

Joint Stakeholder Submission for the 45th Session in the 4th Cycle of the HRC's Universal Periodic Review on the Status of Digital Rights in Malaysia

Prepared and Endorsed by:

KRYSS Network – Lead Organisation

Kemban Kolektif

Association of Women Lawyers (AWL)

Centre of Independent Journalism (CIJ)

Demokrat Universiti Malaya (UM)

Justice for Sisters

Kolektif Iklim

Legal Dignity

Monsters Among Us: Youth Advocates

North-South Initiative (NSI)

Partners of Community Organisation (PACOS Trust)

Pertubuhan Jaringan Kebajikan Komuniti (JEJAKA)

Sisters in Islam (SIS)

SIUMAN Collective

The Malaysian Centre for Constitutionalism and Human Rights (MCCHR)

Submitted by:

18 July 2023

5,340 words

1. INTRODUCTION

- 1.1. The following report is submitted for consideration in Malaysia's fourth Universal Periodic Review (UPR) during the 45th Session of the UPR Working Group.
- 1.2. In 2020, the Report of the Secretary-General Roadmap for Digital Cooperation affirmed that "Digital technologies provide new means to advocate, defend and exercise human rights, but they can also be used to suppress, limit, and violate human rights. [...] existing human rights treaties were signed in a pre-digital era. In today's world, where online violations can lead to offline abuses, the Internet cannot be an ungoverned or ungovernable space – human rights exist online as they do offline and have to be respected in full."¹
- 1.3. In the previous 3rd cycle of the UPR in November 2018, Malaysia received two recommendations concerning reviewing national legislation to ensure the right of freedom of expression, in particular for civil society, including human rights defenders and journalists.² While there were no other explicit references to the internet, the government has failed to implement both those recommendations and many of those suggested in the Stakeholders Report submitted by the Coalition for Internet Rights in Malaysia in 2018.
- 1.4. This submission presents an overview of the status of human rights in digital spaces in Malaysia, including on: meaningful access and the digital divide; right to privacy and data protection; online gender-based violence; freedom of expression and right to information; hate speech and targeting vulnerable groups such as indigenous peoples, among others; and climate change and labour rights.
- 1.5. All thematic areas intersect with Malaysia's obligations as a party to CEDAW, CRC, and CRPD. The list of recommendations reflects our demands for human rights in digital spaces.

2. MEANINGFUL ACCESS AND THE DIGITAL DIVIDE

- 2.1. Meaningful internet access³ means every individual has the ability to effortlessly connect to the online world without concerns about connection quality, reliable and timely access to opportunities and information, financial barriers, and threats to their safety and freedom from violence.
- 2.2. Existing national data fails to accurately measure gaps in internet access and coverage, including factors such as speed, reliability, type of access, and the number

¹ Report of the Secretary-General, Roadmap for Digital Cooperation, June 2020. (A/70/174).

https://www.un.org/en/content/digital-cooperation-roadmap/assets/pdf/Roadmap_for_Digital_Cooperation_EN.pdf

² See 151.140 (Brazil) and 151.145 (Lithuania), A/HRC/40/11/Add.1.

³ United Nations Office of the Secretary-General's Envoy on Technology defines digital inclusion as "equitable, meaningful, and safe access to use, lead, and design of digital technologies, services, and associated opportunities for everyone, everywhere." CRC Committee General Comment No. 25 states that the right to non-discrimination requires that States parties ensure that all children have equal and effective access to the digital environment in ways that are meaningful for them.

of people still without internet access. For example, the Department of Statistics Malaysia's report on SDG17⁴ incorrectly classified Sabah as a high concentration usage area despite reported cases of poor internet access: a youth climbed a tree to take her online exams;⁵ a father built a makeshift hut for his children's online learning;⁶ a teacher had to drive 48 minutes to the capital city for internet; and constant blackouts that cause internet disruptions.⁷ Similarly, Malaysian Communications and Multimedia Commission's 2020 Internet Users Survey measures access based on fixed and mobile broadband usage, overlooking important aspects.⁸

- 2.3. While the core impacted rightsholders are marginalised students from local and indigenous communities, individuals who reside in urban areas also face poor connectivity due to inadequate infrastructure that causes poor network signal.⁹ In Sarawak, there are nearly 500 telecommunications towers erected without equipment.¹⁰
- 2.4. Government-subsidised phones for students attending online classes were found to be unstable and unusable.¹¹ Without affordable and appropriate devices, students' learning are hindered,¹² forcing them to resort to extreme measures such as spending time to climb hills,¹³ trek jungles,¹⁴ risk injuries,¹⁵ or worse, succumb to them.¹⁶
- 2.5. Lack of meaningful access to the internet hinders businesses in Malaysia.¹⁷ Despite being the backbone of the country, micro, small, and medium enterprises are not equipped with the appropriate knowledge and infrastructure to transform their

⁴ Indikator Matlamat Pembangunan Mampan/Sustainable Development Goals (SDG) Indicators, Malaysia 2021, Focus Area: Peace and Partnership. Department of Statistics Malaysia (DOSM). https://www.dosm.gov.my/uploads/release-content/file_20221207142840.pdf

⁵ Syahidatul Akmal Dunia. Kisah Veveonah cari 'line' atas pokok dapat perhatian SKMM, TM. Sinar Harpan. <https://www.sinarharian.com.my/article/88441/edisi/sabah-sarawak/kisah-veveonah-cari-line-atas-pokok-dapat-perhatian-skmm-%E2%84%A2>

⁶ Miwil, Olivia. Father builds makeshift hut for kids' online classes. NST, 21 Jan 2021. <https://www.nst.com.my/news/nation/2021/01/659280/father-builds-makeshift-hut-kids-online-classes>

⁷ Santos, Jason. Sabah's internet woes: paying more for less. The Vibes, 4 Dec 2021. <https://www.thevibes.com/articles/news/48795/sabahs-internet-woes-paying-more-for-less>

⁸ Internet Users Survey 2020. Malaysian Communications and Multimedia Commission (MCMC), 2020. <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS-2020-Report.pdf>

⁹ Davasagayam, Kevin. Users in many areas face connectivity issue while Malaysia moves into 5G era. The Sun Daily, 6 Jan 2020. <https://www.thesundaily.my/local/users-in-many-areas-face-connectivity-issue-while-malaysia-moves-into-5g-era-HJ1856458>

¹⁰ Wong, Alexander. Why are there nearly 500 'naked' telco towers in Sarawak? Malay Mail, 22 May 2023. <https://www.malaymail.com/news/malaysia/2023/05/22/why-are-there-nearly-500-naked-telco-towers-in-sarawak/70437>

¹¹ Kow Gah Chie. Rude shock for nine-year-old as subsidised phone catches fire. Malaysiakini, 16 Jun 2021. <https://www.malaysiakini.com/news/579136>

¹² Nur Adila Abdul Wahab, Sakini Mohd Said. Address pandemic-induced learning loss quickly before it grows more critical. Bernama, 12 Jan 2022. https://www.bernama.com/en/b_focus/news.php?id=2042502

¹³ Siti Rohana Idris. Kelantan student must climb hill for internet connection. NST, 30 Nov 2020. <https://www.nst.com.my/news/nation/2020/11/645393/kelantan-student-must-climb-hill-internet-connection>

¹⁴ In Sarawak, teacher takes students, parents on two-hour jungle trek... in search of internet. Malay Mail, 18 Nov 2020. <https://www.malaymail.com/news/malaysia/2020/11/18/teacher-takes-students-parents-on-two-hour-jungle-trek-for-internet-in-lubo/1923813>

¹⁵ Student badly hurt while out to get internet access for studies. Bernama, 20 Jun 2021. <https://www.nst.com.my/news/nation/2021/06/700607/student-badly-hurt-while-out-get-internet-access-studies>

¹⁶ Rosli, Ameera. 17-Year-Old Dies in Sarawak Road Accident While Searching For Internet Connection. Juice Online, 4 Aug 2021. <https://juiceonline.com/17-year-old-dies-sarawak-road-accident-searching-for-internet-connection>

¹⁷ Poor Internet hampers businesses in Labuan. Daily Express, 20 Dec 2022. <https://www.dailyexpress.com.my/news/204688/poor-internet-hampers-businesses-in-labuan/>

business models to adapt to the digital landscape^{18 19}, inevitably impede on their right to earn a livelihood.

- 2.6. Meaningful internet access is influenced by factors such as gender, race, socioeconomic status, and location. For the working population, particularly youths, lack of access to the internet and digital literacy training means limited access to jobs and upskilling courses to gain employment and better remuneration. The more an individual is impacted by social divides, the higher the gap in accessibility. For example, a youth in Sarawak had to trek 2 hours uphill for his online university admission interview,²⁰ pivotal in securing a teaching job that would shape his future career.
- 2.7. Denied access to the internet is made worse when individuals need online information for aid facing climate disasters, such as storms or floods. The lack of access has different impacts for intersectional marginalised communities, such as indigenous girls in remote areas of Sarawak and the Peninsula under the Jabatan Kebajikan Orang Asli (JAKOA) supervision.
- 2.8. For young persons with disabilities and growing numbers of older persons, continued non-adherence to international digital accessibility standards²¹ causes a major barrier in their access to information, finding employment or educational opportunities, and health care. Elderly individuals face interface design challenges and limited technological exposure,²² while people with disabilities do not just require accessible websites and apps but also affordable assistive technologies that prioritise safety and privacy²³ for their inclusive participation.
- 2.9. Digital rightsholders, particularly individuals with disabilities and older persons, are especially vulnerable to scams, fake news, and discriminatory practices by financial service providers.²⁴ The rise of digitalisation has further harmed vulnerable groups, leading to an Exposure Draft on Fair Treatment of Vulnerable Consumers²⁵ which emphasises the importance of digital savviness²⁶ and highlights poor practices that

¹⁸ 'Standing by our SMEs' and the urgent need to build a 'digital first' workforce. MalaysiaKini, 22 Jun 22.

<https://www.malaysiakini.com/announcement/579939>

¹⁹ Azahar, Sofea. Post-pandemic growth: Address barriers to business digital transformation. The Malaysian Reserve, 21 Oct 2021. <https://themalaysianreserve.com/2021/10/21/post-pandemic-growth-address-barriers-to-business-digital-transformation/>

²⁰ Leong, Adeline. Sarawak Teen Accepted Into UPSI After Trekking 2 Hours Uphill For Online Interview. The Rakyat Post, 3 Mar 2022. <https://www.therakyatpost.com/news/2022/03/03/sarawak-teen-accepted-into-upsi-after-trekking-2-hours-uphill-for-online-interview/>

²¹ Amar-Singh HSS, Lai-Thin Ng, Moses Choo, Yoon Loong Wong, and Yuenwah San. Situation of persons with disabilities in the COVID-19 pandemic and their access to ICT. NCBM, 2022. https://storage.unitedwebnetwork.com/files/725/PwD-WGD%20in%20COVID19%20Pandemic%20&%20ICT%20Access_167918.pdf

²² Ayamany, Keertan. As life in Malaysia turns digital due to Covid-19, elderly may be left behind. Malay Mail, 24 Sep 2021. <https://www.malaymail.com/news/malaysia/2021/09/24/as-life-in-malaysia-turns-digital-due-to-covid-19-elderly-may-be-left-behind/2007956>

²³ Onus on govt to ensure digital inclusion for persons with disabilities: NCBM. The Vibes, 20 May 2021.

<https://www.thevibes.com/articles/news/27823/Onus-on-govt-to-ensure-digital-inclusion-for-persons-with-disabilities-NCBM>

²⁴ Ramendran, Charles. Even the blind are not spared by scammers. The Star, 12 Jul 2023.

<https://www.thestar.com.my/news/nation/2023/07/12/even-the-blind-are-not-spared-by-scammers>

²⁵ Applicable to nine groups: 1. Licensed banks. 2. Licensed Islamic banks. 3. Licensed insurers. 4. Licensed takaful operators. 5. Prescribed development financial institutions. 6. Approved financial advisers and approved Islamic financial advisers. 7. Approved insurance brokers and approved takaful brokers. 8. Approved issuers of a designated payment instrument. 9. Approved issuers of a designated Islamic payment instrument. Source: Fair Treatment of Vulnerable Consumers: Exposure Draft. Bank Negara Malaysia (Central Bank of Malaysia), 28 Feb 2023. <https://www.bnm.gov.my/-/ed-ftvc>

²⁶ Ibid. para (d), p. 6

neglect the needs of those without adequate internet access or requiring assistance.²⁷

- 2.10. Hence, to ensure meaningful internet access that enriches the lives of peoples in Malaysia, it is essential to adopt a human rights approach that addresses barriers that hinder people from exercising their human rights in digital space.

3. RIGHT TO PRIVACY AND DATA PROTECTION

- 3.1. The Federal Constitution does not specifically stipulate that a person has a right to privacy but the Federal Court case of *Sivarasa v Badan Peguam Malaysia & Anor* holds that the right to personal liberty under Article 5(1) of the Federal Constitution includes the right to privacy.
- 3.2. To date, there is no statutory enacted law that protects a person's right to privacy or his or her privacy not to be invaded, save for the Personal Data Protection Act 2010 (PDPA). The PDPA is narrow in its scope and only deals with the processing of personal data protection in commercial transactions and does not protect privacy rights in general.²⁸ However, it precludes data processing by individuals or the federal and state governments, leading to a gap in addressing ongoing privacy concerns and increasing the vulnerability especially for certain groups of people to discrimination and violence online.
- 3.3. The gaps in the PDPA enables authorities to abuse their power by misusing personal information. An example of this occurred during the movement control order when a police officer used personal details obtained at a roadblock to harass a woman.²⁹
- 3.4. In 2019, a police report by a rape survivor was leaked and went viral on WhatsApp and social media. As the leaked report did not redact the survivor's phone number and house address, the survivor was subjected to further traumatised and online harassment.³⁰ The survivor was unable to rely on the PDPA for any form of remedy or protection against the invasion of her privacy.
- 3.5. While on a pilgrimage to Mecca in 2020, trans influencer and entrepreneur Nur Sajat was doxxed over social media, with online users sharing her legal and travel documents without her consent, using her deadname in media reporting, and making harmful comments and hate speech based on sexual orientation and gender identity and expression.³¹ Instead of investigating the non-consensual disclosure of personal data under Section 8 of PDPA, the minister of Islamic Affairs called upon the Malaysian Communications and Multimedia Commission to take action to bar Nur

²⁷ Ibid. para 8.7, Poor practices 2., p. 10.

²⁸ Personal Data Protection Act 2010 (Act 709). <https://www.pdp.gov.my/jpdpv2/laws-of-malaysia-pdpa/personal-data-protection-act-2010/?lang=en>

²⁹ Another cop accused of sexual harassment at roadblock. The Vibes, 13 Feb 2021. <https://www.thevibes.com/articles/news/17534/another-alleged-sexual-harassment-incident-levelled-against-cop-at-roadblock>

³⁰ Alhadjri, Alyaa. Cops urged to probe viral 'removing condom during sex' case. MalaysiaKini, 25 Jul 2019. <https://www.malaysiakini.com/news/485371>

³¹ E Cheah. Monitoring Report: LGBTIQ+ Rights in Malaysia. Justice for Sisters and ARROW, 2020, pp. 19. <https://arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf>

Sajat's content for allegedly provoking Islam and continued sharing the non-consensual information, including her deadname, with no repercussions.³²

- 3.6. The PDPA also currently lacks a mandatory obligation to notify of data breaches or redress for users affected by the data breaches, which contributes to a lack of transparency around data protection until the government tables an amendment bill, purportedly later in 2023.³³ A number of government data breaches have become public knowledge, including the Elections Commission, civil servant e-payslip system, and National Registration Department,³⁴ but the government has not been transparent in disclosing information to the public or providing adequate remedies for those affected.
- 3.7. The Auditor-General's Report for 2021 revealed in February 2023 that a "Super Admin" account had downloaded the personal information of 3 million vaccine recipients from the MySejahtera app,³⁵ which had been used during the COVID-19 pandemic.³⁶ More than a year later, the Health Ministry has yet to disclose more information to the public, such as which fields of data were exposed, only citing an ongoing investigation. Furthermore, there is no information on how the government would store or delete data going forward, despite a survey by the audit team that showed 49.8% of the 2,699 respondents did not agree to their personal details being kept in MySejahtera.³⁷
- 3.8. The lack of human rights consideration or impact assessment when it comes to deployment and adoption of digital technology allows for replication of existing discriminatory practices and inequalities in digital spaces, particularly in the move towards automation over human judgement or participation.
- 3.9. Courts in Sabah and Sarawak states have been testing artificial intelligence (AI) to help judges with sentencing, focusing on two offences: drug possession under Section 12(2) of the Dangerous Drug Act and rape under Section 376(1) of the Penal Code. Analysis showed that judges deviated from the AI recommendation in 67% of cases, but there remain concerns that the recommendations may amplify subconscious biases of developers contained within the sample pool of judgements, and fail to adapt to changing social norms and individual victim impact statements as per the Criminal Procedure Code.³⁸

³² Mujahid wants MCMC to probe Nur Sajat. Malaysiakini, 4 Feb 2020. <https://www.malaysiakini.com/news/509454>

³³ PDPA amendments to curb data breaches to be tabled in Parliament by year end: Fahmi. Bernama/NST, 25 Jan 2023.

<https://www.nst.com.my/news/nation/2023/01/873391/pdpa-amendments-curb-data-breaches-be-tabled-parliament-year-end-fahmi>

³⁴ Loheswar, R. Major data breaches in Malaysia in the past 24 months. Malay Mail, 31 Dec 2022.

<https://www.malaymail.com/news/malaysia/2022/12/31/major-data-breaches-in-malaysia-in-the-past-24-months/47722>

³⁵ Audit: MySejahtera Data Breach Affected Three Million Users. Galen Centre, 16 Feb 2023.

<https://codeblue.galencentre.org/2023/02/16/audit-mysejahtera-data-breach-affected-three-million-users/>

³⁶ During the pandemic, MySejahtera had collected a wide range of personal data, included biodata, vaccination certificates, and check-ins to public locations such as grocery stores as part of the tracing mechanism for the over 38 million registered users.

³⁷ Explain what MySejahtera data went astray, says consumer group. Free Malaysia Today, 23 Feb 2023.

<https://www.freemalaysiatoday.com/category/nation/2023/02/23/explain-what-mysejahtera-data-went-astray-says-consumer-group/>

³⁸ Lim, Claire, and Rachel Gong. Artificial Intelligence in the Courts: AI sentencing in Sabah and Sarawak. Khazanah Research Institute. 18 Aug 2020.

https://www.krinsitute.org/assets/contentMS/img/template/editor/200821%20AI%20in%20the%20Courts%20v3_02092020.pdf

- 3.10. The Malaysian Bar Council reported having not received any guidelines or opportunities for feedback when courts in Kuala Lumpur in mid-2021 started using AI for sentencing in 20 types of crimes,³⁹ which raises concerns about the lack of consultative process in developing these tools, the lack of oversight and accountability, as well as the effect on the lives of people involved.
- 3.11. In an analysis of Malaysia's priorities on AI security risk mitigation in the 2021 National Fourth Industrial Revolution (4IR) Policy, the policy explicitly focuses on economic competitiveness, with only indirect references to reducing inequalities, transparency and accountability, and human rights; and no mention of protection from disinformation and manipulation, or checks against surveillance, control, and abuse of power.⁴⁰ A clear, transparent, and rights-based policy framework is needed to account for the rapid changes ahead in technology—and related risks.

4. ONLINE GENDER-BASED VIOLENCE (OGBV)

- 4.1. There is no legally recognised and specific definition of OGBV applied in Malaysian laws, despite the mention of gender discrimination in Article 8(2) in the Federal Constitution.⁴¹
- 4.2. Therefore, references are made to international human rights definitions on OGBV, also known as technology-facilitated gender-based violence (TFGBV); “any act that is committed, assisted, aggravated or amplified by the use of information communication technologies or other digital tools which results in or is likely to result in physical, sexual, psychological, social, political or economic harm or other infringements of rights and freedoms.”⁴²
- 4.3. Based on 74 cases documented by KRYSS Network since 2021,⁴³ OGBV survivors in the Malaysian context face harassment, sexual harassment, discriminatory and hate speech, doxxing, non-consensual dissemination of intimate photos, extortion, disinformation, surveillance and stalking, and more—reflecting common tactics and strategies globally.⁴⁴ In 2022, KRYSS Network documented 52 OGBV cases that

³⁹ Chandran, Rina. FEATURE-As Malaysia tests AI court sentencing, some lawyers fear for justice. Thomson Reuters Foundation, 12 Apr 2022. <https://www.reuters.com/article/malaysia-tech-lawmaking-idUSL8N2HD3V7>

⁴⁰ Tan, Jun-E. To What Extent Does Malaysia's National Fourth Industrial Revolution Policy Address AI Security Risks? Chapter 2 of Aneja, Urvashi (Ed.), Reframing AI Governance: Perspectives from Asia. Digital Futures Lab, Konrad-Adenauer-Stiftung, 2022, pp.44. <https://www.ai-in-asia.com/02-to-what-extent-does-malysias-national-fourth-industrial-revolution-policy-address-ai-security-risks>

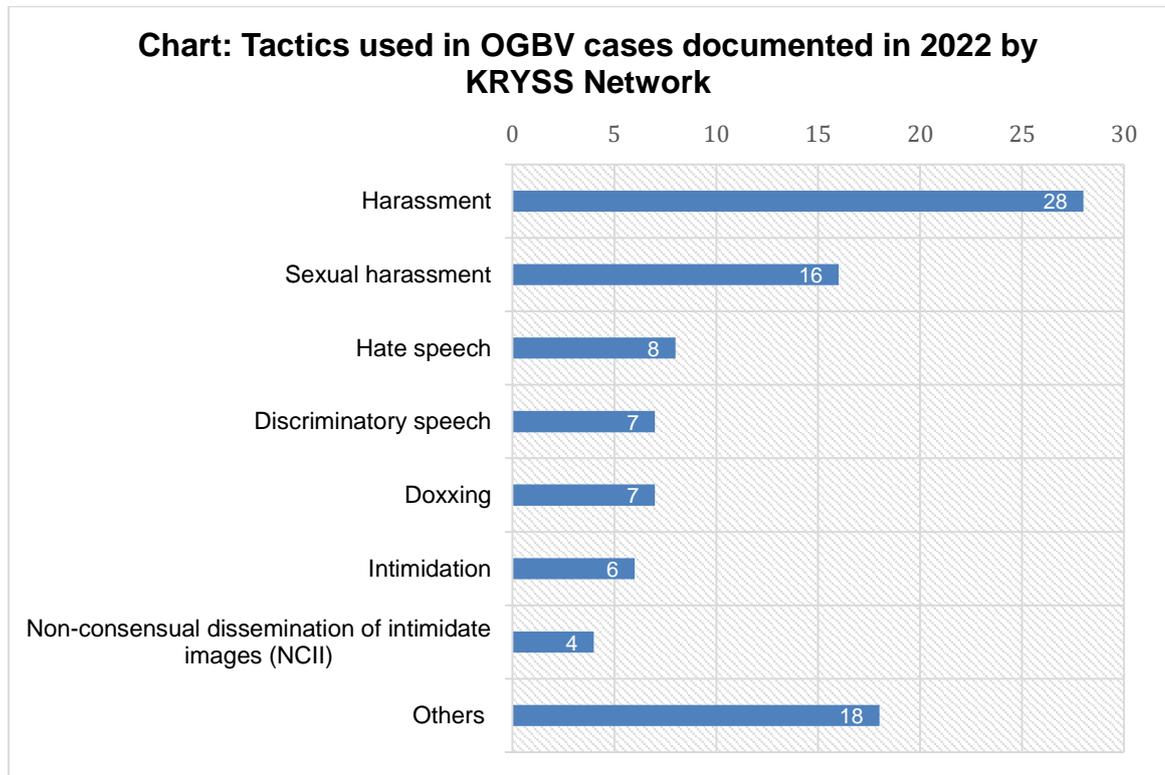
⁴¹ Malaysia is party to CEDAW, which defines GBV in its General Recommendation 19 as “violence that is directed against a woman because she is a woman or violence that affects women disproportionately [...].It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship, or violence perpetrated or condoned by the State or its agents regardless of where it occurs.”

⁴² Frequently asked questions: Tech-facilitated gender-based violence. UN Women, 2022. <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/tech-facilitated-gender-based-violence#:~:text=Technology%2Dfacilitated%2Dgender%2Dbased%20violence,or%20economic%20harm%20or%20other>

⁴³ Rawi, Nisa. Overview of Monitoring and Documentation of Online Gender-Based Violence for Year 2021. KRYSS Network, 13 Jul 2022. <https://kryss.network/2022/07/13/overview-of-monitoring-and-documentation-of-online-gender-based-violence-for-year-2021/>

⁴⁴ Hinson L, Mueller J, O'Brien-Milne L, Wandera N. Technology-facilitated gender-based violence: What is it, and how do we measure it? International Center for Research on Women, 2018. https://www.svri.org/sites/default/files/attachments/2018-07-24/ICRW_TFGBVMarketing_Brief_v8-Web.pdf

included repeated attacks targeted at the same individuals on different occasions and/or times or multiple tactics used in a single OGBV occurrence.



- 4.4. The onus of reporting is on victims/survivors, with limited hope for remedy or redress. A Telegram chat group with over 40,000 users (appearing to be mostly men) was exposed for posting and sharing unsolicited and pornographic images and videos of Malaysian women and underage girls.⁴⁵
- 4.5. There is a lack of clear OGBV data by the Malaysian government—there is no current nationwide data of prevalence of GBV, let alone online GBV. The main data and cases of OGBV that Malaysia has focused on is online child sexual exploitation and abuse (OCSEA), where limited gender analysis has been applied.⁴⁶
- 4.6. The harms experienced by victims/survivors continue to be misunderstood by actors in the justice system and the wider public because of the mistaken assumption that OGBV is not as harmful as in-person violence. OGBV jeopardises the physical safety and mental wellbeing of victims, as digital networks allow for perpetrators to be anonymous and located anywhere, leaving victims in a state of constant turmoil and distress that is often invisible to others. This can lead to risk of suicide, as seen in the

⁴⁵ Hakim, Akmal. Victims Of V2K Telegram Group Come Forward To Report Abuse. The Rakyat Post, 6 Oct 2020.

<https://www.therakyatpost.com/news/malaysia/2020/10/06/victims-of-v2k-telegram-group-comes-forward-to-report-abuse>

⁴⁶ Data is heavily reliant on the criminal justice structures to address these cases in Malaysia, namely the D11 division (Sexual, Women and Child Investigation) of the Royal Malaysia Police as the specialised unit responsible for combating online crimes and domestic violence, including any technology-related crime.

cases of two women who took their own lives due to relentless online violence over their TikTok videos.^{47 48}

- 4.7. The Malaysian legal frameworks that apply to OGBV are scattered and normally confined to heteronormative norms and contexts. Provisions in the Penal Code take a protectionist approach towards addressing OGBV, neglecting the gender-specificity of these acts and failing to provide adequate redress for the harms faced by victim/survivor, instead focusing on the patriarchal societal need to protect a woman's modesty and morality. For instance, although Section 509 has been invoked for the dissemination of intimate images, it does not distinguish between consensual and non-consensual dissemination.
- 4.8. Malaysia has resisted the obligation to read the intersections of OGBV faced by LGBTIQ persons,⁴⁹ which deepens their marginalisation. They continue to face some of the most concentrated and heightened violence online, which mirrors the abuse and mistreatment they face offline. Malaysia has been flagged as a country where State and non-State actors have issued policies, rhetoric, and nationwide action against the queer community, including online. The Global Trans Rights Index has listed Malaysia as the 2nd worst country for trans people.⁵⁰
- 4.9. The survivor-centred and gender-sensitised approach as expounded in CEDAW's General Recommendation 33 is mostly missing in Malaysian laws in writing, in systems or in culture and practices.⁵¹ In most of the cases collected by KRYSS Network, victims/survivors of OGBV rarely report to law enforcement or government agencies. In cases where police reports were made, those rarely led to prosecution of the perpetrator, due to many reasons. Insensitive treatment of OGBV victims/survivors is compounded for marginalised groups. Complaints and reports are trivialised by law enforcement, whether from compassion fatigue or limited capacity and understanding of OGBV.
- 4.10. Victims/Survivors report a lot of resistance from police to address OGBV: there is a lack of understanding of what can be reported as a crime, which is made worse by barriers of accessibility, language, and cultural divide locally. There is rarely any trauma-informed systematic and holistic training, good-practice sharing, and minimum standards of survivor sensitivity among authorities handling OGBV across Malaysia, resulting in gaps in meaningful remedies. Access to justice and positive outcomes that

⁴⁷ Mohamed Basyir, Kalbana Perimbanayagam. Cyberbullying victim found dead after viral Tik Tok video. New Straits Times, 20 May 2020. <https://www.nst.com.my/news/nation/2020/05/594223/cyberbullying-victim-found-dead-after-viral-tik-tok-video>

⁴⁸ Yap Wan Xiang. Mother Of 3 Found Dead After Receiving Hateful Comments On Her TikTok Account. Says, 8 Aug 2022. <https://says.com/my/news/tiktok-cyberbullying-mother-of-3-found-dead-after-receiving-hateful-comments>

⁴⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW, 16 Dec 2010, CEDAW/C/GC/28. <https://www.refworld.org/docid/4d467ea72.html>

⁵⁰ Fergusson, Asher; Fergusson, Lyric. 203 Best (& Worst) Countries for Trans Rights in 2023. Asher & Lyric, 5 Jun 2023. <https://www.asherfergusson.com/global-trans-rights-index/>

⁵¹ Only the Evidence of Child Witnesses Bill currently has a prohibition of cross-examination along gender stereotypes, which could possibly be implemented to avoid retraumatisation of OGBV survivors during criminal trials. However, this newly proposed law is not accepted by most criminal defence lawyers nor is it written in clear enforcement guidelines on OGBV.

are based on survivor's realities are extremely low;⁵² thus, the public turns to NGOs⁵³ to fill such systemic gaps.⁵⁴

- 4.11. The rights of all OGBV survivors to access information, prosecution, and meaningful redress remains unclear, including gaps on their rights for the violent and abusive content to be taken down and/or forgotten, their digital footprints to be erased.
- 4.12. Malaysia's National Human Rights Institution (SUHAKAM), despite having been called upon in a previous NGO UPR report to include digital rights as human rights, has yet to explicitly do so and include OGBV as a thematic focus in its report tabled to the Parliament.

5. FREEDOM OF EXPRESSION AND RIGHT TO INFORMATION

- 5.1. We and others in civil society have long called for the reform of draconian laws that curtail freedom of opinion and expression (FOE).
- 5.2. The Centre for Independent Journalism's FOE status reports for 2021 and 2022 show that the laws most often used are: Section 233 of the Communications and Multimedia (CMA) Act 1998, Sedition Act 1948, Sections 504 and 505 of the Penal Code, and Printing Presses and Publications Act (PPPA) 1984.⁵⁵ They are often used alone or together to question, detain, or charge persons to criminalise legitimate expression online, and in tandem with state Syariah laws on morality and religion to censor speech and expression.
- 5.3. As highlighted in a civil society submission to the Special Rapporteur on Freedom of Opinion and Expression, FOE is often used to justify and validate hate speech and discriminatory (sexist, homophobic, transphobic, racist etc) speech against women and LGBTIQ persons. Forms of expression for the purpose of inflicting harm or denying the voices of especially vulnerable groups or persons should not receive protection under the right to FOE.
- 5.4. Given how sexism, misogyny, trans- and homophobia are normalised, a framework for an unrestrained FOE without understanding these gender power dynamics, and the call for a blanket rejection of any form of censorship, risk silencing and punishing women further.⁵⁶

⁵² Prema Devaraj, Joshua Teh Honguan, Loh Cheng Kooi, Melissa Mohd. Akhir. National Consultation On "The Rights of Vulnerable Witnesses in Court" Consultation Proceedings. Women's Centre for Change, 10 Sep 2015.

https://www.wccpenang.org/01important/books/NC-The_Rights_of_Vulnerable_Witnesses_in_Court.pdf

⁵³ For example, Women's Aid Organisation, Women's Centre for Change, Sarawak Women for Women Society, etc.

⁵⁴ Monsters Among Us: Youth Advocates operates an online reporting portal for child and young person victims called Lapor Predator, with a Chatbot function so that OCSEA victims can report their experiences more easily and receive support throughout the reporting process, thus helping to streamline the journey from harm to access to justice. Through the Lapor Predator website, the organisation advocates for greater multi-stakeholder collaboration to improve the 'unclear' reporting process for children in Malaysia.

⁵⁵ Pillai, V., et al. Freedom of Expression Status Report: 2021. Centre for Independent Journalism, 10 Dec 2021.

<https://cijmalaysia.net/wp-content/uploads/2021/12/FOE-Report-2021.pdf>; and

Naidu, W.G., et al. Freedom of Expression Status Report: 2022. Centre for Independent Journalism, 10 Dec 2022.

https://cijmalaysia.net/wp-content/uploads/2022/12/FOE-REPORT-2022_10Dec2022.pdf

⁵⁶ Gender Justice and the Right to Freedom of Opinion and Expression. Submission to Special Rapporteur on Freedom of Opinion and Expression Irene Khan. KRYSS Network, 16 Nov 2021. <https://kryss.network/2021/11/16/gender-justice-and-the-right-to-freedom-of-opinion-and-expression/>

- 5.5. In June 2021, after posting photos of the Chief Minister of Kedah test-driving a new car while under lockdown, a woman faced extensive online harassment, doxxing, and accusations of fabrication and false allegation against the Chief Minister. Despite the Chief Minister's political secretary confirming the photo, the attacks on her continued, reflecting deeply held prejudices on the credibility and validity of women's voices.
- 5.6. Libresse, a brand specialising in period care products, was accused online of allegedly undermining the dignity of women by using vagina-inspired motifs for their promotional ads.⁵⁷
- 5.7. Sisters in Islam, an NGO for Muslim women's rights, has been battling in court for a 2014 fatwa from the Selangor state religious agency,⁵⁸ which stated that SIS Forum, organisations, and individuals that subscribe to liberalism and religious pluralism are deviants and have strayed from Islamic teachings. Any publications that have elements of liberal and religious plural thought should be banned and seized. Furthermore, the Malaysian Communications and Multimedia Commission (MCMC) should block social media sites that are in contravention of Islamic teachings and 'Hukum Syarak' (Syariah laws), and any individuals who subscribe to liberal and religious plural thought should repent and return to the path of Islam.
- 5.8. This has ramifications not just for SIS: it has threatened their programmes and exposed the organisation and staff to online attacks and backlash, at times supported by state actors. Malay-language media reportedly is more biased and uses negative terms to describe their work, which serves to delegitimise human rights defenders working on religious issues in the eyes of the public and limits the freedom to express dissenting or alternative perspectives related to religion and the impacts of conservative practices on people, especially women and vulnerable groups.
- 5.9. The #Lawan protest in August 2021 called for the resignation of the then prime minister, the reconvening of Parliament, and the ending of the state of emergency. It was organised to be peaceful and follow social distancing practices and was well within the constitutional right to assemble. However, protesters—who were primarily young persons—were met with excessive police presence, roadblocks and barricades, and surveillance from drones and a helicopter.⁵⁹ Further infringing on their freedom of expression and assembly, organisers were called in for investigations in the days prior. The surveillance and backlash extended online, including a youth activist arrested for tweeting about the protest,⁶⁰ an environmental activist who received threatening and inappropriate messages via WhatsApp after a TikTok video

⁵⁷ Rosli, Ameera. Backlash Over Progressive Sanitary Pad Ad Proves That M'sians Are Afraid To Talk About Vaginas. Juice Online, 20 Sep 2021. <https://juiceonline.com/backlash-sanitary-pad-ad-msian-afraid-talk-about-vaginas/>

⁵⁸ SIS FORUM (MALAYSIA) & YANG LAIN lwn. JAWATANKUASA FATWA NEGERI SELANGOR & YANG LAIN [2023] 4 CLJ 449.

⁵⁹ LETTER | Stop harassing #Lawan protest organisers, participants. Malaysiakini, 30 Jul 2021. <https://www.malaysiakini.com/letters/585249>

⁶⁰ Palatino, Mong. #Lawan protest demands the resignation of Malaysian prime minister over pandemic response. Global Voices, 1 Aug 2021. <https://globalvoices.org/2021/08/01/lawan-protest-demands-the-resignation-of-malaysian-prime-minister-over-pandemic-response>

went viral,⁶¹ and reports of police releasing photos of protesters without their consent, encouraging the public to provide information about them to the police.

- 5.10. The government also uses the CMA to target for questioning and arrest of those who are critical of the government; for example, a South China Morning Post journalist was summoned by police after reporting on immigration raids targeting undocumented migrants in 2020,⁶² a refugee activist was charged over a Facebook post on conditions at immigration centres in 2021⁶³ and a cosmetic entrepreneur had to face trial for featuring drag queens in her music video.⁶⁴
- 5.11. The censorship and blocking of movies significantly infringe upon our FOE as it restricts the diversity of narratives and perspectives available to the public. In the past year, two international movies were banned from screening in Malaysia due to LGBTIQ elements.⁶⁵ Previously, the government announced a law review to enable authorities to monitor and control the content on streaming services such as Netflix.⁶⁶
- 5.12. The Universities and University Colleges Act 1971 (AUKU) places additional restrictions on FOE for university and college students. Students report censorship on institutional equipment and internet connections of certain kinds of information, including on issues of human rights and websites of NGOs such as All Women's Action Society.
- 5.13. AUKU also allows for students to be threatened with prosecution for speaking to media without prior permission from the university, unnecessarily restricting their FOE. Members of the Rahman Student League at Tunku Abdul Rahman University of Management and Technology report receiving threats of being sued and being barred from campus facilities by security after a press conference about manipulation of campus elections.⁶⁷

6. HATE SPEECH & TARGETING VULNERABLE PERSONS

- 6.1. Malaysia does not have a law addressing hate speech, nor is it a party to the ICCPR. Several laws address elements of hate speech, such as the Sedition Act, CMA, and

⁶¹ Threats, sexual harassment against activist are unacceptable, says NGO. FMT, 1 Sep 2021.

<https://www.freemalaysiatoday.com/category/nation/2021/09/01/threats-sexual-harassment-against-activist-are-unacceptable-says-ngo/>

⁶² Malaysia: Police summon journalist who reported on migrant raids. Article 19, 4 May 2020.

<https://www.article19.org/resources/malaysia-police-summon-journalist-who-reported-on-migrant-raids>

⁶³ Activist to be charged over posting about immigration depot conditions. FMT, 26 Jul 2021.

<https://www.freemalaysiatoday.com/category/nation/2021/07/26/activist-to-be-charged-over-posting-about-immigration-depot-conditions/>

⁶⁴ Vida pleads not guilty to uploading 'offensive' video featuring 'drag queen' dancers. The Vibes, 8 Nov 2022.

<https://www.thevibes.com/articles/news/76617/vida-pleads-not-guilty-to-uploading-offensive-video-featuring-drag-queen-dancers>

⁶⁵ Kshitij Mohan Rawat. After 'Thor Love and Thunder' and 'Lightyear', Malaysia to ban more films with LGBT elements. Wionews, 12 Aug 2022. <https://www.wionews.com/entertainment/hollywood/news-after-thor-love-and-thunder-and-lightyear-malaysia-to-ban-more-films-with-lgbt-elements-506211>

⁶⁶ Kaur, Minderjeet. Govt looking to curb 'sensitive' content on streaming services like Netflix. Free Malaysia Today, 30 Nov 2021. <https://www.freemalaysiatoday.com/category/nation/2021/11/30/govt-looking-to-curb-sensitive-content-on-streaming-services-like-netflix/>

⁶⁷ Asyraf, Faisal. Uni threatens to sue students over remarks on interference. Free Malaysia Today, 15 Apr 2023.

<https://www.freemalaysiatoday.com/category/nation/2023/04/15/uni-threatens-to-sue-students-over-remarks-on-interference/>

PPPA, but these very same laws are being applied arbitrarily and selectively by the government against human rights defenders and civil society groups,⁶⁸ while hate-based violence being perpetrated against minority groups are ignored.

- 6.2. The stigmatisation of women removing or not donning the hijab remains a prominent feature of online misogyny. The harassment is often aggravated by groups online who habitually police Muslim women, particularly women who are visible in public spaces, who are influencers or have a significant number of followers, and who do not don the hijab. Three Malaysian women who de-hijabed were mobbed online and threatened with investigation for speaking at a forum titled “Malay Women and De-hijabbing.” The backlash against the women came largely from social media and from those who did not attend the discussion. The negative backlash, including violent comments and death threats, eventually garnered attention from the religious authorities, and the then-Minister of Islamic affairs confirmed the three women were under investigation, rather than addressing the OGBV.⁶⁹
- 6.3. During the 15th General Elections, gendered disinformation was rampant. A TikTok video made against the former minister of Women, Family, and Community Development spread the disinformation that the only thing she was able to accomplish in 30 months of being in power was losing weight over helping the people.⁷⁰
- 6.4. During the COVID-19 pandemic and subsequent movement control orders, between 2020 and 2022, human rights defenders came under attack from online backlash to their support of various minority groups. In April 2020, an ambassador faced online intimidation and rape threats over a letter of support for Rohingya refugees, while the head of the Myanmar Ethnic Rohingya Human Rights Organisation Malaysia (Merhrom) faced death threats and hate speech towards the Rohingya community over a false post.⁷¹
- 6.5. As of the 15th General Elections in 2022, the Election Commission of Malaysia still did not have specific guidelines to prevent political parties and candidates from using hate speech during campaigns, or on the use of social media during elections, which resulted in lack of moderation of and penalties for violations online.⁷²
- 6.6. Opaque algorithms on social media platforms also are exacerbating the impacts of ideological bubbles online, resulting in increased political polarisation and the targeting of ‘other’ groups. In one study of TikTok videos during the election season, over half contained Malay-language hate speech targeting non-Malays, especially the Chinese community and Chinese-language content; while TikTok stated it would

⁶⁸ Countering Hate Speech Policy Note – Malaysia. Article 19, 13 Feb 2023. <https://www.article19.org/wp-content/uploads/2023/06/2023.02.13-Hate-Speech-Policy-Note-Malaysia.pdf>

⁶⁹ Zurairi AR. (17 April 2019). ‘Dehijabing’ forum panellists accuse Jais of harassing, intimidating female activists. Malay Mail. <https://www.malaymail.com/news/malaysia/2019/04/17/dehijabing-forum-panellists-accuse-jais-of-harassing-intimidating-female-act/1743964>

⁷⁰ KRYSS Network (2023). Overview of monitoring and documentation of online gender-based violence for Year 2022. https://kryssnetwork/2023/06/15/overview_ogbv_2022/

⁷¹ Media Monitoring Report: APRIL 2020. Centre for Independent Journalism, June 2020. <https://cijmalaysia.net/wp-content/uploads/2020/06/CIJs-April-2020-Media-Monitoring-Report.pdf>

⁷² Social Media Monitoring of Malaysia’s 15th General Elections. Centre for Independent Journalism Malaysia, University of Nottingham Malaysia, Universiti Sains Malaysia, and University Malaysia Sabah, March 2023. <https://cijmalaysia.net/wp-content/uploads/2023/05/GEM-Report-ENG.pdf>

remove content in violation of its community guidelines, some content remains accessible as at earlier this year.⁷³

- 6.7. Elections monitoring found instances of anti-LGBTQ+ elements in campaign materials such as videos and infographics, discriminatory remarks against LGBTQ+ people in political speeches that gained traction on social media platforms, and the use of fake accounts to link political parties and candidates with supporting LGBTQ+ people in an attempt to discredit them, simultaneously fueling LGBTphobia online and offline.⁷⁴
- 6.8. Human rights groups had reported that LGBTQ+ persons and allies faced discrimination and violence online following the 14th General Elections in 2018; for example, online users tagging enforcement agencies and state actors to report LGBTQ+-related content or issues,⁷⁵ illustrating the government's longstanding role in creating an unsafe and discriminatory environment online for LGBTQ+ persons.
- 6.9. A monitoring report by the Centre for Independent Journalism⁷⁶ found that, while most posts analysed were non-offensive, 18% or nearly 1 in 5 were found to have offensive or discriminatory language, in order of severity of issues by race, religion, royalty, gender and LGBTQ+, and refugees and migrants. Compared to past elections, the targeting of LGBTQ+ persons was more politicised, linked with claims of liberalism or anti-Islamic values.
- 6.10. In the same report, while 0.15% used dehumanising/hostile language or incitement to violence, they were mainly aimed towards refugees and migrants. Repeated Immigration Department posts urged the public to report undocumented migrant workers via its hotline, which resulted in hateful comments and doxxing of personal information.⁷⁷

7. CLIMATE CHANGE AND LABOUR RIGHTS

- 7.1. Activists and human rights defenders (HRDs) face attacks in the public and digital sphere in response to their advocacy and as part of disinformation smear campaigns, and intersections with social justice issues such as climate change and labour rights are becoming emerging issues.
- 7.2. SLAPPs (Strategic Lawsuits Against Public Participation) are often used to intimidate, harass, and/or silence critics, including HRDs, by draining their time and resources in an unnecessary legal battle. Such lawsuits have also been used by the Pahang state

⁷³ Jalli, Nuurrianti. How TikTok became a breeding ground for hate speech in the latest Malaysia general election. The Conversation, 23 March 2023. <https://theconversation.com/how-tiktok-became-a-breeding-ground-for-hate-speech-in-the-latest-malaysia-general-election-200542>

⁷⁴ Preliminary Analysis: LGBTphobia in Malaysia's 15th General Elections (GE15). Justice for Sisters, 19 Nov 2022. <https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/>

⁷⁵ E Cheah, pp. 38.

⁷⁶ The Centre for Independent Journalism (CIJ) is a non-profit organisation that advocates for free media and the freedom to express, seek, and impart information.

⁷⁷ Social Media Monitoring of Malaysia's 15th General Elections. Centre for Independent Journalism Malaysia, University of Nottingham Malaysia, Universiti Sains Malaysia, and University Malaysia Sabah, March 2023. <https://cijmalaysia.net/wp-content/uploads/2023/05/GEM-Report-ENG.pdf>

government to demand an apology on social media platforms and RM1 million in damages from an activist who wrote about logging activities in the state.^{78 79}

- 7.3. Indigenous rights group SAVE Rivers had published on its website 8 articles between June 2020 and March 2021 about timber logging company Samling Plywood, saying that it was conducting illegal logging outside of its concession area and without adequate consultation with Indigenous residents, after having rushed the Malaysian Timber Certification Council process during the pandemic.⁸⁰ SAVE Rivers is now facing a defamation SLAPP.
- 7.4. Since the past few years, misinformation about climate change has become prevalent.⁸¹ In 2022, there were 850,000 climate-sceptical tweets or retweets, marking a peak in the rejection of climate change science. This dangerous trend reduces climate change awareness among Malaysians, particularly among young people who rely heavily on social media for climate change information.⁸²
- 7.5. Another emerging area of concern is the labour rights of those in the gig economy, particularly those working for e-hailing and online delivery apps such as Grab and Foodpanda, or courier services for online shopping platforms. They are not considered employees and are not covered under the Employment Act,⁸³ and thus face depressed wages, exploitation, and unfair working conditions due to the imbalance of power in the digital workspace, evidenced by the workers' recent protest.^{84 85} Drivers with disabilities face additional barriers to entry, such as being required to undergo medical tests and buying hearing aids, and limited driving exam times.⁸⁶

⁷⁸ Razak, Radzi. Report: Pahang govt sues environmental activist for defamation over logging issue. Malay Mail, 18 Jun 2022. <https://www.malaymail.com/news/malaysia/2022/06/18/report-pahang-govt-sues-environmental-activist-for-defamation-over-logging-issue/12932>

⁷⁹ Cheah Chor Sooi. Use of SLAPP against women human rights defenders in M'sia condemned. Focus Malaysia, 14 Feb 2022. <https://focusmalaysia.my/use-of-slapp-against-women-human-rights-defenders-in-msia-condemned/>

⁸⁰ Keeton-Olsen, Danielle. Sarawak Indigenous NGO squeezed by defamation case, silenced from reporting alleged logging. Mongabay, 16 May 2023. <https://news.mongabay.com/2023/05/sarawak-indigenous-org-squeezed-by-defamation-case-silenced-from-reporting-alleged-logging/>

⁸¹ Klepper, David. Climate misinformation 'rocket boosters' on Musk's Twitter. AP News, 20 Jan 2023. <https://apnews.com/article/elon-musk-twitter-inc-technology-science-social-media-a7e2e3214abb4470dcb6e2837aa39c2e>

⁸² Change for Climate: Findings from the National Youth Climate Change Survey Malaysia. UNDP, UNICEF & EcoKnights, 19 Nov 2020. <https://www.undp.org/malaysia/publications/change-climate>

⁸³ Cheah, Donovan, and Fang, Adelyn. High Court Rules that Grab Drivers are Not Employees. Donovan & Ho, 13 Jul 2021. <https://dnh.com.my/high-court-rules-that-grab-drivers-are-not-employees/>

⁸⁴ Yeong, Ashley. Grab, Foodpanda strike: Riders call for better delivery fees, social security amid rising cost of living. Malay Mail, 5 Aug 2022. <https://www.malaymail.com/news/malaysia/2022/08/05/grab-foodpanda-strike-riders-call-for-better-delivery-fees-social-security-amid-rising-cost-of-living/21245>

⁸⁵ Huei Ting Cheong. Building Power Through Associations: Experience of Grab Drivers in Malaysia. Asian Labour Review, 31 May 2023. <https://labourreview.org/malaysia-grab/>

⁸⁶ Disabled drivers want discrimination to end in e-hailing services. The Star, 27 Jun 2019. <https://www.carsifu.my/news/disabled-drivers-want-discrimination-to-end-in-e-hailing-services>

8. RECOMMENDATIONS TO GOVERNMENT

Recommendations related to prevention of digital rights abuses through consciousness-raising and education

- 8.1. Develop a comprehensive roadmap that looks at ensuring peoples' human rights in digital spaces from a gender lens, including through law and policy reforms, social change through consciousness raising and preventive strategies.
- 8.2. Strengthen awareness on climate change by amplifying and validating the voices of young environmentalists through constant engagement and the formation of a youth task force or council on climate change.
- 8.3. For MCMC and the Election Commission, develop guidelines on media standards and campaigns, respectively, to counteract misinformation and disinformation that also leads to increased polarisation and hate speech against vulnerable groups.
- 8.4. Conduct regular public campaigns on raising awareness on disinformation, hate speech, and online gender-based violence.
- 8.5. Address code of conduct in digital spaces, as well as the importance of having non-discriminatory and respectful interactions in digital spaces through educational programmes and suitable self-regulatory i.e. Content Code and monitoring mechanisms.

Recommendations related to data, evidence, and research gaps in effective and innovative policy development

- 8.6. Review the standard operating procedures of government agencies and the police in dealing with complaints of online gender-based violence to be completely victim-centric, timely, and proactive; and to integrate monitoring by EAIC with reports tabled before the relevant Parliamentary Special Select Committee for accountability for action without delay.
- 8.7. Implement consistent documentation and monitoring of OGBV to plug the gap in national prevalence data and evidence-building, in consultation with civil society and academic institutions throughout Malaysia. Dovetailing with ground-up and public-facing campaigns that create a space for open discussions on safety in the digital environment allows for prevalence data to be collected in an integrated and inclusive manner to all impacted communities to identify cybercrimes or OGBV crimes.
- 8.8. Establish a clear index or indicators to measure the quality of internet access in Malaysia so gaps are better identified, and tailored solutions can be made.
- 8.9. Conduct research and document existing AI use in Malaysia, publicly sharing positive and negative impacts including use cases, and best practices.
- 8.10. Institutionalise AI impact assessments and embed societal requirements in AI research and development.

Recommendations related to law reform and enforcement of existing laws

- 8.11. Recognise the rights of Indigenous Peoples enshrined in the UN Declaration on the Rights of Indigenous Peoples, which was ratified by the Malaysian government in 2007.
- 8.12. Review and repeal laws that restrict the freedom of expression of persons, civil society and human rights defenders, and the media, including the Sedition Act, the PPPA, and parts of the CMA and the Penal Code.
- 8.13. Adopt the UN Rabat Plan of Action on the Prohibition of Incitement to Hatred and become a party to the ICCPR to curb hate speech.⁸⁷
- 8.14. Legislate to prohibit and address socio-cultural intersecting forms of discrimination, among others, the Anti-Discrimination Bill; prevent, prosecute, and provide meaningful remedies for online gender-based violence cases, centred on survivor-centred impacts; and implement using an integrated, multisectoral approach on the ground.
- 8.15. Amend the PDPA to align with international standards and best practices. Ensure comprehensive coverage of right to privacy, obligations for data controllers including compulsory and prompt notification in the event of a data breach, enforcement mechanisms and effective redresses for affected users in the event of a violation of privacy. This also includes promoting and protecting the people's autonomy over their own personal information and rights to be free of surveillance.
- 8.16. Enact the Gender Equality Act in consultation with various stakeholders, including rights organisations and HRDs.
- 8.17. Curb the usage of SLAPPs (Strategic Lawsuits Against Public Participation) against human rights defenders and the media, and strengthen legislation to protect whistleblowers in cases of social justice.

Recommendations related to national policies reforms, national action plan, and standard settings

- 8.18. Provide free and secure fixed broadband at public places where local communities assemble, particularly for rural areas.
- 8.19. Develop a Rural Internet Access Policy that allows for and legalises community networks to be operationalised wholly or partly by local communities and/or local non-government organisations, with the support and participation of the private sector and/or local councils.
- 8.20. Expand USP Fund access for local communities and partnering NGOs to pilot projects, including community networks, that may be overlooked by for-profit service providers.

⁸⁷ Rabat Plan of Action http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

- 8.21. Follow through on Pelan Tindakan OKU 2016–2022, which states what meaningful access to the internet should look like for persons with disabilities.
- 8.22. Develop and implement a national policy and plan, with adequate institutional resource allocations, to ensure Malaysia’s compliance with the latest version of the Web Content Accessibility Guidelines (WCAG).
- 8.23. Provide frontline officers with institutionalised and compulsory training on survivor-centric and sensitised handling of OGBV cases, in collaboration with NGOs as ground issues and practicum experts.
- 8.24. Conduct stakeholder consultations as part of developing ethical standards and governance frameworks on digital technologies, including AI, that prioritise transparency, fairness, and accountability, and safeguard the human rights of vulnerable groups.
- 8.25. Invest in and engage with global Artificial Intelligence governance networks for effective communication and innovation in governance frameworks and business models.

Annexure

Annex 1: List of Submitting Organisations

KRYSS Network (Lead Organisation)

KRYSS Network is a Malaysian organisation focusing on freedom of expression from a gender lens. <https://kryss.network> Email: info@kryss.network

Justice for Sisters

Justice for Sisters is a human rights group working on the rights of lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) and gender-diverse persons in Malaysia.

<https://justiceforsisters.wordpress.com> Email: justiceforsisters@gmail.com

Monsters Among Us: Youth Advocates

Monsters Among Us (MAU) is a non-profit organisation that combats systemic violence against children in Malaysia through youth-led child rights advocacy.

<https://www.laporpredator.org> Email: monstersamongus2017@gmail.com

Pertubuhan Jaringan Kebajikan Komuniti (JEJAKA)

JEJAKA is an organisation for GBQ men in Malaysia to create safe and brave space for self-acceptance. <https://jejaka.org> Email: hello@jejaka.org

Sisters in Islam (SIS)

Sisters in Islam is a Malaysian civil society organisation committed to promoting women's rights within the frameworks of Islam and universal human rights. <https://sistersinislam.org>

Email: sis@sistersinislam.org.my

SIUMAN Collective

SIUMAN (the Malay-language word for "sane") is a collective of mental patients and allies fighting for socioeconomic & political equity & equality for the mentally ill.

<https://twitter.com/KamiSIUMAN>

Kemban Kolektif

A feminist civil society organisation focused on gender, access to justice, and intersecting human rights issues. <https://my.linkedin.com/company/kemban-kolektif> Email:

consult@kembankolektif.org

Kolektif Iklim

A youth-led movement mobilising to strengthen the synergies between climate action & biodiversity protection in Malaysia. <https://www.instagram.com/kolektifiklim/?hl=en>

Demokrat Universiti Malaya (UM)

An independent student movement bringing the idea of democracy to UM.

<https://linktr.ee/DemokratMalaya>

Legal Dignity

Legal Dignity is a queer-affirming feminist initiative that works to promote and defend the rights of sexual minority people to meaningful access to justice. <https://legaldignity.org>

Email: ld.legaldignity@gmail.com

Partners of Community Organisation (PACOS Trust)

A community-based organisation dedicated towards supporting indigenous communities in Sabah. <https://pacostrust.com> Email: info@pacostrust.com

Centre of Independent Journalism (CIJ)

The Centre for Independent Journalism, Malaysia (CIJ) is a non-profit organisation that aspires for a society that is democratic, just and free where all peoples will enjoy free media and the freedom to express, seek, and impart information. <https://cijmalaysia.net>

Email: cijmalaysia@gmail.com

Association of Women Lawyers (AWL)

The Association of Women Lawyers (AWL) is responsible for the promotion of the rights, welfare & professional development of women lawyers & law graduates in Malaysia.

<https://www.awlmalaysia.org> Email: awlmsia@gmail.com

North-South Initiative (NSI)

North South Initiative is a civil society organisation that aims to promote sustainable development in Malaysia and other developing countries. <https://nsinitiative.net> Email:

admin@nsinitiative.net

The Malaysian Centre for Constitutionalism and Human Rights (MCCHR)

The Malaysian Centre for Constitutionalism and Human Rights (MCCHR) is a non-partisan and non-profit organisation that provides an integrated approach towards the protection and promotion of human rights in Malaysia via strategic litigation programmes.

<https://mcchr.org/> Email: pusatrakyatlb@mcchr.org

Annexure

Annex 2: List of OGBV-relevant Legislation in Malaysia

Laws	Description of the law	Types of OGBV	Punishment
Section 509 of the Penal Code	This law asserts any person who insults the modesty of any woman by word, through sound, gesture or exhibits any object intentionally, shall be punished for a term which may extend to five years or be fined or both.	Victims of non-consensual dissemination of intimate images are protected by the provision.	Imprisonment for up to five years or with fine or with both.
Section 506 of the Penal Code	This law criminalises threats to cause death or grievous hurt, the destruction of any property by fire, or to cause any other offence punishable with death or imprisonment.	This provision protects victims/survivors who receive such threats both online or offline in nature.	Imprisonment for up to two years in jail, a fine or both. When there are threats to cause death or grievous bodily harm, the prison term can be extended up to seven years.
Section 383 of the Penal Code	This law states that whoever intentionally instils fear in a person, thereby dishonestly induces the person to (with fear) deliver any property or valuable security, commits extortion.	Section 383 is commonly used in cases of sextortion .	Imprisonment for up to seven years or with fine or with whipping or with any two of such punishments

Part XVA and Section 2 of Employment Act 1955	This law define "sexual harassment" as any unwanted conduct of sexual nature, verbal or non-verbal, visual, gestural, or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.	This Act is limited to sexual harassment in the workplace .	If the occurrence of sexual harassment is proven, the employer shall (i) dismiss the employee without notice, (ii) downgrade the employee, (ii) impose any other lesser punishment as the employer deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of 2 weeks.
Sexual Offences Against Children Act 2017	This law was established in 2017 with the intention to protect children who are victims of sexual abuse or harassment.	Section 10 (access to pornography), Section 11 (sexually communication with children), Section 12 (child grooming), Section 15 (non-physical assault on a child) of the Act covers OCSAE (Online Child Sexual Abuse Exploitation).	Section 10: Liable to imprisonment maximum 5 years or fine maximum RM10,000 or to both. Section 11: Imprisonment maximum 3 years. Section 12: Imprisonment maximum 5 years and liable for whipping. Section 15: Imprisonment maximum 10 years or fine maximum RM20,000 or both.
Section 233 of the Communications and Multimedia	This law renders it an offence when a person makes, creates, or solicits any content that is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person.	Victims of online harassment and violence are generally protected by this Act.	A fine up to RM50,000, jailed up to a year, or both.

Anti-Sexual Harassment Act 2022	The scope of the sexual harassment would include <i>'any unwanted conduct of a sexual nature, in any form, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is reasonably offensive or humiliating or is a threat to his well-being.'</i>	Victims of online sexual harassment, cyberflashing, threats of rape & sexual violence and non-consensual dissemination of intimate images will be protected by this act.	Offenders may have to pay compensation or damages of up to RM250,000 for any loss or damage suffered by the complainant. Those who fail to comply with the ruling can be imprisoned or fined.
Anti-Stalking Law 2022 / Section 507(a) of the Penal Code	Under the provision, a person is deemed to have committed stalking if the individual repeatedly by any act of harassment, intends to cause or knowing or ought to know, that such an act causes distress, fear or alarm to any person with regard to their safety.	Victims of stalking both online and offline are protected by this provision.	Imprisonment of not more than three years, a fine or both.

Laws defining and penalising gender-based violence – either existing as separate laws or contained within a country’s penal law

The Domestic Violence Act 1994 (DVA) was enacted to curb the use of violence as an instrument to settle domestic disputes and as a platform for the victims (spouse, former spouse, child, incapacitated adult or any member of the family) to seek protection and justice. DVA recognises emotional, mental and psychological forms of violence and the use of electronic means to threaten or insult the modesty of the victims. Recognition of psychological violence in a domestic violence case is important and especially useful in cases where OGBV is involved, especially when communication technology is used to maintain the abusive control over the victim.

However, DVA in practice only recognises marriages that are lawful or customary unions that are permitted in Malaysia. This excludes same-sex and non-heterosexual marriages, as the Ministry of Women, Family and Community Development has presented in Parliament that the government’s position on gender only encapsulates women and/or men. This contradicts CEDAW’s General Recommendation 28 on intersectional reading of Malaysia’s general obligations embodied by Article 8(2) of the Federal Constitution—where discrimination based on gender is inextricably linked with other factors—ethnicity, religion

or belief and family background. In systemic structures manifested in culture or practices including by criminal justice personnel and policymakers, there is a clear lack of understanding and resistance to the application of gender and intersectionality as per Malaysia's CEDAW obligations.

The other laws for gender-based violence can be found in the **Penal Code**, which often fall short of the definition provided in the Declaration on the Elimination of Violence against Women (DEVAW) and General Recommendations 19 and 35 of CEDAW. There are: 1) Section 383 of the Penal Code: Extortion; 2) Section 385 of the Penal Code: Putting person in fear of injury in order to commit extortion; 3) Section 503 of the Penal Code: Criminal intimidation; 4) Section 509 of the Penal Code: Word or gesture intended to insult the modesty of a person.

While these provisions are invoked in some cases of online gender-based violence, they neglect the gender-specificity of these acts and fail to provide adequate redress for the harms faced by victim/survivor. For instance, Section 509, although has been invoked before the dissemination of intimate images, does not distinguish between consent or the lack of consent in the attempt to disseminate the content. The provision is grounded in the false belief that a woman's modesty is something that needs to be protected.

The **Sexual Offences against Children Act** criminalises the act of sexually communicating with a child or encouraging a child to sexually communicate by any means. Most of the offences were committed offline with the use of a smartphone or mobile device to record. The children were solicited directly by the offenders, with the exception of one case in which a facilitator was identified. The number of charges for the possession of child sexual abuse material (CSAM) was relatively high, while the number of charges for CSAM production was lower. In a majority of the cases, sexual gratification was identified as the primary motivation for offenders. Monetary gain was the driving factor in one case only. In that particular case, the mother of the victim and her boyfriend coerced her to engage in sexual intercourse with two other men in exchange for cash, which was kept by the mother. According to one government interviewee: "Child sexual abuse materials, grooming and sexual extortion are the most common offences under OCSEA categories in Malaysia".

Section 233 of the Communications and Multimedia Act 1998 (CMA) provides that it is an offence for anyone to make "any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive...with the intent to...harass another person." Sharing or dissemination of "obscene content", including women's sexually explicit photos recorded the highest filed by MCMC under Section 233 of the said Act. Criminalising dissemination of women's sexually explicit photos under obscenity laws should be critically reviewed. The power to punish under such laws vest in the idea of women's body being a matter of public morality and national honour and the visibility of women's nude photos is deemed as a threat to the country's morality and religious principles. Underlying this is the desire to censor expression of women's sexuality and bodily autonomy in public spaces.

Annexure

Annex 3: Use of Laws to Investigate and Prosecute Opinions and Expression in Malaysia

Table: Freedom of Expression Status Report, 2021 and 2022, by CIJ¹					
Laws	2020	2021		2022	
	Incidents (Mar–Dec 2020)	Incidents (Jan–Nov 2021)	Individuals implicated	Investigations (Jan–Nov 2022)	Individuals implicated
Section 233 of the Communications and Multimedia (CMA) Act 1998 (criminalises improper use of network facilities or network service, etc)	71	140	236	114	126
Sedition Act 1948 (criminalises discourse deemed as seditious)	25	19	40	15	19
Section 504 of the Penal Code (criminalises intentional insults with intent to provoke a breach of the peace)	4	32	45	6	8
Section 505 of the Penal Code (criminalises statements conducting to public mischief)	19	35	72	30	31
Emergency (Essential Powers) (No. 2) Ordinance 2021 [EO2] (criminalises "fake news" relating to COVID-19 or the Emergency Proclamation of 2021)	n/a	30	12	n/a	n/a
Printing Presses and Publications Act (PPPA) 1984 (governs the usage of printing presses)	3	0	0	3	3

¹ Pillai, V., et al. Freedom of Expression Status Report: 2021. Centre for Independent Journalism, 10 Dec 2021. <https://cijmalaysia.net/wp-content/uploads/2021/12/FOE-Report-2021.pdf>; and Naidu, W.G., et al. Freedom of Expression Status Report: 2022. Centre for Independent Journalism, 10 Dec 2022. https://cijmalaysia.net/wp-content/uploads/2022/12/FOE-REPORT-2022_10Dec2022.pdf