

DAWN OF DIGITAL DICTATORSHIP:
WEAPONISING THE LAW AGAINST ONLINE SPEECH



MALAYSIA



What is the ASEAN Regional Coalition to #StopDigitalDictatorship?

The ASEAN Regional Coalition to #StopDigitalDictatorship was established in 2020, by human rights and digital rights activists from Southeast Asia, on a mission to decolonize digital rights and restore our online democracies.

Together, we stand in solidarity with one another, with people from the Global Majority, resisting and pushing back against authoritarian governments and complicit tech companies.

We tell our realities from the ground, and we develop solutions together.

Our truths. Our Stories. Our Solutions. Our Liberation.

Fighting back online authoritarianism in Southeast Asia is, and shall always be, decolonial, grounded on feminist values, centred on our voices and our collective power.

Listed alphabetically, members of the Coalition include: ALTSEAN-Burma, Cambodian Center for Human Rights, ELSAM, Free Expression Myanmar, Foundation for Media Alternatives, ILGA Asia, Manushya Foundation, The Rohingya Maiyafuñor Collaborative Network, SAFEnet, Viet Tan, and Women's Peace Network.

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List of Abbreviations

3Rs	race, religion, and royalty
GE15	15th General Elections
APF	ASEAN People's Forum
CIJ	Centre for Independent Journalism
CMA	Communications and Multimedia Act
Jakim	Islamic Development Department
JASA	Special Affairs Department
MACC	Malaysian Anti-Corruption Commission
MCMC	Malaysian Communications and Multimedia Commission
OGBV	Online gender-based violence
PAS	Malaysian Islamic Party
PN	Perikatan Nasional
PPPA	Printing Presses and Publications Act
SSR	Sekretariat Solidariti Rakyat
SUHAKAM	the Human Rights Commission of Malaysia
USM	Universiti Sains Malaysia
WAO	Women's Aid Organisation

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This project would not have been possible without the help of the authors below, as well as reviewers who asked to remain anonymous, in validating our desk-research and in some cases, contributing content that informed this report.

Chapter I.

Introduction

The digital space is quickly emerging as one of the key spaces in which human rights are threatened. In Southeast Asia, the internet is no longer a free, safe, and secure space for expression. Restrictive legislation, intimidation, and even the murder of human rights defenders, activists, and journalists tarnishes the commitment to freedom of expression of the countries in the region. In this light, the need for our rights to be respected, including online, becomes greater.

This report is the outcome of the collaborative work of the ASEAN Regional Coalition to #StopDigitalDictatorship (“the Coalition”). After its establishment in 2020, with the coordination of Manushya Foundation, virtual discussions were initiated to discuss challenges faced, while determining collaborative and inclusive efforts to assess, amend, and monitor implementation of legislations affecting digital rights. The Coalition has established itself as a leading regional expert voice on digital rights in the region and is now a key player, powering local and regional voices to speak their truth to power and to resist digital dictatorship.

A core group of members of the Coalition has collectively developed the research and analysis framework of a regional ASEAN Study, which is divided into three thematic reports. This report is part of the series of three thematic reports and focuses on the right to freedom of speech and expression in the digital space.

The aim of this report goes far beyond merely analysing the legal framework related to freedom of expression online and documenting rights violations in the nine Southeast Asian countries covered. The main goal is to increase public understanding of how important digital rights are to everyone’s lives and to strengthen netizens’ knowledge of those rights. But there is more to consider. As intersectional feminists, we recognise the internet is not equal for everyone. While the digital realm offers immense opportunities, it is far from being neutral or egalitarian, and it remains susceptible to persistent backlash against the rights of women and LGBTIQ+ people. Like other social spaces, it reflects and reproduces power relations and inequalities, including those related to gender.

Coalition members dedicate their work to make Asia a safe and peaceful place for all. While they have different goals and perspectives, the cultivation of an open, safe, and inclusive digital space for all is a key priority for them. At **Manushya Foundation**, we place “equality” at the core of our activities, apply a gender lens to all of our work, and focus on powering women activists and human rights defenders, youth, and LGBTIQ+ individuals to tell their very own stories in a powerful manner for their advocacy. Likewise, **ILGA**

Asia, a regional federation of more than 204 member organisations, works for the equality of all people regardless of sexual orientation, gender identity, and sex characteristic, as well as liberation from all forms of discrimination and stigmatisation. **Women’s Peace Network** has “equality” as one of its core visions and works to protect the rights and increase the inclusion of marginalised women, youth, and communities in the Rakhine state and across Myanmar. **The Foundation for Media Alternatives** focuses on the intersection between information and communication technology (ICT) and gender rights, including tech-related gender-based violence.

We also recognise that gender inequality intersects with other forms of oppression, such as race, class, sexuality, and disability, and women exposed to intersecting forms of discrimination are particularly vulnerable to violence in the digital world. Understanding the intricate ways in which power operates, we apply an intersectional feminist lens to explore and tackle the multifaceted dynamics within the digital realm. With this report, we shed light on this and the patriarchal power dynamics that hold our world back from fulfilling a society where everyone is treated with fairness and dignity.

However, that is not where our work ends. The ultimate objective is to call, as a strong and unified voice, on governments, policy-makers, and tech companies to move the needle forward from commitments on paper to concrete measures to respect their international human rights obligations—in order to restore our only democracy. Recommendations are also extended to civil society, which provides a critical foundation for holding governments and businesses accountable, and promoting human rights and democracy.

Following **Chapter II: Methodology**, which will clarify our research and compilation process, **Chapter III: Summary of International Human Rights Laws and Standards** will provide important context for the rest of the report with a table addressing the right to freedom of expression; the rights of human rights defenders; the right to privacy; and the right to effective remedy, and indicates the ratification status by country of each convention, where appropriate. Following, **Chapter IV: Country Overviews (Analysis)** is originally split into

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nine sections, each one focused on a specific country: **Cambodia, Indonesia, Lao PDR (Laos), Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.** Each section explains how laws and legal frameworks are being used to target free expression and information online, censor or regulate content, and monitor online activities. Each section includes cases of individuals arrested and charged for their online activities, as well as instances of online censorship, monitoring, and surveillance.

However, in this booklet, the focus is solely on Malaysia.

In this booklet, a section is dedicated to the impact of COVID-19 and democracy in Malaysia. Although the pandemic has brought the world grinding to a halt, Southeast Asian governments took it as an opportunity to tighten their grip over civic space and implemented self-serving laws and policies. Under the banner of safeguarding public health, governments exploited emergency powers and other legal tools, including “fake news” laws, in restrictive and repressive ways, to advance

their authoritarian agendas, suppress freedoms and critical speech, silence political opponents, control the flow of information, and attack media freedoms. While national circumstances differed in how the pandemic was governed, the states covered in this report had national circumstances differed in how the pandemic was governed, the states covered in this report had extensive repressive powers and used COVID-19 as a pretext to limit democratic space both offline and online.

Further, each country section draws particular attention to cases of online gender-based violence and harassment experienced by women, including those who are more susceptible to online violence because of their jobs, race, religion, or identity, such as women activists and human rights defenders, women journalists, women belonging to religious or ethnic minorities, young women, women with intersecting identities (Indigenous, ethnic and minority, migrant women; lesbian, bisexual, transgender and intersex women; women with disabilities).

The report concludes with a number of **recommendations** for the primary actors identified as holding key functions in enhancing the state of digital freedoms in Malaysia, specifically that of online expression. Governments, members of Parliament, tech companies, and civil society have—each one to a different extent—a crucial role to play to uphold human rights and fundamental freedoms in the digital space. Since civil society civil groups are front and centre in representing the factual needs of the people and they can power citizens by providing civic education on human rights, a series of recommendations is likewise made to them. People are more likely to resist attempts to suppress their rights if they are aware of them.

Creating a safe internet space for everyone is crucial for promoting inclusivity, respect, and equal opportunities.

Only together can we foster a more inclusive and respectful internet culture where everyone can engage, express themselves, and participate without fear of discrimination or harassment. None of us are free until we are all free.

Chapter II.

Methodology

This Thematic Report is a culmination of four years of monitoring, research, writing, reviewing, and examining the digital rights space in nine ASEAN countries: Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, The Philippines, Singapore, Thailand, and Vietnam. Our research does not cover Brunei Darussalam and Timor-Leste due to the lack of coalition members in these countries. As mentioned previously, this booklet will, however, focus solely on Malaysia.

The methodology used in this report encompasses both primary and secondary sources. Primary data was gathered by Manushya Foundation, together with organisation members of the ASEAN Regional Coalition to #StopDigitalDictatorship. We have entrusted our coalition members to write thorough country-specific analyses, based on their expertise in the digital rights landscapes of their respective countries. It must thus also be noted that as these coalition members are specialists in their own rights, with a wealth of information obtained through lived experiences and field research, not every source will be cited, as a lot of information was first-handedly provided by the author and not obtained from elsewhere. We included voices from the ground and experts' insight from panel discussions, including sessions we held as part of RightsCon, such as the 2022 "Thailand: Digital Authoritarianism Rising" session, the 2021 "Online Freedom Under Attack: Weaponising Misinformation, Disinformation, and 'Fake News' for Censorship in Southeast Asia" session, as well as a series of other webinars hosted by the Coalition. Participants of the webinars and discussions consisted of citizens, experts, representatives of academia, and civil society groups. For some countries, our Coalition members also conducted independent investigations and compiled data from open sources published by the relevant authorities, government agencies and the judiciary. The report's coverage spans the years 2020 through 2023, except for the chapter on Laos (**Chapter IV, 3. Lao PDR**), where egregious human rights breaches instances prior to 2020 are

also included. Similarly, for Myanmar (**Chapter IV, 5. Myanmar**) and Cambodia (**Chapter IV, 1. Cambodia**), countries for which we are also incorporating elements from 2024 due to the rapidly evolving events. We focused our inquiries on different target areas, which were ultimately synthesised into primary themes featured in the reports in this series: criminalisation of defamation and lack of human-centred cyber laws and policies; online monitoring and content moderation; threats to privacy and data protection; harassment of activists and human rights defenders (HRDs); and internet shutdowns.

This report is also composed on the basis of desk research, including a systematic literature review of relevant legislation and regulations; reports, studies, and recommendations by UN human rights mechanisms and NGOs; online news articles; policy and white papers; and independent publications. Data was also obtained from studies and external civil society organisations. We carried out interviews with a wide range of stakeholders to receive the most accurate insight on the state of digital rights on the ground relating to the target areas specified above. The study's ultimate objective is to provide a comprehensive analysis on the state of digital rights in the Southeast Asia region, including during the COVID-19 pandemic, by looking at existing national laws, policies and measures; recorded cases of violation; as well as previous recommendations or proposals made in line with international human rights laws and standards.

Chapter III.

Summary of International Human Rights Laws and Standards

Fig. G: Summary table of international human rights laws and standards.

FREEDOMS OF EXPRESSION AND TO HOLD OPINION		
International Human Rights Instruments	Relevant Provisions and Interpretations	Ratification/Voting/Adoption Date and Status
UDHR	Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”	NOT Binding but serves as a cornerstone for the development and evolution of international human rights law. as a matter of customary international law
ICCPR	Article 19: Upholds the right of every individual to freedom of expression, including the freedom to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media” without interference.	Ratified Cambodia (May 26, 1992) Indonesia (Feb. 23, 2006) Lao PDR (Sept. 25, 2009) Philippines (Oct. 23, 1986) Thailand (Oct. 29, 1996)
	Article 19(3): Articulates a three-part test, stipulating that any restrictions on expression must be “provided by law”, proportionate, and necessary for “respect of the rights and reputations of others,” “for the protection of national security or of public order, or of public health and morals.”	General comment no. 34: Article 19 (freedoms of opinion and expression): States that criminalize defamation must decriminalize it given that “imprisonment is never an appropriate penalty” for, and is neither necessary nor proportionate to the aim of protecting others. ²
UDHR	Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”	NOT Binding but serves as a cornerstone for the development and evolution of international human rights law. Binding as a matter of customary international law

Fig. G: Summary table of international human rights laws and standards.(continuous)

<p>ICCPR</p>	<p>Article 17: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” It also upholds the right of persons to receive legal protection from such interference or attacks.</p> <hr/> <p>General comment no. 16: Article 17 (right to privacy): This Article is intended to protect against said infringements, both by states and private individuals. Further, “interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.” The principles of legality, necessity and proportionality also apply to privacy limitations.³</p>	<p>Ratified Cambodia (May 26, 1992)</p> <p>Indonesia (Feb. 23, 2006)</p> <p>Lao PDR (Sept. 25, 2009)</p> <p>Philippines (Oct. 23, 1986)</p> <p>Thailand (Oct. 29, 1996)</p> <p>Vietnam (Sept. 24, 1982)</p> <p>Not signed or ratified Malaysia, Myanmar, Singapore</p>
<p>Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2016) juncto Report of the OHCHR on the right to privacy in the digital age (2014)</p>	<p>Legitimate surveillance, where intended to limit the freedom of expression, requires states to demonstrate the risk that the expression “poses to a definite interest in national security or public order.”⁴ All interference with the right to privacy must also be authorised by an independent oversight body through careful review, and be accompanied with an assurance of effective remedy in case of a breach.⁵</p>	<p>Non-binding (interpretive)</p>
<p>RIGHTS OF HRDS</p>		
<p>International Human Rights Instruments</p>	<p>Relevant Provisions and Interpretations</p>	<p>Ratification/Voting/Adoption Date and Status</p>
<p>UN Declaration on Human Rights Defenders</p>	<p>Article 6: Provides for the right of persons to seek, obtain, receive and hold information about all human rights and fundamental freedoms; freely publish or impart or disseminate information and knowledge on all human rights and fundamental freedoms; and to study, discuss and hold opinions on the observance of these rights.</p> <p>Article 7: “Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.”</p> <p>Article 9: Everyone whose rights or freedoms pursuant to the Declaration are allegedly violated must be able to access an effective remedy and have their complaint heard by an independent, impartial and competent authority.</p>	<p>NOT Binding but serves as a cornerstone for the development and evolution of international human rights law</p>

Fig. G: Summary table of international human rights laws and standards.(continuous)

RIGHT TO AN EFFECTIVE REMEDY		
International Human Rights Instruments	Relevant Provisions and Interpretations	Ratification/Voting/Adoption Date and Status
UDHR	Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.	NOT Binding but serves as a cornerstone for the development and evolution of international human rights law
ICCPR	Article 2(3): Provides for the obligation of states to ensure that those individuals whose rights have been violated have access to an effective remedy whether the violation(s) were committed by a person acting in their official capacity. Further, the effective remedy is to be determined by a competent judicial, administrative, legislative or other authority as mandated by the national legal system. The bottomline is that, regardless of the authority in charge, remedy must actually be granted.	<p>Ratified</p> <p>Cambodia (May 26, 1992)</p> <p>Indonesia (Feb. 23, 2006)</p> <p>Lao PDR (Sept. 25, 2009)</p>
	General comment no. 31 (the nature of the general legal obligation imposed on States Parties to the Covenant): Judicial and administrative mechanisms must be set in place to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.” Reparation to individuals can take the forms of “restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.” ⁷	<p>Philippines (Oct. 23, 1986)</p> <p>Thailand (Oct. 29, 1996)</p> <p>Vietnam (Sept. 24, 1982)</p> <p>Not signed or ratified Malaysia, Myanmar, Singapore</p>

Chapter IV.

Country Analysis

4. Malaysia

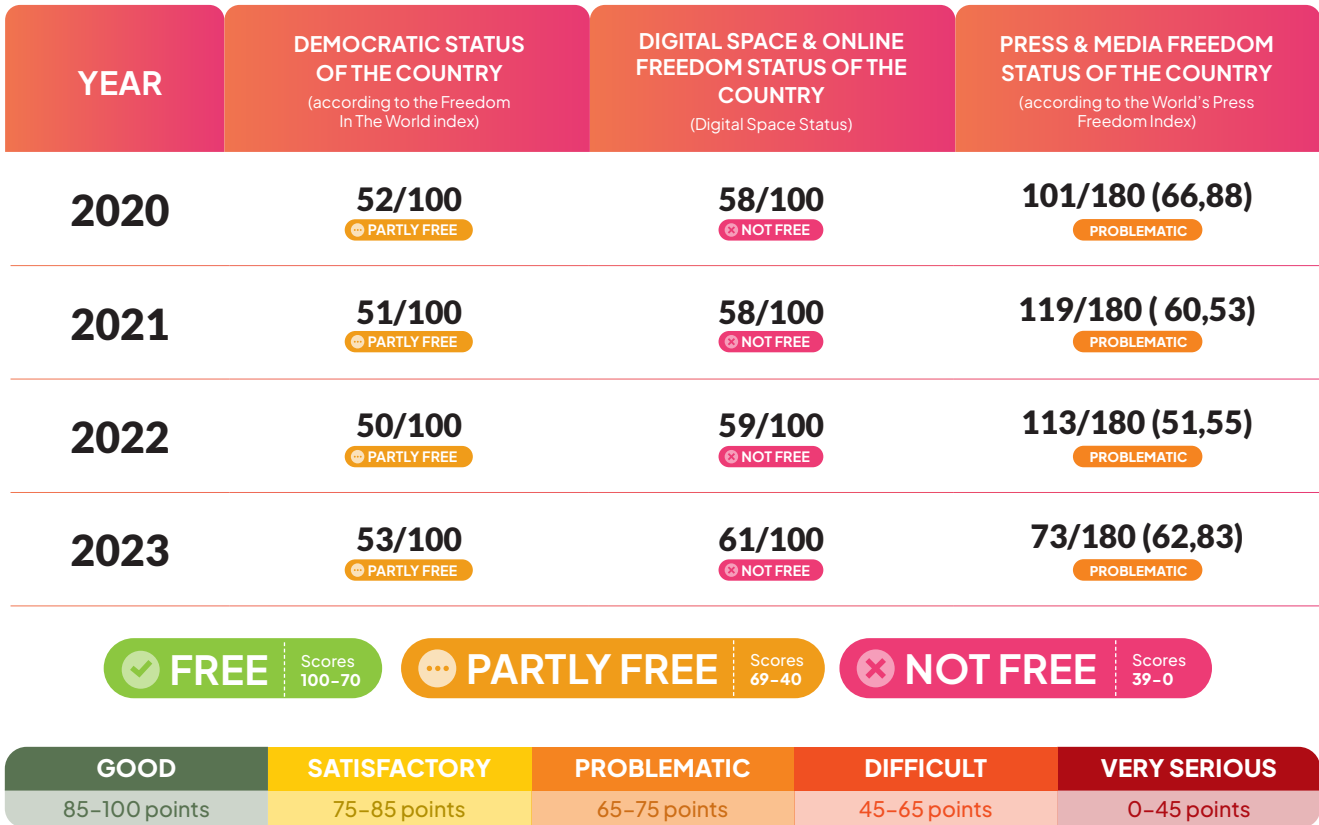


Fig. 4.1: Summary of freedom ratings for Malaysia, 2020-2023.¹

4.1 Legal Framework

Freedom of Expression is Guaranteed but Illegitimately Restricted

The right to freedom of speech and expression, as recognised in Article 10(1)(a) of Malaysia’s Federal Constitution, is guaranteed to all citizens. Notwithstanding the rights enshrined in the Federal Constitution, Malaysia’s legal framework is made up of a number of repressive laws and provisions that aim to impose censorship and punish those exercising their right to freedom of expression. For instance, paragraph (2)(a) of the Constitution allows certain restrictions that are “deem[ed] necessary

or expedient in the interest of the security of the Federation or any party thereof ... public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.”² The article has been narrowly interpreted in numerous cases, resulting in the state wielding undue power to regulate and constrain freedom of expression. Additionally, Article 10(4) emphasises Parliament’s authority to enact laws imposing the aforementioned restrictions in the name of the Federation’s security.³

Criminalisation of Defamation: the Penal Code

Defamation is punishable under the Penal Code. It is stipulated within Chapter XXI (Sections 499-502) which reads “whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation and shall also be punishable by up to two years in prison, a fine or both, to defame that person.”⁴ Coupled with the turbulent state of freedom of speech in Malaysia, defamation provisions arm the authorities in levelling defamation accusations against voices critical of the government. Moreover, Section 505(b) of the Penal Code makes it a criminal offence to “make, publish or circulate any statement, rumour or report with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity.”⁵ The provision fails to meet the requirement that any limitation on expression shall be expressed precisely enough for a person to understand what speech would be deemed “likely to cause fear and alarm in the public” or what will be considered an offence “against public tranquillity.” Moreover, Section 298A(1) of the Penal Code, which criminalises the insult of any religion, and has resulted in the arbitrary prosecution of religious speech, continues to be used despite having been declared unconstitutional by the Supreme Court and the Court of Appeal in 1987 and 2014 respectively.⁶

Section 203A of the Penal Code is also another barrier which criminalises the disclosure of information acquired during official duties or in the exercise of one’s functions under any written law. This provision carries penalties of imprisonment for up to one year, a fine of up to RM 1 million (\$238,095), or both, potentially stifling freedom of expression. Particularly concerning is its potential use to suppress information,

including disclosures related to government corruption. Notably, Section 203A also extends its reach to media outlets reporting on such matters, thus restricting their ability to disseminate information obtained from civil servants or other sources.⁷

In addition, the law on defamation in Malaysia is governed by the Defamation Act 1957 for civil claims, although it is less used in this context. It distinguishes between two forms of defamation: permanent defamation, known as “libel”, which concerns written records or drawings, and temporary defamation, known as “slander”, which concerns temporary statements of a gestural or verbal nature.⁸

Sedition Law to Muzzle Critics

Another law used to limit online speech is the Sedition Act. Originally enacted in 1948, it went through an amendment in 2015 that broadened its scope to include online statements. The Sedition Act, which dates back to the colonial era, is notoriously used by the authorities to silence dissent and opponents.⁹ It has also been used to stifle discourse on topics like religion, race, ethnicity, and Malaysian royalty. Section 3 of the Act criminalises any “publishing, distribution and importing of seditious publications,” as well as “publication by electronic means” and acts which “cause to be published” materials that “promote feelings of ill will, hostility or hatred ... on the grounds of religion,” or “bring into hatred or contempt or to excite disaffection against any Ruler.” Section 3(1) carries a maximum sentence of seven years’ imprisonment and a maximum sentence of 20 years’ imprisonment for a new “aggravated” offence of sedition causing “bodily harm” or “damage to property.” It also accords courts the power to order individuals to remove online content deemed seditious, ban individuals from accessing an electronic device, and order an officer authorised under the Communications and Multimedia Act 1998 to restrict access to online content deemed seditious.¹⁰

Chilling Free Speech and Controlling Media: the 1950 Evidence Act, the PPPA, and the CMA

Other laws include the 1950 Evidence Act and the Printing Presses and Publications Act (PPPA). The 2012 amendment to the 1950 Evidence Act holds individuals liable if they “facilitate” the publication of the offending content, and holds the owner of the computer the content was published from liable, regardless of whether they are the author. Section 114A creates a reverse onus clause, meaning that an accused is presumed to be the publisher of illicit online content—including that of defamatory, seditious, or libellous nature—unless he or she proves otherwise. This construction distorts evidentiary processes (the processes in which the evidence is recorded by the court) in cases initiated under other laws such as the Communications and Multimedia Act (CMA) and the Sedition Act.¹¹ The PPPA provides the government with unfettered powers to stifle press freedom and disproportionately restrict the public’s right to access information. Under Section 7(1), the Minister of Home Affairs has the authority to ban media that is “in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise

prejudicial to or is likely to be prejudicial to public interest or national interest.” Any printing press or other media outlet is required to obtain a licence from the Ministry under Section 3.¹²

While Section 3(3) of the CMA explicitly states that “nothing in this Act shall be construed as permitting the censorship of the Internet,” it includes several clauses which unduly restrict free expression and are incompatible with international human rights law. Section 233 imposes a maximum of one year’s imprisonment and a fine for the use of network facilities or network service to transmit communications that are “obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person.” Similarly, Section 211 punishes “content applications service provider(s), or other person(s) using a content applications service” for “providing content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.” The broad criminalisation of online content alongside the use of loose terms such as “indecent,” “obscene,” “false,” “menacing,” or “offensive” affords the authorities a wide discretionary margin to target government criticism or unpopular or controversial opinions.¹³

“

In Malaysia, women and gender diverse individuals face significant restrictions on their freedom of expression, impeding their advocacy for rights. Oppressive legislations and censorship practices create barriers that silence their voices, hindering their participation and representation in the media. The state's rigid interpretation of Article 10(1)(a) of the Federal Constitution excessively controls and further limits its citizens' freedom of expression. Moreover, the criminalisation of defamation and utilisation of the Sedition Act further suppress dissent, subjecting individuals to false accusations and severe punishments. There is a dire need for Malaysia to prioritise protecting freedom of expression, and cultivating an inclusive media landscape that encompasses the perspectives and voices of women and gender diverse individuals.

–Henry Koh, Executive Director of ILGA Asia

4.2 Challenges and Cases

Struggles, Legislation, and Repression in Malaysia (2020–2023)



LEGEND:

⚠️ : Alleged offense + (articles/provisions invoked against the individual)
 - "Unknown": Either information is not available or no articles/provisions have been cited by the judiciary

🔒 : Legal and extralegal consequences
 - "Status Unknown": Current status of the individual is unknown (detained, convicted, deceased, etc).

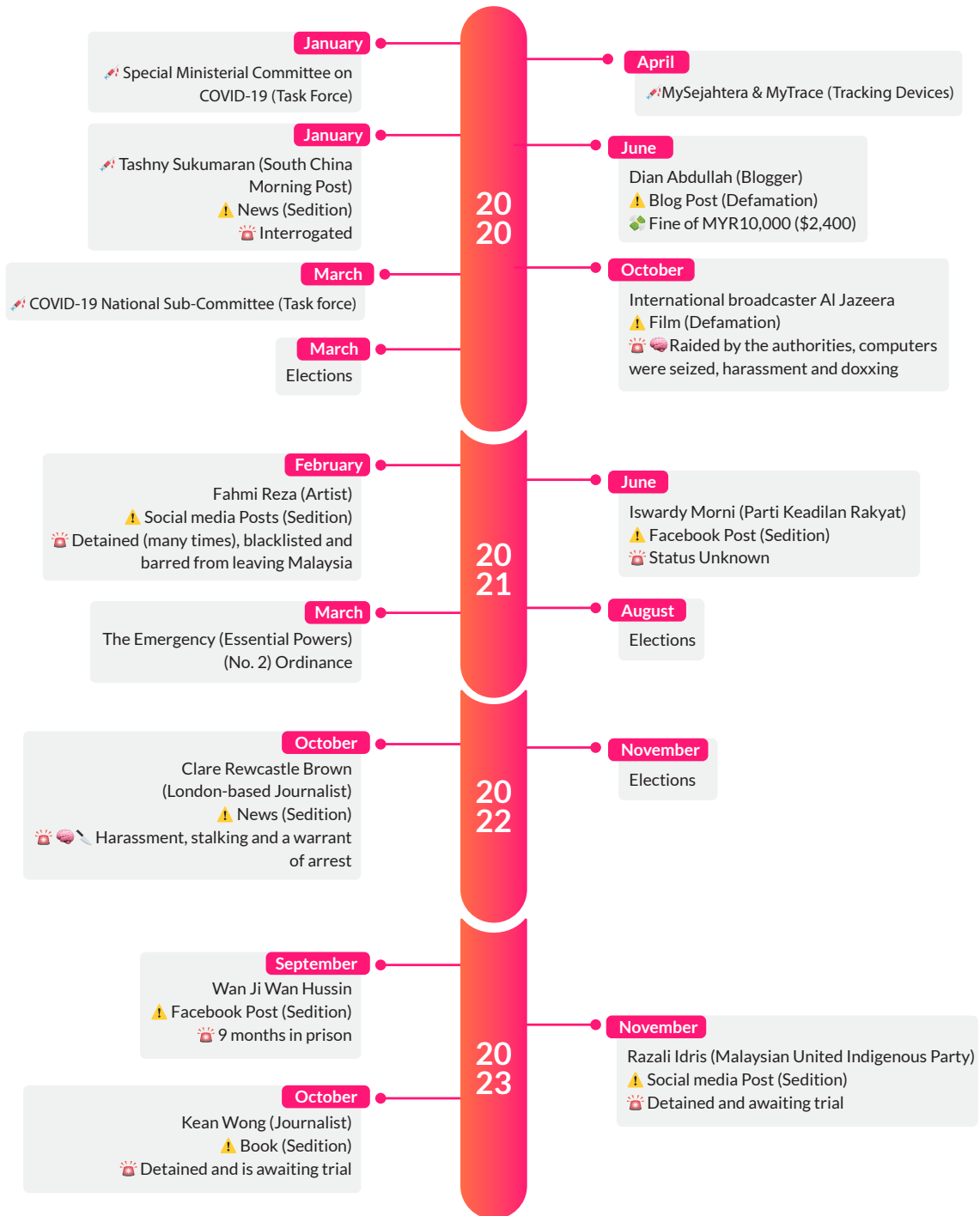


Fig. 4.2A: Summary timeline for Malaysia, 2020-2023






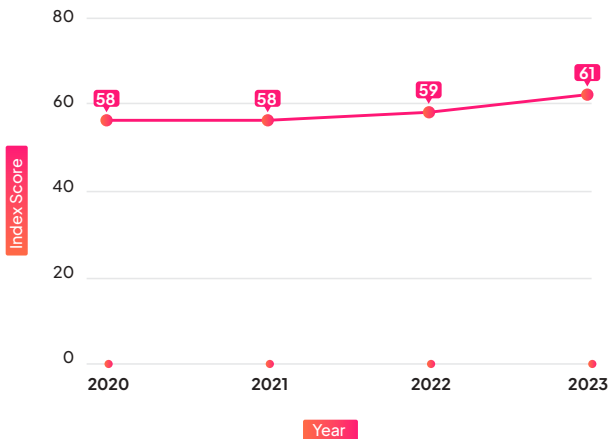
Country	Event	Contextualisation
 <p>MALAYSIA</p>	 The Emergency (Essential Powers) (No. 2) Ordinance	<p>This law has been particularly used to control the dissemination of certain information deemed sensitive or potentially detrimental to the management of the health crisis.</p>
	 Elections (2020)	<p>Muhyiddin Yassin was appointed as the Prime Minister in politically complex circumstances triggered by the sudden resignation of Prime Minister Mahathir Mohamad in February 2020. Subsequently, a political crisis erupted. The manner in which Muhyiddin Yassin became Prime Minister sparked controversies and debates on the legitimacy of the process.</p>
	 Elections (2021)	<p>Ismail Sabri Yaakob was elected as the Prime Minister of Malaysia on August 21, 2021. He assumed office following the resignation of his predecessor due to political pressure. Ismail Sabri was appointed Prime Minister after gaining the support of a majority of members in the Malaysian Parliament, and there were no elections per se. Instead, Ismail Sabri was selected through the internal political process of Parliament, where members expressed their confidence in his ability to form a stable government.</p>
	 Elections (2022)	<p>Anwar Ibrahim became the Prime Minister of Malaysia on November 24, 2022, following legislative elections. His appointment marked the end of a prolonged period of political uncertainty post-elections. The 15th Malaysian General Elections (GE15), the first since the Covid pandemic lockdown, aimed to restore political stability after three different prime ministers since 2018. However, the results were inconclusive, with no single coalition winning the minimum seats to form a government. Subsequently, the King entrusted Anwar Ibrahim with the task of forming a new government.</p>

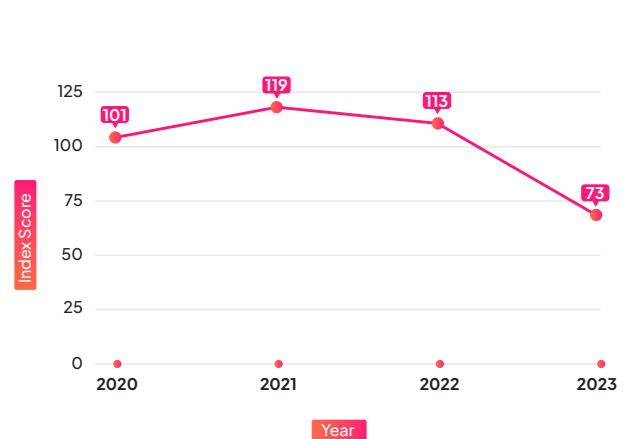
Fig. 4.2B: Contextualisation for Malaysia's timeline, 2020-2023.

Digital Space & Online Freedom Status: Malaysia



Freedom House, *Explore the Map*, (n.d.), available at: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

Media & Press Freedom Status: Malaysia



Reporters sans frontières, *Classement*, (n.d.), available at: <https://rsf.org/fr/classement>

Fig. 4.3: Digital Space & Online Freedom Status (Freedom on The Net) and Media & Press Freedom (World Press Freedom Index) Ratings for Malaysia over the years, 2020-2023.



In recent years, the trend of arrests of online users expressing their views on the monarchy, government, or Islam continues to increase. It is common for people in Malaysia to come under scrutiny for questioning or expressing challenging views related to the royal institution, race, or religious matters (3Rs), and the government. Authorities are actively monitoring digital space for 3Rs remarks, and this has been openly acknowledged by the Communications and Digital Minister.

–Kelly Koh, Programme Officer at Sinar Project

Malaysia has been ruled by four different prime ministers from 2020 to 2023.¹⁴ Despite continued political tumult, little has been done to address the persistent crackdown on fundamental freedoms in the country. For instance, Malaysia was ranked “partly free” in the Freedom on the Net Report, with a score of 58/100 in 2021 and 59/100 in 2022.¹⁵

On press freedom, Malaysia placed 113th out of 180 countries and scored 51.55/100 on the 2022 World Press Freedom Index by Reporters Without Borders and witnessed notable improvement in 2023, now situated 73rd out of 180 countries, with a score of 62.83/100.¹⁶

Freedom of expression is continuously under threat. With power conferred on the authorities to weaponise broad and loosely worded laws, HRDs, journalists, political opponents, and ordinary users are prosecuted, investigated, and jailed for their online activities. Individuals are investigated under Penal Code Section 298A, CMA Section 233, and the Sedition Act for expressions that touch on race, religion, and royalty (hereinafter **3Rs**).¹⁷

Defamation Laws: Used to Silence Dissenting Voices

The government has used the defamation laws to silence opposition lawmakers, activists, journalists and individuals criticising the regime. Reports have surfaced in recent years of individuals being investigated and prosecuted based on the defamation laws for freely expressing themselves. On July 1, 2021, FreedomFilmFest organiser Anna Har and the animator of “Chili Powder and Thinner” Amin Landak, were questioned by the police in connection with the release of a four-minute animation depicting Malaysian police officers torturing and abusing individuals in custody. They were investigated under Sections 500 and 505(b) of the Criminal Code—concerning defamation and “statements conducing to public mischief” respectively—along with Section 233 Article 1(a) of the CMA, for improper use of network facilities.¹⁸ They were eventually released, but three computers, a modem, and a router as well as Landak’s personal computer were seized during the search.¹⁹ In July 2022, a nature activist was investigated under Section 500 and 500(b) of the Penal Code and Section 233 of CMA over a Twitter post allegedly insulting the Pahang regent.²⁰ In June 2020, blogger Dian Abdullah was accused of criticising the King and ex-Prime Minister Muhyiddin Yassin through her blog post published in March 2020; aside from the Penal Code, Abdullah was additionally charged under Section 233(1)(a) of the CMA.²¹ In December 2021, the court handed her a fine of MYR 10,000 (\$2,400).²² But these laws do not apply exclusively to human beings. In fact, they were almost used in 2023 against Meta for violating the law on communications and multimedia, but the project was abandoned after meetings with the company.²³

The Sedition Act and CMA: Another Political Weapons

One of the key promises within the manifesto made by the current Prime minister, Dato Seri Anwar Ibrahim’s

political party during the November 2022 election was a call for a review and repeal of “oppressive legislations that can be misused curtail freedom of expression”, including the SA 1948 and Section 233 of CMA 1998.²⁴ However, it was soon announced that the government has no plans to abolish the Sedition Act. In fact, between January 2022 and November 2023, The Centre for Independent Journalism (CIJ) reported an increase of the number of investigations and arrests under the Sedition Act from 15 in 2022 to 31 incidents in 2023.²⁵ Additionally, In the early months of 2023, it was disclosed that 444 cases had undergone investigation under Section 233 of the CMA from 2020 to Jan. 23, 2023.²⁶

Between March 2020 and February 2021, 66 cases were initiated under the Sedition Act and Section 233 of the CMA,²⁷ with about 60 cases related to online activities. Over the course of 2021 and 2022, a significant increase in the use of oppressive legislation to silence dissenting opinions and expressions was recorded. The Centre for Independent Journalism (CIJ) documented 140 incidents under Section 233 CMA and 19 under Sedition Act in 2021.²⁸ In 2022, from January to November, 114 such incidents were documented.²⁹ A report on the state of freedom of expression in Malaysia by the Centre for Independent Journalism (CIJ) that was released on Dec. 10 2023 found that Section 233 of the Communication and Multimedia Act - which criminalises the improper use of network facilities or network services - has already been used 103 times this year up until November.³⁰ However it is also noted that the 2023 data does not reflect investigations triggered by the 3R election task force and police statements during the elections.³¹ This is compared to the 114 times the law was used for the whole of 2022. According to the official statistics from the Home Minister, 367 investigations were opened under the sedition act from 2018 to 2022, with only five cases tried in court. Under the Communications and Multimedia Act (CMA) the police conducted 692 investigations between January 2020 and June 2022.³²

In June 2021, Iswardy Morni, member of opposition Parti Keadilan Rakyat, was charged under the Sedition Act for statements made on Facebook deemed to be seditious and insulting towards the King. If found guilty, he could be fined up to MYR 5,000 (\$1,100) or a maximum of three years' imprisonment, or both.³³ In another case from April 2022, a campaign worker for the opposition Democratic Action Party was arrested under the Sedition Act for his comments on a social media post allegedly encouraging ethnic Indians not to vote for the Malaysian Indian Congress.³⁴ More recently, in late 2023, Muhammad Sanusi Md Nor, a politician affiliated to the conservative Islamic party PAS, faced two charges of sedition under section 4(1)(a) of the Sedition Act 1948. The charges were brought against him for insulting the country's sultans. Sanusi's comments questioned decisions taken by the royalty regarding the formation of government at the federal and state levels. He appeared in court, pleading not guilty.³⁵ On Nov. 24, 2023, Razali Idris, Information Chief of the Malaysian United Indigenous Party (Bersatu), Terengganu executive councillor and Kijal assemblyman from an opposition political party was charged under the Section 4(1)(b) of the Sedition Act for allegedly making seditious remarks about the court decision against MP Syed Saddiq and another politician who was granted a discharge not amounting to acquittal.³⁶ He alleged that the Malaysian Anti-Corruption Commission (MACC) and judges were under the control of the current Prime Minister. Another notable case took place on Sept. 25, 2023, Wan Ji Wan Hussin appealed against the first appeal verdict that sentenced him to nine months in prison for publishing offensive words and insulting the Sultan of Selangor via Facebook in 2012. Although this sentencing is shorter than the initial conviction in July 2019 of a one-year prison term, the sentencing is still deemed as disproportionate to the crime.³⁷

Repressive laws have also been used against the #Lawan protest organisers.³⁸ On July 29, 2021, the police arrested activist Sarah Irdina under the Sedition

“

*The Sedition Act is reportedly used in a way that prevents Malaysians from expressing and debating, freely and openly, a diverse range of political opinions and ideas.*⁴¹

-A group of UN experts

Act and CMA. She was questioned for 10 hours in relation to posts calling on people to participate in the protests.³⁹ Aside from Sarah, the government also opened an investigation against seven other activists of the youth coalition Sekretariat Solidariti Rakyat (SSR) based on a report published on an online portal.⁴⁰

Activists and HRDs in Malaysia continue to face numerous obstacles to conducting their work. On March 3, 2020, Fadhiah Nadwa Fikri, a human rights lawyer, was summoned by the police for a Twitter post calling for people to join a rally against the new government, amid the political instability triggered by the change in government. During the question, she was compelled to give the police access to her Twitter account.⁴²

Artist and activist Fahmi Reza has repeatedly faced judicial harassment for his work, critical of the

government. In March 2021, he was summoned by police about his satirical artworks of the Health Minister posted online. On April 23, 2021, he was arrested in relation to satirical online commentary about the Queen under Section 4(1) of the Sedition Act and Section 233 of the CMA. The material on his Facebook page was associated with a Spotify playlist called “This Is Dengki Ke?” with cover art depicting Queen Tunku Hajah Azizah Aminah Maimunah Iskandariah and the title “100 dengki songs, all in one playlist.” The playlist includes 101 select songs about jealousy. On May 6, he was again summoned for two new cases regarding previously posted graphics. In July 2021, for the seventh time, he was summoned by the police because of his satirical poster allegedly related to PAS.⁴³ On Oct. 4, 2021, Fahmi Reza was arrested over a caricature of former Prime Minister Ismail Sabri Yaakob’s “Keluarga Malaysia” concept and later freed on police bail.⁴⁴ On April 14, 2022, he was arrested over a satirical artwork depicting what appears to be an ape in a monarch’s clothing, published on his Facebook page.⁴⁵ At the time of writing, Fahmi Reza is being investigated for several cases under laws including Section 504 of the Penal Code, Section 4(1) of the Sedition Act and Section 233 of the CMA.⁴⁶ In April 2022, he was blacklisted and barred from leaving Malaysia.⁴⁷ The ban was lifted in the following month. In January 2023, he was questioned by the police over a democracy workshop he held outside Universiti Sains Malaysia (USM), after authorities did not allow him to conduct it on campus.⁴⁸ After the police returned one of the phones confiscated from him one year ago, Fahmi Reza stated that he has 10 ongoing cases against him, as of June 2023.⁴⁹

Apart from being the targets of police inquiries and criminal investigations, many HRDs and activists are also subjected to online harassment, intimidation, threats and hateful remarks.⁵¹ For instance, Clare Rewcastle Brown, a London-based investigative journalist known for her work on deforestation in her blog Sarawak Report, has drawn the attention of

“

*I always remind people that we should not be afraid of the government and the authorities because that is exactly what they want. They want us to keep quiet. As citizens, we have the power.*⁵⁰

–Fahmi Reza, graphic artist and political activist

the Malaysian government. She revealed that around \$700 million had been paid into Prime Minister Najib Razak’s personal accounts from the state investment fund, 1Malaysia Development Berhad (1MDB). In August, the Malaysian government issued a warrant for her arrest, accusing her of activities prejudicial to parliamentary democracy and disseminating false reports that caused public concern. If convicted, she faces up to 25 years in prison. The journalist is firmly convinced that her email has been hacked since her contacts in Malaysia have been arrested. She was placed under police protection after being stalked and photographed in London.⁵²

Furthermore, the investigative processes under the CMA have been marred by prolonged remand periods, lasting 3 to 410 days. This protracted

detention period prompts concerns regarding the proportionality and necessity of such measures since it potentially infringes upon individuals' rights and raises doubts about the effectiveness of CMA investigations. It was also reported by the Deputy Minister of Communications and Digital that out of 876 investigations initiated under Section 233 of the CMA, between January 2018 to November 2023, only 65 cases were charged in court. This statistic underscores the broad scope of Section 233 and the low proportion of cases that meet the threshold for prosecution, suggesting a potential misuse of the law to suppress speech and online content. Further, the incorporation of CMA with other legal provisions such as Sections 504, 505, and offences outlined in the Penal Code (Section 500) establishes a comprehensive legal framework.⁵³

Prosecutions for Blasphemy

Aside from defamation and cyber laws, Malaysia has resorted to blasphemy provisions to charge and prosecute individuals for expressions allegedly insulting religion, religious figures, or beliefs. In July 2020, an individual was sentenced to over two years in prison for social media content purportedly insulting the Prophet Muhammad, Islam, and Malaysian Islamic Party (PAS) President.⁵⁴ In July 2022, a man was arrested by the police for allegedly insulting Islam in a TikTok video clip.⁵⁵ Two filmmakers of a film banned in Malaysia, "Mentega Terbang", have been charged with "offending religious feelings". It tells the story of a young Muslim girl confronted with questions about life after death. The film was banned in September 2023 due to criticism from conservative groups under the directive of the Home Minister, who cited Section 26 of the Film Censorship Board 2002 as grounds for the ban. The film's producer, Tan Meng Kheng, and director, Khairi Anwar Jailani, were charged under the blasphemy provisions of Section 298 of the Penal Code, but were released on bail of RM 6,000 and RM 6,500 respectively, with strict conditions.⁵⁶

“
**Conducting a raid
 on our office and
 seizing computers is
 a troubling escalation
 in the authorities’
 crackdown on media
 freedom and shows
 the lengths they are
 prepared to take
 to try to intimidate
 journalists.**”⁶³

–Giles Trendle, managing director
 of Al Jazeera English

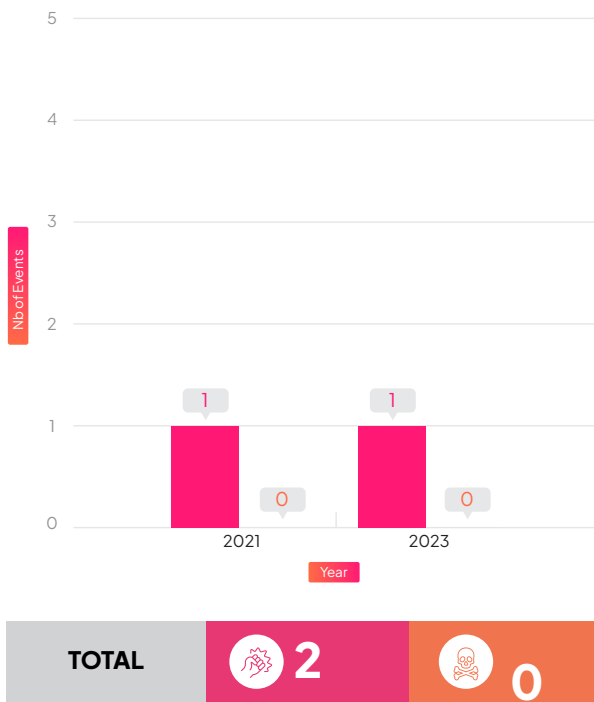
State Surveillance to Stifle Dissent

In addition to prosecutions, the government is under the suspicion of employing surveillance technologies to stifle online freedoms. The government is determined as a potential customer of Circles technology, which exploits weaknesses in mobile phone networks to spy on calls, texts, and location information.⁵⁷

Crackdown on Media and Journalists

Journalists and online news outlets have also been repeatedly subjected to investigation and prosecution as a result of their critical reporting.⁵⁸ In July 2020,

Disorders involving the Media in Malaysia



The Armed Conflict Location & Event Data Project (ACLED), *Disorder Involving the Media*, (10 February 2024), available at: <https://acleddata.com/data-export-tool/>

LEGEND

- Disorders involving the Media
- Disorders involving Fatalities

Fig. 4.4: Disorders involving the Media in Malaysia, 2020-2023.

i The information used to construct this infographic is sourced from the ACLED database, specifically the dataset titled "Disorders involving Media." Within this database, we have exclusively selected relevant countries from the ASEAN region, namely Indonesia, Thailand, Myanmar, and the Philippines. However, this infographic only focuses on Malaysia. The events were further filtered based on an additional criterion: date. As our report focuses on events from 2020 to 2023, only those occurring between January 1, 2020, and December 31, 2023, have been included

international broadcaster Al Jazeera and several of its journalists were investigated for sedition, violations of the CMA, and defamation. This came after Al Jazeera broadcasted a short film called "Locked Up in Malaysia's Lockdown," which uncovered the plight of thousands of undocumented migrant workers who were detained during raids in areas under tight lockdowns. Malaysian officials criticised the documentary as being inaccurate and unfair, claiming that it constituted an attempt to tarnish

Malaysia's international reputation.⁵⁹ In August 2020, the offices of Al Jazeera in Kuala Lumpur and that of two local broadcasters were raided by the authorities and computers were seized.⁶⁰ Following the incident, Malaysia's communications minister announced that all film producers must possess a licence to shoot and produce videos in the country, including those who broadcast on social media.⁶¹ Al Jazeera staff also faced abuse online, including death threats and publication of their personal information on social media, in relation to the documentary.⁶²

This episode is part of a larger pattern of harassment of media outlets and individuals drawing attention to politically sensitive subjects, including corruption, and the state of human rights. Rewcastle Brown's case, the founder and editor of the Sarawak Report—a news website known for reporting on corruption in Malaysia, was reopened in 2021 over a book she wrote on the Malaysia Development (1MDB) scandal.⁶⁴ The case was halted in 2018 after the police decided "no further action," but an arrest warrant was issued against her for not attending court proceedings on Sept. 23, 2021. She was charged in absentia under Section 500 of the Penal Code,⁶⁵ and on November 5, Malaysian authorities made a public appeal for information on her.⁶⁶ The IFJ called Brown's case "another arbitrary attempt by the Malaysian authorities to quash critical reportage and crucial investigative journalism."⁶⁷ In 2023, Malaysian journalist Kean Wong, who lives in Australia, was briefly detained and is under investigation for sedition in Malaysia after publishing a book banned by the Malaysian government. The book, entitled "Rebirth: Reformasi, Resistance, And Hope in New Malaysia", was banned on national security grounds. Wong was arrested while attempting to renew his passport in Malaysia but was released shortly afterwards.⁶⁸

In the larger scheme of Malaysia's control over online speech, the government has strictly controlled information, invoking the "national security" justification to shield itself from criticism.⁶⁹

Websites that address LGBTIQ+ and religious issues are subject to blocking. LGBTIQ+ websites www.gaystarnews.com, www.planetromeo.com, and www.utopia-asia.com were the first ones targeted.⁷⁰ Additionally, 4,068 pornographic websites were blocked by the Malaysian Communications and Multimedia Commission (MCMC) from September 2018 to 2021.⁷¹ As of December 2022, a total of 217 websites have been blocked in Malaysia, out of which 24 were on human rights, 18 on the LGBTIQ+ community, 15 news outlets, 7 on religion, and 13 contained pornographic material.⁷²

Furthermore, on several occasions, actions to restrict media coverage were undertaken. In October 2020, the coverage of the 14th Parliament session was limited to 15 media agencies, excluding online news portals which operate exclusively online.⁷³ Similarly, in September 2021, only 16 media agencies were

allowed to cover the proceedings from inside the Parliament. New Straits Times, Malay Mail, The Vibes, The Malaysian Insight and Free Malaysia Today were all denied entry for the Dewan Rakyat sitting.⁷⁴

In a prominent case, the news portal Malaysiakini was fined an excessive sum of MYR500,000 (\$125,000) for comments made on their platform by third-party subscribers. Although Malaysiakini immediately proceeded with deleting the comments, a proceeding was initiated by the Attorney-General against Malaysiakini and its chief editor, claiming that the “comments threaten[ed] public confidence in the judiciary and are clearly aimed at tarnishing the administration of justice by the judiciary.” On Feb. 19, 2021, the Federal Court held Malaysiakini liable under Section 114A of the 2012 amended Evidence Act for publishing the comments.⁷⁵

“

Portals such as Malaysiakini will be held liable for third-party comments. It is thus required to ensure adequate safeguards are in place prior to publishing to ensure they are not held liable. Not only will this be resource-intensive to moderate the sheer volume of comments, but it will also be a form of censorship and curtailment of the readers’ freedom of expression.⁷⁶

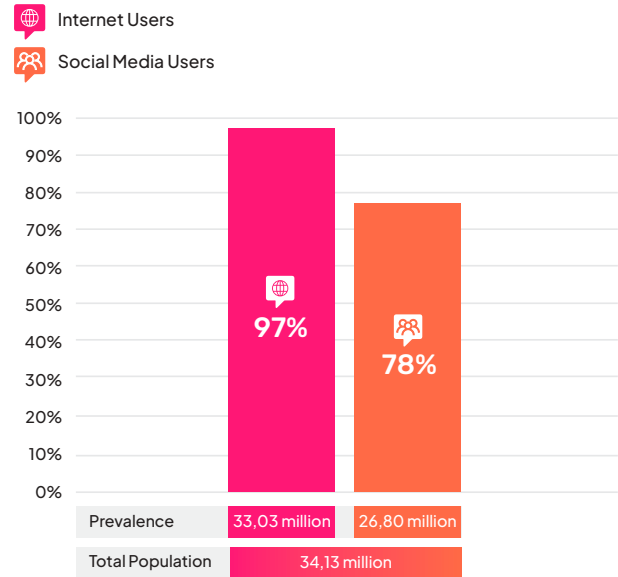
–Wathshlah G. Naidu, Executive Director of the Center for Independent Journalism

Online Content Manipulation & Restrictions

Online content manipulation persists. There are government-sponsored online commenters, known as cyber troopers, that use social media to influence public opinion, set public agendas and spread ideas. Many of these efforts took place on major platforms such as Twitter and WhatsApp.⁷⁷ In 2020, the Perikatan Nasional (PN) government allocated funds to revive the Special Affairs Department (JASA), an agency mandated to disseminate information and conduct strategic communication on behalf of the government which had been previously dissolved.⁷⁸ Several government agencies have been regularly monitoring social media platforms for false and sensitive statements relating to the 3Rs, including a unit established by the Department of Islamic Development Malaysia or Jakim to monitor complaints and the MCMC.⁷⁹

In June 2022, referring to content relating to the 3Rs, Communications and Multimedia Minister Tan Sri Annuar Musa said that “MCMC does not have to wait for a report [to be made] as action can be taken to remove the post as MCMC is allowed to do that.”⁸⁰ In November, MCMC reaffirmed its commitment to monitoring and preventing the dissemination of false information and malicious statements involving the 3Rs.⁸¹ MCMC also urged civilians to police the internet through a WhatsApp group set up by the MCMC, asking people to lodge screenshots of social media posts that they deem sensitive to the 3Rs. The establishment of this hotline is a form of policing of free expression as well as a step backward in the country’s democracy.⁸²

Malaysia’s mid-2023 elections were marred by controversy, including the blocking of websites. The ruling Pakatan Harapan (PH) coalition, previously hailed for introducing democratic reforms in 2018, took a worrying turn by blocking access to four pro-opposition media sites. MalaysiaNow, UtusanTV, Malaysia Today, TV Pertiwi and former politician Wee



DataReportal, *Digital 2023, Malaysia*, (9 february 2023), available at : <https://datareportal.com/reports/digital-2023-malaysia>

Fig. 4.5: Percentage of Internet and Social Media Users in Malaysia, 2023.

Choo Keong’s blog were all subjected to unexplained blocks by local ISPs 15 days before the elections. Communications Minister Fahmi Fadzil denies any involvement.⁸³

The Nexus of Freedom: Navigating Expression, Religion, Politics, and Disinformation

The digital landscape in Malaysia has become a battleground between the intersections of freedom of expression, political interest, and disinformation. This already complicated relationship is exacerbated by Malaysia’s dual-track legal system that consists of the civil and the Syariah Courts that can prosecute Malay Muslims based on religion, sexual orientation and gender identity under the Syariah Criminal Offences (Federal Territories) Act 1997.⁸⁴

Political and conservative groups often utilise digital platforms to amplify their narratives that are focused on race, religion, gender, and LGBTIQ+. The Center for Independent Journalism (CIJ)’s monitoring finds resurfacing ‘kafir harbi’ and ‘Islam is under threat’ rhetoric fueled by disinformation campaigns that creates a false sense of urgency.

#PeoplePower | How Are People Resisting #DigitalDictatorship?**Courage Under Fire: Nik Elin's Battle Against Syariah Laws & Misinformation**

The case of Lawyer Nik Elin Zurina is a prime example of people power. In 2022, together with her daughter Tengku Yasmin, they constitutionally challenged the 2019 enactment of some Islamic Syariah Criminal law provisions by the Kelantan State Legislature, eliciting strong reactions from conservative right-wing groups. Despite the Federal Court establishing the constitutionality of her case, these groups claim that contesting such Syariah provisions threatens the position of Islam and the Syariah courts in Malaysia. Nik Elin, in response, has become a target of extensive misinformation, online gender-based

violence, including threats to her life.⁸⁵ On 9 February 2024, two years after the start of the legal process, Nik Elin and Yasmin won the case with a majority 8-1 ruling that the Kelantan state government did not have the power to enact Syariah Criminal Code provisions that are already covered by the jurisdiction of the federal parliament.⁸⁶ This monumental ruling does not only impact other conservative state legislations, but it also paves the way towards a more progressive and democratic Malaysia.



Similarly, the Center for Independent Journalism (CIJ) reported rising trends of hostility against migrant and refugee communities. Ustaz Sophian Mohd Zain, an Islamic religious leader perpetuates this through documenting his harassment, verbal abuse and doxxing by revealing personal information and last known locations through his TikTok platforms against the community. CIJ's social media monitoring also noted that user generated comments from these platforms tend to steer towards hostile language and calls for the erasure of migrant and refugee communities.⁸⁷

Government Requests to Remove or Restrict Content or Accounts

In 2020, Twitter received 194 requests to remove content and complied with 59.2% of them. In 2021, there were 221 removal requests and a 27.6% compliance rate.⁸⁸ In February 2022, Twitter suspended a pseudonymous account called Edisi Siasat (also Edisi Khas) for allegedly violating its terms of service.⁸⁹ The account was investigated by the government several times for reporting on corruption and abuse of power involving government officials.⁹⁰

In 2020, Meta received 398 restriction requests, and 269 in 2021, both for Facebook and Instagram. From January to June 2022, 80 items were reported on the two social media platforms, out of which 66 were subsequently restricted, including 19 items which contained misinformation, having allegedly violated Section 505(b) of the Penal Code. The second half of 2022 was composed of 59 requests. For the first half of 2023, there were 59 requests.⁹¹ In June 2023, MCMC announced that it will take legal action against Meta for failing to remove "undesirable content" from Facebook. The content is related to defamation, impersonation, online gambling, scam advertisements, and the 3Rs.⁹² Between July 2022 and June 2023, Meta addressed requests from the Malaysian communications regulator and various government entities by placing restrictions on more than 3,500 items.⁹³ These encompassed content critical of the government and posts allegedly violating laws related to illegal gambling, hate speech, racial or religious division, bullying, and financial scams, according to Meta's report. Google reported 42 requests throughout 2020, complying with 40.4% of them. In 2021, it received 80 requests and complied

with 47.15% of them. In 2022, between January and June, it received 27 requests and complied with 47.9% of them.⁹⁴ The second half of 2022 is characterised by 36 requests, with one additional request for the first half of 2023.

In 2020, Tik Tok received 547 requests, 4156 in 2021, 5009 in 2022, and 4,083 requests in the first six months of 2023 (January to June).⁹⁵ More specifically, during

the initial half of 2023, Tik Tok received 340 requests from the Malaysian government to remove or restrict access to specific content, affecting approximately 890 posts and accounts, with the platform taking action against 815 of them due to violations of local laws or its community guidelines.⁹⁶ According to data from the Surfshark website, Malaysia has had a total of 1,208 account requests from Apple, Google, Meta, and Microsoft between 2013 and 2021.⁹⁷



PANDEMIC POLITICS: COVID-19 IMPACT ON ONLINE ACTIVITIES

The Government has used the COVID-19 pandemic as an opportunity to silence critics and adopt new repressive laws criminalising speech. In March 2021, the Emergency (Essential Powers) (No. 2) Ordinance⁹⁸ was adopted, which establishes several criminal offences related to “fake news” about the pandemic, raising concerns about freedom of expression in Malaysia. The Ordinance follows the structure of the 2018 Anti-Fake News Act which had been repealed in 2019, and many provisions are identical to those in the Act. It subjects anyone who creates, publishes, distributes, or disseminates “fake news,” “with intent to cause, or which is likely to cause fear or alarm to the public, or to any section of the public” to a RM 100,000 fine, three years of jail, or both. There has been a steady stream of arrests and detention for online speech, many of them conducted without a warrant, including for social media criticism of government policies related to insufficient screening procedures or a lack of government preparedness. Additionally, internet service providers (ISPs) and digital platforms have been compelled by the authorities to facilitate censorship and surveillance or otherwise face harsh penalties. For instance, in the first half of 2020, Twitter restricted access to 190 items pertaining to COVID-19 misinformation, following the government’s requests.⁹⁹ The state of emergency lasted until Aug. 1, 2021.¹⁰⁰

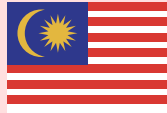
While the government claimed that the Ordinance is imperative for combating disinformation about the

COVID-19 pandemic,¹⁰¹ it fails to establish a standard for what constitutes falseness, rendering it prone to misuse. In December 2021, the Senate approved a motion to revoke a string of Emergency Ordinances, including the Emergency (Essential Powers) (No. 2) Ordinance.¹⁰²

A report by Amnesty International shows that Malaysia’s crackdown on human rights defenders, journalists, opposition members, and activists has continued through the COVID-19 pandemic and the resulting state of emergency in 2021.¹⁰³ In May 2020, Tashny Sukumaran, a South China Morning Post correspondent, was questioned and summoned to a police station in Kuala Lumpur after co-writing an online article about raids targeting migrants and refugees during the pandemic. She is being investigated under Section 504 of the Penal Code, for “intentional insult with intent to provoke a breach of the peace,” and under Section 233 of the CMA.¹⁰⁴

In July 2021, the Malaysian police summoned for questioning Boo-Su Lyn, Editor-in-Chief of healthcare news outlet CodeBlue and socio-political activist, after she published an article about a COVID-19 outbreak at a local vaccination centre.¹⁰⁵ In February 2022, graphic designer Fahmi Reza was charged under Section 233 of the Communications and Multimedia Act after he made a satirical post about the Minister’s decision to shorten the quarantine period for Cabinet ministers returning from official visits abroad.¹⁰⁶

MALAYSIA



2023 Political Overview

Elected Parliamentary Constitutional Monarchy in theory, semi-authoritarian regime in practice.

Head of State, Monarch

Abdullah of Pahang by the end of 2023 (currently reigning monarch is Sultan Ibrahim of Johor, who ascended in 2024)

Head of Government

Prime Minister Anwar Ibrahim

#PandemicPolitics

#TashnySukumaran

📖💡📰 CASE STUDY

Authorities in Malaysia **weaponised the COVID-19 shutdown** used to silence a journalist for reporting on raids targeting **refugees and migrant** workers in Malaysia. This is an example of **Digital Dictatorship**.

WHEN

1 May 2020 (article published); 5–6 May 2020 (summoned and questioned)

WHERE

Kuala Lumpur, Malaysia

WHO

Tashny Sukumaran, Malaysia correspondent for the South China Morning Post 📰

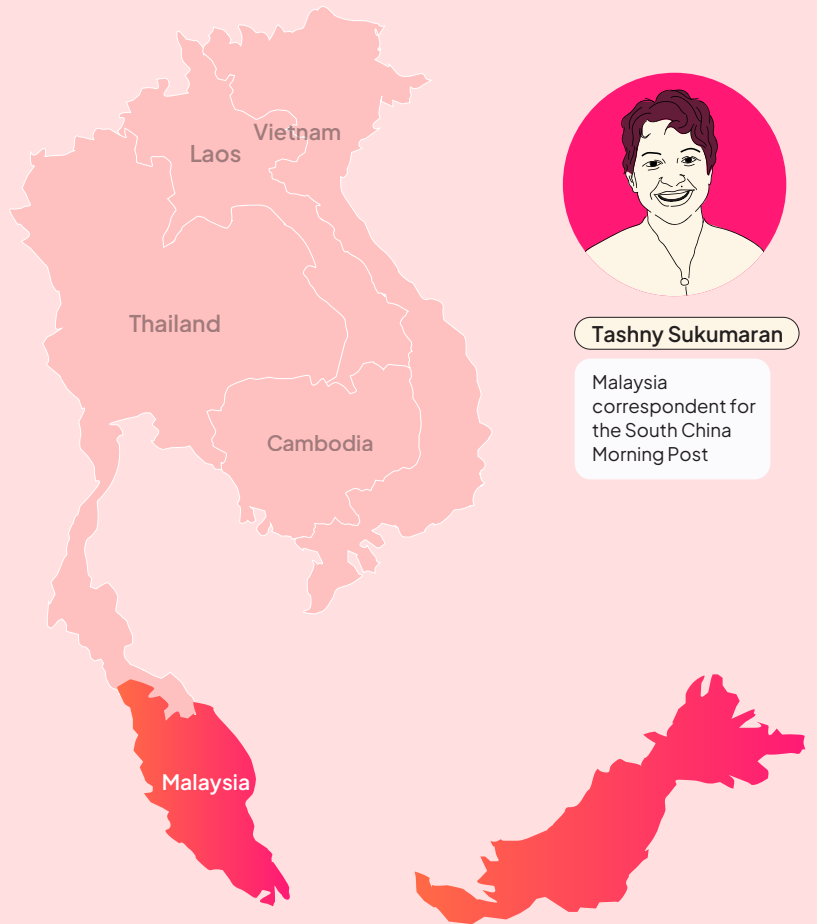
WHY/WHAT

📖💡📰 Sukumaran co-wrote an article (with Hong Kong based journalist Bhavan Jaipragas) titled 'Coronavirus: hundreds arrested as Malaysia cracks down on migrants in Covid-19 red zones,' how brutal immigration raids were being executed against refugees and migrant workers, including men, women, and very young children, during the COVID-19 pandemic. Sukumaran had also personally gone to the 'red zone' and interviewed community members, as part of her due diligence and journalistic duty. In the article, she exposed how Malaysian authorities were taking advantage of the pandemic to target marginalised groups.

HOW

⚠️ How Digital Dictatorship has caused the violation of Tashny Sukumaran's human rights:

📰👮🇲🇾 Sukumaran was summoned and questioned by the Royal Malaysian Police for questioning after her co-written article was published. She was accused of, and charged for, violating **Section 504 of the Malaysian Penal Code (for "intentional insult with intent to provoke a breach of the peace")** and **Section 233 of the Malaysian Communications and Multimedia Act**. It must also be noted that many other news publications reported a similar story, yet were not targeted in the same way Sukumaran was, demonstrating inconsistencies and potential identity-based discrimination involved in these decisions.



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Original article by Tashny Sukumaran for SCMP: SCMP, *Coronavirus: hundreds arrested as Malaysia cracks down on migrants in Covid-19 red zones*, (1 May 2020), available at: <https://www.scmp.com/week-asia/politics/article/3082529/coronavirus-hundreds-arrested-malaysia-cracks-down-migrants>.

RSF, *Malaysian police investigate reporter who covered Covid-19 arrests*, (6 May 2020), available at: <https://rsf.org/en/malaysian-police-investigate-reporter-who-covered-covid-19-arrests>.

Arrests, litigation, and the other forms of harassment mentioned in this case study are just some examples of how Digital Dictatorship has affected the individual(s) mentioned, as well as Southeast Asian society as a whole. HRDs and/or journalists, including the one(s) in this case study, are often perpetually targeted by Digital Dictatorship in numerous ways that go beyond just what is discussed here.

INTERSECTIONAL GENDER ANALYSIS: DIGITAL THREAT TOWARDS MARGINALISED GROUP IN MALAYSIA

Online gender-based violence (OGBV) is an extension of the forms of gender-based violence experienced by women, girls, and LGBTIQ+ community. The advancement and ubiquity of digital technologies have provided an additional fertile ground for gender inequalities and gender-based violence to manifest with even greater intensity and reach. While both men and women may encounter online violence, it is women, girls, and LGBTIQ+ community who are disproportionately targeted based on their gender identity, expression, and roles.¹⁰⁷

Online sexual harassment, occurring through various digital channels, has become a widespread concern as highlighted by a 2018 survey conducted by the Malaysian Centre for Constitutionalism and Human Rights.¹⁰⁸ The survey revealed alarming statistics, indicating that 50.4 percent of respondents had experienced online harassment at least once in their lives, with women experiencing online sexual harassment at nearly twice the rate of men.¹⁰⁹ According to Malaysian CSOs, Muslim women's advocates, in particular, are harassed online by overdressing and behaviour deemed "inappropriate" by those intent on moral policing of women's bodies and actions. For example, a female politician was harassed online for not putting on make-up, and for supporting a civil society organisation deemed "deviant" by her attackers due to its work on the rights of Muslim women.¹¹⁰

A 2021 survey conducted by Justice for Sisters that involves 220 members of the LGBTIQ+ community indicated that 55% and 53% experienced heightened stress due to sensationalism in the media and online hate speech, while 33% to 39% faced discrimination.¹¹¹ Despite a prevalent political atmosphere of LGBTIQ+phobia, with instances such as the outing of politicians based on perceived sexual orientation and the dissemination of explicit videos, there has been a lack of action against the hostility, exploitation, and scapegoating of LGBTIQ+ individuals and issues.¹¹² In 2019, a female human rights defender encountered public backlash

after being appointed as a civil society representative for an oversight mechanism for the Global Fund to fight AIDS, Tuberculosis, and Malaria. This backlash included pressure to review her representation and replace her with an ex-transgender person, along with death threats and doxing, where her personal information and pre-transition photos were disclosed without consent.¹¹³

In the context of Malaysian politics, the year 2022 witnessed a significant milestone for women during the 15th General Elections (GE15). Despite political parties falling short of the 30% target for women political candidates during the nomination process, the year witnessed the highest-ever number of women in political representation in Malaysian history. However, this achievement was overshadowed by a surge in attacks against women political candidates, particularly during the campaign period. Online harassment, online sexual harassment, and misogynistic speech proliferated across various social media platforms, including TikTok, Facebook, Twitter, and Instagram.¹¹⁴

GENDER DISINFORMATION

Furthermore, gendered disinformation is pervasive in Malaysia, also particularly targeting women politicians. For instance, a TikTok video falsely claimed that Datuk Seri Rina binti Mohd Harun's only accomplishment in 30 months of power was weight loss, diverting attention from her actual contributions. Such disinformation contributes to a hostile environment by perpetuating harmful stereotypes against women, girls, and gender-non-conforming individuals. Statements like Datuk Seri Muhammad Sanusi Md Nor's assertion that women representatives were ineffective during floods further reinforce damaging stereotypes, portraying women as lacking leadership skills and equal contribution capabilities.¹¹⁵ The impact of gendered disinformation extends beyond the political sphere, affecting women and gender non-conforming individuals in various aspects of life. Addressing this issue is crucial to combat the perpetuation of negative stereotypes and mitigate the harm caused by false narratives. By promoting a more inclusive and respectful online environment, Malaysia can work towards dismantling the structures that facilitate online gender-based violence and foster greater gender equality.

#PeoplePower | How Are People Resisting #DigitalDictatorship?

On 3 October 2022, the parliament unanimously passed the Anti–Stalking Bill that criminalises acts of stalking both online and offline after years of advocacy from women groups.¹¹⁶

What happened before the law? Previously, existing laws related to stalking such as the Domestic Violence Act or offences under the Communications and Multimedia Act 1998 did not address the basic act of stalking such as continuous following and contacting, and did not have measures to restrain



stalkers. In 2020, Women’s Aid Organisation (WAO) reported that 91% of women have experienced an act of stalking with 39% of them feeling fearful, 8% threatened with harm and 12% experienced harm.¹¹⁷ In 2021, a woman was stabbed to death by her boyfriend in front of her children despite numerous police reports filed against him regarding stalking incidents, harassments and break-ins a month before.¹¹⁸

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4.3 Access to Effective Remedy: No Constitutional Right to Access Justice and Appeal

The Federal Constitution of Malaysia does not stipulate the right to access justice, appeal and obtain effective remedy. In *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd*, the Malaysian Federal Court reasoned that the right of access to justice “cannot amount to a guaranteed constitutional right.”¹¹⁹ As such, there is an ongoing judicial debate between the Court of Appeal and the Federal Court over whether or not the right to access justice is a fundamental right. In practice, access to justice is frequently hampered by the lack of a clear legal framework for obtaining damages for harm suffered, as well as by the limits of current legal provisions.¹²⁰

Limited judicial independence, along with legislation restricting judicial review and the executive influence over judiciary, deters individuals from seeking redress. According to members of the Malaysian Bar Council, NGO officials, and other observers, the demarcation lines between the executive, the judiciary, and the state are becoming increasingly blurred. This is also evidenced by a series of arbitrary or politically motivated verdicts in high-profile cases issued by courts.¹²¹ Several existing laws jeopardise the right to due process. For the broadly specified “security offences,” the 2012 Security Offences (Special Measures) Act allows police to detain anyone for up

to 28 days without judicial review, and offenders can be detained for up to 48 hours before being allowed access to a lawyer.¹²² Likewise, the 1983 amended Prevention of Crime Act, 2015 Prevention of Terrorism Act, along with the 2016 National Security Council Act, grant the authority broad powers of detention, search and seizure without a warrant.¹²³

Alternative Options for Challenging Misinterpretation and Abuse of Laws: the CMA and the PPPA

There are few options available to individuals and organisations to challenge the misinterpretation and abuse of the laws restricting online expression and regulating online information, as the laws fail to provide effective appeal processes, remedy or accountability. Sections 120 and 121 of the CMA allow for appeals against the decision of MCMC, through a review by the Appeal Tribunal and Judicial Review. Nevertheless, this mechanism does not apply under all circumstances; it is limited to decisions and actions of MCMC taken under Part V (Powers and Procedures of the Malaysian Communications and Multimedia Commission) only. Legal challenge or appeal of an access blocking order is not explicitly laid out in the Act.¹²⁴ Despite the fact that the 2012 amendments to the PPPA permit media outlets to challenge the Ministry's decision to suspend or revoke their licence before a court of law, the uncertainty of the process and high costs are likely to subject media outlets to prolonged and expensive legal processes.¹²⁵

Human Rights Commission of Malaysia: Another Solution Turned Into an Obstacle

In terms of state-based non-judicial grievance mechanism, the Human Rights Commission of Malaysia (SUHAKAM), created as a “channel for the people to forward their grievances about infringements and violations of human rights” is equally problematic. It was especially criticised for

the lack of transparent appointment and dismissal process of its commissioners, which weakened the independence of the institution.¹²⁶ SUHAKAM commissioners are also not explicitly required by the legislation to have any expertise on human rights. Although SUHAKAM's mandates are in line with the Paris Principles, its constitutive instrument—the 1999 Human Rights Commission of Malaysia Act—is fundamentally flawed; “human rights” is narrowly defined as to encompass only those fundamental liberties enshrined in Part II (Fundamental Liberties) of the Federal Constitution of Malaysia.¹²⁷ Moreover, SUHAKAM has limited powers. Under Section 12(2) (a) of the 1999 Act, it shall not “inquire into any complaint relating to any allegation of the infringement of human rights which is the subject matter of any proceedings pending in any court, including any appeals.” This has resulted in a consistent number of investigations being withdrawn.¹²⁸ Concerningly, SUHAKAM's annual reports have been largely ignored by the government, with the first SUHAKAM report being debated in 2019. In addition, SUHAKAM commissioners were summoned for questioning by the police in August 2021 for merely complying with their duties as monitors at the #Lawan protest.¹²⁹

In 2022, SUHAKAM's appointment of the commissioners were shrouded in controversy as there was a “lack of transparency” and “parliamentary oversight” of the appointment process and was only made public after the fact. In 2019, the appointed chairman was one of four academics that successfully opposed the ratifying of the Rome Statute of the International Criminal Court which impeded Malaysia's commitment to the global peacekeeping mission.¹³⁰ Other commissioners' composition were of individuals strongly associated with major political parties and former director-general of the Islamic Development Department (Jakim). Suaram, a human rights organisation, asserts that Suhakam needs to be independent from political influence in order to effectively carry out its mandate to hold the Malaysian government accountable to the International Human Rights Standard.¹³¹

Anti-SLAPP and Whistleblowers Protection

Malaysia recognizes HRDs as well as their rights and responsibilities through the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly in 1998. Malaysia also acknowledges the UN General Assembly Resolution 70/161 on HRDs, adopted in 2015, with Malaysia voting in favour. Nonetheless, there is no anti-SLAPP law to protect HRDs and activists from lawsuits.¹³² Additionally, Malaysia enacted the 2010 Whistleblower Protection Act¹³³ which protects any person who provides

information as to the wrongdoing of any company or its directors.¹³⁴ Nonetheless, the protection afforded by Whistleblower Protection Act is limited to disclosures made to a law enforcement agency including any ministry, department, agency or other body set up by the Federal Government or State Government. Moreover, the whistleblower protection could be limited in several circumstances enshrined in Section 11(1). For instance, any disclosure of improper conduct which is “frivolous or vexatious,” or improper conduct that “principally involves the merits of government policy, including policy of a public body,” is excluded from protection. As is the common pattern with these laws, “improper conduct” is loosely defined, thus enabling its misapplication.¹³⁵

Chapter V.

Recommendations

In this chapter, we will discuss recommendations regarding the governance of the digital space in Malaysia. These recommendations are addressed to different stakeholders.

Recommendations to Governments

- 1 Decriminalise defamation (Sections 499 to 502 of the Penal Code) and fake news (Section 505(b) of the Penal Code and the 2018 Anti-Fake News Act), and bring any other relevant provisions of the Criminal and Penal Codes into line with article 19 of the International Covenant on Civil and Political Rights;
- 2 Amend and uphold the 2010 Whistleblower Protection Act to safeguard individuals from judicial harassment by both state entities and corporations.;
- 3 Repeal or substantially amend laws and regulations that unduly restrict freedom of expression, independent media, and access to information, to bring them in line with international human rights law. In particular, clarify or reform vague laws, so that they are written in ways that are comprehensible and accessible to all members of society, so that all society members are aware of their responsibilities, protections, and the consequences of not abiding. This includes all the articles discussed in the recommendations, as well as the 2012 Security Offences (Special Measures) Act, the 1950 Evidence Act and the 2014 Amended Prevention of Crime Act, which are used for mass surveillance.. The repeal or amendment process should include effective public consultation (in particular, taking into account historically marginalised opinions);
 - a. Clarify legal responsibility under civil and administrative law for what constitutes ‘online gender-based violence (OGBV),’ ‘hate speech,’ ‘hateful conduct,’ ‘harassment,’ ‘doxxing,’ and other key terms, while simultaneously upholding the right to freedom of expression and opinion. Enable people of marginalised groups (e.g. women, LGBTIQ+, disabled peoples, people marginalised based on ethnicity, Indigenous peoples, etc.) to guide and participate in the development of reasonable definitions for terms used in legislation that disproportionately affect them. Ensure that reports of online gender-based violence (OGBV) are subject to systematic and consistent investigation, and offer assistance to individuals or groups affected;
 - b. Expand any definitions of ‘personal information’ and/or ‘private information’ to protect (if not already protected) an individual’s full legal name; date of birth; age; gender/legal sex; LGBTIQ+ identity; places of residence, education and work; private personal information of family members and relatives; descriptions and pictures depicting an individual’s physical appearance; and screenshots of text messages or messages from other platforms. These should be considered when investigating cases of doxxing, smear campaigns, and other instances of online violence that weaponise an individual’s personal/private information against them. Ensure that reports of doxxing campaigns and other forms of violence on the digital space are subject to systematic and consistent investigation, and offer assistance to individuals or groups affected.

- 4 When punishing expression as a threat to national security under sedition laws (the 2015 Sedition Act or the 1998 Communications and Multimedia Act), the scope of incitement should be specified, and the government must demonstrate, with evidence, that:
 - a. The expression is intended to incite imminent violence;
 - b. It is likely to incite such violence; and
 - c. There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence, in line with the Johannesburg principles.
- 5 Guarantee transparency and access to information, both offline and online, particularly where such information relates to the public interest and impacts upon the individual's right to public participation, including by amending existing laws or adopting a law to enable provision of such access. This includes notably the 1998 Communications and Multimedia Act. Implement measures to enhance transparency in political advertising, including clear disclosure of funding sources and target audiences to promote accountability and integrity, and combat disinformation;
- 6 Enable HRDs, journalists, civil society members, ordinary users, lawyers and academics to safely carry out their legitimate online activities to spread awareness for human rights violations without fear or undue hindrance, obstruction, judicial harassment, and/or online harassment (e.g. OGBV and general OBV, hate speech campaigns, or doxxing);
- 7 Working with responsible MPs and with tech companies, enforce social media policies to prevent harmful effects of doxxing, while considering applicable regulations in Malaysia. Establish a committee, if not already in place, to ensure compliance with these regulations, with a particular focus on moderating or removing illicit content;
- 8 Repeal or amend all laws and regulations that establish a licensing regime for the print and online media, replacing them with a system of self-regulation. This includes the 1994 Printing Presses and Publications Act and the 1998 Communications and Multimedia Act;
- 9 Cease the targeting and criminalisation of legitimate online speech by opposition activists, journalists, HRDs, and other dissenting voices solely in the exercise of their rights to free expression online, through the abuse of laws and administrative regulations;
- 10 Prevent acts of harassment and intimidation against, the placement of arbitrary restrictions on, or arrests of journalists, activists and human rights defenders who merely criticise public officials or government policies;
- 11 Recognise online and technology facilitated online gender-based violence (OGBV) as a human rights violation and include it in laws to criminalise and prohibit all forms of violence in digital contexts. Enhance the capabilities of law enforcement agencies to effectively investigate and prosecute such crimes;
- 12 Strengthen collaboration with the technology industry, feminist organisations, civil society, and national and regional human rights bodies to bolster measures and policies aimed at promptly and effectively providing remedies to victims of OGBV;
- 13 Implement an immediate moratorium on the export, sale, transfer, servicing, and use of targeted digital surveillance technologies until rigorous human rights safeguards are put in place to regulate such practices. In cases where such technologies have been deployed,

ensure both targeted individuals and non-targeted individuals whose data was accessed as a result of someone else's surveillance are notified, implement independent oversight, and ensure targets have access to meaningful legal remedies;

- 14 End all legal proceedings against individuals facing investigation, charges or prosecution initiated by state authorities for engaging in legitimate activities protected by international human rights law or for addressing violations. Cease all violence against independent media and journalists allowing them to freely report on the emerging situation in the country and stop all efforts to restrict independent information from reaching people;
- 15 Legally recognise human rights defenders and provide effective protection to journalists, HRDs and other civil society actors who are subjected to intimidation and attacks owing to their professional activities;
- 16 Ensure that all measures restricting human rights that may be taken in response to mass-distabilising events, including public health emergencies such as a global pandemic, are lawful, necessary, proportionate and non-discriminatory. Review the measures taken in response to the pandemic in order to ensure that a clear and sufficient legal framework exists for the response to any future pandemic, and take a cautious, progressive approach to emergency measures, adopting those that require derogation only as a last resort when strictly required because other, less restrictive options prove inadequate;
- 17 Take immediate steps to ensure and protect the full independence and impartiality of the judiciary and guarantee that it is free to operate without pressure and interference from the executive;
- 18 Facilitate the participation, leadership, and engagement of a diverse range of people of marginalised communities in government. Create task forces to take proactive initiatives to safeguard marginalised communities (e.g. women, LGBTIQ+, people marginalised based on ethnicity and/or religion) from specific forms of abuse, (e.g. hate crimes, smear campaigns, the sharing of intimate images online including revenge porn), doxxing, hate speech, and overall gender-based violence. This includes notably reviewing the 2021 Emergency (Essential Powers) (No.2) Ordinance, the Special Ministerial Committee on COVID-19 (Task Force, March 2020), and the tracking devices MySejahtera and MyTrace (April 2020);
- 19 Carry out routine assessments of the state of digital rights under the jurisdiction. Facilitate the creation of task forces, consisting of individuals trained in the safeguarding of digital rights, to investigate these affairs;
- 20 Set up accessible and appropriate, judicial and non-judicial grievance mechanisms; Provide, among the remedies, fair treatment, just compensation or satisfaction, and the establishment of sufficient grounds to avoid its repetition. Also, implement an evaluation system that regularly screens the existing mechanisms.
- 21 Integrate subjects related to OGBV and healthy relationships, consent, bullying and online safety in school curricula, through a Department of Education campaign against OGBV.
- 22 Provide gender training for law enforcement officers for them to investigate OGBV cases and prosecute perpetrators.

Recommendations to Members of Parliament

- 1 Propose amendments to the Criminal and Penal Codes and other laws to address all shortcomings in line with international human rights standards such as UDHR and the IC-CPR; and gather consensus among other MPs to ensure these amendments are adopted into the text of the law;
- 2 Hold the government accountable by ensuring that the steps taken by government bodies and agencies in the legal framework are evaluated and analysed on an individual as well as regular basis, applied only in cases where there is a risk of serious harm and cover both the enterprises in the public and private sector without discrimination, particularly when such a step could result in the violation of rights of individuals affected;
- 3 Build discussion and debate around digital rights with specific attention paid to the Malaysian context as well as good practices adopted regionally and internationally, with the general public actively involved in providing the grassroots perspective;
- 4 Adopt and enforce national laws to address and punish all forms of gender-based violence, including in the digital space. Legal and policy measures to eradicate OGBV should be framed within the broader framework of human rights that addresses the structural discrimination, violence and inequalities that women and other communities marginalised based on gender (e.g. the LGBTIQ+ community) face. Policies should also highlight specific forms of abuse that people marginalised based on gender often face online (e.g. doxxing, non-consensual sharing of intimate pictures online, the spread of deep fakes);
- 5 Adopt specific laws and measures to prohibit new emerging forms of OGBV, as well as specialised mechanisms with trained and skilled personnel to confront and eliminate online gender-based violence;
- 6 Organise and take responsibility for task forces that will take proactive initiatives to safeguard marginalised communities (e.g. women, LGBTIQ+, people marginalised based on ethnicity and/or religion) against specific forms of abuse (e.g. hate crimes, smear campaigns, the sharing of intimate images online including revenge porn), doxxing, hate speech, and overall gender-based violence;
- 7 Ensure that the opposition parties are allowed to fully participate in drafting and passing legislation to enable them to fully represent their constituents.

Recommendations to Tech Companies

- 1 Ensure the companies' terms of services and policies are uniform and in compliance with international standards on freedom of expression, which are reviewed regularly to ensure all circumstances and situations that may arise have been addressed, while also addressing new legal, technological, and societal developments, in line with the obligation to respect human rights under the UNGPs;
- 2 Drop the for-profit business model that revolves around overcollection of data. Such business models are being utilised by the government and are violating data rights;
- 3 Adopt the Global Network Initiative Principles on Freedom of Expression and Privacy;
- 4 Clearly and completely explain in guidelines, community standards, and terms of services what speech is not permissible, what aims restrictions serve, and how content is assessed for violations;
 - a. Ensure tech companies recognise gendered hate speech as hate speech,
 - b. Ensure profanities and slang in Malaysian local languages directed against human rights defenders are considered hate speech, including less common words or phrases which convey the same threat of serious harm as "kill", "murder" or "rape".
- 5 Ensure the integrity of services by taking proactive steps to counteract manipulative tactics utilised in the dissemination of disinformation, including the creation of fake accounts, amplification through bots, impersonation, and the proliferation of harmful deep fakes;
- 6 Prioritise prediction of, preparation for, as well as protection against digital dictatorship and online-based violence when launching, revolutionising, or reforming products, services, and initiatives. The guidelines of the Center for Countering Digital Hate (CCDH) 'STAR Framework' should be urgently considered, which include: safety by design; transparency in algorithms, rules enforcement, and economics; accountability systems implementation; and corporate responsibility. In addition, these predictive, preparative, and protective factors must take into account and implement the input of marginalised communities (e.g. LGBTIQ+ peoples, women, and those marginalised based on ethnicity and/or religion) who often become targets of online violence that is often unregulated or even perpetuated by existing systems;
- 7 Products, services, and initiatives must have consumer safety in mind from the very beginning of conception. This means that product, service, and initiative developers, as well as high-level executives, must all take all possible measures to ensure that their products are safe, by design for all users, including marginalised communities (e.g. including LGBTIQ+ peoples, women, and those marginalised based on ethnicity and/or religion). Ensuring safety by design includes the practice of performing thorough risk assessments, and educating developers as well as executives to recognise their responsibilities to uphold human rights standards during the development as well as execution processes;
- 8 Promote transparency. CCDH specifically highlights the need for transparency in "algo-

rithms; rules enforcement; and economics, specifically related to advertising.” Though transparency is more of a ‘preparative’ factor rather than a ‘preventive’ one, it will make civic engagement and corporate accountability much more effective, ultimately amounting to increased ‘prevention’ efficacy;

- 9 Transparency in algorithmic development, for example, is essential; though algorithms are not responsible humans, they were created by responsible humans. This same logic can be applied to company regulation development processes, as well as advertising strategy. For example, if company regulations were formulated in a way that disproportionately excludes marginalised voices (e.g. without any adopted input from a diverse range of people of intersectional identities, such as women, LGBTIQ+ people, disabled people, or people marginalised based on ethnicity and/or religion), those regulations are more likely to cause or perpetuate human rights violations. Companies should implement measures to enhance transparency in advertising, including clear disclosure of funding sources and target audiences to promote accountability and integrity, and combat disinformation;
- 10 Transparency goes hand-in-hand with effective corporate regulatory and accountability systems. The people who run and work for tech companies, like consumers, are humans, who must be proportionately held accountable for their actions if they intend to create products, services, and initiatives for consumption by civil society. Companies and their stakeholders (particularly senior executives) must recognise they hold a lot of economic, political, and social power by virtue of being in their positions, and thus naturally hold more responsibility than the average consumer. This means that though consumers have their own responsibilities, companies cannot put responsibility disproportionately on the consumer to regulate their own use of the companies’ products, services, and initiatives, if these companies genuinely intend to safeguard human rights. Thus, companies must implement regulatory systems that put people above profit, in order to allow themselves to be held accountable, and in order to facilitate their self-regulation;
- 11 Enable people of marginalised groups (e.g. women, girls, LGBTIQ+ people, disabled people, people marginalised based on ethnicity and/or religion), to participate and lead in the technology sector to guide the design, implementation, and use of safe and secure digital tools and platforms;
- 12 Commit to eradicating OGBV and allocate resources to information and education campaigns aimed at preventing ICT-facilitated gender-based violence. Additionally, invest in raising awareness for the intersection between human rights and digital security, demonstrating how human rights must be taken seriously in both the offline and online spaces. This can come in many forms, including working closely with local communities and human rights organisations (e.g. feminist groups, LGBTIQ+ groups) to facilitate dialogue and sensitivity training regarding the needs of people marginalised based on gender and/or other factors;
- 13 Implement and communicate stringent user codes of conduct across their platforms, ensuring their enforcement. Additionally, establish uniform content moderation standards that can effectively identify and address nuanced forms of online violence, while remaining sensitive to diverse cultural and linguistic contexts;

- 14 Improve the systems for reporting abuse so that victims of OGBV and racial discrimination can easily report it and track the progress of the reports;
- 15 Publish regular information on official websites regarding the legal basis of requests made by governments and other third parties and regarding the content or accounts restricted or removed under the company's own policies and community guidelines, and establish clear, comprehensive grievance mechanisms that allow governing bodies and civil society members to dispute restrictions or removals of content and accounts. Aside from being clear and comprehensive, these mechanisms must have efficient, effective, and bias-trained systems of humans and/or electronic systems ready to receive and handle the grievances.;
- 16 When appropriate, consider less-invasive alternatives to content removal, such as demotion of content, labeling, fact-checking, promoting more authoritative sources, and implementing design changes that improve civic discussions;
- 17 Engage in continuous dialogue with civil society to understand the human rights impacts of current and potential sanctions, and avoid overcompliance in policy and practice;
- 18 Ensure that the results of human rights impact assessments and public consultations are made public;
- 19 Ensure that any requests, orders and commands to remove content must be based on validly enacted law, subject to external and independent oversight, and demonstrates a necessary as well as proportionate means to achieve one or more aims;
- 20 Organise task forces and initiate proactive initiatives to safeguard LGBTIQ+, women, girls and other concerned minorities against specific forms of abuse, (e.g. the non-consensual sharing of intimate images, including revenge porn), doxxing, hate speech, and overall gender-based violence;
- 21 Carry out routine assessments of human rights impacts and provide comprehensive transparency reports on measures taken to address the against marginalised communities (e.g. e.g. hate crimes, smear campaigns, the sharing of intimate images online including revenge porn).

Recommendations to Civil Society

- 1 Set up an independent multi-stakeholder body with the cooperation of various sectors to monitor and provide recommendations on trends in, and individual cases of digital rights abuses;
- 2 Work alongside governments and other stakeholders, to generate dialogue on issues and ensure accountability of government measures especially when it comes to issues related to democracy and human rights;
- 3 Support the independent evaluation and analysis of substantive aspects, including the use of the principles of necessity and proportionality through established global standards, and the impact of responses on society and economy;
- 4 Hold implementing authorities and officials liable for the misuse of their powers or information obtained, while carrying out their duties in the existing legal framework;
- 5 Strengthen understanding and solidarity among underprivileged people (e.g. class solidarity, solidarity among women and others marginalised based on gender, understanding among different ethnic groups within a jurisdiction);
- 6 Promote a safe and respectful environment for free online expression;
- 7 Continue to increase knowledge on digital security through training and capacity building programs, and actively carry out training on media literacy, including how to verify information to be true;
- 8 Continue to conduct awareness campaigns to educate individuals and communities about the various forms of gender-based violence, its impact on survivors, and the importance of promoting a safe and respectful online environment;
- 9 Advocate for the implementation and enforcement of robust laws and policies that criminalise all forms of gender-based violence, including OGBV;
- 10 Develop and implement digital literacy programs that equip individuals, especially women and marginalised communities, with skills to navigate online platforms safely, recognise and respond to online harassment, and protect their privacy;
- 11 Create and participate in grassroots, community-led initiatives to safeguard LGBTIQ+, women, girls and other concerned minorities against specific forms of abuse (e.g. the non-consensual sharing of intimate images, including revenge porn), doxxing, hate speech, and overall gender-based violence. Wherever possible, mobilize these initiatives to hold governments, MPs, and corporations accountable;
- 12 Collaborate with social media platforms and technology companies to develop and enforce policies and mechanisms that effectively address OGBV.
- 13 Have specialised support services and helplines for the survivors of OGBV, including counselling. Advocate for data collection and collect disaggregated data on OGBV when running prevention and response programmes.

Glossary

Abolition: putting an end to something by law

Appeal: the resort to a higher court to review the decision of a lower court, or to a court to review the order of an administrative agency

Arresto mayor: In Philippine criminal law, a sentence of imprisonment with a full range of one month and a day to six months

Attorney: a person legally appointed or empowered to act on behalf of another person

Bail: a sum of money paid by a defendant upon release to ensure later appearance in court

Bill: a statute in draft, before it becomes law

Charge: the specific statement of the crime accused to a party in the indictment or criminal complaint in a criminal case

Chilling effect: suppression of free speech and legitimate forms of dissent among a population due to fear of repercussion

Customary international law: international obligations arising from established international practices accepted as the norm

Conviction: an adjudication or formal declaration of a criminal defendant's guilt

Damages: a sum of money the law imposes to compensate a loss or injury

Defendant: someone who is being sued or accused of committing a crime

Distributed Denial-of-Service (DDoS) attack: a malicious attempt to disrupt normal traffic to a website or targeted server

De facto: Latin for "in fact." Phrase to show that that a state of affairs is true in fact, but not officially sanctioned

Directive: a set of instructions, guidelines, decisions or regulations issued by an official body outlining how a legal objective is to be achieved

Disenfranchisement: the removal of the rights and privileges inherent in an individual or group

Doxxing: publicly revealing identifying information about a person online

Entry into force: the coming into effect of a law or international agreement as to make it binding

Extradition: surrender by a country of a person charged with a crime in another country, usually under provisions of a treaty

Felony: a crime, characterised under federal law and state statutes as any offence punishable by imprisonment of over one year or death

Grievance mechanism: a formalised process, either judicial or non-judicial, by which a harm or cost suffered by a person can be compensated or remedied

Hoax: a trick or something else that is intended to deceive someone

Incommunicado detention: a situation of detention where a person is denied access to family members, an attorney or independent physician

Indictment: a formal written accusation stating that a person is being charged with a crime and must undergo a criminal trial

Injunction: a court order by which a person is ordered to perform, or restrain from performing, a certain act

Lawsuit: a disagreement between people or organisations that is brought to a court of law for a decision

Libel: a published false statement that is damaging to a person's reputation

Moratorium: a delay or suspension of an activity or law until further consideration

Perjury: the intentional act of swearing a false oath or falsifying an affirmation to tell the truth, whether spoken or in writing, concerning matters material to an official proceeding

Persecution: severe discrimination that results in the denial or infringement of fundamental rights

Phishing: a technique to trick a person into disclosing sensitive data through the use of deceptive emails or websites

Pre-trial detention: the detaining of an accused person in a criminal case before the trial has taken place

Prisión correccional: In Philippine criminal law, a sentence of imprisonment with a full range of six months and one day to six years

Prisión mayor: In Philippine criminal law, a sentence of major imprisonment with a full range of from six years and one day to twelve years

Probation: an alternative to imprisonment allowing a convicted person to stay in the community, usually under conditions and supervision of a probation officer

Prosecution: the initiation of criminal proceedings against a person accused of a crime

Ratification: an international act whereby a state expresses its consent to be bound to a treaty by an exchange or deposit of requisite instruments

Redress: relief or remedy or a means of seeking relief or remedy

Red-tagging: a harmful practice that targets people who often end up being harassed or even killed

Reverse onus: a legal provision that shifts the burden of proof onto a specified individual, normally the defendant, to disprove an element of an information

Self-censorship: withholding of one's true opinion from others in the absence of formal obstacles

Slander: false oral statements which damages the reputation of others

SLAPP suit: a civil claim filed against an individual or organisation to dissuade criticism, or intimidate or harass into silence

Smear campaign: a planned attempt to harm the reputation of a person or company by telling lies about them

Status quo: state of affairs as it exists at a particular time, normally one that precedes a controversy

Statute of limitations: a law that sets the maximum time that parties have to initiate legal proceedings from the date of an alleged offence

Sub judice contempt: a form of law that protects a person's right to a fair hearing by preventing the publication of material or comment which may improperly influence a jury or witness

Summons: a document issued by a court notifying someone that they are being sued or required to appear in court

Uphold (of a decision): to agree with a decision made earlier by a lower court

Writ: a written order issued by an administrative or judicial body

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