



Malaysia

Joint Submission to the UN Universal Periodic Review

45th Session of the UPR Working Group

Submitted 18 July 2023

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

**The Asian Forum for Human Rights and Development (FORUM-ASIA)
NGO in General Consultative Status with ECOSOC
And**

Suaram Rakyat Malaysia (SUARAM)

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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 180 countries throughout the world.
- 1.2** The Asian Forum for Human Rights and Development (FORUM-ASIA) is a network of 85 organisations in 23 countries that works to promote and protect human rights, including the right to development, through collaboration and cooperation among human rights organisations and defenders in Asia and beyond.
- 1.3** Suara Rakyat Malaysia (SUARAM) is a CSO established in 1989 to monitor and advocate for the respect of human rights in Malaysia. It defends all aspects of human rights, including the right to trial, freedom from abuse of police powers and law enforcement agencies, freedoms of expression and information, freedoms of assembly and association and democracy.
- 1.4** In this submission, the three organisations 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 freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in 2018. To this end, we assess Malaysia's implementation of recommendations received during the 3rd UPR cycle relating to these issues and provide follow-up recommendations.
- 1.5** During the 3rd UPR cycle, the Government of Malaysia received 11 recommendations relating to the space for civil society (civic space). It accepted 10 of these recommendations and noted one. However, an evaluation of a range of legal sources and human rights documentation addressed in this submission demonstrates that the Government of Malaysia has partially implemented only three recommendations and not implemented any of the others.
- 1.6** The government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination. Acute implementation gaps were found with regard to the rights to freedoms of peaceful assembly and expression.
- 1.7** Malaysia has yet to ratify the International Covenant on Civil and Political Rights (ICCPR), which imposes obligations on states to respect and protect freedoms of association, peaceful assembly and expression.

- 1.8** We are deeply concerned by the harassment of HRDs and the use of restrictive laws including the Sedition Act, section 233 of the Communications and Multimedia Act (CMA) and other laws to silence dissent.
- 1.9** We are further alarmed by systematic harassment of peaceful protesters using the Peaceful Assembly Act 2012 and restrictive provisions in the law that are inconsistent with international law and standards.
- 1.10** As a result of these issues, civic space in Malaysia is currently classified as ‘obstructed’ by the CIVICUS Monitor, indicating a high level of civic space restrictions.¹
- Section 2 of this submission examines Malaysia’s implementation of UPR recommendations and compliance with international human rights standards concerning 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 freedom of expression and media freedom.
 - Section 5 examines Malaysia’s implementation of UPR recommendations and compliance with international human rights standards related to freedom of peaceful assembly.
 - Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 3rd cycle.
 - Section 7 is an annex on the implementation of 3rd cycle UPR recommendations related to civic space.

2. Freedom of association

- 2.1** During Malaysia’s examination under the 3rd UPR cycle, the government did not receive any recommendations on the right to freedom of association. However, as evidenced below, there are ongoing concerns about restrictions related to freedom of association in law and policy.
- 2.2** Article 10(c) of the Malaysia Constitution guarantees the right to freedom of association.² However, the legal framework governing the operations of CSOs – the

¹ CIVICUS Monitor: Malaysia, <https://monitor.civicus.org/country/malaysia>.

² ‘Document: Federal Constitution’, Laws of Malaysia, https://www.jac.gov.my/spk/images/stories/10_akta/perlembagaan_persekutuan/federal_constitution.pdf.

Societies Act 1966 – remains unduly restrictive and heavily burdensome.³ In particular the law does not recognise the 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. Potential grounds for refusal by the ROS are drafted in vague and overly broad language.⁴

- 2.3** Organisations report that in practice, applications from some groups, such as those working on human rights, are often sent to the police intelligence (Special Branch) for vetting, and sometimes denied registration. North South Initiative, a migrants’ rights group, was denied registration multiple times without legal justification between 2020 and 2023. In one instance the ROS stated that it had failed to pass police vetting.⁵
- 2.4** Under the Act, registered societies are restricted in multiple ways.⁶ As a result, over the years many CSOs working on human rights in Malaysia have been forced to register as companies, which presents legal and bureaucratic restrictions, including when it comes to recruiting members, raising funds and obtaining tax exemptions.
- 2.5** In recent years, the Societies Act 1966, which also governs the registration and operations of political parties, has been used to delay or reject the formation of political parties, especially those in opposition. In March 2022, the government said it had rejected 86 applications to register political parties since 2018.⁷ The application of Malaysia United Democratic Alliance, MUDA, a youth-led party, that was submitted in September 2020, was rejected in January 2021,⁸ as was its appeal in August 2021.⁹ Its application was finally approved in December 2021¹⁰ following a successful legal

³ ‘Document: Act 832 - Societies ACT 1966 (Revised-2021)’, Federal Legislation, 15 November 2021, <https://lom.agc.gov.my/act-detail.php?act=832&lang=BI&date=2021-11-15>.

⁴ For example, the Registrar shall refuse to register a local society ‘where it appears to him that such local society is unlawful under the provisions of this Act or any other written law or is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia’ (section 7(3)(a)).

⁵ Interview with representative from North South Initiative, June 2023.

⁶ Throughout the Act, there is repeated emphasis on maintaining welfare, peace, security, public order and morality in Malaysia. Societies may be prevented from engaging in certain activities if these are considered to be incompatible with any of these broad terms.

⁷ ‘RoS Looking Into 25 Applications To Form Political Parties’, FMT Newsletter, 9 March 2022, <https://www.freemalaysiatoday.com/category/nation/2022/03/09/ros-looking-into-25-applications-to-form-political-parties>.

⁸ ‘RoS Rejects Registration Of Muda As Political Party’, New Straits Times (NST), 7 January 2021, <https://www.nst.com.my/news/politics/2021/01/655291/ros-rejects-registration-muda-political-party>.

⁹ ‘Muda’s Application To Be Registered As A Political Party Rejected Again’, NST, 12 August 2021, <https://www.nst.com.my/news/politics/2021/08/717440/mudas-application-be-registered-political-party-rejected-again>.

¹⁰ ‘Malaysia: Muda Officially A Political Party, Gets RoS Nod’, The Vibes.com, 29 December 2021, <https://www.thevibes.com/articles/news/50825/muda-officially-a-political-party-gets-ros-nod>.

challenge against the Home Minister.¹¹ The application of political party Parti Pejuang Tanah Air (Pejuang) in August 2020¹² was rejected by the ROS in January 2021¹³ but finally approved in July 2021 after a legal challenge at the High Court.¹⁴

- 2.6** Sisters in Islam, a CSO working to promote women's rights within the frameworks of Islam and universal human rights, has been battling in the courts against an edict (fatwa) prepared by the Selangor State Fatwa Committee in July 2014 labelling the group as 'deviant and against the teaching of Islam'. The group lost an appeal against the edict at the High Court in June 2016 and the Appeals Court in March 2023.¹⁵

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 3.1** Under Malaysia's previous UPR examination, the government received two recommendations on the protection of HRDs, journalists and civil society representatives. The government committed to 'refrain from judicial and administrative harassment of journalists and human rights defenders' and 'continue developing efforts in order to guarantee the freedoms and safety of human rights defenders'. Both recommendations were accepted. However, the government has not implemented either of the recommendations.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. However, in spite of these protections the harassment of HRDs and journalists have been documented.
- 3.3** A number of laws are often used to investigate HRDs, including the draconian 1948 Sedition Act, which is excessively broad and vague, and section 233 of the CMA, which criminalises 'intentional insult' and 'the improper use of network facilities'. Other laws used include Penal Code sections 500 (criminal defamation) and 504 (intentional insult with intent to provoke a breach of the peace) and section 14 of the Minor Offences Act 1955 (indecent, threatening, abusive, or insulting words, behaviour or posts with intent to provoke a breach of the peace).

¹¹ 'MUDA Wins Suit To Register As Malaysia's First Youth Political Party', Coconuts KL Newsletter, 14 December 2021, <https://coconuts.co/kl/news/muda-wins-suit-to-register-as-malaysias-first-youth-political-party>.

¹² 'Pejuang Submits Application For Registration To RoS', Astro Awani News, 19 August 2020, <https://www.astroawani.com/berita-malaysia/pejuang-submits-application-registration-ros-255956>.

¹³ 'RoS Rejects Party Registrations Of Dr Mahathir-Led Pejuang And Syed Saddiq's Muda', The Edge Malaysia, 7 January 2021, <https://theedgemaalaysia.com/article/ros-rejects-dr-mahathir-led-pejuang-party-registration>.

¹⁴ 'Mahathir Reveals Pejuang Finally Registered As Political Party', Malaysiakini News, 8 July 2021, <https://www.malaysiakini.com/news/582265>.

¹⁵ 'Malaysia: Use Of Restrictive Laws And Harassment Of Protesters Persist Under New Government Despite Reform Commitments', CIVICUS Monitor, 5 April 2023, <https://monitor.civicus.org/explore/malaysia-use-of-restrictive-laws-and-harassment-of-protesters-persists-under-new-government-despite-reform-commitments>.

- 3.4** In October 2019, police filed a defamation charge under section 500 of the Penal Code and section 233 of the CMA against HRD Sevan Doraisamy, Executive Director of SUARAM, over comments made during a press conference that a father and son had been wrongfully detained and ill-treated.¹⁶
- 3.5** In July 2021, refugee rights activist Heidy Quah was charged under section 233(1)(a) of the CMA for her Facebook post in June 2020 alleging the ill-treatment of refugees at an immigration detention centre.¹⁷ After over a year and a half, in February 2023, the courts issued a discharge not amounting to an acquittal, meaning she could be prosecuted in future for the same charge.¹⁸
- 3.6** Activist and graphic artist Fahmi Reza has faced multiple investigations for his satirical graphics posted online. In April 2021 he was arrested for allegedly insulting Malaysia's queen by uploading a Spotify playlist that seemingly mocked comments on the queen's Instagram account.¹⁹ In October 2021, he was arrested again under section 233 of the CMA, section 504 of the Penal Code and section 14 of the Minor Offences Act over a satirical Twitter poster he made on 'Keluarga Malaysia' (Malaysian family), the tagline of then Prime Minister Ismail Sabri Yaakob's government.²⁰
- 3.7** In February 2022, Fahmi was charged under section 233 of the CMA for a 2021 satirical poster caricaturing Malaysia's former Health Minister. The graphic, which was posted on Fahmi's social media accounts, called out the minister's decision to shorten the COVID-19 quarantine period for cabinet ministers returning from foreign official visits. In February 2022, Fahmi was slapped with another charge under the same law for a poster mocking the June 2021 order by the Ministry of Trade and Industry to allow alcohol production during the COVID-19 lockdown despite the regulation that only 'essential services' were allowed to operate. In April 2022, Fahmi was arrested over a satirical artwork depicting what appears to be an ape in a monarch's clothing and investigated under section 4(1) of the Sedition Act and section 233 of the CMA. He was detained overnight.²¹

¹⁶ 'Activists In Malaysia Facing Various Forms Of Harassment From Authorities', CIVICUS Monitor, 19 November 2019, <https://monitor.civicus.org/explore/activists-malaysia-facing-various-forms-harassment>.

¹⁷ CIVICUS Monitor, 28 July 2021, op. cit.

¹⁸ CIVICUS Monitor, 5 April 2023, op. cit.

¹⁹ The playlist included songs that contained the word 'jealousy' in the titles, a reference to reports that the queen's Instagram account had replied 'are you jealous?' to a comment left on her account asking the queen if the palace chefs had all been vaccinated. See CIVICUS Monitor, 28 July 2021, op. cit.

²⁰ 'Harassment Of Activists, Critics Persist In Malaysia As New Prime Minister Comes To Power', CIVICUS Monitor, 13 October 2021, <https://monitor.civicus.org/explore/harassment-activists-critics-persist-malaysia-new-prime-minister-comes-power>.

²¹ It is believed that he was responding to news of Selangor ruler Sultan Sharafuddin Idris Shah purchasing a painting that depicts parliamentarians as monkeys, apes and frogs. See, 'Malaysian Police Continue To Harass Protesters And Activists And Criminalise Online Expression', CIVICUS Monitor, 20 June 2022,

- 3.8** In February 2022, the Pahang state government demanded an apology and RM1 million (approx. US\$227,000) in compensation from environmental activist Shariffa Sabrina Syed Akil of the Association for the Protection of the Natural Heritage of Malaysia for alleged defamation over comments made in two Facebook posts on the state's involvement in logging activities.²²
- 3.9** Activists have also faced threats and harassment from non-state actors. In August 2021, environmental activist Shakila Zen received a package containing a letter threatening an acid attack and a replica of a severed hand with fake blood. The next day she received a sexually explicit message on WhatsApp containing an indecent poster of her and her personal information. She attributed the harassment to a video of her discussing an upcoming protest that went viral on TikTok.²³
- 3.10** Stateless Rohingya refugee and HRD Zafar Ahmad Abdul Ghani, President of Myanmar Ethnic Rohingya Human Rights Organization, has been vilified and has received death threats since April 2020 after he was falsely accused of demanding Malaysian citizenship and equal rights for Rohingya people in Malaysia during the COVID-19 pandemic. A systematic smear campaign was launched against Zafar, his family and his organisation. Zafar and his wife filed seven reports of threats and harassment with Malaysian police. More than three years on, there has been a lack of action by the authorities to investigate the threats against him effectively and provide him with protection. In December 2021, the UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, sent a Joint Communication to the government.²⁴ The government responded in March 2022, stating that the authorities had decided that no further action would be taken after an investigation.²⁵
- 3.11** Journalists have also faced judicial harassment for their reporting. In May 2020, the police summoned South China Morning Post journalist Tashny Sukumaran under section 504 of the Penal Code and section 233 of the CMA concerning her reporting on the mass arrest of foreign nationals in Kuala Lumpur. In May 2021, Malaysiakini journalists Rusnizam Mahat and Aedi Asri Abdullah were questioned under section 505(b) of the Penal Code by the police for three articles published about a death-in-custody case.²⁶ Journalist Sean Augustin from the outlet Free Malaysia Today was

<https://monitor.civicus.org/explore/malaysian-police-continue-harass-protesters-and-activists-and-criminalise-online-expression>.

²² CIVICUS Monitor, 20 June 2022, op. cit.

²³ CIVICUS Monitor, 13 October 2021, op. cit.

²⁴ 'Malaysia: Threats And Harassment Of Defender Of Refugee & Asylum Seeker Rights, Zafar Ahmad Abdul Ghani (Joint Communication)', UN Special Rapporteur On Human Rights Defenders Website, 10 February 2022, <https://srdefenders.org/malaysia-threats-and-harassment-of-defender-of-refugee-asylum-seeker-rights-zafar-ahmad-abdul-ghani-joint-communication>.

²⁵ CIVICUS Monitor, 20 June 2022, op. cit.

²⁶ CIVICUS Monitor, 28 July 2021, op. cit.

called in for questioning by the police in January 2021 over an article about flood response.²⁷

3.12 Journalists have also been deported for their reporting. In August 2020, the authorities declined to renew the work visas of Al Jazeera reporters Drew Ambrose and Jenni Henderson, both Australian nationals, two days after police raided the broadcaster's office in Kuala Lumpur. They were previously investigated for alleged sedition, defamation and violation of the CMA for a documentary, 'Locked up in Malaysia's Lockdown', broadcast on 3 July 2020, which focused on the plight of thousands of undocumented migrants detained during raids carried out in areas under tight COVID-19 lockdowns.²⁸

3.13 Pakistani journalist Syed Fawad Ali Shah, who was a refugee in Malaysia, was abducted by members of Inter-Services Intelligence, Pakistan's most-feared intelligence agency, and disappeared on 23 August 2022 for reasons that were not known until January 2023, when the Home Affairs Minister finally acknowledged that he had been deported to Pakistan in August 2022 at the request of the Pakistan High Commission in Kuala Lumpur.²⁹

3.14 Whistleblowers have also been targeted. In August 2020, Bangladeshi national Rayhan Kabir, who was interviewed in the Al Jazeera documentary, was deported to his home country after his arrest the previous month. In addition to having his work permit revoked he has been permanently banned from re-entering Malaysia.³⁰

3.15 There has been a failure to ensure accountability for the enforced disappearances of Amri Che Mat, the founder of local community CSO Perlis Hope, and Christian pastor and social worker Raymond Koh. In April 2019, following an extensive public inquiry, the national human rights commission (SUHAKAM) concluded that the abductions were both cases of enforced disappearances carried out by state agents, namely the Special Branch or the police intelligence unit.³¹ In June 2019, the Home Ministry announced the formation of a special taskforce to reinvestigate the alleged enforced disappearances of Koh and Amri. However, the Malaysian government has refused to

²⁷ CIVICUS Monitor, 7 February 2022, op. cit.

²⁸ 'Free Speech Under Assault In Malaysia As Government Targets Students, Online Critics And Journalists', CIVICUS Monitor, 27 November 2020, <https://monitor.civicus.org/explore/free-speech-under-assault-malaysia-government-targets-students-online-critics-and-journalists>.

²⁹ CIVICUS Monitor, 5 April 2023, op. cit.; 'They put a black hood over my face and took me to the airport', CIVICUS interview with Syed Fawad Ali Shah, 20 April 2023, <https://www.civicus.org/index.php/media-resources/news/interviews/6367-pakistan-they-put-a-black-hood-over-my-face-and-took-me-to-the-airport>.

³⁰ CIVICUS Monitor, 27 November 2020, op. cit.

³¹ Raymond Koh was abducted on the morning of 13 February 2017 and Amri Che Mat was abducted on the night of 24 November 2016. Their fate and whereabouts are still unknown. See, 'Reforms At Risk In Malaysia While Repressive Laws Continue To Be Deployed Around The Pandemic', CIVICUS Monitor, 27 March 2020, <https://monitor.civicus.org/explore/reforms-risk-malaysia-while-repressive-laws-continue-be-deployed-around-pandemic>.

publish the findings of the special taskforce, saying the report is classified as ‘secret’ under the Official Secrets Act 1972 and that its public release would be against the ‘national interest’.³²

4. Freedom of expression, media freedom and access to information

- 4.1 Under the 3rd UPR cycle, the government received seven recommendations relating to freedom of expression, media freedom and access to information. For example, the government pledged to ‘rescind or revise the Sedition Act, Security Offences Act, and Communications and Multimedia Act’ and ‘enact legislation guaranteeing the right of access to information. Six recommendations were accepted and one was noted. However, only one recommendation has been partially implemented.
- 4.2 Article 10(a) of the Constitution of Malaysia guarantees the right to freedoms of speech and expression.³³ However, an array of restrictive laws undermine these rights and have been used to target people critical of the government.
- 4.3 In October 2019, the Anti-Fake News Act was repealed. UN experts and human rights groups had raised serious concerns that the law was inconsistent with international standards on the right to freedom of expression. The law was passed by the government of former Prime Minister Najib Razak just weeks before he lost the May 2018 election, in a step that critics said was designed to stifle dissent.³⁴
- 4.4 However, in March 2021, using its new powers under emergency rule during the COVID-19 pandemic, the government issued a new regulation on ‘fake news’. The Emergency (Essential Powers) (No. 2) Ordinance 2021 established a number of criminal offences relating to ‘fake news’ about the pandemic and emergency declaration, including the creation, publication and dissemination of ‘fake news’ and the failure to take down publications containing content deemed to be ‘fake news’.³⁵ Thirty investigation papers were opened between 12 March and 21 October 2021 and 12 people were charged in court. The ordinance was revoked on 25 October 2021.³⁶
- 4.5 The government has also increasingly arrested and prosecuted online critics for criticism of the state, religion and the monarchy, primarily using section 233 of the

³² CIVICUS Monitor, 7 February 2022, op. cit.

³³ ‘Document: Federal Constitution’, Laws of Malaysia, op. cit.

³⁴ CIVICUS Monitor, 19 November 2019, op. cit.

³⁵ ‘Malaysian Government Continues To Silence Dissent With Emergency And Repressive Laws’, CIVICUS Monitor, 7 April 2021, <https://monitor.civicus.org/explore/malaysian-government-continues-silence-dissent-emergency-and-repressive-laws>.

³⁶ ‘Dewan Rakyat Approves Motion To Revoke Emergency Ordinances [NSTTV]’, NST, 25 October 2021, <https://www.nst.com.my/news/nation/2021/10/739449/dewan-rakyat-approves-motion-revoke-emergency-ordinances-nsttv>.

CMA and the Sedition Act but also other laws, including section 298A(1)(a) of the Penal Code (on causing disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing the maintenance of harmony or unity, on grounds of religion) and section 14 of the Minor Offences Act (see section 3.3 of this submission).

- 4.6** In March 2019, the Kuching Sessions Court sentenced Alister Cogia to 10 years and 10 months in jail for insulting Islam and the Prophet Muhammad on Facebook. He was charged under section 298A(1)(a) of the Penal Code and section 233 of the CMA. It is believed to be the harshest penalty ever imposed for such an offence.³⁷ His sentence was reduced to six years on appeal.³⁸
- 4.7** In June 2021, Iswardy Morni, chair of CSO Pro-Keadilan Sarawak, was charged under section 4 (1)(a) of the Sedition Act for making statements on his Facebook page that were seditious and insulting towards the king.³⁹
- 4.8** In August 2021, four people were arrested and investigated for criticising Kedah Chief Minister Muhammad Sanusi Md Nor over his comments telling reporters to ‘sign up to get into containers for the COVID-19 dead’ when they asked about the pandemic situation.⁴⁰
- 4.9** In April 2022, a member of an opposition political party was arrested for sedition for his comments on social media that allegedly encouraged ethnic Indians not to vote for the Malaysian Indian Congress, a party that was part of the ruling coalition.⁴¹
- 4.10** In April 2022, writer Uthaya Sankar was arrested and investigated under section 298A of the Penal Code and section 233 of the CMA after he was accused of insulting the Prophet Mohammad in a Facebook post.⁴²
- 4.11** Media outlets have also faced judicial harassment. In February 2021, Malaysiakini, a news site, was found guilty of ‘contempt of court’ and fined RM500,000 (approx.

³⁷ ‘Criminal Defamation Laws Used To Prosecute Online Criticism Of Religion And Monarchy’, CIVICUS Monitor, 26 March 2019, <https://monitor.civicus.org/explore/criminal-defamation-laws-used-prosecute-online-criticism-religion-and-monarchy>.

³⁸ ‘Court Cuts Jail Time For Sarawakian Convicted Of Insulting Islam, Retains RM50,000 Fine’, Malaymail Newsletter, 13 September 2019, <https://www.malaymail.com/news/malaysia/2019/09/13/court-cuts-jail-time-for-sarawakian-convicted-of-insulting-islam-retains-rm/1790176>.

³⁹ CIVICUS Monitor, 28 July 2021, op. cit.

⁴⁰ The four are being investigated under section 504 of the Penal Code, section 233 of the CMA and section 14 of the Minor Offences Act. Sanusi was responding to questions during a press conference about the status of shipping containers for dead bodies due to COVID-19, following a space shortage in the morgue in Sungai Petani Hospital. He replied by stating that there were enough containers and those who would like to enter could provide their names. See CIVICUS Monitor, 13 October 2021, op. cit.

⁴¹ Murugan, a 43-year-old campaign worker for the Democratic Action Party, was picked up by police at his house in Paloh in Johor state. The 15-second clip he shared was from another person’s TikTok account. Police detained him under section 4(1) of the Sedition Act. See CIVICUS Monitor, 20 June 2022, op. cit.

⁴² CIVICUS Monitor, 20 June 2022, op. cit.

US\$124,000) for readers' comments in one of its articles that were deemed to impugn the judiciary. The Federal Court ruled that Malaysiakini was responsible for these comments.⁴³ The outlet was targeted again in July 2021, when the Federal Court ordered Malaysiakini to pay RM550,000 (approx. US\$132,180) in damages in a defamation case filed by a now-defunct Australian mining corporation, Raub Australian Gold Mine, for its publication of articles over pollution allegedly linked to the corporation's operations.⁴⁴

4.12 The authorities have also targeted writers and sought to ban books. Activist Maryam Lee was summoned by the Selangor Islamic Religious Department in October 2019 for allegedly insulting the Islamic faith in her book 'Unveiling Choice' about her decision to stop wearing the hijab.⁴⁵ In July 2020, the government banned the printing, publishing and sale of a book under subsection 7(1) of the Printing Presses and Publications Act (PPPA) 1984 because its cover allegedly demeaned the Malaysian state crest. The authorities also raided the publisher's office and seized copies of the book.⁴⁶ In September 2022, it was reported that the latest edition of British weekly *The Economist* was banned in Malaysia. It is believed the ban was because the edition contained an article that discussed Southeast Asian royals, including those in Malaysia.⁴⁷ On 15 February 2023, the Home Ministry banned three publications deemed to be harmful to Malaysian morals, with two books containing 'LGBT elements', under section 7(1) of the PPPA.⁴⁸

4.13 Artists have also been questioned or faced threats and attacks from non-state actors with impunity. In July 2022, Rizal Van Geyzel, co-founder of the Crackhouse Comedy Club, was arrested under section 4(1) of the Sedition Act and section 233 of the CMA for three videos of him performing stand-up comedy that touched on racial stereotypes. Four days later, the Crackhouse Comedy Club was vandalised and

⁴³ Human rights groups noted that the decision constituted harassment against the independent news portal, which has reported widely on government abuse and corruption, and that making website owners and administrators criminally liable for third-party content was inconsistent with international human rights law. See CIVICUS Monitor, 7 April 2021, op. cit.

⁴⁴ The court ruled in Malaysiakini's favour in 2016, but the decision was overturned by the appellate court in 2018. The Federal Court upheld the appellate court's ruling, stating that the media outlet had failed to ensure proper verification prior to publication. See CIVICUS Monitor, 28 July 2021, op. cit.

⁴⁵ She was questioned under section 10(a) of the Syariah Criminal Enactment 1995, which carries a maximum punishment of a RM3,000 (approx. US\$720) fine, or three years in jail, or both, if found guilty. See CIVICUS Monitor, 19 November 2019, op. cit.

⁴⁶ 'Malaysian Police Ramp Up Persecution Of Al Jazeera, Journalists And Activists To Stifle Criticism', CIVICUS Monitor, 5 August 2020, <https://monitor.civicus.org/explore/malaysian-authorities-ramp-persecution-journalists-and-activists-stifle-criticism>.

⁴⁷ 'Protesters Face Judicial Harassment While Restrictions To Freedom Of Expression Persist In Malaysia', CIVICUS Monitor, 17 November 2022, <https://monitor.civicus.org/explore/protesters-face-judicial-harassment-while-restrictions-freedom-expression-persist-malaysia>.

⁴⁸ The books were entitled 'The Tale of Steven', 'Jacob's Room To Choose' and 'Aku'. See CIVICUS Monitor, 5 April 2023, op. cit.

Geyzel's wife received death threats.⁴⁹ In March 2023, actors and filmmakers involved in the movie 'Mentega Terbang' faced police questioning, death threats and property vandalism.⁵⁰

4.14 LGBTQI+ people in Malaysia face various risks. The government continues to criminalise and persecute LGBTQI+ people, specifically the colonial remnant that is section 377 of the Penal Code, commonly referred to as the anti-sodomy law, and state-level Syariah laws. In October 2022, in the wake of Halloween celebrations, the police and religious authorities conducted a raid of a social gathering attended by people of diverse sexual orientations, gender identities and gender expressions, including LGBTQI+ people. The raid resulted in the arrest and interrogation of at least 24 gender-diverse people.⁵¹

4.15 The government has yet to pass a national law on freedom of information. The Official Secrets Act 1972 is an outdated, overly broad law that places virtually no limits on what can be designated as 'secret' and runs counter to the public's interest in access to information about government activity.⁵²

5. Freedom of peaceful assembly

5.1 During Malaysia's examination under the 3rd UPR cycle, the government received two recommendations on the right to freedom of peaceful assembly, including to 'accelerate consultations within the government in order to review and amend the Peaceful Assembly Act'. It accepted both recommendations but has only partially implemented them.

5.2 Article 10(b) of the Malaysian Constitution guarantees the right to freedom of assembly and peaceful protests.⁵³ While the authorities have allowed peaceful protests to take place, restrictive laws continue to be used to haul up protesters for organising and participating in peaceful protests.

5.3 In 2012, the government passed the Peaceful Assembly Act (PAA)⁵⁴ to facilitate peaceful protests. Amendments were made in July 2019, removing provisions that

⁴⁹ CIVICUS Monitor, 17 November 2022, op. cit.

⁵⁰ The film drew criticism from religious groups for its portrayal of a young woman exploring the concept of the afterlife in various religions. The filmmakers were investigated under provisions of the Penal Code for 'causing disharmony' and for statements that 'lead to public harm and distress', as well under section 233 of the CMA. See CIVICUS Monitor, 5 April 2023, op. cit.

⁵¹ CIVICUS Monitor, 17 November 2022, op. cit.

⁵² 'Document: Act 88 - Official Secrets Act 1972', Laws Of Malaysia, <https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%2088.pdf>.

⁵³ 'Document: Federal Constitution', Laws of Malaysia, op. cit.

⁵⁴ 'Document: Act 736 - Peaceful Assembly ACT 2012', Federal Legislation, <https://lom.agc.gov.my/act-detail.php?type=principal&act=736&lang=BM&language=BI>.

made street protests a crime. Further, amendment of section 9(5) of the law meant that organisers of peaceful assemblies or street protests are required notify the police five days before an event as opposed to the previous 10-day notification period (section 9(5)).⁵⁵

- 5.4** However, onerous requirements in the PAA, such as the need to provide detailed information about the planned event and its organisers, fall short of international standards. 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 (approx. US\$2,500). The PAA still lacks an exception to the notice requirement for spontaneous assemblies where it is not practicable to give advance notice. The law also makes it a criminal offence for people under 21-years-old to organise an assembly and for children to attend an assembly. Further, non-citizens are also denied the right to organise or participate in protests, which is clearly discriminatory.⁵⁶
- 5.5** During the pandemic, the authorities used both the PAA and emergency ordinances enacted to deal with COVID-19 to criminalise protesters.
- 5.6** Groups calling for women's rights are among those targeted by the authorities and non-state actors for holding protests. In March 2019, the organisers of a march for women's rights were investigated under section 4(1) of the Seditious Act and section 9(5) of the PAA.⁵⁷ In March 2023, police opened an investigation into seven people, including organisers, speakers and participants, under section 9(5) of the PAA and section 14 of the Minor Offences Act after around 300 people, including HRDs and civil society groups, took to the streets in Kuala Lumpur to commemorate International Women's Day.⁵⁸
- 5.7** Labour rights activists have also been targeted for holding protests. In June 2020, police arrested five protesters who had gathered outside a hospital in Ipoh to highlight concerns about cleaners working in state-run hospitals. The five were arrested for obstructing public servants from carrying out their duty under the Criminal Procedure Code and regulation 7(1) of the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations 2020.⁵⁹
- 5.8** Police have harassed youth protesters, particularly from Sekretariat Solidariti Rakyat (Peoples Solidarity Secretariat, SSR), an ad hoc umbrella body for youth groups. In July 2021, three SSR activists were investigated by the police and fined for holding a flashmob protest on COVID-19 and the failure of the then government. They were

⁵⁵ 'Ongoing Use Of Defamation Laws Raises Questions Of Malaysia's Reform Credentials', CIVICUS Monitor, 25 July 2019, <https://monitor.civicus.org/explore/ongoing-use-defamation-laws-raises-questions-malysias-reform-credentials>.

⁵⁶ 'Rights in Reverse: One Year Under The Perikatan Nasional Government In Malaysia', CIVICUS, March 2021, <https://civicus.org/documents/A19CIVICUSRightsInReverseReportMarch2021.pdf>.

⁵⁷ CIVICUS Monitor, 26 March 2019, op. cit.

⁵⁸ CIVICUS Monitor, 5 April 2023, op. cit.

⁵⁹ CIVICUS Monitor, 5 August 2020, op. cit.

each fined RM2,000 (approx. US\$473) for breach of regulation 10 of the Prevention and Control of Infectious Diseases Regulations 2021.⁶⁰

5.9 On 31 July 2021, an estimated 400 people attended the #Lawan protest in Kuala Lumpur. During the protest, human rights groups observed police blocking protesters, photographing them and setting up barricades. A low-flying helicopter and drone were also seen, raising fears of surveillance. Rights groups also highlighted police intimidation and harassment before and after the protest. On 1 August 2021, police said they had identified 29 participants in the protest and that they would face investigation for violating Act 243 and regulation 17(1) of the Infectious Diseases Regulations 2021 and other related legislation.⁶¹ On 4 August 2021, in a blatant attempt to intimidate peaceful protesters, police visited the home or office of at least 15 people, both protest organisers and activists, who had participated in the protest.⁶² Police also harassed bodies that monitored the protest, including the Bar Council and SUHAKAM.⁶³

5.10 On 19 August 2021, police arrested 31 participants who took part in a candlelight vigil for COVID-19 victims in Kuala Lumpur. Less than an hour into the event, police obstructed the vigil. Participants said police refused to give grounds for their arrest. Police were captured in photos and videos dragging participants into police trucks. The participants were later each fined RM2,000 (approx. US\$479). Two SSR activists were subsequently charged with 'rioting' and 'disorderly conduct'.⁶⁴

5.11 Another #Lawan protest scheduled for 21 August 2021 was called off. Despite the cancellation, the police closed off traffic at 88 intersections in Kuala Lumpur. The police also obtained a court order preventing the participation of 34 people. The court order included the personal information of the 34, including identification numbers, raising criticism of privacy violations.⁶⁵

5.12 Police have also harassed the organisers and participants of anti-corruption protests. In August 2022, police hauled up 13 individuals allegedly involved in the #ManaKapalLCS protest in Kuala Lumpur over corruption allegations linked to the navy's littoral combat ship project. On 26 August 2022, Amir Abdul Hadi, the MUDA party secretary-general, was charged in the magistrates' court in connection with the protest under section 9(1) of the PAA for failing to inform the officer in charge five days before holding the assembly.⁶⁶

⁶⁰ CIVICUS Monitor, 28 July 2021, op. cit.

⁶¹ CIVICUS Monitor, 13 October 2021, op. cit.

⁶² Among those visited by police were SUARAM Executive Director Sevan Doraisamy, SUARAM Coordinators Muhammad Alshatri and Azura Nasron, Undi18 co-founder Qyira Yusri and MUDA co-founders Amir Abdul Hadi, Dr Thanussha Francis Xavier and Dr Mathen Nair.

⁶³ CIVICUS Monitor, 13 October 2021, op. cit.

⁶⁴ CIVICUS Monitor, 13 October 2021, op. cit.

⁶⁵ CIVICUS Monitor, 13 October 2021, op. cit.

⁶⁶ CIVICUS Monitor, 17 November 2022, op. cit.

5.13 Organisers of spontaneous protests have also faced harassment. Three representatives from the CSO Lawyers for Liberty were summoned by the police on 25 April 2022 to give a statement on a protest the group organised outside the High Commission of Singapore to oppose the execution of Malaysian national Nagaenthran K Dharmalingam in Singapore. They were investigated under section 9(5) of the PAA and article 7 of the Prevention and Control of Infectious Diseases Act.⁶⁷ Four activists were hauled in by police for investigations into a candlelight vigil held on 25 September 2022 over the death of Iranian woman Mahsa Amini. The group was charged under section 9(5) of the PAA 2012 for failing to notify police of the gathering.⁶⁸

6. Recommendations to the Government of Malaysia

CIVICUS, FORUM-ASIA and SUARAM 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: 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 the light of this, the following specific recommendations are made:

16.1 Freedom of association

- Foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit freedom of association.
- Remove all undue restrictions on the ability of CSOs to receive international and domestic funding 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 freedom of association are removed and the Act is brought into compliance with ICCPR articles 21 and 22. To avoid inordinate delays, registration authorities should be

⁶⁷ CIVICUS Monitor, 20 June 2022, op. cit.

⁶⁸ CIVICUS Monitor, 17 November 2022, op. cit.

bound to act within a reasonable length of time and laws should set short time limits to respond to registration applications. A clear legal basis should be provided in the legislation supporting the denial of registration, with an explicit and limited number of justifiable grounds compatible with international human rights law and standards.

16.2 Protection of human rights defenders

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of enforced disappearances, attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their activities without fear or undue hindrance, obstruction, or legal and harassment of themselves or their families.
- Ensure the safety and security of HRDs seeking refuge in Malaysia and facilitate a safe passage for them to resettle to a third country.
- Undertake 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.
- Publicly condemn at the highest levels and put an end to all acts of harassment and intimidation of HRDs, activists and CSOs, including judicial harassment.
- Implement systematically legal provisions that promote and protect human rights and establish mechanisms that protect HRDs, including by working with CSOs to adopt a specific law on the protection of HRDs in accordance with Human Rights Council resolution 27.31.
- Ratify the ICCPR and take steps to ensure that all domestic legislation is consistent with the treaty and implement its provisions in policy and practice.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognise the competence of the Committee on Enforced Disappearance to receive and consider communication.

16.3 Freedom of expression, media freedom and access to information

- Ensure freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Repeal the Sedition Act and Penal Code sections 298 and 298A, and drop all charges and quash convictions of individuals prosecuted under these laws for peacefully exercising their right to freedom of expression.
- Review the Communications and Multimedia Act in order to ensure that the legislation is in line with international law and standards on 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.
- 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 media content.
- Ensure a free, independent and diverse media environment, including by enacting a Media Council Act in line with international standards on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Refrain from adopting any laws providing for censorship or undue control over social and conventional media content.

6.4 Freedom of peaceful assembly

- Adopt best practices on freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and by General Comment No. 37 on the right to peaceful assembly adopted by the UN Human Rights Committee in 2020.
- Amend the Peaceful Assembly Act 2012 to guarantee fully the right to freedom of peaceful assembly as provided in international law and standards. In particular, repeal provisions that prevent children and non-citizens from organising and participating in protests. Further, provide an exception to the notice requirement for spontaneous assemblies where it is not practicable to give advance notice, and remove excessive fines currently imposed on protests and organisers.

- Halt the systematic questioning, harassment and arrest of protesters under the Peaceful Assembly Act and other laws for exercising their right to freedom of peaceful assembly.
- Instruct all police departments that it is their duty to facilitate peaceful assemblies rather than hinder them.
- Review and if necessary update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards.

6.5 Access to UN Special Procedures mandate holders

- Extend a standing invitation to all UN Special Procedure mandate holders and prioritise 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; 3) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; and 4) Working Group on Arbitrary Detention.

6.6 State engagement with civil society

- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans 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.

7. Annex: Assessment of implementation of civic space recommendations under the 3rd cycle

| Recommendation | Position | Assessment/Comments on level of implementation |
|---|----------|---|
| <p>151.19. Sign and ratify International Covenant on Civil and Political Rights, bring its national law on communication and media in conformity with international human rights law and refrain from judicial and administrative harassment of journalists and human rights defenders (Slovakia);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | Accepted | <p>Status: Not implemented</p> <p>Source: Section 3</p> |
| <p>151.96. Ensure early submission to Parliament of legislation abolishing the death penalty and repealing the Sedition Act (Australia);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | Accepted | <p>Status: Not implemented</p> <p>Source: Section 4</p> |
| <p>151.136. Enact legislation guaranteeing the right of access to information and ensure its full implementation (Slovakia);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | Accepted | <p>Status: Not implemented</p> <p>Source: Section 4</p> |
| <p>151.137. Rescind or revise the Sedition Act, Security Offences Act, and Communications and Multimedia Act, which negatively affect freedoms of expression, association and peaceful assembly (United States of America);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | Accepted | <p>Status: Not implemented</p> <p>Source: Section 4</p> |
| <p>151.139. Take further steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets (Austria);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | Accepted | <p>Status: Not implemented</p> <p>Source: Section 4</p> |
| <p>151.140. Consider revising national legislation, including the Communication and Multimedia Act</p> | Accepted | <p>Status: Not implemented</p> |

| | | |
|---|-----------------|---|
| <p>of 1998, in order to bring it into conformity with international human rights law regarding the right of freedom of expression online and offline (Brazil);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | | <p>Source: Section 4</p> |
| <p>151.142. Build upon its efforts to ensure the full enjoyment of the freedom of opinion and expression by repealing the Sedition Act and bringing in line with international human rights law the Printing Presses and Publication Act, Official Secrets Act and the Anti Fake News Act (Czechia);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | <p>Noted</p> | <p>Status: Partially implemented</p> <p>Source: Section 4</p> |
| <p>151.144. Continue efforts in the area of free speech to create a safe and enabling environment for the media and civil society, and in this regard, repeal the Printing and Publication Act as previously recommended (Ireland);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | <p>Accepted</p> | <p>Status: Not implemented</p> <p>Source: Section 4</p> |
| <p>151.143. Accelerate consultations within the Government in order to review following legislation: Sedition Act, the Printing Presses and Publications Act, the Prevention of Crime Act, the Special Offence Act, the Peaceful Assembly Act and the Prevention of Terrorism Act (Georgia);</p> <p>Source of position : A/HRC/40/11/Add.1</p> | <p>Accepted</p> | <p>Status: Partially implemented</p> <p>Source: Section 5</p> |
| <p>151.141. Amend existing provisions that limit the freedom of expression, the Evidence Amendment Act, Peaceful Assembly Act, and the cessation of arbitrary detention and apprehensions without charges following legislative reforms in accordance with international standards (Spain);</p> <p>Source of position: A/HRC/40/11/Add.1</p> | <p>Accepted</p> | <p>Status: Partially implemented</p> <p>Source: Section 5</p> |