



Malaysia

Joint Submission to the UN Universal Periodic Review  
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Submission by CIVICUS: World Alliance for Citizen Participation, NGO in  
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And

Pusat KOMAS

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## 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. Founded in 1993, CIVICUS has members in more than 170 countries throughout the world.
- 1.2 Pusat KOMAS is a Malaysian-based human rights organisation that promotes the principle of non-discrimination in advocating for an equal and just society. Since its establishment in 1993, Pusat KOMAS has actively empowered marginalised groups, particularly indigenous people and urban poor communities, and engaged with the government at all levels to eliminate any forms of racially discriminatory laws and policies. Pusat KOMAS is a member of CIVICUS.
- 1.3 In this document, CIVICUS and Pusat KOMAS examine the Government of Malaysia's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Malaysia'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 in October 2013. To this end, we assess Malaysia's implementation of recommendations received during the 2<sup>nd</sup> UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.4 During the 2<sup>nd</sup> UPR cycle, the Government of Malaysia received 13 recommendations relating to civil society space. Of these recommendations, five were accepted and eight were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Malaysia partially implemented five recommendations relating to civic space and did not implement eight recommendations at all. The government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination. Particularly acute implementation gaps were found with regard to the rights to the freedoms of peaceful assembly and expression.
- 1.5 CIVICUS and Pusat KOMAS are deeply concerned with the use of restrictive laws by the authorities to investigate and prosecute government critics and peaceful protesters in their exercise of the rights to freedom of expression and peaceful assembly as well as to shut down independent media outlets.
- 1.6 CIVICUS and Pusat KOMAS are further alarmed by the harassment of and threats against HRDs as well as the increasing use of arbitrary travel bans by the government to deter the freedom of movement of HRDs.

- Section 2 of this submission examines Malaysia's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Malaysia's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Malaysia's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, independence of the media and access to information.
- Section 5 examines Malaysia's implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 makes a number of recommendations to address the concerns raised.
- An annex assessing implementation of 2<sup>nd</sup> cycle UPR recommendations related to civic space.

## 2. Freedom of association

- 2.1** During Malaysia's examination under the 2<sup>nd</sup> UPR cycle, the government received one recommendation related to the right to the freedom of association and creating an enabling environment for CSOs. This recommendation, which the Government of Malaysia noted, urged the government to facilitate an official visit by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. As evidenced below, the government has failed to take adequate measures to realise this recommendation, and the right to the freedom of association more generally
- 2.2** Malaysia has yet to ratify the International Covenant on Civil and Political Rights (ICCPR) which imposes obligations on states to respect and protect the freedoms of association, peaceful assembly and expression. While Article 10(c) of the Malaysia Constitution guarantees the right to the freedom of association, the government has continued to use legislation to restrict the formation of associations unwarrantedly, including by threatening to suspend or close CSOs and movements not legally registered.<sup>1</sup> Moreover, the National Human Rights Action Plan issued by the government in February 2018 neither prioritises these rights nor includes specific provisions to strengthen their protection.<sup>2</sup>
- 2.3** The legal framework governing the operations of CSOs remains unduly restrictive and heavily burdensome. In particular, the Societies Act 1966 prohibits the formation

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<sup>1</sup> Malaysia Federal Constitution, [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf).

<sup>2</sup> See 'Part 1: Civil and Political Rights' of the 2018 National Human Rights Action Plan, Malaysia, pp. 52-69 (available in Bahasa on file).

or operation of unregistered groups. Organisations that have attempted to register with the Registrar of Societies (ROS) have experienced excessive waiting periods as there is no fixed time period to decide upon a registration application. Further, the ROS has broad powers to refuse registration and absolute discretion to declare a society illegal. As a result, many CSOs in Malaysia register as companies, which presents legal and bureaucratic restrictions on their ability to recruit members and raise funds.<sup>3</sup>

**2.4** In January 2014, The Home Ministry deemed the Coalition of Malaysian NGOs (COMANGO) an 'illegal entity' under the Societies Act after it made a UPR submission. The Home Ministry vilified COMANGO for 'championing LGBT rights' and making demands contrary to Malaysia's Syariah law.<sup>4</sup> In November 2016, the government announced a ban on the activities of Bersih, the Coalition for Clean and Fair Elections, two weeks before a planned mass protest, on the specious grounds that they were not registered under the Societies Act.<sup>5</sup>

**2.5** In law and practice, the freedom of association for workers in Malaysia remains unduly constrained.<sup>6</sup> The Director General of Trade Unions (DGTU), a government official with the authority over general supervision, direction and control of all matters relating to trade unions, has vast powers to refuse to register a union or withdraw union registration.<sup>7</sup> Further, union recognition claims are also subject to arbitrary and discretionary delays.<sup>8</sup> Migrant workers, who represent at least 15 per cent of the Malaysian workforce,<sup>9</sup> are often coerced by immigration authorities or their employers not to join unions.<sup>10</sup>

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<sup>3</sup> 'Malaysia Country Report 2015', in the website of the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, June 2015, <http://freeassembly.net/wp-content/uploads/2015/11/Malaysia-Country-Report-June-2015.pdf>; 'Civic Freedom Monitor: Malaysia', International Center for Not-for-Profit Law (ICNL), March 2018, [http://www.icnl.org/research/monitor/malaysia.html#\\_ftn63](http://www.icnl.org/research/monitor/malaysia.html#_ftn63).

<sup>4</sup> 'Home Ministry: COMANGO is an illegal entity, not registered with ROS', The Star, 8 January 2014, <https://www.thestar.com.my/news/nation/2014/01/08/comango-illegal-home-ministry>.

<sup>5</sup> 'Bersih, Red Shirts groups not registered under Societies Act: Zahid', The Sun Daily, 3 November 2016, <http://www.thesundaily.my/news/2048946>.

<sup>6</sup> 'A safety net for employees', The Star, 29 August 2017, <https://www.thestar.com.my/news/nation/2017/08/29/a-safety-net-for-employees-with-the-employment-insurance-system-eis-some-65-million-workers-in-the-p>.

<sup>7</sup> ICNL, op. cit.

<sup>8</sup> For example, the requirement that the list of workers eligible to vote to form a union be based on the workforce on the day the vote was requested is problematic. Often a ballot may only take place after one to three years, due to delaying tactics and legal challenges by employers, meaning changes to the workforce requesting union recognition. See 'Labor Justice for Migrants - and Malaysian Workers Too', Malaysian Trades Union Congress, 13 November 2015, <http://www.mtuc.org.my/labor-justice-for-migrants-and-malaysian-workers-too>.

<sup>9</sup> 'Three things to know about migrant workers and remittances in Malaysia', The World Bank, 6 January 2017, <http://blogs.worldbank.org/eastasiapacific/three-things-to-know-about-migrant-workers-and-remittances-in-malaysia>.

<sup>10</sup> According to some Nepali migrant workers, immigration authorities have coerced them into signing a separate paper that restricts them from joining trade unions. Further, some of their employment contracts

- 2.6** CIVICUS and Pusat KOMAS remain concerned by attempts by the Prime Minister's department to undermine the independence of the Malaysian Bar Council. In July 2016, the department proposed amendments to the 1976 Legal Profession Act (LPA) to allow the Minister in charge of legal affairs to appoint two members to the Malaysian Bar Council, restrict eligibility for leadership positions to those elected to the Council by the various State Bars and change the quorum requirements, which would make it extremely difficult to hold general meetings. CSOs raised concerns that the amendments would repress the Malaysia Bar's strong and principled voice on legal matters of public interest. The government was forced to back down,<sup>11</sup> and in February 2018 began a 'public online consultation' on the proposed amendments to the LPA.<sup>12</sup>
- 2.7** The Government of Malaysia's cooperation with mechanisms of the Human Rights Council related to civil and political rights has been poor<sup>13</sup> and longstanding requests for visits from the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have gone unanswered. Worryingly, in December 2016, the Deputy Home Minister criticised the rapporteur for his comments on politically motivated investigations by the authorities into foreign funding received by CSOs in Malaysia.<sup>14</sup>

### **3. Harassment, intimidation and attacks against HRDs, civil society activists and journalists**

- 3.1** Under Malaysia's previous UPR examination, the government received one recommendation on the protection of journalists and bloggers, which the government

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state that if an employee is found to be creating social problems he/she will be dismissed with immediate effect. Migrant workers say that such a provision in their employment contract is basically meant to discourage migrant workers from joining a trade union. See 'Malaysia flouts own law on migrants rights', Republica, 26 June 2015, <http://admin.myrepublica.com/politics/story/23544/plight-of-nepalis-in-malaysia-flouting-own-law-malaysia-prevents-migrants-joining-trade-union.html%20>.

<sup>11</sup> 'Joint NGO letter on LPA amendments', Human Rights Watch, 14 November 2016, <https://www.hrw.org/news/2016/11/14/joint-ngo-letter-lpa-amendments>; 'LPA amendments an open attack on independence of M'sian Bar', Suaram, 21 July 2016, <https://www.suaram.net/2016/07/21/lpa-amendments-an-open-attack-on-independence-of-msian-bar>.

<sup>12</sup> 'Putrajaya invites public feedback on proposed changes to legal profession', The Malay Mail Online, 28 February 2018, <http://m.themalaymailonline.com/malaysia/article/putrajaya-invites-public-feedback-on-proposed-changes-to-legal-profession>.

<sup>13</sup> Malaysia has yet to accept ongoing requests from the UN Special Rapporteurs on Human Rights Defenders, Human Rights and Counter Terrorism, Freedom of Religion, the Independence of Judges and on Torture. Further, the last visit of the UN Special Rapporteur on Freedom of Expression was in 1998. See 'Country visits of Special Procedures of the Human Rights Council since 1998', United Nations Office of the High Commissioner for Human Rights, <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=MYS>.

<sup>14</sup> 'Nur Jazlan: UN rep's 'meddling' justifies foreign funding probe', Malaysiakini.com, 6 December 2016, <https://www.malaysiakini.com/news/365282>

accepted. However, as examined in this section, the government has failed to operationalise this recommendation effectively.

- 3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure protection to HRDs. However, despite these protections, HRDs and civil society activists in Malaysia continue to be restricted, targeted and criminalised for their legitimate work.
- 3.3 Malaysian authorities have increasingly used the Immigration Act to prevent HRDs from travelling abroad to expose human rights concerns at international events. Political cartoonist Zunar (full name Zulkiflee Anwar Ul Haque), whose satirical cartoons are sharply critical of the government, has been banned from travelling since June 2016.<sup>15</sup> In May 2016, HRD Maria Chin, from Bersih, was barred from travelling to South Korea to accept the Gwangju Prize Human Rights Award.<sup>16</sup> The courts dismissed her judicial review of the ban in May 2017, stating that the ban was not reviewable.<sup>17</sup>
- 3.4 HRDs and activists have also been barred from entering Malaysia. In July 2017, Malaysian authorities detained Adilur Rahman Khan, Secretary of Odhikar, a leading Bangladeshi human rights organisation, as he arrived in the country to speak at a conference on the death penalty. He was deported after being detained for 14 hours.<sup>18</sup> On 18 June 2017, police in Malaysia's Kuala Lumpur International Airport detained HRD Han Hui Hui for four hours and interrogated her for over an hour, before deporting her back to Singapore. She later learned that she was sent back to Singapore under section 8(3)(k) of Malaysia's Immigration Act, which applies to "undesirable immigrants."<sup>19</sup>
- 3.5 The authorities have also used the judicial system to intimidate HRDs and activists. On 13 June 2017, human rights lawyer Siti Kasim was charged with "obstructing a public servant in discharge of his public functions" under Section 186 of the Penal Code after she questioned a raid in April 2016 by the Federal Territories Islamic Religious Department (JAWI) on a private transgender fundraising dinner in Kuala

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<sup>15</sup> 'Malaysia: Cartoonist Zunar barred from travel and facing new investigation', Article 19, 30 November 2017, <https://www.article19.org/resources/malaysia-cartoonist-zunar-barred-travel-facing-new-investigation>.

<sup>16</sup> 'Bersih chief barred from leaving Malaysia, can't accept South Korean award', Malaysiakini, 15 May 2016, <https://www.malaysiakini.com/news/341599>.

<sup>17</sup> 'Maria Chin fails to challenge Immigration DG's travel ban', Malay Mail Online, 18 May 2017, <http://www.themalaymailonline.com/malaysia/article/maria-chin-fails-to-challenge-immigration-dgs-travel-ban>.

<sup>18</sup> 'Malaysia: Release and subsequent deportation of Mr Adilur Rahman Khan', Worldwide Movement for Human Rights, 21 July 2017, <https://www.fidh.org/en/issues/human-rights-defenders/malaysia-release-and-subsequent-deportation-of-mr-adilur-rahman-khan>.

<sup>19</sup> 'Han Hui Hui prevented from entering Malaysia and deported', Front Line Defenders, 23 June 2017, <https://www.frontlinedefenders.org/en/case/han-hui-hui-prevented-entering-malaysia-and-deported>.

Lumpur, which she had attended as a guest.<sup>20</sup> On 24 May 2017, HRDs Sevan Doraisamy, Thomas Fann and Rama Ramanathan, all members of the Citizen Action Group On Enforced Disappearance, were interrogated by the police over a statement they made that abductions perpetrated between November 2016 and February 2017 were “enforced disappearances.” An investigation was launched into the three under Section 504 of the Penal Code, which applies to “intentional insult to provoke a breach of the peace” and carries a penalty of two years imprisonment and a fine.<sup>21</sup>

- 3.6** On 21 February 2017, HRD and former Pusat KOMAS staff member, Lena Hendry, was found guilty of violating the Film Censorship Act for holding a screening in 2013 of ‘No Fire Zone: The Killing Fields of Sri Lanka’, a film on human rights violations during the civil war in Sri Lanka. She was charged in September 2013 and initially acquitted in 2016. However, in February 2017, she was convicted upon appeal and fined RM10,000 (approximately US\$2,600).<sup>22</sup> CIVICUS and Pusat KOMAS believe she was arbitrarily and unjustly targeted for her activism.
- 3.7** Journalists exposing government abuse may also be targeted by the authorities. On 4 September 2014, police arrested Susan Loone, a journalist with online news portal Malaysiakini.com, under the Sedition Act, following an interview in which she criticised the police. She was questioned for nine hours before being released on bail without charges being filed.<sup>23</sup>

## **4. Freedom of expression, independence of the media and access to information**

- 4.1** Under the 2<sup>nd</sup> UPR cycle, the government received seven recommendations relating to the freedom of expression and access to information. For example, the government pledged to “amend or repeal both the Sedition Act and the Printing, Presses and Publications Act” and “to bring Malaysia’s domestic security legislation in line with its international human rights commitments on the freedoms of expression, peaceful assembly, and association.” Of the recommendations received, three were accepted and four were noted. However, as discussed below, the government did not take effective measures to implement these recommendations. The government partially implemented three recommendations and did not implement the other four.

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<sup>20</sup> ‘Malaysia: Drop charges against human rights defender Siti Kassim’, Article 19, 27 June 2017, <https://www.article19.org/resources/malaysia-drop-criminal-charges-against-human-rights-defender-siti-kassim>.

<sup>21</sup> ‘Sevan Doraisamy to be investigated by the police over claims of enforced disappearances’, Front Line Defenders, 19 May 2017, <https://www.frontlinedefenders.org/en/case/sevan-doraisamy-be-investigated-police-over-claims-enforced-disappearances>.

<sup>22</sup> ‘Activist Lena Hendry disappointed over conviction’, The Star, 21 February 2017, <https://www.thestar.com.my/news/nation/2017/02/21/activist-lena-hendry-disappointed-over-conviction>.

<sup>23</sup> ‘Malaysia: Critical Crackdown: Freedom of Expression under attack in Malaysia’, Amnesty International, 26 January 2016, <https://www.amnesty.org/en/documents/asa28/3166/2016/en>.

- 4.2** Article 10(a) of the Constitution of Malaysia guarantees the right to the freedoms of speech and expression.<sup>24</sup> However, restrictive laws undermine these rights and target those critical of government. Further, most print and broadcast outlets are controlled either by political parties in the ruling coalition or by businesses with political connections to the government. Independent media outlets exposing government abuse often face harassment and defamation charges or are blocked.<sup>25</sup>
- 4.3** Instead of repealing the Sedition Act as recommended in the previous UPR cycle, its use has skyrocketed since the government narrowly won the 2013 general elections. In 2015 alone, at least 91 individuals were arrested, charged or investigated for sedition - almost five times as many as during the law's first 50 years of existence. Those targeted include human rights activists, journalists, academics, lawyers and opposition politicians.<sup>26</sup> In February 2015, Eric Paulsen, a human rights lawyer, was charged for publishing a tweet in which he allegedly accused the Malaysian Islamic Development Department, a government agency, of promoting extremism.<sup>27</sup> At the time of reporting the case was still being adjudicated.
- 4.4** There has also been an increase in the use of the Communications and Multimedia Act (CMA) 1998 to criminalise online expression. On 6 November 2017, the government revealed that between January and 30 September 2017, 146 cases were investigated under Section 233 of the CMA.<sup>28</sup> Section 233(1)(a) of the CMA criminalises, among other activities, the use of network facilities or network services by a person to transmit any communication that is deemed to be offensive and could cause annoyance to another person. On 7 June 2016, 19-year-old Muhammad Amirul Azwan Mohammed Shakri was sentenced to a year in prison under section 233 of the CMA for making insulting comments against a member of the Johor state royalty on Facebook. In the same month, activist and artist Fahmi Reza was charged under the CMA for posting a clown caricature of the Prime Minister on Facebook. He first posted the image in January 2016, with a comment on how the repressive Sedition Act was being used to persecute Malaysians who speak out.<sup>29</sup> On 20 February 2018, Fahmi

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<sup>24</sup> Malaysian Constitution, op. cit.

<sup>25</sup> 'Malaysia - Freedom of the Press 2016', Freedom House, 2016, <https://freedomhouse.org/report/freedom-press/2016/malaysia>.

<sup>26</sup> 'Malaysia: End unprecedented crackdown on hundreds of critics', Amnesty International, 11 March 2016, <https://www.amnesty.org/en/latest/news/2016/03/malaysia-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act>.

<sup>27</sup> 'Jan 28 fixed for Eric Paulsen's sedition charge', The Star Online, 2 December 2015, <https://www.thestar.com.my/news/nation/2015/12/02/court-eric-paulsen-sedition-charge>.

<sup>28</sup> 'Malaysia: Human Rights report 2017 Overview', Suaram, December 2017, p. 17 (available on file).

<sup>29</sup> 'Malaysia: Ongoing crackdown on social media', Amnesty International New Zealand, 8 June 2016, <https://www.amnesty.org.nz/malaysia-ongoing-crackdown-social-media>.

was found guilty and sentenced to a month in jail and fined RM10,000 (approximately US\$2,550).<sup>30</sup>

- 4.5** Section 263(2) of the CMA endows the authorities with excessive powers to bar public access to websites for “the protection of the public revenue and preservation of national security.” In February 2016, the Malaysian Communications and Multimedia Commission blocked The Malaysian Insider news website on ‘national security’ grounds after it published a report about corruption allegations linked to Prime Minister Najib Razak.<sup>31</sup> In July 2016, the commission blocked the UK-based Sarawak Report news website for its extensive reporting on a corruption scandal surrounding the misappropriation of an estimated US\$4.5 billion from the 1 Malaysia Development Berhad (1MDB) state investment fund, allegedly by high level officials and their associates.<sup>32</sup>
- 4.6** In January 2018, the government proposed a law to address the spread of ‘fake news’ that could “potentially threaten the country’s political stability, undermine public order and disrupt national security.” CSOs including Pusat Komnas and CIVICUS have raised concerns that the law could be used to further restrict the freedom of expression.<sup>33</sup>
- 4.7** Despite the government’s commitments to revise a number of repressive national security laws, it has systematically and wilfully misused these laws to suppress democratic dissent. The Security Offences (Special Measures) Act 2012 (SOSMA), which allows for 28 days’ detention without trial, was applied in November 2016 to detain Maria Chin Abdullah, chairperson of Bersih. She was held for 10 days in preventive detention in an unknown location. During her detention, she was kept in solitary confinement, in a cell without a bed, air circulation or windows and with a bright light on at all times. She was questioned for between six to eight hours each day, as authorities sought information on Bersih’s activities. She was forced to wear blinding black goggles and handcuffed when being transported in and out of her cell for questioning. For the first two days of her confinement, she was denied access to her family and lawyers.<sup>34</sup>

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<sup>30</sup> ‘Malaysian court jails, fines artist for clown caricature of PM Najib’, The Straits Times, 20 February 2018, <http://www.straitstimes.com/asia/se-asia/malaysian-court-jails-fines-artist-for-clown-caricature-of-pm>.

<sup>31</sup> ‘Police question Malaysian Insider CEO, editors about corruption story’, Benar News, 26 February 2016, <https://www.benarnews.org/english/news/malaysian/Malaysian-Insider-blocked-02262016183306.html>.

<sup>32</sup> Freedom House, op. cit.

<sup>33</sup> ‘Ministry reviewing Communications and Multimedia Act to address fake news’, Malay Mail Online, 27 January 2018, <http://www.themalaymailonline.com/malaysia/article/ministry-reviewing-communications-and-multimedia-act-to-address-fake-news#8Rvg3SrloqQEmPg1.99> and ‘Proposed ‘fake news’ bill a threat to freedom of expression’, Malaysiakini.com, 23 March 2018, <https://www.malaysiakini.com/news/416813>

<sup>34</sup> ‘Human Rights Defender released but still at risk’, Amnesty International, 1 December 2016, <https://www.amnesty.org/download/Documents/ASA2852402016ENGLISH.pdf>. As well as the case of Maria Chin Abdullah, another noted case where security legislation was misused was that of Khairuddin Abu Hassan, who was detained on 18 September 2015, for alleged “activity detrimental to Parliamentary democracy.” The

- 4.8** The Printing Presses and Publications Act (PPPA) gives the authorities broad and ill-defined powers to limit the number of printed newspapers, suspend publication of newspapers that report on corruption and deter printing presses from printing books critical of the government. In July 2015, the Home Ministry suspended permits for news publications the Edge Weekly and Edge Financial Daily for three months, stating that their reporting on the 1MDB corruption scandal had prejudiced public order. The High Court overturned the suspensions in September 2015.<sup>35</sup> In 2017, human rights group Suaram documented the banning of at least 50 books under the PPPA, including those that were deemed to contain ‘deviationist’ teachings.<sup>36</sup>
- 4.9** News websites and blogs offer Malaysians a space to debate political issues and government policies as well as raise human rights concerns. However, some online media outlets have been subject to civil defamation suits by government officials and politicians, with the effect of stifling political dissent and curtailing the freedom of expression. In 2014, Prime Minister Najib and his political party, the United Malays National Organisation (UMNO), sued media outlet Malaysiakini, accusing them of publishing articles defamatory of the Prime Minister and UMNO.<sup>37</sup> The lawsuit stems from two articles that were published in the ‘Yoursay’ section of the Malaysiakini website on 14 May 2014. The two articles contained a compilation of readers’ comments critical of the government.
- 4.10** There has also been growing intolerance of minority beliefs and views in Malaysia. In October 2017, at least 200 Iraqi nationals were arrested by Islamic authorities for taking part in a Shia ceremony<sup>38</sup> while followers of the Ahmadiyya movement have faced arrests and harassment.<sup>39</sup> In August 2017, a government minister called for atheists to be “hunted down” after a photo of the Atheist Republic chapter in Malaysia went viral on social media.<sup>40</sup>

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detention prevented him from travelling to the USA after he gave information about the 1MDB corruption scandal to authorities in France, Hong Kong, Singapore, Switzerland and the UK. When the court ordered him released on 23 September 2015, he was rearrested and ordered detained under SOSMA for 28 days, pending investigation into alleged “sabotage against the state.” Authorities also arrested Khairuddin’s lawyer, Matthias Chang, in Kuala Lumpur under the same provision on 8 October 2015.

<sup>35</sup> Freedom House, op. cit.

<sup>36</sup> Suaram, December 2017, pp. 22-24, op. cit.

<sup>37</sup> ‘Malaysia: Drop defamation lawsuit against news website’, Amnesty International, 9 June 2014, <https://www.amnesty.org/en/documents/ASA28/004/2014/en>.

<sup>38</sup> ‘200 Iraqi Shias released in Selangor after pressure from Baghdad’, Free Malaysia Today, 1 October 2017, <http://www.freemalaysiatoday.com/category/nation/2017/10/01/200-iraqi-shias-released-after-pressure-from-baghdad>.

<sup>39</sup> ‘JAIS allegedly menace Ahmadis with arrest to continue Shariah trial halted by High Court’, Malay Mail Online, 1 July 2015, <http://www.themalaymailonline.com/malaysia/article/jais-allegedly-menace-ahmadis-with-arrest-to-continue-shariah-trial-halted#FqeuMjWikdKXIZP.97>.

<sup>40</sup> ‘Atheists in Malaysia should be hunted down, minister says’, Malay Mail Online, 8 August 2017, <http://www.themalaymailonline.com/malaysia/article/atheists-in-malaysia-should-be-hunted-down-minister-says#dtx7YP3SWHIYU2GJ.97>.

## 5. Freedom of peaceful assembly

- 5.1** During Malaysia's examination under the 2<sup>nd</sup> UPR cycle, the government received five recommendations on the right to the freedom of peaceful assembly. Among other recommendations, the government committed to ensuring to "continue encouraging the right to peaceful assembly." Of the recommendations received by Malaysia, two were accepted and three, all related to reviewing the 2012 Peaceful Assembly Act (PAA), were noted. However, as evidenced below, the government has failed to realise these recommendations adequately. Of the five recommendations on the freedom of peaceful assembly, the government has partially implemented two of these recommendations and not implemented the other three.
- 5.2** Article 10(b) of the Malaysian Constitution guarantees the right to the freedom of assembly and peaceful protests. While the authorities have on some occasions allowed peaceful protests to take place, restrictive laws continue to be used to arrest and prosecute individuals for organising and participating in peaceful protests.
- 5.3** In 2012, the government passed the PAA, which eliminated the need for a police permit to hold an assembly and repealed some of the more draconian elements of the Police Act. However, Section 9(5) requires organisers to provide the police with 10 days' notice before any assembly, along with detailed information about the proposed rally. While the requirement of notification is not, of itself, inconsistent with international standards, onerous requirements such as the need for detailed information fall short of international standards and may be used to block peaceful protests.<sup>41</sup> Further, anyone who organises an assembly without giving the required notice can be charged with a criminal offence carrying a fine of up to RM10,000 (approximately US\$2,500). In 2014, the Court of Appeal ruled that Section 9(5) of the PAA was unconstitutional. However, it was cited in various police arrests of protesters following the ruling. It is also problematic that the right to assemble under the PAA does not extend to street protests and makes it an offence to participate in such a protest.
- 5.4** In November 2015, the police charged Maria Chin Abdullah, chairperson of the Bersih coalition, under the PAA for failing to give prior notice of at least 10 days before a Bersih rally that took place in August 2015, which saw hundreds of thousands of people take to the streets across Malaysia to voice frustration with government

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<sup>41</sup> International guidance of relevance here includes that of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Organization for Security and Co-Operation in Europe Office for Democratic Institutions and Human Rights Guidelines on Freedom of Peaceful Assembly and the African Commission on Human and Peoples' Rights Guidelines on Freedom of Assembly and Association in Africa. These recommend that notice should only be required when a substantial number of participants are expected, or only for certain types of assembly, such as assemblies where disruption is reasonably expected by the organizers, and that notification procedures should be subject to a proportionality assessment, should not be onerous or bureaucratic and the amount of notice requested should not be excessive. See '11. Notification And Authorization Procedures For Assemblies', FOAA Online!, <http://freeassembly.net/foaa-online/notification-authorization-procedures>.

corruption and human rights issues.<sup>42</sup> In October 2015, Jannie Lasimbang, Bersih organiser in the state of Sabah and a well-known human rights activist, was also charged under the PAA for failing to provide 10 days' notice.<sup>43</sup>

**5.5** A series of peaceful protests held following the Federal Court's conviction of political prisoner Anwar Ibrahim (known as the 'KitaLawan' rallies) in February and March 2015 resulted in the arrest of numerous opposition politicians and activists, many of whom were arrested at night and held in custody for several days. More than six months later the authorities filed charges against eight activists and opposition politicians under Section 4(2)(c) of the PAA for participating in "street protests" at those rallies.<sup>44</sup>

**5.6** Community activists have also been arrested when organising peaceful protests to protect their land. In January 2017, five Orang Asli indigenous<sup>45</sup> HRDs in the state of Kelantan were arbitrarily detained at a blockade they had erected to protect their ancestral lands and natural resources, which they claim were under threat from logging licences granted by local authorities. The following day, 16 indigenous activists and two journalists were also detained.<sup>46</sup> On 18 July 2017, 28 community activists from Kampung Gatco village, in the state of Negeri Sembilan, who are involved in a land dispute with a company, were arbitrarily arrested for setting up a blockade to prevent lorries from leaving the estate with harvested rubber logs.<sup>47</sup>

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<sup>42</sup> 'Malaysia: End vindictive crackdown on leaders of protest movement', Amnesty International, 2 November 2015, <https://www.amnesty.org/en/latest/news/2015/11/malaysia-end-vindictive-crackdown-on-leaders-of-protest-movement>.

<sup>43</sup> In September 2016, the Court of Appeal struck out the charge against Maria Chin Abdullah, citing the 2014 ruling that found the requirement for a 10-day notice period under the PAA to be unconstitutional. Jannie Lasimbang was also acquitted in December 2016. See 'Court of Appeal strikes out Bersih chief's illegal assembly charge', Malay Mail Online, 7 September 2016, <http://www.themalaymailonline.com/malaysia/article/court-of-appeal-strikes-out-bersih-chiefs-illegal-assembly-charge#PXTtZyle3xPJLXKe.99>; 'Sabah Bersih organiser beats unlawful assembly charge', Malay Mail Online, 20 December 2016, <http://www.themalaymailonline.com/malaysia/article/sabah-bersih-organiser-beats-unlawful-assembly-charge#jvLBmycsLhEKOd2y.97>.

<sup>44</sup> Cases were filed against Bersih Chair Maria Chin Abdullah, Bersih Secretariat Member Mandeep Singh, activists Adam Adli, Mohd Fariz Musa and Rozan Azan Mat Rasep, People's Justice Party (PKR) State Assemblymen Chang Lih Kang and Lee Chean Chung, and PKR MP Sim Tze Tzin. In August 2017, Maria Chin Abdullah, Mandeep Singh and Sim Tze Tzin were discharged, not amounting to an acquittal. Mohd Fariz Musa was granted a discharge not amounting to acquittal in November 2017. In December 2017, Adam Adli was acquitted. See 'Maria Chin, 2 others get discharge over #KitaLawan rally', Malay Mail Online, 28 August 2017, <http://www.freemalaysiatoday.com/category/nation/2017/08/28/maria-chin-2-others-get-discharge-over-kitalawan-rally>; 'Fariz Musa given discharge in Kita Lawan rally case', Malaysiakini, 2 November 2017, <https://www.malaysiakini.com/news/400512>; '#KitaLawan rally: Adam Adli freed of charge', Free Malaysia Today, 28 November 2017, <http://www.freemalaysiatoday.com/category/nation/2017/11/28/kitalawan-rally-adam-adli-freed-of-charge>.

<sup>45</sup> The Orang Asli are an Indigenous group of people in Peninsular Malaysia who the authorities have harassed and intimidated. In November 2016, 47 Orang Asli people were detained for two days after peacefully protesting against the government's claim over their ancestral lands.

<sup>46</sup> 'End harassment of indigenous rights defenders', Amnesty International, 25 January 2017, <https://www.amnesty.org/download/Documents/ASA2855492017ENGLISH.pdf>.

<sup>47</sup> '28 Gatco settlers arrested over blockade', Free Malaysia Today, 18 July 2017, <http://www.freemalaysiatoday.com/category/nation/2017/07/18/23-gatco-settlers-arrested-over-blockade>.

5.7 Students have also been targeted. In December 2016, university authorities suspended student activists Anis Syafiqah, Muhammad Luqman Nul Haqim, Muhammad Luqman Hakim and Suhail Wan Azahar for six months under the University and University Colleges Act (UUCA) for their involvement in organising a peaceful assembly against government corruption on 27 August 2016.<sup>48</sup>

## 6. Recommendations to the Government of Malaysia

CIVICUS and Pusat KOMAS call on the Government of Malaysia to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

### 6.1 Regarding the freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association;
- Remove all undue restrictions on the ability of CSOs to be established in line with best practices articulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association;
- Review the Societies Act to guarantee that undue restrictions on the freedom of association are removed and the Act is brought into compliance with article 21 and 22 of the ICCPR. The legislation should provide that approval for registering an association is granted within a certain and adequate number of days following the submission of an application to the authorities. A clear legal basis should be provided in the legislation supporting the denial of registration, with

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<sup>48</sup> The student activists were found guilty of acting in a manner detrimental and prejudicial to the interests and good reputation of the university; acting in a manner detrimental to public safety; and violating the university's regulations by organising and participating in the rally. See 'Suspension will not silence me, vows Anis Syafiqah', Free Malaysia Today, 15 December 2016, <http://www.freemalaysiatoday.com/category/nation/2016/12/15/suspension-will-not-silence-me-vows-anis-syafiqah>.

an explicit and limited number of justifiable grounds compatible with international human rights law and standards. The authorities must also halt unwarranted threats and harassment of CSOs that are not registered under the Societies Act;

- Guarantee the effective and independent functioning of autonomous trade unions by removing undue limitations and restrictions in the Trade Unions Act to form and register unions, and ensure an enabling environment for migrant workers to join trade unions;
- Halt amendments to the Legal Profession Act that could undermine the independence of the Malaysian Bar and ensure that lawyers can perform all their professional functions “without intimidation, hindrance, harassment or improper interference” as provided for in the UN Basic Principles on the Role of Lawyers.

## **6.2 Regarding the protection of human rights defenders**

- Ensure that civil society members, journalists and HRDs are provided with a safe and secure environment in which they can carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice;
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment;
- Initiate a consolidated process for the repeal or amendment of legislation that unwarrantedly restricts the legitimate work of HRDs, in line with the UN Declaration Human Rights Defenders;
- Lift existing travel bans on HRDs immediately and halt the misuse of the Immigration Act to prevent arbitrarily HRDs and government critics from travelling abroad to undertake their legitimate human rights work, and halt the use of the Act to prevent HRDs and activists from entering Malaysia;
- Publicly condemn instances of harassment and intimidation of civil society activists and CSOs;
- Work with the National Human Rights Commission (Suhakam) and CSOs to adopt a specific law on the protection of human rights activists in accordance with Human Rights Council resolution 27.31.

### **6.3 Regarding the freedom of expression, independence of the media and access to information**

- Ensure the freedom of expression and media freedom by bringing all national legislation into line with international law and standards;
- Repeal the Sedition Act, drop all charges and quash convictions of individuals prosecuted under the act simply for peacefully exercising their right to the freedom of expression;
- Repeal the Printing Presses and Publications Act and immediately lift arbitrary bans on books imposed under the law, and refrain from adopting any laws providing for censorship or undue control over the content of the media.
- Review the Communications and Multimedia Act in order to ensure that the legislation is in line with international law and standards in the area of the freedom of expression. In particular, thoroughly revise Section 233(1)(a) to define more narrowly and precisely what constitutes an “improper use of network facilities or services” under the Act. Further, repeal Section 263 on blocking websites. Instead, as a matter of principle, ensure that hosting service providers can only be required to remove access to content following a court order, respective of due process principles;
- Drop the passage of the proposed ‘fake news’ law that could be used as a dragnet to criminalise reporting on government misconduct, the expression of critical opinions, and the speech of the political opposition;
- Review the Security Offences (Special Measures) Act 2012 to ensure that the legislation is in line with international law and standards. In particular, repeal Section 4(5) of the Act, which permits detention for 28 days without any judicial oversight. The government should ensure that the law is not misused to arrest and detain human rights activists and anti-corruption campaigners with prolonged detention without charge;
- Repeal Section 6 of the Film Censorship Act to eliminate criminal penalties for screening unapproved films;
- Reform defamation legislation in conformity with article 19 of the ICCPR;
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may find sensitive;

- End the harassment and criminalisation of individuals with minority views and beliefs and revoke all regulations that restrict their activities or otherwise violate their rights to freedom of thought, conscience and religion;
- Refrain from censoring social and conventional media and ensure that the freedom of expression is safeguarded in all forms, including in the arts.

#### **6.4 Regarding the freedom of peaceful assembly**

- Amend the Peaceful Assembly Act to guarantee fully the right to the freedom of peaceful assembly as provided in international law and standards. In particular, amend section 9 to shorten the time period for advance notice, repeal criminal penalties for not providing notice and provide an exception to the notice requirement for spontaneous assemblies where it is not practicable to give advance notice. Further, repeal the limitation on street protests in section 4(1)(c) and 4(2)(c) of the Act;
- Drop all charges against demonstrators, community activists and HRDs for exercising their right to the freedom of peaceful assembly brought under the Peaceful Assembly Act and other laws;
- Instruct all police departments that it is their duty to facilitate peaceful assemblies, rather than hinder them. Permit people and groups who are organising assemblies or rallies to hold their events within sight and sound of their intended audience, and ensure that the police take appropriate steps to protect the safety of all participants;
- Call on universities and others educational institutions in Malaysia not to penalise students for exercising their right to the freedom of peaceful assembly.

#### **6.5 Regarding access to UN Special Procedures mandate holders**

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits with the: Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

## **6.6 Regarding state 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;
- Ensure that input provided by CSOs in the UPR process are genuinely taken into account and reflected before finalising and submitting the national report;
- Systematically consult with civil society on the implementation of the UPR, including by holding periodical comprehensive consultations with a diverse range of civil society sectors;
- Incorporate the results of this UPR into the national human rights action plan for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

## Annex: Assessment of implementation of civic space recommendations under the 2<sup>nd</sup> cycle

<b>Theme: D45 Freedom of association</b>			
146.166. Facilitate the visit by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Switzerland) <b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 4	Noted	D45 Freedom of association  E33 Trade union rights  <b>Affected persons:</b>  - CSOs  - trade unions  - lawyers	Status: Not implemented:  Source: Paragraph: 2.7
<b>Theme: D43 Freedom of opinion and expression</b>			
146.48. Repeal the Sedition Act (United Kingdom of Great Britain and Northern Ireland) <b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para.3	Accepted in principle	D43 Freedom of opinion and expression  A41 Constitutional and legislative framework  <b>Affected persons:</b>  - HRDs  - media	Status: Not implemented:  Source: Paragraph 4.3
146.49. Repeal the Sedition Act and sustain previous reforms in the human rights field (Australia) <b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 3	Accepted in principle	D43 Freedom of opinion and expression  <b>Affected persons:</b>  - HRDs  - media	Status: Not implemented:  Source: Paragraph 4.3
146.157. Bring the Printing Presses and Publication Act (1984), the Official Secrets Act (1972) and the Sedition Act (1948) in line with international human rights standards and enable all citizens to exercise fully the rights of opinion and expression (Czech Republic) <b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 4	Noted	D43 Freedom of opinion and expression  <b>Affected persons:</b>  - HRDs  - media	Status: Not implemented:  Source: Paragraphs 4.3 and 4.8

<p>146.160. Take steps to strengthen and promote the rights of journalists and bloggers to freely exercise their right to freedom of expression (Austria)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para.3</p>	Accepted in principle	<p>D43 Freedom of opinion and expression</p> <p>H1 HRDs</p> <p><b>Affected persons:</b></p> <p>- general</p>	<p>Status: Partially implemented:</p> <p>Source: Paragraph 4.9</p>
<p>146.161. Takes steps to ensure proper judicial oversight regarding the granting and revoking of media licenses (Austria)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1 – Para.10</p>	Noted	<p>D43 Freedom of opinion and expression</p> <p><b>Affected persons:</b></p> <p>- media</p>	<p>Status: Partially implemented:</p> <p>Source: Paragraph 4.8</p>
<p>146.162. Amend or repeal both the Sedition Act and the Printing Presses and Publication Act, to bring Malaysia’s domestic security legislation in line with its international human rights commitments on the freedoms of expression, peaceful assembly, and association (United States of America)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1 – Para.10</p>	Noted	<p>D43 Freedom of opinion and expression</p> <p>H1 HRDs</p> <p><b>Affected persons:</b></p> <p>- general</p>	<p>Status: Not implemented:</p> <p>Source: Paragraphs 4.3, 4.8 and 5.4</p>
<p>146.168. Repeal the Printing Presses and Publication Act and take steps to ensure full respect and protection for freedom of opinion and expression (Ireland)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para.4</p>	Noted	<p>D43 Freedom of opinion and expression</p> <p>H1 HRDs</p> <p><b>Affected persons:</b></p> <p>- HRDs</p> <p>- media</p>	<p>Status: Partially implemented:</p> <p>Source: Paragraph 4.8</p>
<p><b><i>Theme: D44 Right to peaceful assembly</i></b></p>			
<p>146.163. Continue its efforts to further enhance the exercise and enjoyment of civil and political rights, including the rights to freedom of peaceful assembly in the country (Indonesia)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 2</p>	Accepted	<p>D44 Right to peaceful assembly</p> <p><b>Affected persons:</b></p> <p>- general</p> <p>- HRDs</p>	<p>Status: Partially implemented:</p> <p>Source: Paragraph 5.2</p>
<p>146.164. Continue encouraging the right to peaceful assembly in accordance with national legislation (Russian Federation);</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 2</p>	Accepted	<p>D44 Right to peaceful assembly</p> <p><b>Affected persons:</b></p> <p>- general</p> <p>- HRDs</p>	<p>Status: Partially implemented:</p> <p>Source: Article 5.2</p>

<p>146.165. Revise the Peaceful Assembly Act so that there is no discrimination and hindrance in the organization of peaceful public gatherings and protests (Czech Republic)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1 – Para.10</p>	<p>Noted</p>	<p>D44 Right to peaceful assembly</p> <p><b>Affected persons:</b></p> <ul style="list-style-type: none"> <li>- general</li> <li>- HRDs</li> </ul>	<p>Status: Not implemented: Source: Article 5.3</p>
<p>146.166. Amend the Peaceful Assembly Act to guarantee the right to peaceful assembly and facilitate the visit by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (Switzerland)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 4</p>	<p>Noted</p>	<p>D44 Right to peaceful assembly</p> <p><b>Affected persons:</b></p> <ul style="list-style-type: none"> <li>- general</li> <li>- HRDs</li> </ul>	<p>Status: Not implemented: Source: Article 5.3</p>
<p>146.167. Amend the Peaceful Assembly Act to allow the full enjoyment of the freedom of association, expression and peaceful assembly, by removing limitations or restrictions on movement, location or participation (Canada)</p> <p><b>Source of position:</b> A/HRC/25/10/Add.1/Corr.1- Para. 4</p>	<p>Noted</p>	<p>D44 Right to peaceful assembly</p> <p><b>Affected persons:</b></p> <ul style="list-style-type: none"> <li>- general</li> <li>- HRDs</li> </ul>	<p>Status: Not implemented: Source: Article 5.3</p>