

## **Submission by Centre for Independent Journalism (CIJ) Malaysia to the UN Universal Periodic Review of Malaysia**

*Seventeenth Session of the Working Group of the Human Rights Council, October - November 2013*

### **Executive summary**

1. The Centre for Independent Journalism (CIJ) Malaysia is a Kuala Lumpur-based non-governmental organisation dedicated to the promotion of media freedom and freedom of expression, as well as access to information in Malaysia. Established in 2001, its programmes advocate for freedom of expression, promote access to information, and encourage journalistic excellence. CIJ has since 2004 released an annual report which highlights the state of free expression in Malaysia. It is a member of the international network of free expression groups IFEX.
2. CIJ has worked with Article 19 and other civil society groups to provide a model Freedom of Expression Bill for Malaysia. CIJ has also organised the Malaysian leg of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Mr Frank La Rue's academic visit to Malaysia in 2011. CIJ is also monitoring media coverage of the 13<sup>th</sup> General Elections in Malaysia to gauge the extent of free and fair access to media.
3. Given the expertise and scope of activities of CIJ, this submission focuses on Malaysia's compliance with its international human rights obligations in protecting the right to freedom of expression. Malaysia has acceded to only three of the core human rights treaties: CEDAW, CRC and CRPD, all with reservations. Malaysia has only acceded to two optional protocols, both under CRC.
4. During the first session of UPR, Malaysia has given general responses to recommendations on reviewing, amending or enacting laws to enable its citizens to exercise fully the right to freedom of opinion and expression, including freedom of the press and freedom of information. Since then, the Malaysian government has amended the licensing provision and reinstated judicial review of ministerial decisions under the Printing Presses and Publications Act 1984. However, freedom of expression and press freedom remain tightly guarded. The major issues of concern for CIJ are:
  - violence against journalists;
  - the control on media by the government;
  - repressive laws that serve to curb Internet freedom; and
  - religious interference against the freedom of expression.

### **Violence against Journalists**

5. On 28 April 2012, tens of thousands of Malaysians gathered in Kuala Lumpur for Bersih 2, a rally demanding free and fair elections. The rally's demand to use *Dataran Merdeka* (freedom square, a culturally symbolic field in the heart of Kuala Lumpur that is supposed to symbolise independence and freedom) for the peaceful gathering was denied by a court injunction at the very last minute, thus thousands of extra police manpower was summoned by the Home Ministry to limit entry into the city on that day and guard the perimeters to keep protesters off the square.
6. When some protesters surrounding the sealed area of *Dataran Merdeka* breached the barricades, the police reacted with an all-out attack against the protestors. Tear gas canisters were fired into

crowds consisting peaceful protesters, including seniors and children, and several journalists were attacked and beaten. Expensive photographic, video and other equipment relevant to documenting events at the scene were destroyed and / or seized and not returned.<sup>1</sup> What is more troubling is that the Home Minister regarded the seizures as their standard operating procedure, a claim which was refuted by the Inspector General of Police.<sup>2</sup>

7. Injuries were also rampant: Radzi Razak of *the Sun*, was admitted to the hospital after injuries suffered from attacks by at least seven policemen and had to have his jaw wired. Arif Kartono, a photographer for the *Malay Mail* was assaulted by six uniformed police personnel. Wong Onn Kin, a photographer with *Guang Ming Daily*, was punched in the back of the head by three policemen. P. Malayandy was assaulted by five policemen. *Al-Jazeera* correspondent Harry Fawcett alleged police violence when his crew was documenting arrests and ill-treatment of protesters. Fawcett told CIJ that he and his colleagues were shoved and held, and their camera equipment damaged during the incident. *Channel News Asia* video cameraperson Kenny Lew reported being punched by police and had his tripod seized.
8. When probed further, it was clear that the attacks against journalists were carried out despite the fact that members of the press wore clear identification as media providing coverage of the protest.<sup>3</sup> While two police officers have been charged with using criminal violence against the *Guang Ming Daily* photographer, other assaults against journalists and the loss and damage of media equipment remain unaddressed. As of 11 March 2013, there has yet to be any offer or consideration of far-reaching reforms by Malaysia to provide better protection for media and journalists as called for by the UN Inter Agency Action Plan on Safety of Journalists.<sup>4</sup>
9. There were other instances of attacks against journalists. At the *Himpunan Hijau* (Green Rally against the rare earth Lynas plant in Kuantan) on Penang Island on 28 February 2012, two journalists from *Kwong Wah Yit Poh*, Adam Chew and Lee Hong Chun, were attacked by pro-Lynas supporters. Both lodged police reports on the attack and the violence against journalists was condemned by the National Union of Journalists Malaysia.<sup>5</sup>
10. On 21 February 2013, some 60 disgruntled People Progressive Party members 'occupied' the headquarters of Tamil daily *Malaysian Nanban* to demand an apology over an article which had allegedly defamed the party. The "occupation" lasted for five hours, where one of the daily's reporter LK Raj assaulted by several disgruntled PPP members. *Malaysian Nanban* director Ahmad Mydin Sikandar Batcha has said that he will take legal action against the party.<sup>6</sup>
11. CIJ believes that such threats to media professionals, whether by state or non-state actors, point towards the need for Malaysia to develop legislation and mechanisms favourable to freedom of expression and information, and to implement existing international rules and principles. The UN Plan of Action on the Safety of Journalists and the Issue of Impunity recognises the safety of journalists is essential to upholding Article 19 of the Universal Declaration of Human Rights that guarantees the right to freedom of expression.<sup>7</sup>

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<sup>1</sup> <http://cijmalaysia.org/2012/05/02/joint-media-statement-media-groups-condemn-arrest-harassment-violence-towards-journalists-during-bersih-rally/>

<sup>2</sup> <http://www.freemalaysiatoday.com/category/nation/2012/04/30/hisham-wrong-about-sop-says-igp/>

<sup>3</sup> <http://en.rsf.org/malaisie-major-protest-prompts-attacks-on-05-05-2012,42567.html>

<sup>4</sup> [http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/un\\_approves\\_common\\_strategy\\_on\\_safety\\_of\\_journalists/](http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/un_approves_common_strategy_on_safety_of_journalists/)

<sup>5</sup> <http://nujstar.org/?m=201202>

<sup>6</sup> <http://www.malaysiakini.com/news/222001>

<sup>7</sup> [http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/un\\_approves\\_common\\_strategy\\_on\\_safety\\_of\\_journalists/](http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/un_approves_common_strategy_on_safety_of_journalists/)

## Control of the media by the government

12. Malaysia's major print and broadcast outfits still remain heavily influenced by the Barisan Nasional (BN) coalition which has ruled for the past 55 years. The Printing Presses and Publications Act 1984 (PPPA) requires all newspapers to have a permit before they can publish. This has led to many newspapers being owned, either directly or indirectly, by BN component parties, which in turn has led to a relative lack of media freedom in Malaysia. Malaysia was rated “Not Free” in Freedom House’s 2012 freedom of the press data<sup>8</sup> and ranked 145th out of 179 countries in the 2013 World Press Freedom index compiled by Reporters Without Borders.<sup>9</sup>
13. On 18 April 2012, amendments were made to the PPPA which were part of Prime Minister Najib Razak’s eve of Malaysia Day address that promised “sweeping reforms” to “accommodate and realise a mature, modern and functioning democracy.”<sup>10</sup> The Home Minister will no longer have absolute discretion to approve printing licences and publishing permits, and judicial oversight over the minister’s decisions was reinstated.
14. The fact that publishing permits must still be granted and the minister has a right to revoke or suspend these permits means that the ruling government still has effective control over the Malaysian print media. Newspapers would still be subjected to show-cause letters and be required to answer summonses to the Home Ministry if they published articles that displeased the minister or ministry officials. Editors would also still be subject to calls from the ministry officials and politicians dispensing “advice”. These aspects are all not consistent with the internationally-recognised concept of a free and independent media that is able to serve the public interest by reporting fairly and accurately and holding the government and those in power to account.
15. The proposed **statutory media council** is also raising much cause for concern. While the idea has surfaced even back in the 1970s and a bill proposed in 2001, the latest government proposal was reintroduced to select editors and the National Union of Journalists by the Attorney General in May 2012.<sup>11</sup> While a self-regulatory media council can help to uphold the standards of journalistic freedom and independence, any media council initiative led by the Government instead of by the industry will be another layer of control over media, especially when the PPPA, Official Secrets Act and sedition Act are still in place and are used to curtail freedom of expression.
16. The government control of print and broadcast media can be seen in the continued smearing of its critics. This can be seen daily especially as the 13<sup>th</sup> General Elections nears. Additionally, it is also demonstrated by the fact that Opposition Members of Parliament such as Khalid Samad<sup>12</sup>, Theresa Kok<sup>13</sup>, Lim Guan Eng<sup>14</sup> and Anwar Ibrahim<sup>15</sup> have all managed to win their defamation suits against the UMNO-owned *Utusan Malaysia*.<sup>16</sup>

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<sup>8</sup> <http://www.freedomhouse.org/report-types/freedom-press>

<sup>9</sup> <http://www.themalaysianinsider.com/malaysia/article/malaysia-falls-to-record-low-145th-in-press-freedom-index>

<sup>10</sup> <http://thestar.com.my/news/story.asp?sec=nation&file=/2011/9/16/nation/20110916070850>

<sup>11</sup> <http://thestar.com.my/news/story.asp?file=/2012/5/13/nation/11282779&sec=nation>

<sup>12</sup> <http://www.themalaysianinsider.com/malaysia/article/khalid-samad-wins-defamation-suit-against-utusan>

<sup>13</sup> <http://thestar.com.my/news/story.asp?file=/2012/10/8/nation/20121008143150&sec=nation>

<sup>14</sup> <http://www.themalaysianinsider.com/malaysia/article/guan-eng-wins-second-defamation-suit-against-utusan>

<sup>15</sup> <http://www.nst.com.my/latest/anwar-wins-defamation-suit-against-utusan-1.205041>

<sup>16</sup> UMNO whose support base is the Malay ethnic community is the leading party in the Barisan Nasional coalition government.

17. Where and when the opportunity arises, we have seen **criminal defamation** used as a potent means by the state to silence dissent and alternative points of view, namely from members of the Opposition coalition. In September 2011, Muhammad Sabu the vice president of PAS (the Malaysian Islamic Party), a key party member in the opposition coalition, was met with criminal defamation charges for his comments that allegedly disrespected members of the police force who died during the communist attack of a police headquarters of Bukit Kepong in the 1950s.<sup>17</sup> CIJ believes that defamation should be decriminalized and the courts must consider the interests of the public in deciding cases involving criminal defamation suits.
18. There were also two instance of the Penang and Kelantan state **government restricting media access** to state assembly sittings. The Democratic Action Party-led government of Penang and the PAS-led governments of Kelantan and Kedah denied *Utusan Malaysia* from attending and providing coverage of state assembly meetings.<sup>18</sup> Though motivated by *Utusan's* alleged false reporting of news of the three states led by the Federal Opposition parties, the ban is a suppression of the freedom of the press and an unhealthy precedent which restricts media's access to state events.

### **Repressive laws against internet freedom**

19. Article 10 of the Malaysian Constitution guarantees the freedom of speech, expression, assembly and association, with some limiting provisions which can be put in place by the parliament under the pretext of national security, foreign relations, public order and morality. However, various laws have been created by the current regime to limit freedom of expression. One such example is section 114A of the Evidence Act.
20. **Section 114A** is the second of two amendments made to Malaysia's Evidence Act 1950 that was gazetted in July 2012. Section 114A deals with allegedly illicit or harmful content on the Internet. In short, the amendment enables law enforcement officials to swiftly hold someone accountable for publishing seditious, defamatory, or libellous content online. The problem is that the list of those who can be held accountable is too broad as to be easily abused.
21. Section 114A holds the following people accountable for publishing content online: (1) those who own, administrate, or edit websites open to public contributors, such as online forums or blogs; (2) those who provide webhosting services or Internet access; and (3) those own the computer or mobile device used to publish content online. Thus if such content is traced back to a person's username, electronic device, and/or WiFi network, Section 114A presumes you are the publisher. It renders Internet intermediaries—parties that provide online community forums, blogging and hosting services—liable for content that is published through their services. It allows hackers and cyber criminals to be free by making the person whose account/computer is hacked liable for any content/data which might have changed.
22. Section 114A disproportionately burdens average Internet users who are wrongfully accused of publishing seditious or defamatory content. CIJ believes this provision goes against the UN Human Rights Council's first Resolution on Internet Free Speech which affirms that the same rights that people have offline must also be protected online.<sup>19</sup>

### **Religious interference against free expression**

<sup>17</sup> <http://www.themalaysianinsider.com/malaysia/article/mat-sabu-charge-violates-free-speech-tenets-says-rights-groups>

<sup>18</sup> <http://cijmalaysia.org/2011/06/23/dont-restrict-media-access-expose-unethical-media-instead/>

<sup>19</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G12/147/10/PDF/G1214710.pdf?OpenElement>

23. Post-2008 elections, the winning but badly shaken BN coalition as well as new ethno-religious Malay-Muslim groups have invoked the “threat against Islam and Muslims” for political mileage.
24. There have been instances of direct state intervention, notably with regards to the rights of non-Muslims to use the word “Allah” in their texts and rituals. In 2009, the printing permit for the *Herald*, a local Catholic newspaper, was rescinded by the Home Ministry over their use of supposedly exclusive Islamic terms such as “Allah”, “Kaabah”, “Baitullah” and “Solat”. The *Herald*'s use of these terms were perceived and alleged to be a covert and indirect means of converting Muslims. The Catholic Church responded by applying for a judicial review and while the High Court eventually ruled in their favour, several Muslim groups protested throughout the nation demanding for “Allah” to be for the exclusive use of Malays. This controversy resurfaced when the Home Ministry seized thousands of copies of Bibles in the national language Bahasa Malaysia.
25. The upholding of state-sanctioned religious orthodoxy have also served as a pretext for seizures and banning of books on Islam. Canadian author Irshad Manji's books were the most recent high-profile victim of this in 2012. In this instance, it led to the persecution of a store manager for Border's, Nik Raina Nik Abdul Aziz, for selling a translated version of Manji's “banned” books, this despite the manager being arrested on the same day as the ban being announced.<sup>20</sup>
26. Book banning as a suppression of dissenting views has been around for years. The works of well-known authors such as Karen Armstrong, Prof John Esposito, Salman Rushdie and Khalil Gibran have been included in the banned list. Local works by authors such as Faisal Tehrani and Kassim Ahmad and a title published by renowned Sisters in Islam have also been banned under the PPPA under the pretext of transgressing religious sensitivities. The departments conducting the banning also vary, from the Home Ministry’s Publication and Quranic Texts Control Division to the 13 state-level religious authorities.

### **Recommendations:**

27. In response to these concerns, the Centre for Independent Journalism calls on the UN Human Rights Council to make the following recommendations to the Malaysian government:
  - Ensure that all restrictions on freedom of expression meet international standards and particularly meet the three part test: that restrictions on freedom of expression be provided by law, pursue a legitimate aim and are “necessary in a democratic society”;
  - Repeal the Printing, Presses and Publications Act 1984 which exercises government control on print media as well as all forms of publications;
  - Repeal Sedition Act 1948;
  - Abolish Section 114A of the Evidence Act towards ensuring freedom of expression online is protected;
  - Develop mechanisms to provide protection for media and journalists to enable them to discharge their duties under a safe environment as called for by the UN Inter Agency Action Plan on Safety of Journalists. The government should also conduct widespread and meaningful public consultations in developing these mechanisms;
  - Repeal criminal defamation provision and impose limits on the use of civil defamation charges by public bodies and officials, and on the amount of damage claims; and
  - Introduce Freedom of Information Act at the Federal level to recognise the right to information.

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<sup>20</sup> <http://www.themalaysianinsider.com/malaysia/article/seizure-of-irshad-manji-books-illegal-says-publisher>