



Professor Philip Alston
UN Special Rapporteur on extreme poverty and human rights

16 August 2019

Re: Submission to the UN Special Rapporteur on extreme poverty and human rights on migrant workers and civic space in Malaysia

Dear Rapporteur,

CIVICUS, the World Alliance for Citizen Participation 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. North South Initiative (NSI) is an organization to help build synergy between the North and South in addressing human rights, social justice and development issues. Our main mission is the empowerment of marginalized groups including migrant workers

We welcome your fact-finding visit to Malaysia from 13 to 23 August 2019 and that you will be looking at the precarious situation of foreign workers, who play an important role in Malaysia's economy but are excluded from official poverty statistics, and often work for low pay in difficult conditions.

We are making a submission of the findings of a research project that CIVICUS and NSI undertook in 2018 with regards to the civic freedoms of migrant workers in particularly on freedom of expression, assembly and association. We believe the restrictions to their civic freedoms creates barriers for migrant workers from speaking up and mobilizing to improve their conditions related to employment, housing and so forth. We also believe that restrictions to civic freedoms is a major stumbling block to migrant workers in poverty alleviation.

Freedom of expression

Article 10(a) of the Malaysian Constitution guarantees the right to freedom of speech and expression. While many laws severely restricted this right during the past administration, we are

aware that the new government is planning to review and repeal many of these law in accordance with international human rights law and standards. However, progress has been slow.¹

Despite this our research findings show that many migrant workers do not feel confident to criticize or call on the authorities to meet their needs. When they do speak up they often feel that they are ignored and that the government rarely listens to them. Many migrant workers told us that migrant workers fear being fired, detained or deported for speaking out and often there is a lack of access to information or language barriers for them to express themselves. In some cases, due to the fact their employer holds their passports, the migrant workers told us that speaking up is often not an option. The main perpetrators of violations of the right to freedom of expression for migrant workers include the police, other agents or institutions that form part of the state as well as employers and business owners.

Often, they believe the treatment against them is rooted in racist or xenophobic attitudes that exist within society and in certain media as well as negative statements made by government leaders and politicians against migrant workers

Freedom of peaceful assembly

Article 10(b) of the Malaysian Constitution guarantees the right to peaceful assembly. However, the 2012 Peaceful Assembly Act (PAA) imposes notice requirements that are onerous and inconsistent with international standards. Furthermore, the right to assemble under the PAA does not extend to foreigners including migrant workers.²

While our research found that some migrant workers have participated in rallies organized by the MTUC or involved in gathering to submit petitions to their embassies, many do not feel safe taking part in protests in Malaysia. They believe if they take part they could be fired from their job, removed from their workplace (perhaps without payment for work already done), detained or deported

Freedom of Association

Although Article 10(c) of the Malaysian Constitution guarantees the right to form associations, this right has been restricted by various laws and the actions of the prior government.³

Our research found that while some migrant workers have formed informal organisations to support themselves many do not feel safe or confident to do this as the Societies Act 1966 prohibits the operation of unregistered groups. The previous government used legislation to restrict the formation and operation of associations, including by threatening to suspend or close civil society organisations (CSOs) and limit the activities of informal movements. Despite promises by the current government to revise existing laws related to the formation of associations, no steps have been taken at the time of writing.

With regards to the ability for migrant workers to join unions, this is another massive challenge. According to our research, migrant workers, are often coerced by immigration authorities or their

¹ See <https://www.civicus.org/index.php/media-resources/media-releases/3851-malaysia-a-year-after-elections-fundamental-freedoms-still-restricted>

² See <https://www.civicus.org/index.php/media-resources/news/3930-malaysia-positive-step-but-further-revisions-needed-of-protest-law>

³ See https://www.civicus.org/images/Joint_CIVICUS_Pusat_Komas_UPR_Submission_Malaysia_2018.pdf

employers not to join unions. In some cases, migrant workers told us that their working contracts or the constitution of certain trade unions deny their participation.

To this end, and in light of the concerns described in this submission, we urge you to make the following recommendations to the government as a matter of priority:

- Take steps to ratify relevant human rights treaties, including the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and ILO Convention No. 189 on domestic workers;
- Send a strong message to government leaders, civil servants and the media that racism and xenophobia against migrant workers will not be tolerated;
- Step up its efforts to protect the rights and to enhance the safety and welfare of foreign workers in Malaysia, particularly to secure better working conditions for domestic workers and better protection for those undocumented migrants;
- Instruct the police and law enforcement officials and call on employers to halt all forms of harassment, intimidation, and abuses against migrant workers for exercising their civic freedoms and ensure action is taken against perpetrators;
- Take positive measures to ensure that all migrant workers have the knowledge and ability to exercise their right to the freedom of peaceful assembly effectively and review laws in particularly the 2012 Peaceful Assembly Act to ensure that there are no restrictions or discrimination in law and practice;
- Take measures to foster a safe, respectful and enabling environment for the formation of migrant worker organisations, including by reforming or repealing laws and policies that unwarrantedly limit the right to freedom of association, including the Societies Act;
- Take measures to ensure an enabling environment for migrant workers to join trade unions and ensure that employers remove any form of restrictions in their contracts or agreements against migrant workers joining trade unions

We express our sincere hope that you will include our concerns in your report.

Sincerely,



Josef Benedict
Researcher
CIVICUS



Adrian Pereira
Director
North South Initiative (NSI)