



FREEDOM OF EXPRESSION IN MALAYSIA

Joint Stakeholder Report to the United Nations Universal Periodic Review for the 45th Session of the UPR Working Group 2018 - 2023

Joint submission by¹:

- 1) Centre for Independent Journalism (CIJ)
- 2) Amnesty International Malaysia (AIM)
- 3) Freedom Film Network (FFN)
- 4) Gerakan Media Merdeka (GERAMM)
- 5) Justice For Sisters (JFS)
- 6) KRYSS Network (KRYSS)
- 7) Malaysian Centre for Constitutionalism and Human Rights (MCCHR)
- 8) Sisters in Islam (SIS)
- 9) Suara Rakyat Malaysia (SUARAM)

A. Introduction

¹ Refer to Annex 1 for additional information on the submitting organisations.

1. The submitting organisations note that since the last Universal Periodic Review (UPR) in 2018, Malaysia has seen little to no improvement in its promotion and protection of freedom of expression and assembly.
2. As Malaysia went through a time of political uncertainty with frequent changes in government leadership and the added challenges of the COVID-19 pandemic, freedom of expression and information integrity suffered. Repressive laws were used to silence dissenting voices, with the government enacting strict legislation to combat “fake news”.² The Sedition Act 1948, Communications and Multimedia Act 1998 (CMA) and other laws were arbitrarily used to arrest and investigate critics, human rights activists, and media personnel and resulted in undue restrictions on the dissemination and access to information.
3. Despite Malaysia’s election to the United Nations Human Rights Council for the 2022-2024 term, there are still ongoing abuses of power and restrictions on fundamental freedoms within the country.
4. Malaysia held its 15th general election on 19 November 2023. No coalition managed to secure a majority, resulting in a hung parliament. Pakatan Harapan (PH) and Barisan Nasional (BN) agreed to form a unity government. Anwar Ibrahim, from PH was appointed Prime Minister alongside Ahmad Zahid as Deputy Prime Minister from United Malays National Organisation (UMNO/BN).
5. This unprecedented alliance meant that UMNO, ridden with allegations of corruption, was back in power. The Malaysian Islamic Party (PAS) and Malaysian United Indigenous Party (Bersatu) of the right-wing Perikatan Nasional (PN) coalition became the opposition coalition.
6. PAS and Bersatu had dominated the narratives of Malay supremacy and nationalism. The PN coalition used Islamic values to level attacks against LGBTQ+ (lesbian, gay, bisexual, transgender, and queer) people. PAS had also accused the largely Chinese-led, Democratic Action Party (DAP) of the PH coalition of being communist and pro-secularism.
7. Attacks against LGBTQ+ people, refugees and migrants continued to dominate the actions of the State as well as the narratives of the politicians. Gendered disinformation was also used to discredit and undermine women political candidates effectively.
8. The media landscape remains highly political, with various factions using information platforms for their propaganda. Social media has become the primary source of information but it also raises the risks of disinformation, hate speech, digital surveillance, privacy violations, and online gender-based violence. Social media was highly instrumentalised during the election period to garner the support of young voters.
9. While digital infrastructure and awareness allowed for broader engagement and dissemination of information, there was also a digital divide amongst the different

² Emergency (Essential Powers) (No. 2) Ordinance 2021 [EO2] (criminalises “fake news” relating to COVID-19 or the Emergency Proclamation of 2021); repealed on 1st August 2021.

states as well as based on socio-economic factors in Malaysia, particularly between the Peninsular and East Malaysia.

B. Recommendations from the 2018 Universal Periodic Review (UPR)

10. During its last UPR in 2018, Malaysia “outright accepted” numerous recommendations regarding the right to information and improve media plurality within the region but had claimed “partial acceptance”³ or “taken note” for more explicit calls for reform of restrictive and archaic laws.^{4 5}

C. Media Freedom and Information Justice

11. During the last UPR, Malaysia had “outright accepted” recommendations to “take steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets”⁶ and to “create a safe and enabling environment”.⁷ However, no progress has been made in terms of legislative changes to foster a better environment for the media in Malaysia. Section 233 of the Communications and Multimedia Act 1998 (CMA), the Printing Presses and Publications Act 1984 (PPPA), the Official Secrets Act 1972 (OSA), Section 114A of the Evidence Act, and defamation laws under sections 499 and 500 of the Penal Code continue to stifle media freedom.⁸
12. The abovementioned laws have been used to suppress dissent, curtail investigative reporting, and create an environment of self-censorship. These legal measures are inconsistent with international standards on freedom of expression and hinder the role of the media as a watchdog and a forum for democratic discourse.
13. The PPPA has numerous issues, one of which pertains to the current system for granting permits. The definition of what is considered “prejudicial to public order or national security” in section 13(1) is unclear and subjective. The vague definition of “publications” in section 2 also poses a problem where it can be arbitrarily used to restrict space for public discourse of ideas. The PPPA is also used extensively to restrict publications, namely relating LGBTQ+ related discourse and expressionⁱ.
 - a) On 22 May 2023, Swatch reported raids on 11 of their outlets by the Home Ministry to confiscate their limited edition Pride collection watches. A total of 164 watches were seized for violating the PPPA. These watches were considered a “publication” under the broad definition provided under section 2 of the PPPA.ⁱⁱ
14. The absence of job security, unsustainable working conditions, and delayed salary payments undermine the independence of the media industry. In 2022, a former journalist with the state news agency (BERNAMA), went public with the labour discrimination she experienced, resulting in being publicly labelled as being “mentally ill”ⁱⁱⁱ by the Deputy Communications and Multimedia Minister. This underscores the urgent need for labour reform in Malaysian media companies. Such reforms are

³ Recommendations accepted in full: **151.136 (Slovakia), 151.139 (Austria), 151.143 (Georgia), 151.147 (Czechia)**, source: A/HRC/40/11/Add.1 - Para. 8

⁴ Recommendations with “partial acceptance”: **151.137 (United States of America), 151.138 (Uruguay), 151.140 (Brazil), 151.141 (Spain), 151.144 (Ireland), 151.145 (Lithuania), 151.146 (Switzerland)** source: A/HRC/40/11/Add.1 - Para. 8

⁵ Recommendations “taken note” **151.142(Czechia)** source: A/HRC/40/11/Add.1 - Para. 8

⁶ Recommendation 151.139 (Georgia)

⁷ Recommendation 151.149 (Ireland)

⁸ Refer to case examples in Annex 3.

necessary to ensure fair treatment, job security, and better working conditions, ultimately leading to a more robust media industry in Malaysia^{iv}.

15. In March 2023, the Ministry of Communications and Digital (KKD) committed to the establishment of a Media Council.^v However, there is no guarantee that the Media Council will retain an independent governance and self-regulatory framework. This is imperative to ensure that any regulation of the media industry remains free from the influence of any business or government, thus preserving media freedom.

D. Threats to Information Justice

16. During Malaysia's 15th General Elections (GE15), the Centre for Independent Journalism's (CIJ) social media monitoring project^{vi} discovered alarming findings regarding the proliferation of hate speech. The project revealed that politicians played a significant role in amplifying racial and religious narratives and using them as a divisive tool against LGBTQ+ people.
17. During this period, significant engagement was seen on Facebook, Twitter and TikTok. Unfortunately, some users posted hateful comments that further divided society along racial and religious lines and even incited violence. TikTok faced criticism for not effectively moderating harmful content and disinformation, with some fearing a repeat of past racial riots. In response, TikTok blocked 857 videos during the campaign period and removed 130 videos on polling day. After the elections, 1,126 videos were removed by TikTok upon the request of the Malaysian Communications and Multimedia Commission (MCMC) during the volatile period between 20 and 26 November 2023.^{vii}
18. Gendered disinformation is also prevalent in Malaysia and was used to silence and undermine women politicians. For instance, one TikTok video was made to spread disinformation and discredit the former Minister of Women, Family and Community Development, stating that her only contribution as Minister was losing weight over helping the people. A statement was also made by the Kedah Chief Minister of women representatives' inability to help their constituency during the flood based on harmful gender stereotypes.^{viii} The State, including the Election Commission of Malaysia failed to censure such acts and these harmful stereotypes and narratives continue to prevail.
19. At the same time, the term hate speech and disinformation is often instrumentalized by majority groups to silence expression, that is protected under international law, specifically on race, religion and royalty (3R). Political dissent is frequently punished, and people and organisations who criticise the government, State officials, or a particular religion, even without resorting to hate speech, are typically silenced.

E. Right to Information

20. During the last UPR, Malaysia received several recommendations⁹ pertaining to the right to information (RTI) and "fully accepted" two of these recommendations from Slovakia and Austria. Malaysia has "taken note" of Czechia's recommendation to repeal and/or bring specific problematic legislation in line with international human rights law.¹⁰ While the State is making early attempts to enact federal legislation on

⁹ Recommendations accepted in full: **151.136 (Slovakia), 151.139 (Austria), 151.142 (Czechia), 151.147 (Czechia)**, source: A/HRC/40/11/Add.1 - Para. 8

¹⁰ Recommendation "taken note": (Czechia) Source of position: A/HRC/40/11/Add.1 - Para. 18

RTI, it has not made any tangible efforts towards readdressing the information ecosystem in its entirety.

21. The government enables a culture of secrecy and lack of transparency amongst its agencies which poses severe challenges to RTI. Accessing information on crucial matters such as land and environmental issues, development projects, and transportation infrastructure is daunting for some individuals and organisations.^{ix} This is particularly true when there is a lack of avenues for public access to information, thus limiting affected communities' public participation and also human rights defenders' capacity to call out practices that infringe on human rights.
22. Legal restrictions such as the Official Secrets Act 1972 (OSA), Section 203A of the Penal Code, and limited protection under the Whistleblower Protection Act 2010 further limit the right to information.
 - a) The OSA is the primary law that defines the current informational environment,^x mainly because the OSA awards arbitrary powers to a federal government Minister or Chief Minister to designate and classify any government document as secret. Boo Su-Lyn, editor-in-chief of health news portal *CodeBlue*, was investigated under the OSA after publishing articles that covered "declassified findings" of an investigation into the Sultanah Aminah Hospital (HSA) fire that occurred in 2016 in Johor Bahru.^{xi}
 - b) Section 203A of the Penal Code criminalises the disclosure of "any information or matter" that a person has obtained "in the performance of his duties or the exercise of his functions under any written law". Government officials often cite this law as a means of preventing leaks of confidential information based on national security. It discourages proactive and maximum disclosure of information held by public authorities as a matter of public interest. It is open to abuse as it could be used to prosecute whistleblowers or those who report on the disclosed information, specifically if it is related to government wrongdoing.
23. The issue arises where restrictive laws persist in Malaysia's legal framework without a federal RTI law. When the Pakatan Harapan (PH) government was in power from 2018 to 2020, it aspired to join an Open Government Partnership (which requires a Freedom of Information (FOI) law) and to repeal the OSA.^{xii} The subsequent governments, while proceeding with plans to enact an RTI legislation, retracted the earlier promise to repeal the OSA.
24. Penang and Selangor have had state-level FOI enactments (FOIE) since 2010 and 2011 respectively. However, there remain concerns:
 - a) Keywords such as "public bodies" and "information" are defined too broadly in the FOIEs, and the exemption list is non-exhaustive.
 - b) The existing FOIEs impose costly application fees and processing costs which limit public access to information. This fails to promote equality when some cannot afford the fees imposed or forfeit said fees if information is denied.
 - c) These FOIEs allow the public to obtain most information owned by the respective state governments, however without a federal level RTI guarantee, the OSA supersedes the FOIEs, and the prevalence of corruption continues to undermine the FOIEs. Thus, the implementation of the FOIEs lack effectiveness and further inhibit the public's right to access information.

F. Data Protection and Privacy

25. Protecting our digital presence and privacy can be challenging, and the Personal Data Protection Act 2010 (PDPA), the primary law regulating privacy protection in Malaysia, must be reformed to address critical weaknesses.
26. **Federal and State Governments are exempted:** The PDPA is meant to only cover commercial transactions while excluding government agencies. This raises concerns about personal data usage. For example, the government was not held accountable for the leak of the personal information of three million users from the contact tracing app MySejahtera in October 2021 due to inadequate security protocols.^{xiii} Another example is where state actors, like the police, have publicly released personal information, including national identification numbers of young protesters from the #LAWAN protests.^{11xiv}
27. **Data leaks:** The PDPA covers commercial entities but does not impose any accountability upon companies whenever data leaks occur, as was the case in 2022 when a ransomware attack compromised the personal data of five million passengers and all employees of AirAsia.^{xv}
28. **Lack of regulation:** A significant issue in Malaysia is the need for more accountability of big tech companies with an operation base in Malaysia. These companies collect large amounts of data without clear rules or transparency in terms of privacy and FOE protection.
29. **Lack of policy measures on state surveillance:** The government has resorted to using surveillance tools to curb Covid-19 cases, but this is a slippery slope because enforcement agencies would arbitrarily use such surveillance tools for national security. For example, a 2020 article by the Malay Mail reported the use of 92 drones during the movement control order (MCO),^{xvi} and drones were also reported to have been used during the Lawan protest, potentially for facial recognition.^{xvii}
30. Another potential area of concern is Artificial Intelligence (AI) technology. As AI advances and its use becomes more prevalent in major industries, addressing the gaps in relation to issues of consent, transparency, and accountability within the PDPA is essential. It is critical for the State to ensure that ethical and adequate reforms are adopted to protect the rights of the people and provide the necessary remedy when there is a breach.
31. Additionally, many people need more digital literacy, especially when it comes to issues of privacy, security, and surveillance. This knowledge deficit puts them at risk of online threats and undermines their ability to protect their personal information effectively.

G. Censorship

32. Despite several recommendations by several countries to reform laws that limit freedom of expression, no progress has yet to be made since the last UPR.¹²

¹¹ The Lawan protest was held to call for the resignation of then Prime Minister Muhiyiddin Yassin for his failure in taking proactive measures in curbing the covid-19 pandemic.

¹² Recommendations with "partial acceptance": **151.137 (United States of America), 151.140 (Brazil), 151.142 (Czechia), 151.143 (Georgia), 151.144 (Ireland).**

Unfortunately, there has been widespread use of Section 233 of the Communications and Multimedia Act 1998 (CMA), the Sedition Act, and sections 504, 505(b) and 298A of the Penal Code.

33. Individuals and organisations who express dissenting opinions or criticise the government are often targeted for prosecution. This includes activists and political figures facing legal action or harassment for their online activities.
34. An alarming trend that we have noticed is the use of section 233 of the CMA, alongside section 505(b) of the Penal Code as a tool to initiate investigations and take legal action against media practitioners, human rights defenders and online users. The CMA is broader in scope than the Sedition Act, encompassing offenses related to the improper use of network facilities and services, including transmitting offensive or false content electronically. The rise of digital communication and social media has also led to increased online communication, necessitating laws that adequately address these emerging challenges. Its broad scope also enables authorities to use this law as an intimidation/harassment tactic by using it to initiate investigations, without comprehensively adopting the international principles of legitimacy, necessity and proportionality.
35. Based on media monitoring,^{xviii} the Sedition Act^{xix} continues to be used to prohibit speech with a 'seditious tendency,' which includes causing hatred, contempt, or disaffection towards the royalty or government and creating discontent or disaffection among the people. However, the terms 'hatred,' 'contempt,' 'discontent,' and 'disaffection' are vague and can be arbitrarily used. Additionally, Malaysian courts have imposed unreasonable fines on those found liable under the Sedition Act.
 - a) In 2021, section 4(1) of the Sedition Act was used to arrest Iswardy Morni, a Parti Keadilan Rakyat member, who produced a YouTube Live video titled 'Total Lockdown: *Apa Yang Kerajaan Gagal Belajar Dalam Setahun*' (What the Failed Government Learned in One Year). He pleaded not guilty before the Sessions Court and risks facing a fine of up to RM5,000 if found guilty.^{xx}
36. In addition, Malaysia has laws to address **speech considered blasphemous**, such as section 298A of the Penal Code which holds individuals accountable for promoting negative emotions towards religion, such as hostility or prejudice. However, these laws have been criticised. Laws favouring certain religions or beliefs violate human rights, including the freedom to criticise religious leaders or doctrines. The right to freedom of expression cannot be limited to protect religions or their ideas from criticism or shield believers from criticism or offence.^{xxi}
 - a) Malaysian authorities detained Siti Nuramira Abdullah and her partner, Alexander Navin Vijayachandran, for a video of Siti performing stand-up comedy at Crackhouse Comedy Club, which was deemed insulting to Islam.^{xxii} Comedy club owner Rizal Van Geyzel was arrested for three stand-up comedy films addressing racial prejudices and eventually fined RM8000 after pleading guilty to one out three charges.^{xxiii xxiv}
37. **LGBTQ+ persons in Malaysia experienced state-imposed restrictions** on their freedom of expression and association. The criminalisation of LGBTQ+ people under section 377A of the Penal Code and various Syariah laws, CMA, and PPPA creates an environment that promotes discrimination and bias, leading to stigmatisation, marginalisation and censorship of the community against LGBTQ+ people with impunity.

38. Additionally, the authorities often conduct arbitrary raids, harassment, and arrests of LGBTQ+ friendly venues, both deter and intimidate LGBTQ+ persons from gathering, socialising, and expressing themselves freely.
- a) In 2022, a raid was carried out by the Federal Territories Islamic Religious Department (JAWI) and the police at a Halloween party.^{xxv} The guests at the party were allegedly subjected to heavy intimidation and humiliation by the authorities. JAWI arrested 20 people and put them in a truck to be transported to a holding facility for further questioning.
39. Freedom of expression, especially relating to plurality/diversity and non-patriarchal interpretation of Islam and LGBTQ+ people is curtailed under various laws state Syariah criminal offences enactments and act. For example, at least 4 provisions under the Syariah Criminal Offences (Federal Territories) Act 1997, criminalise opinions contrary to fatwa, publications against Islamic laws, contempt of religious authorities, and insulting Islam.
40. In the Iki Putra case^{xxvi}, the Federal Court affirmed that while state legislatures can enact laws 'against the precepts of Islam' it must abide by the preclusion clause in the same line, which states, "except in regard to matters included in the Federal List". the court decision calls for a review of the constitutionality of many state Syariah laws.
41. **Strategic lawsuits against public participation (SLAPP)** have also been used to discourage and silence public participation in Malaysia for decades. It is thus a severe threat to exercising human rights and fundamental freedoms such as freedom of expression, information, association, and the right to protest.
- a) In June 2021, the Samling Group filed an RM5 million defamation lawsuit against SAVE Rivers¹³ and four of its leaders for allegedly defamatory articles published between June 2020 and March 2021. The articles, among others, suggested that the Samling Group needed to consult the indigenous communities in and around two concessional forests and had logged-in areas that were part of indigenous land. The trial dates have been adjourned twice on Samling Group's request and postponed twice by the court.¹⁴ The trial has now been set for 18 to 20 September 2023.^{xxvii}
42. Malaysian authorities also constantly weaponise the law as a fear tactic to prohibit free speech. This can have a chilling effect on the people's freedom of expression and gives disproportionate power to the authorities to take control of human rights' narratives. There is also a chilling effect of SLAPP on whistleblowers, human rights defenders (HRDs) and the media. SLAPP is not limited to the use of civil defamation claims but also extends to criminal investigations and prosecutions under laws such as Sedition Act 1948, section 233 of the CMA to mount pressure on their targets to silence them.^{xxviii}

¹³ SAVE Rivers is a civil society organisation that supports and empowers rural communities to protect their land, rivers and watersheds. It was approached by indigenous communities around the Baram Dam in Sarawak to raise their concerns about logging in the area, allegedly by the Samling Group of companies which are involved in the timber industry.

¹⁴ First trial dates were set for 22-26 August 2022, but were adjourned to 19-23 September 2022; The second adjournment was to 14-18 November 2022. The Court postponed the November 2022 trial dates to 15-19 May 2023, and subsequently postponed the May 2023 trial dates to 18-20 September 2023.

H. Film Censorship and Artistic Freedom

43. The issue of film censorship in Malaysia poses a threat to artistic freedom. The Film Censorship Board's (LPF) guidelines are seen as strict and conservative, which can result in movies being heavily edited or banned if they are critical of the ruling government and authorities, violent and sexually explicit, or religiously controversial. This heavy religious and moral policing has led filmmakers to self-censor to avoid getting into trouble with the authorities.
44. The Film Censorship Act 2002 (FCA) regulates all films and content meant for public viewing in cinemas and television in Malaysia, giving the government the authority to ban films entirely. All films for public viewing are subjected to prior censorship and must be approved by the LPF before being screened. Films also undergo double censorship whereby films are censored and further classified for age-suitability.¹⁵
45. The LPF sits under the Home Ministry, whose primary concern is the security and peace of the nation. It is also clear that the LPF needs more independence because its members are appointed by the Minister of Home Affairs, who additionally has the executive authority to override the decisions of the LPF. Moreover, the findings of the LPF and the Minister are final and cannot be challenged in a court of law, further emphasising the lack of independence and depriving filmmakers of their right to legal recourse.
46. Filmmakers are subjected to multiple layers of censorship. It is worth noting that apart from the Home Minister, the Minister of Communications and Digital and the Police also intervene in creative content cases. In addition, the Federal Islamic Authority (Jabatan Kemajuan Islam Malaysia or JAKIM) is responsible for reviewing any portrayal of Islam and its teachings in films. They also review content related to the supernatural that falls under "religion." Experts on Islamic matters from the religious authorities serve on the LPF review board.
47. The FCA, which restricts the content of films, has forced many filmmakers to screen their work privately or through online streaming services to avoid censorship by authorities. While this offers an alternative option, filmmakers and creators are still vulnerable to censorship. The FCA has faced criticism for being outdated and infringing upon the right to free expression. In response to these concerns, there have been calls for reform in recent years as the existing legal framework on film censorship restricts creativity and negatively impacts the screen industries.^{xxix}
48. The independent production 'Mentega Terbang' and its filmmakers and actors, including a 15-year-old child actor, were subjected to multiple police investigations under sections 233 of the Communications and Multimedia Act 1998 (CMA), 505(b) and 239A of the Penal Code, as well as physical harassment^{xxx} by members of the public. Additionally, regulatory bodies such as the National Film Development Corporation Malaysia (FINAS) and religious bodies like the Department of Islamic Development Malaysia (Jabatan Kemajuan Islam Malaysia) and the Federal Territory Islamic Religious Council (MAIWP) conducted their investigations into the film.^{xxxi}

¹⁵ In 2020, the Freedom Film Network (FFN) published two reports on the legal framework of film censorship in Malaysia and its impact on the screen industries. The findings revealed that the current legal framework is not aligned to international standards of human rights and freedom of expression, and negatively impacts the local screen industries.

49. The restrictive laws in Malaysia significantly impact artists, limiting their ability to push boundaries and express themselves artistically. For example, Fahmi Reza is an artist and activist who constantly faces legal action for his political graphics. Based on media monitoring done, Fahmi Reza has been investigated a total of nine times in 2021 and 2022.^{xxxii} In 2022, he was charged for social media posts criticising a former health minister and calling for a ban on alcohol sales. The authorities have used various laws, such as the Sedition Act of 1948, section 233 of the CMA, and Section 504 of the Penal Code, to investigate him.^{xxxiii xxxiv} He pleaded not guilty but was still detained and restricted from travelling.^{xxxv}

I. Academic Freedom

50. No recommendations were made in the last UPR concerning academic freedom in Malaysia. It should be noted that academic freedom has not been a reality in Malaysia for decades, mainly when it concerns public tertiary institutions.
51. The Universities and University Colleges Act 1971 (AUKU) has long been criticised for its capacity to restrict freedom of expression in public universities and colleges. Today, this is mainly because AUKU allows students to be prosecuted for speaking to the media without prior permission from University authorities.^{xxxvi} They are not allowed to join political parties and must pledge obedience to the government upon entry to university. AUKU further allows government control over free speech in tertiary education institutions.
52. Academic freedom is a crucial aspect of the right to information and the free exchange of ideas and the pursuit of knowledge¹⁶ which should not be curbed by the AUKU.
53. In 2022, student activist and former president of the University Malaya (UM) Association of New Youth, Wong Yan Ke, was prohibited from giving a talk on free speech at UM despite the Student Union's attempts to negotiate with the university authority. Wong Yan Ke spoke for less than five minutes before the university authority forcibly cut off the sound system and abruptly ended the event.^{xxxvii}

J. Freedom of Assembly and Association

54. Compared to the previous UPR reporting period, there are some changes to the Peaceful Assembly Act 2012 (PAA), but it still threatens freedom of assembly in Malaysia. We commend the recent amendment to the PAA in 2019 by the Ministry of Home Affairs to decriminalise 'street protests' and reduce the notification period from ten to five days. Despite the amendments, there are still several issues that arise.
- a) The PAA hinders spontaneous and urgent assembly in response to sudden events.
 - b) Although no provision in the PAA states that assemblies held without fulfilling the notice requirement are unlawful, the authorities still decide whether an assembly is lawful.
 - c) Authorities still use excessive force to hinder public assemblies from being conducted, such as roadblocks, armed weapons and vehicles, blocking of public transport and video and picture taking of participants during protests.

¹⁶ Although Pakatan Harapan government had promised to repeal AUKU in its manifesto for GE-14, as of now, Parliament has yet to repeal the problematic Act.

- d) Citizens under 15 are not allowed to attend assemblies, and those under 21 cannot organise them.
55. Law such as the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 was invoked to limit assembly in the name of public health. Although the Order is no longer in use, it violated democracy and civic spaces. In 2021, this Order and the PAA were used in tandem to investigate and arrest participants of assemblies.
- a) A group of 31 participants gathered for a vigil organised by the Sekretariat Solidariti Rakyat (SSR), commemorating those who had lost their lives to Covid-19 at Dataran Merdeka. The authorities exercised excessive force to arrest them by dragging them into crowded armoured vehicles.^{xxxviii}
 - b) A movement called 'Hartal Doktor Kontrak' held a mass protest to call for better treatment of contract doctors and was met with heavy police intimidation.^{xxxix}
56. After the Order was revoked in 2022, protests were still met with heavy intimidation by law enforcement. Police still use the PAA to conduct investigations.
- a) Approximately 200 individuals, including NGOs, university students, and politicians, gathered to request the dismissal or criminal prosecution of ministers responsible for the failed littoral combat ship (LCS) project. Following the protest, 13 individuals were identified by Dang Wangi police for further investigation under the PAA.^{xl}
57. The Registrar of Societies (RoS) under the Home Ministry needs to be revised in Malaysia. One of the main concerns is transparency and accountability in the registration process. The RoS has been criticised for exercising broad discretionary powers, leading to inconsistent and arbitrary decisions.
- a) The lack of clear guidelines and criteria for registration makes it hard for civil society organisations and political parties to attain registered status.
 - b) Another issue is the excessive control exerted by the government over the registration of societies and political parties. The independence and impartiality of RoS as a government department remains questionable, raising doubts about the fair treatment of applicants and the possibility of political interference in the registration process.
 - c) Moreover, the lengthy and uncertain timeframe for registration decisions poses a challenge for organisations seeking legal recognition. Delays can hinder the effective functioning and activities of associations, limiting their ability to exercise their right to freedom of association.
 - d) The Malaysia United Democratic Alliance (Muda) applied to be a registered political party in Malaysia in 2021. However, their application was rejected by the RoS without any explanation. This rejection follows a similar decision by RoS to reject the application of Parti Pejuang Tanah Air, led by former Prime Minister Tun Dr Mahathir Mohamad.^{xli}

K. Recommendations

A) Strengthening Freedom of Expression

1. Ensure that any attempts to limit people's constitutional rights to free speech, expression and right to information adhere to established human rights principles and international standards and meet the following criteria:
 - (i) they are grounded in a legal framework;
 - (ii) they are based on absolute necessity and not arbitrary; and
 - (iii) they are proportionate and serve the public's interest.
2. Enable a secure and transparent space for people to engage in open and constructive discussions while upholding democratic values. Using fear-mongering or unjust enforcement of restrictive legislation to suppress or bully individuals who express dissenting opinions or disrespect the government is unacceptable and must be avoided at all costs.
3. Stop censorship and banning of arts and artistic performances, including satire.
4. Initiate a comprehensive legislative reform based on Malaysia's international human rights obligations, and amend or repeal the following laws:
 - Film Censorship Act 2002
 - National Film Development Corporation (FINAS) Act 1981
 - Official Secrets Act (OSA) 1972,
 - Peaceful Assembly Act 2019,
 - Printing Presses and Publications Act 1984
 - Sedition Act 1948,
 - Section 211 and 233 Communications and Multimedia Act 1998,
 - Section 114A of the Evidence Act (Amendment) (No.2) 2012,
 - Section 203A of the Penal Code,
 - Section 298A of the Penal Code,
 - Section 500, 504, and 505(b) of the Penal Code.
5. Establish a moratorium on the use of these laws while undergoing reform initiatives.
6. Promote a progressive information regime and open governance by enacting a Right to Information (RTI) law.
7. Ratify all outstanding international human rights treaties and their optional protocols.
8. Establish anti-SLAPP legislation and foster an environment of zero tolerance towards retaliation against human rights defenders and media practitioners.
9. Decriminalise defamation and allow defamation proceedings to fall under the purview of civil law, not criminal law.
10. Develop a national action plan or framework to address women's and girls' freedom of opinion and expression online/in digital spaces by eliminating and preventing online gender-based violence.
11. Undertake an assessment of the state syariah laws to ensure compliance of the state syariah laws with human rights standards and the Federal Constitution. Any laws or enactments doing so should be declared invalid and unconstitutional.
12. Repeal all discriminatory laws and discriminatory measures, including misinformation, raids, and censorship against LGBTQ people on the basis of their SOGIE.
13. End arbitrary raids on spaces for LGBTIQ+ people.

14. Amend the Universities and University Colleges Act 1971 (AUKU) to foster a better environment for students to have debates and express ideas by removing government interference from the administration of the universities and university colleges which fall under the purview of AUKU.

B) Strengthening Media Freedom

15. Create an enabling environment for the media to function independently and without fear of repercussion for carrying out their reporting functions.
16. Drop all investigations and pledge to stop all future acts of intimidation and adverse actions against the media and journalists.
17. Review, amend and repeal repressive laws which restrict media freedom, specifically:
 - Official Secrets Act (OSA) 1972,
 - Printing Presses and Publications Act (PPPA) 1984,
 - Sedition Act 1948, and
 - Section 233 of the Communications and Multimedia Act (CMA) 1998to fall in line with the fundamental right to freedom of expression.
18. Establish the Malaysian Media Council (MMC) as a transparent and independent self-regulatory body for the industry by adopting the work of the Protem Committee set up in January 2020.

C) Combating Disinformation and Hate Speech

19. Establish an independent multistakeholder committee that can comprehensively evaluate the underlying reasons for hate speech and construct effective solutions in conformity with international standards, such as the Rabat Plan of Action, Human Rights Council Resolution 16/18, and the Camden Principles on Freedom of Expression and Equality.
20. Work with rights-based CSOs to implement precise fact-checking mechanisms to efficiently debunk false and misleading narratives before they can go viral.
21. Focus on educating and disseminating public information to counter the alleged mis/disinformation and hate speech, and not rely on disproportionate responses in punitive measures.
22. Engage with social media platforms and multi-stakeholder experts to strengthen the current social media standards and mechanisms to ensure effective responses in situations of disinformation and hate speech and to request social media platforms to conduct a human rights impact assessment of their use of AI in content moderation.

D) Providing better data and digital protection

23. Set up an independent regulator empowered to enforce transparency requirements under data protection laws and provide a check and balance to prevent abuse by the state.

24. Strengthen reporting requirements for listed and unlisted companies, including human rights impact assessments of their products and services.
25. Amend the Personal Data Protection Act 2010 (PDPA) to require companies to disclose data breach policies, including commitments to notify affected individuals about the nature of breaches, and any remedial measures the companies undertake to ensure accountability for such breaches.
26. Establish legal and policy frameworks to prevent discrimination resulting from personalisation and targeting of products and services leading to discrimination.

E) Upholding Freedom of Association and Assembly

27. Remove the Registrar of Societies (RoS) from under the purview of the Home Ministry and make it a separate, independent entity.
28. Ensure transparency in the guidelines and criteria for registration and allow appeal mechanisms for organisations whose applications are rejected.

References

- ⁱ Between 2020 and May 2023, MOHA banned at least 6 LGBT-themed books under the PPPA on broad grounds of so-called threat to public morality, order and security Swatch raid over Pride-themed watches calls for a review of the Printing, Presses and Publication Act (PPPA). (2023, May 26). *Justiceforsisters*. <https://justiceforsisters.wordpress.com/2023/05/26/swatch-raid-over-pride-themed-watches-calls-for-a-review-of-the-printing-presses-and-publication-act-pppa/>
- ⁱⁱ Malaysiakini, *Letter: PPPA must be reviewed following Swatch raid – Justice for Sisters*. (2023, May 27). <https://www.malaysiakini.com/letters/666591>
- ⁱⁱⁱ Malaysiakini, *Dealing with nonsensical statements gives us stress – Geramm*. (2022, August 19). <https://www.malaysiakini.com/news/632702>
- ^{iv} Refer to Annex 3 for more case studies.
- ^v MalayMail, *Comms Ministry committed to establishing Malaysian Media Council, says Fahmi*. (2023, May 28). <https://www.malaymail.com/news/malaysia/2023/05/28/comms-ministry-committed-to-establishing-malaysian-media-council-says-fahmi/71376>
- ^{vi} Centre for Independent Journalism, *Social Media Monitoring of Malaysia's 15th General Election* <https://cijmalaysia.net/social-media-monitoring-of-malaysias-15th-general-elections/>
- ^{vii} Ang, M. V. *Fahmi Fadzil Says TikTok Deleted Over 1,000 Videos With Extremist Content After GE15*. SAYS. (2022, December 7). <https://says.com/my/news/fahmi-fadzil-says-tiktok-deleted-over-1000-videos-with-extremist-content-after-ge15>
- ^{viii} New Straits Times, *GE15: Kedah MB Sanusi questions women's abilities as elected reps in Sik*. (2022, November 12) <https://www.nst.com.my/news/politics/2022/11/849739/ge15-kedah-mb-sanusi-questions-womens-abilities-elected-reps-sik>
- ^{ix} The Selangor government decided to degazette and take over land at the Bukit Cherakah Forest Reserve without prior notice and a public inquiry (as required under the National Forestry Act (Amendment) Enactment 2011), and without providing a replacement piece of land, as was the state government's normal practice. There was also no provision for an environmental impact assessment (EIA) as required under the Environment Order 2015. Augustin, S. (2022, August 5). *2 NGOs file for judicial review of Bukit Cherakah degazettement*. Free Malaysia Today (FMT). <https://www.freemalaysiatoday.com/category/nation/2022/08/05/2-ngos-file-for-judicial-review-of-bukit-cherakah-degazettement/>
- ^x Centre for Independent Journalism, *A Preliminary Assessment of the Early Years of State-level FOI Enactment Implementation in Malaysia*, p 2. <https://cijmalaysia.net/a-preliminary-assessment-of-the-early-years-of-state-level-foi-enactment-implementation-in-malaysia/>
- ^{xi} Malaysiakini, *Health news portal's editor-in-chief being probed under OSA*. (2020, June 26). <https://www.malaysiakini.com/news/531841>
- ^{xii} Pakatan Harapan, *Buku Harapan: Membina Negara Memenuhi Harapan*, (2018, March 8) at page 52. https://kempen.s3.amazonaws.com/pdf/Buku_Harapan.pdf
- ^{xiii} CodeBlue, *Audit: MySejahtera data breach affected three million users*. (2023, February 16). <https://codeblue.galencentre.org/2023/02/16/audit-mysejahtera-data-breach-affected-three-million-users/#:~:text=The%20data%20breach%20took%20place,to%20the%20National%20Security%20Council>
- ^{xiv} The Star, *Police seeking 47 individuals involved in "Keluar dan #Lawan" rally*. (n.d.). (2021, August 2). <https://www.thestar.com.my/news/nation/2021/08/02/police-seeking-47-individuals-involved->

[in-039keluar-dan-lawan039-rally](#)

^{xv} The Straits Times, *Malaysia conducts probe into AirAsia ransomware attack, data of 5 million people affected*. (2022, December 10). <https://www.straitstimes.com/asia/se-asia/malaysia-conducts-probe-into-airasia-ransomware-attack-data-of-5-million-people-affected>

^{xvi} Malay Mail, *Digital surveillance: Privacy, data ecosystem and effectiveness — Moonyati Yatid, Farlina Said and Tengku NurQistina*. (2020, May 17). <https://www.malaymail.com/news/what-you-think/2020/05/17/digital-surveillance-privacy-data-ecosystem-and-effectiveness-moonyati-yati/1867050>

^{xvii} Human rights organisations working on freedom of expression, *#Lawan protest monitoring report*. (2021, August). <https://cijmalaysia.net/wp-content/uploads/2021/09/LAWAN-Protest-Monitoring-Report-AUG-2021.pdf>

^{xviii} Centre for Independent Journalism, *Report on the state of freedom of expression (FOE) in Malaysia 2022*. (2022, December). https://cijmalaysia.net/wp-content/uploads/2022/12/FOE-REPORT-2022_10Dec2022.pdf

^{xix} Based on media monitoring efforts, 114 cases of use of S233 CMA and 15 cases of Sedition Act in 2022. 140 cases of use of S233 CMA and 19 cases of Sedition Act in 2021. (to move to footnotes?)

^{xx} Article 19, *Malaysia: Drop sedition charges against opposition party member and repeal the draconian Sedition Act*. (2021, June 2) <https://www.article19.org/resources/malaysia-drop-sedition-charges/>

^{xxi} Article 19, *Malaysia: Repeal publications law to promote freedom of expression*. (2020, February 17). <https://www.article19.org/resources/malaysia-repeal-publications-law-to-promote-freedom-of-expression/>

^{xxii} Malaysiakini, *Woman arrested for allegedly insulting Islam at comedy club*. (2022, July 10). Retrieved June 4, 2023, from <https://www.malaysiakini.com/news/627848>

^{xxiii} Asyraf, F. *Comedian Rizal van Geyzel arrested over viral videos*. Free Malaysia Today (FMT). (2022, July 14). <https://www.freemalaysiatoday.com/category/nation/2022/07/14/comedian-rizal-van-geyzel-to-be-remanded-over-viral-videos/>

^{xxiv} Bernama. *Crackhouse owner fined RM8,000 for offensive Facebook post*. Free Malaysia Today (FMT). (2023, July 7). <https://www.freemalaysiatoday.com/category/nation/2023/07/07/crackhouse-owner-fined-rm8000-for-offensive-facebook-post/>

^{xxv} TRP, *Netizens, Politicians And Artists Express Regret On Halloween Party Raid At RexKL*. (2022, October 30). Retrieved June 15, 2023, from <https://www.therakyatpost.com/news/malaysia/2022/10/30/netizens-politicians-and-artists-express-regret-on-halloween-party-raid-at-rexkl/>

^{xxvi} Berita Harian, *Iki Putra case: 200 lawyers call for constitutional amendment*. (2021, March 19).. <https://www.bharian.com.my/berita/nasional/2021/03/797727/kes-iki-putra-200-peguam-gesa-pindaan-perlembagaan>

^{xxvii} Centre for Independent Journalism, *Use of the Law and Strategic Lawsuits against Public Participation (SLAPP) in Malaysia to silence critics*, pps 11-12 (2022, May). <https://cijmalaysia.net/strategic-lawsuits-against-public-participation-slapp/>

^{xxviii} Centre for Independent Journalism, *Use of the Law and Strategic Lawsuits against Public Participation (SLAPP) in Malaysia to silence critics*, pps 11-12 (2022, May). <https://cijmalaysia.net/strategic-lawsuits-against-public-participation-slapp/>

^{xxix} Freedom Film Network, *An Evaluation of The Film Censorship Framework in Malaysia*. (2022). <https://freedomfilm.my/wp-content/uploads/2022/09/an-evaluation-of-the-film-censorship-framework->

^{xxx} New Straits Times, *Acid and paint splashed on Mentega Terbang director and screenwriter's cars* [NSTTV]. (2023, March 16). <https://www.nst.com.my/news/crime-courts/2023/03/889912/acid-and-paint-splashed-mentega-terbang-director-and-screenwriters>

^{xxxi} Refer Annex 3 for more case studies.

^{xxxii} Based on media monitoring by the FOE Cluster.

^{xxxiii} NST online, *Fahmi Redza charged with posting offensive material*. (2022, February 10). <https://www.nst.com.my/news/crime-courts/2022/02/770249/fahmi-redza-charged-posting-offensive-material>

^{xxxiv} Malaysiakini, *Activist Fahmi charged for satire jabbing PAS over beer ban*. (2022, February 17). Retrieved June 4, 2023, from <https://www.malaysiakini.com/news/611036>

^{xxxv} The Star, *Fahmi Reza in Immigration blacklist, barred from leaving Malaysia*. (2022, April 23). Retrieved June 4, 2023, from <https://www.thestar.com.my/news/nation/2022/04/23/fahmi-reza-in-immigration-blacklist-barred-from-leaving-malaysia>

^{xxxvi} Based on media monitoring by the FOE Cluster

^{xxxvii} Wong Yan Ke, *Press Statement by Former Student Activist Wong Yan Ke in Response to Higher Education Minister Parliamentary Reply on AUKU* (2023, February 25) Agenda Daily <https://www.thevibes.com/articles/news/57959/former-um-student-who-protested-during-convo-ordered-to-submit-defence>

^{xxxviii} Wong, D. J. *Cops arrest and fine 31 Malaysians who set up vigil for COVID-19 victims*. Mashable SEA. (2021, August 20). <https://sea.mashable.com/culture/17227/cops-arrest-and-fine-31-malaysians-who-set-up-vigil-for-covid-19-victims> (i can't open this to check)

^{xxxix} The Star, *Cops investigating protest by contract doctors at HKL for alleged illegal gathering*. (2021, July 26). Retrieved June 4, 2023, from <https://www.thestar.com.my/news/nation/2021/07/26/cops-investigating-protest-by-contract-doctors-at-hkl-for-alleged-illegal-gathering>

^{xl} Free Malaysia Today, *Cops to call up 13 over LCS protest rally*. (2022, August 14). <https://www.freemalaysiatoday.com/category/nation/2022/08/14/cops-to-call-up-13-over-lcs-protest-rally/>

^{xli} Malay Mail, (2021, August 12). *Muda confirms home minister rejected its appeal for registration with RoS*. (2021, August 12). <https://www.malaymail.com/news/malaysia/2021/08/12/after-court-hearing-delayed-muda-confirms-appeal-for-registration-with-ros/1997115>