



Hungary

Joint Submission to the UN Universal Periodic Review
39th Session of the UPR Working Group

25 March 2021

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

**CIVICUS: World Alliance for Citizen
Participation**

CIVICUS UPR Lead: Mawethu Nkosana

Email: mawethu.nkosana@civicus.org

Tel: +27 11 833 5959

Web: www.civicus.org

1. Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world.
- 1.2** In this document CIVICUS examines Hungary's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society, outlining concerns related to Hungary's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination.
- 1.3** During the 2nd UPR cycle, Hungary received 33 recommendations relating to civic space: 31 were accepted and two were noted. However, an evaluation of a range of legal sources and human rights documentation demonstrates that Hungary has not fully implemented any of these recommendations.
- 1.4** CIVICUS is concerned by closing civic space in Hungary. Since the government took power in 2010, there has been a steady erosion of respect for well-established democratic principles as enshrined in Hungary's laws, the laws of the European Union (EU) and international human rights treaties to which Hungary is a state party.¹
- 1.5** CIVICUS is deeply concerned by legal and extra-legal restrictions on the freedom of association, and the systematic targeting of LGBTQI+ associations and activities.
- 1.6** CIVICUS is alarmed by waning respect for the freedom of expression and media freedoms. The government's introduction of restrictive laws, application of targeted tax rules and interference with editorial independence have severely damaged the media's ability to share a variety of information and opinions with the public.
- 1.7** Civic space in Hungary is currently rated as 'obstructed' by the CIVICUS Monitor.²
- Section 2 of this submission examines Hungary's implementation of UPR recommendations and compliance with international human rights standards relating to the protection of HRDs and civil society activists.
 - Section 3 addresses the freedom of expression and independence of the media and journalists.
 - Section 4 addresses the freedom of association.
 - Section 5 addresses the freedom of peaceful assembly.
 - Section 6 makes recommendations to address the concerns.

¹ Hungary Mid Term Assessment 2011, UPR info, https://www.upr-info.org/sites/default/files/document/hungary/session_11_-_may_2011/mia-hungary.pdf.

² CIVICUS Monitor: Hungary, <https://monitor.civicus.org/country/Hungary>.

2. Harassment, intimidation and attacks against HRDs and civil society activists

- 2.1 Under Hungary's previous UPR examination, the government received and accepted 11 recommendations on the protection of HRDs and civil society representatives. However, it has failed to strengthen measures to ensure a safe environment for HRDs and has not effectively operationalised these recommendations.
- 2.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure protection for HRDs. The International Covenant on Civil and Political Rights (ICCPR) further guarantees the freedoms of association, peaceful assembly and expression.
- 2.3 However, Hungarian HRDs continue to work in a space characterised by threats and wide-ranging harassment, including physical attacks and reprisals for engaging in legitimate and peaceful advocacy.³
- 2.4 In 2018 June, parliament passed a series of laws ('Stop Soros' Laws) criminalising individuals or groups offering to help undocumented immigrants claim asylum.⁴ The legislation restricts the ability of CSOs to act in asylum cases.⁵ On 25 July 2019, the European Commission referred Hungary to the Court of Justice of the EU (CJEU).
- 2.5 LGBTQI+ rights are repeatedly attacked (see 5.7-5.9).⁶ Politicians have increasingly targeted LGBTQI+ people with homophobic and discriminatory comments. Far-right groups have verbally and physically attacked people who have organised and participated in Budapest Pride Month events and workshops of LGBTQI+ organisations. In some cases the police have failed to provide adequate protection.⁷

³ 'European Court to rule on criminalisation of human rights defenders', International Service For Human Rights, 9 September 2020, <https://www.ishr.ch/news/hungary-european-court-rule-criminalisation-human-rights-defenders>; 'Observations Relating to Case C-821/19 Commission vs Hungary', International Service For Human Rights, https://www.ishr.ch/sites/default/files/article/files/ishr_pic_observations_on_case_c-821_19_1.pdf.

⁴ "'Stop Soros laws" followed by new protest law', CIVICUS Monitor, 1 August 2018, <https://monitor.civicus.org/updates/2018/08/01/Stop-Soros-Laws-Passed-by-Hungarian-Parliament>.

⁵ 'Orban continues to target CSOs and opponents ahead of April 8th elections', CIVICUS Monitor, 4 April 2018, <https://monitor.civicus.org/updates/2018/04/04/orban-targets-csos-head-elections-april-8th>; 'Hungary passes anti-immigrant 'Stop Soros' Laws', The Guardian, 20 June 2018, <https://www.theguardian.com/world/2018/jun/20/hungary-passes-anti-immigrant-stop-soros-laws>.

⁶ 'A Small Victory for Transgender Rights in Hungary', Human Rights Watch, 16 March 2021 <https://www.hrw.org/news/2021/03/16/small-victory-transgender-rights-hungary>.

⁷ 'Hungary: Dark day for LGBTI community as homophobic discriminatory bill and constitutional amendments are passed', Amnesty International, 15 December 2020, <https://www.amnesty.org/en/latest/news/2020/12/hungary-dark-day-for-lgbti-community-as-homophobic-discriminatory-bill-and-constitutional-amendments-are-passed>.

3. Freedom of expression and independence of the media

- 3.1 Under the 2nd UPR cycle, the government received nine recommendations relating to the freedom of expression, supporting eight and noting one. However, the freedom of expression and independence of the media continue to face challenges as journalists experience prosecution and media outlets are raided and attacked by the authorities.
- 3.2 ICCPR article 19 guarantees the rights to the freedoms of expression and opinion. The UN Human Rights Committee states that it is “incompatible with paragraph one [of ICCPR article 19] to criminalise the holding of an opinion.”
- 3.3 Under the leadership of Prime Minister Viktor Orbán, the government has continued to diminish media independence. In November 2018, 476 media outlets became part of a new media holding organisation, the Central European Press and Media Foundation (KESMA), controlled by pro-government forces. Most media outlets were owned by pro-government oligarchs and donated to KESMA. In January 2020, the Budapest-Capital Regional Court stated that the decision of the Hungarian Competition Authority to allow the creation of KESMA was unlawful.
- 3.4 On 11 September 2020, Hungary’s Media Council decided not to renew the licence of the radio station Klubrádió, one of the few remaining critical outlets. According to the Media Council, it had repeatedly violated Hungary’s media laws. The Media Council is appointed by the government and dominated by members of the ruling Fidesz party.⁸ On 9 February 2021, a Budapest court rejected the request to temporarily extend Klubrádió’s licence. Klubrádió went permanently off air on 14 February 2021. While it is still able to broadcast online, the station cannot reach many of its previous listeners.
- 3.5 In mid-January 2020, the Hungarian Civil Liberties Union reported that the government had made an arbitrary decision on which editorial offices would be granted the opportunity to attend Prime Minister Orbán’s annual press conference. While pro-government media were well represented at the event, well-known independent online media were denied entry.
- 3.6 In March 2020, it was reported that Hungarian public media (MTVA) employees require special approval from their editors to cover topics such as migration, politics and the EU, and that coverage of reports from leading human rights organisations is prohibited. In November 2020, an investigation found that MTVA editors were

⁸ ‘New huge pro-government media conglomerate in Hungary threatens freedom of speech’, CIVICUS Monitor, 17 February 2019, <https://monitor.civicus.org/updates/2019/02/17/New-huge-pro-government-media-conglomerate-in-Hungary-threatens-freedom-of-speech>.

instructed on how to cover opposition parties and reporters were instructed to take a negative stance on climate change and LGBTQI+ and migration issues.

- 3.7** On 11 March 2020, Hungary declared a state of emergency due to the COVID-19 pandemic. On 20 March 2020, a bill was submitted to prolong emergency measures for as long as the government deems necessary, allowing the government to rule by decree. The Authorisation Act was adopted on 30 March 2020.⁹
- 3.8** On 17 June 2020, the government announced an end to the 'state of danger' but immediately declared a 'state of medical crisis'. This newly established legal situation allowed the government to issue a wide range of decrees and restrict rights. The state of medical crisis cannot be lifted by parliament. Human rights organisations are concerned that this offers a smokescreen for maintaining unchecked and excessive government powers.
- 3.9** The Authorisation Act criminalised the spread of 'false news' about the pandemic. Media organisations raised concerns that this would significantly impact on the freedom of expression. While no journalists have so far been detained for spreading 'fake news' based on the Act, criminalisation has had a chilling effect on the freedom of expression.¹⁰
- 3.10** On 21 June 2020, almost 100 journalists and staff of the Index.hu website, which was Hungary's remaining major independent news site, released a statement stating that the site was in danger due to an organisational overhaul. The site operates under a complex ownership structure, with government allies having moved into some key positions in recent years. On 24 July 2020, over 70 Index.hu journalists resigned, including three leading editors, following the dismissal of editor-in-chief Szabolcs Dull, which editorial staff saw as a clear case of political interference. The developments came shortly after pro-government businessman Miklos Vaszily gained a stake in it. Following the resignations, journalists and thousands of other people protested outside the offices of Prime Minister Orbán.
- 3.11** Academic freedom faces significant threats, with a decision by Fidesz in July 2020 to transfer ownership of the University of Theatre and Film Arts to a private foundation. A board of five trustees, closely linked to Prime Minister Orbán, was appointed. This prompted the resignation of the school's administration and several teachers. Six other universities have recently undergone similar changes.¹¹

⁹ 'The defense law was passed by parliament', Vakcinainfo, 30 March 2020, <https://koronavirus.gov.hu/cikkek/elfogadta-vedekezesrol-szolo-torvenyt-parlament>.

¹⁰ 'Concerns over democratic decline, with transgender rights and freedom of speech under attack', CIVICUS Monitor, 5 June 2020, <https://monitor.civicus.org/updates/2020/06/05/concerns-over-democratic-decline-transgender-rights-and-freedom-speech-under-attack>.

¹¹ 'Hungary Renews its War on Academic Freedom', Human Rights Watch, 2 July 2019, <https://www.hrw.org/news/2019/07/02/hungary-renews-its-war-academic-freedom>; 'Hungary Continues Attacks on

4. Freedom of peaceful assembly

- 4.1** During Hungary's examination under the 2nd UPR cycle, the government received seven recommendations on the right to the freedom of peaceful assembly, accepting six and noting one. However, the government has failed to realise these recommendations. Recent protests have seen the use of brutal force by security forces.
- 4.2** ICCPR article 21 guarantees the freedom of peaceful assembly, as does article VIII of the Fundamental Law of Hungary. The right to the freedom of peaceful assembly is largely observed. However, the three-day notification requirement remains the main rule applicable to meeting organisers; international best practice suggests a maximum 48-hour notification period.
- 4.3** The authorities have prevented assemblies on the basis that criminal offences may be committed by participants. Gatherings have often been disrupted by state forces, employing repressive measures and unnecessary and excessive force to disperse peaceful crowds.
- 4.4** On 12 December 2018, dozens of Hungarian opposition lawmakers were fined up to a month's wages for their protests inside parliament as deputies were voting on changes to the labour code.¹²
- 4.5** Based on the 20 November 2020 emergency law, the government adopted a decree putting a blanket ban on assemblies in public spaces, allowed the military to take part in patrols and monitor compliance, and imposing heavy fines of up to €1,400 (approx. US\$1,650) for participation in banned protests.¹³
- 4.6** While restricting the right to assemble due to public health concern is permitted under international human rights law, any form of blanket ban on assemblies is generally considered disproportionate. Limitations need to remain proportionate as the context of the pandemic changes and be lifted as soon as possible.
- 4.7** On 15 March 2021, protesters in Budapest broke the blanket ban to demand an end to lockdown restrictions. The protest, organised by a far-right party, Our Homeland Movement, was joined by around a thousand people. The police denied claims by

Academic Freedom', Human Rights Watch, 3 September 2020, <https://www.hrw.org/news/2020/09/03/hungary-continues-attacks-academic-freedom>.

¹² 'Hungarian opposition lawmakers fined for parliament protest', Associated Press, 19 March 2019, <https://apnews.com/article/ef07ea1f36324d73bfd59f6751da13d4>.

¹³ 'Hungary: New Rules put a total ban on protests infringing on the right to freedom of peaceful assembly', Civic Space Watch, 20 November 2020, <https://civicspacewatch.eu/hungary-new-rules-put-a-total-ban-on-protests-infringing-on-the-right-to-freedom-of-assembly>.

organisers that it could be legally held if masks were worn and social distancing observed. Protests gradually dispersed after police began checking identification documents.

5. Freedom of Association

5.1 During Hungary's examination under the 2nd UPR cycle, the government received six recommendations on the right to the freedom of association and creating an enabling environment for CSOs. All recommendations were accepted by the government, but it has not implemented any of them.

5.2 ICCPR article 22 guarantees the freedom of association, as does Act CLXXV of 2011 on the Freedom of Association, Non-profit Status and the Operation and Support of Civil Organizations (Civil Act).¹⁴

5.3 The Act regulates CSOs of various kinds. Civil organisations are required to publish an annual public benefit report, including activity and financial reports and reporting on any budgetary support, any grants given, the value or amount of compensation provided to leading officials and assets management.¹⁵

5.4 On 8 June 2020, the CJEU ruled that the 2017 law concerning the foreign funding of CSOs does not comply with EU law. According to the law, any organisation receiving more than €24,000 (approx. US\$28,400) from abroad must register as 'foreign supported'. Under the law, CSOs must also list any foreign sponsors granting them more than €1,600 (approx. US\$1,900) a year. The law requires qualifying organisations to label all communications materials accordingly. Failure to comply can lead to the freezing of assets or termination of an organisation's activities.

5.5 The government claimed that the law was needed to counter money laundering and boost transparency. However, the law has long been perceived as part of the Hungarian government's sustained campaign of vilification against philanthropist George Soros. The EUCJ found that the law introduced "discriminatory and unjustified restrictions" on organisations and helped create a "climate of distrust".

5.6 On 18 February 2021, the European Commission sent a letter of formal notice to the Hungarian government for failing to repeal the law in accordance with the Court's ruling.¹⁶ The letter gives Hungary two months to respond to the Commission's concerns, after which the Commission may decide to refer the case to the EUCJ with proposed financial sanctions.

¹⁴ International Labour Organization: Hungary, http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=99862.

¹⁵ Ibid.

¹⁶ 'February infringements package: key decisions', European Commission, 18 February 2021, https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441.

5.7 On 19 May 2020, parliament passed an amendment to an omnibus bill changing the Registry Act to only recognise 'sex at birth'.¹⁷ The new law makes the legal recognition of transgender and intersex persons impossible.¹⁸ The constitutionality of the law is being challenged by The Transvanilla Transgender Association.¹⁹ The law sparked outcry from human rights organisations and the Council of Europe.²⁰

5.8 In November 2020, the government proposed a draft constitution amendment, reinforcing institutionalised homophobia and transphobia.²¹ A sentence was added to Constitution article L to define that "the mother is a woman; the father is a man." In a second change, article XVI (1) now states that: "Hungary protects children's rights to their identity in line with their birth sex, and the right to education according to our country's constitutional identity and system of values based on Christian culture."²² Draft amendments to the Civil Code and the Child Protection Act were also passed, meaning that single parents can only adopt under special circumstances.²³

5.9 On 10 November 2020, parliament's Justice Committee presented legislation to abolish the Equal Treatment Authority (ETA), with the Hungarian Commissioner for Fundamental Rights absorbing its activities, claiming that this will provide a more efficient institutional structure.²⁴ ETA has been the most successful body for addressing discrimination against LGBTQI+ people. By contrast the Commissioner has shown no interest in defending LGBTQI+ rights.

6. Recommendations

- CIVICUS calls on the Government of Hungary to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights

¹⁷ 'Hungary Outlaws Changing Gender on Documents After Birth', The New York Times, 28 May 2020, <https://www.nytimes.com/2020/05/28/world/europe/hungary-transgender-law.html>.

¹⁸ 'Concerns over democratic decline, with transgender rights and freedom of speech under attack', CIVICUS Monitor, 5 June 2020, <https://monitor.civicus.org/updates/2020/06/05/concerns-over-democratic-decline-transgender-rights-and-freedom-speech-under-attack>.

¹⁹ 'Transvanilla Association representing two trans applicants turns to the constitutional court', Transvanilla, 28 May 2020, <https://transvanilla.hu/home/news/press-release-transvanilla-association-representing-two-trans-applicants-turns-to-the-constitutional-court>.

²⁰ 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards', Council of Europe, 27 April 2020, https://www.coe.int/en/web/ingo/newsroom/-/asset_publisher/BR9aikJBXnwX/content/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards.

²¹ 'A New Chapter in the Hungarian Government's Crusade Against LGBTQI People', Verfassungsblog, 18 November 2020, <https://verfassungsblog.de/a-new-chapter-in-the-hungarian-governments-crusade-against-lgbtqi-people>.

²² 'Unabated attacks on LGBTI rights amid pandemic', CIVICUS Monitor, 3 December 2020, <https://monitor.civicus.org/updates/2020/12/03/unabated-attacks-lgbti-rights-amid-pandemic>.

²³ 'Hungary: dark day for LGBTI community as homophobic discriminatory bill and constitutional amendments are passed', Amnesty International, 15 December 2020, <https://www.amnesty.org/en/latest/news/2020/12/hungary-dark-day-for-lgbti-community-as-homophobic-discriminatory-bill-and-constitutional-amendments-are-passed>.

²⁴ Verfassungsblog, op. cit.

enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

6.1 Protection of HRDs and activists

- Provide HRDs and activists with a safe environment in which they can carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation and bring perpetrators of offences to justice.
- Initiate a consolidated process of repeal or amendment of legislation and decrees that unwarrantedly restrict the legitimate work of HRDs, in line with the UN Declaration on Human Rights Defenders.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect activists by adopting a specific law on the protection of activists, in accordance with Human Rights Council resolution 27.31.

6.2 Freedom of expression and independence of the media

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Reinstate all media outlets unwarrantedly closed.
- Take steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Guarantee unfettered access to domestic and foreign media information, offline and online

6.3 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 report.
- Immediately and impartially investigate all instances of excessive force committed by security force towards protests.

- Review and update human rights training for police and security forces, with the assistance of CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn the use of excessive force in the dispersal of protests, launch investigations into such instances and bring perpetrators to justice.
- Provide recourse for judicial review and effective remedy in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.4 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing measures that unwarrantedly limit the right to association.
- Promote meaningful dialogue that allows and embraces diverging views, including those of CSOs, HRDs, journalists, political activists, LGBTQI+ groups and other minority groups.
- Amend the Law on Associations to remove undue restrictions on the freedom of association and amend laws on public gathering to bring their provisions into compliance with ICCPR articles 21 and 22.

6.5 Access to Special Procedures mandate holders

- Facilitate official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association.

6.6 Engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of the UPR.

- Incorporate the results of this UPR into action plans for the promotion and protection of human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Council on the implementation of the recommendations of this session.