

FREEDOM OF EXPRESSION STATUS REPORT: 2021



*Launched by the Centre for
Independent Journalism (CIJ) in
conjunction with International
Human Rights Day 2021*

CENTRE FOR
**INDEPENDENT
JOURNALISM**
Advocating Media Freedom and Access to Information



The Centre for Independent Journalism (CIJ) is a feminist, freedom of expression watchdog and 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.

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Published in Kuala Lumpur in December 2021

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EXECUTIVE SUMMARY

As COVID-19 continues to take a toll on our fundamental human rights and basic liberties, it has become important now more than ever to continue protecting our freedom of expression (FOE) and speech and hold the authorities accountable.

In particular, we must carry on monitoring, documenting and making public related developments that threaten to limit our free speech or media operations, or infringe on our rights to express ourselves, share information, challenge, think, create, and explore ideas. These reports provide sound evidence and data to support our policy recommendations, which we can then use to better inform and strategise our work to address ongoing human rights violations and threats to our fundamental liberties and dignities that either surfaced or were magnified due to the pandemic.

“Freedom of Expression Status Report: 2021” is one such report. Launched in Kuala Lumpur in conjunction with International Human Rights Day, this annual report by the Centre for Independent Journalism (CIJ) Malaysia provides an overview into the state of freedom of expression¹ (FOE) in Malaysia during 2021. It illustrates how external factors such as COVID-19 and a nationwide emergency played a significant role in undermining our FOE this year. It also includes thematic policy observations, analyses and recommendations for the State to consider to better protect and uphold our basic rights.

This year has been a difficult year for most. But for those of us who speak truth to power and exercise our basic and fundamental human rights, this has been a year of continued struggle. Our FOE continues to be trampled on by the State, often under the guise of external factors like COVID-19 and an emergency, and many of our comrades have been harassed, intimidated and silenced. Nevertheless, we stand stronger in unity and solidarity, and we will continue speaking up and highlighting the various injustices and violations.

We hope that the launch of this report leads to more public awareness surrounding the state of FOE in Malaysia and our challenges in impacting change, and actual change from the State. We also hope and strongly urge the government of the day to seriously consider our recommendations and work towards implementing the various reforms we have suggested. We stand ready to work with the government to push these reforms through, alongside our civil society partners and friends, and collectively bring about change and better enshrine our rights in law and reality, for a better Malaysia, a true *Keluarga Malaysia*.

¹ Disclaimer: The data and statistics presented in this report was computed from CIJ's monitoring of online media reports and may not include every incident under the aforementioned laws. As such, our data may vary from official government statistics or data from other human rights organisations. Furthermore, our monitoring scope does not cover all repressive laws that are used in Malaysia to curtail FOE, such as security laws and gender or sexuality-related laws. Therefore, this already extensive list is certainly non-exhaustive as there are many more individuals who are being probed and charged under very repressive laws. Read together, however, these incidents can be seen as part of a larger, deliberate and concerted series of actions intended to stifle our fundamental freedoms.

FREEDOM OF EXPRESSION IN 2021

Incidents ² from March to December 2020 ³	Incidents from January to November 2021	List of repressive laws	Individuals implicated ⁴ in 2021
71	140	Section 233 of the Communications and Multimedia (CMA) Act 1998 (criminalises improper use of network facilities or network service, etc)	236
25	19	Sedition Act 1948 (criminalises discourse deemed as seditious)	40
4	32	Section 504 of the Penal Code (criminalises intentional insults with intent to provoke a breach of the peace)	45
19	35	Section 505 of the Penal Code (criminalises statements conducting to public mischief)	72
0	1	Official Secrets Act (OSA) 1972 (criminalises the dissemination of information classified as an official secret)	1
3	0	Printing Presses and Publications Act (PPPA) 1984 (governs the usage of printing presses)	0
7	9	Peaceful Assembly Act (PAA) 2012 (regulates public protests)	292
N/A ⁵	30 ⁶	Emergency (Essential Powers) (No. 2) Ordinance 2021 [EO2] (criminalises "fake news" relating to COVID-19 or the Emergency Proclamation of 2021)	12 ⁷
129	266	Total number of incidents	N/A ⁸

² Incidents include reported police investigations, arrests and charges. We did not use "case" as that could refer to just investigations, which is not what our "incidents" capture.

³ Data was collected from March 2020 onwards as it marked the first change in government following the 2018 polls. Prior to that, FOE violations were not as rampant as they are now.

⁴ This refers to the total number of individuals who were investigated by the police or summoned as witnesses.

⁵ EO2 was only introduced in 2021.

⁶ This is the official figure by the State, and which CIJ was unable to capture fully in its media monitoring work (only 12 incidents).

⁷ This figure does not include the individuals implicated in the State's 18 other EO2 incidents, which are not public knowledge.

⁸ The total number of individuals implicated is not included in our table as there are many individuals with overlapping cases (eg. sedition and Section 233 of the CMA). Including a cumulative figure of all the individuals (i.e. 698) will be inaccurate and misleading.

THEMATIC OBSERVATIONS AND RECOMMENDATIONS

A. FREEDOM OF EXPRESSION AND INTERSECTIONAL AREAS

Demographic analysis

On average, there were more men than women who were implicated. In terms of age, we observed incidents involving most age groups - from teenagers and youngsters below 25, adults up to 50 and senior citizens up to age 69 - thus showing the full extent of the use of State instruments. However, we did not see anyone older than 70 in our data. Looking at work and profession, we saw individuals from all walks of life, including opposition politicians, activists, netizens, students and so on. Besides that, we noted arrests, interrogations and investigations were not predominantly focused in cities like Kuala Lumpur, but also in various parts of the country, including rural areas. Our analysis on this is two-fold - on the one hand, this could be an indication that more and more members of society are exercising their right to express themselves, but on the other hand, the scope of repressive laws is wide and there is a higher chance for freedom of expression (FOE) violations to take place given the reachability and virality of social media postings.

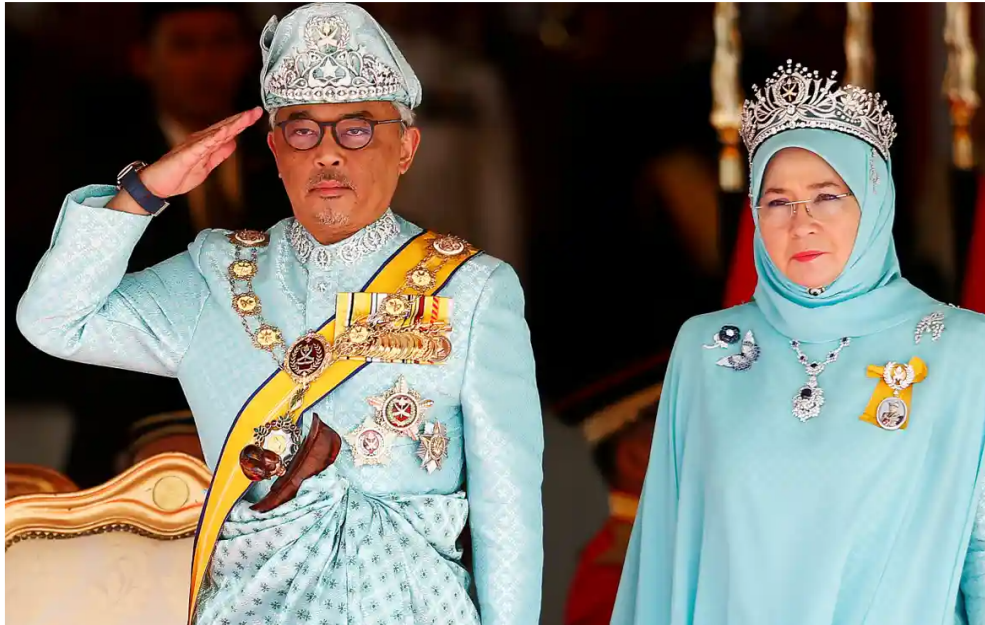
Necessity and proportionality

In terms of the allegedly offending content we documented, we observed both pandemic or vaccination related postings or sentiments that were sceptical, cheeky, critical, dissenting and satirical - valid forms of expression - as well as the more serious violations such as making provable false claims, threats to another's life, security or well being and expressing hate speech. For example, we saw how four individuals were either investigated or arrested for their comments against Kedah Menteri Besar Muhammad Sanusi Md Nor following his reported remarks to the media that were seen as insensitive to COVID-19 victims. While some actions may have warranted a response, such as the [fourth case](#) of an IT analyst who allegedly made "threatening remarks" against Sanusi, not all four cases warranted significant action - there was one individual who claimed that the menteri besar was "[displaying his stupidity for all to see](#)".

We strongly believe most of the incidences we observed this year did not warrant investigations and some actions by the State were unwarranted, excessive and disproportionate in maintaining public order or peace - such as [breaking into the house and arresting](#) graphic designer and artist Fahmi Reza, over a Spotify playlist he created that was seen as insulting the queen. We observed with alarm how Fahmi was investigated several times this year over his work - up to at least nine times according to our monitoring - and had his devices confiscated and forced to surrender his Twitter password. Laws such as the Sedition Act 1948, Section 233 of the Communications and Multimedia (CMA) Act 1998 and Section 504 of the Penal Code were consistently used against him. It was also alarming to note that the investigations in itself, in our view, did not warrant investigations in the first place as satire is a protected form of expression - even if they were seen as "insulting" our institutions. There were also no elements of harm, violence or hate speech in his work that would, ordinarily, warrant action and restrictions against such expression.

Malaysia: artist detained for allegedly insulting queen with Spotify playlist

Arrest of Fahmi Reza comes amid concerns of a crackdown on dissent under prime ministership of Muhyiddin Yassin



Screengrab of [The Guardian article](#)

Repressive laws continued to be used in 2021 as seen in the above table. We repeat our position: laws that are largely restrictive and oppressive in nature, and which blur the lines between right and wrong and do not take into account factors like intent, and which are vague in definition and give large and overreaching power to the authorities, must not be used and must instead be reformed. Continuing to rely on arbitrary applications of such laws will almost certainly lead to the potential for misuse and abuse of power, not just because the power to do so is vested in law, but also because these instruments can be conveniently and arbitrarily used to stifle dissent, silence critical thinking and further shrink our democratic spaces on a whim - even if there are no real grounds for doing so. For instance, criminalising all forms of criticism as “fake news”, even criticism or comments which are entirely based on fact but which make the government look bad. Initiating an investigation merely on the account that a particular incident negatively portrays the police is unwarranted and a serious violation of our constitutional guarantees of FOE and speech.

Investigations into netizens and Human Rights Defenders (HRDs)

Rather worryingly, we observed a relatively high number of ordinary citizens being investigated when compared to activists and politicians. We noticed with alarm how valid and legitimate forms of expressions such as asking questions, raising concerns about accountability and transparency, or making light humour of a situation, were restricted and penalised. We saw how a sedition probe was initiated against a Twitter user who simply [posted three question marks](#) along with a screengrab of a news report of Melaka governor

Mohd Ali Rustam visiting a village gymnasium where an Olympic gold medalist from the Philippines had previously trained at. Eight individuals were questioned over this case. We recall as well the case of a [Twitter user](#) who allegedly tweeted about the RM70 million government budget to develop a system for the ongoing COVID-19 vaccination programme. He was arrested, detained, had his devices confiscated, forced to surrender his Twitter account password, and was later investigated under Emergency (Essential Powers) (No. 2) Ordinance 2021 [EO2].

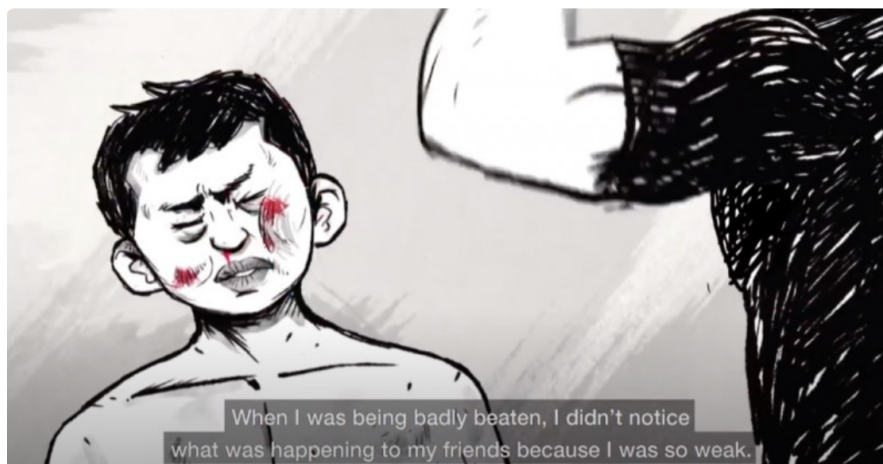
We also continued to see attacks against HRDs this year. We recall how activists were investigated for [attending peaceful solidarity meets](#) and [alleged Movement Control Order \(MCO\) breaches](#) this year. Rather alarmingly, we saw an [activist and illustrator](#) being investigated, raided and questioned by the police over a film they worked on illustrating alleged torture while in police custody. On 2 July 2021, Freedom Film Network (FFN) co-founder Anna Har and animator/artist Amin Landak went to the federal police headquarters in Bukit Aman to have their statements taken in connection with the film, Chilli Powder and Thinner. They finished giving their statements to the police later that day but nevertheless, the police raided the FFN office and Amin's home all the same. We also recall with horror as 20-year-old Sarah Irdina Mohammad Ariff was [questioned for 10 hours](#) for allegedly committing sedition and misusing the internet over tweets that merely iterated the demands of the Lawan movement. She was also expected to be remanded overnight but was released in the wee hours of the following morning.

Filmmaker, cartoonist under probe for movie on police brutality

Anna Har's Petaling Jaya office, Amin Landak's house raided by cops after both called in for questioning today

Updated 5 months ago · Published on 02 Jul 2021 5:40PM · 0 Comments

238 Shares [f](#) [t](#) [e](#) [w](#) [s](#) [p](#)



Screengrab of [The Vibes article](#)



#Lawan: Youth activist released at 1am, after 10-hour grilling for sedition

Screengrab of [Malaysiakini article](#)

HRDs play an important role in society as they promote reform and good governance. In doing so, they create opportunities for debate and expression on shared values. Such a role should be defended as a vital part of public participation, to enable a robust civic discourse and healthy democracy through public scrutiny, criticism and exchange of opinions. Retaliatory investigations against HRDs and the general public for raising attention to violations of basic human rights show the dire need to protect FOE and ensure the authorities in Malaysia are held accountable for any instances of misconduct. Accordingly, the human rights environment in Malaysia must not be allowed to deteriorate into a situation where HRDs - and as a result, the general public - operate within a climate of fear.

Freedom of Assembly

Freedom of peaceful assembly was under grave threat this year. A number of peaceful protests were organised by various groups in ensuring the spread of the messages and demands in claiming our democratic spaces. The organisers and participants, however, experienced various forms of cyberattacks, harassment and intimidation, including being investigated, arrested or charged by the authorities. COVID-19 was mainly used as a justification to undermine the right to peaceful assembly.

The actions by the authorities were often disproportionate as the organisers and participants had taken proactive measures to adhere to the necessary SOPs and social distancing measures to mitigate the risks of COVID-19. Rather than taking a progressive and proactive role in facilitating the protests and in mitigating safety risks in relation to COVID-19, the

authorities came down with heavy-handed measures to crackdown and intimidate those involved in the actions. The actions of the police had, in fact, increased the risks of COVID-19 as seen in the actions of the police in [arresting](#) the 31 young participants who were gathered for a vigil, organised by the Sekretariat Solidariti Rakyat (SSR), commemorating those who had lost their lives to COVID-19, on 19 August at Dataran Merdeka. The irony is that in order to facilitate investigations into an [alleged breach of COVID-19 restrictions](#), they were forced into crowded Black Marias prior to being whis

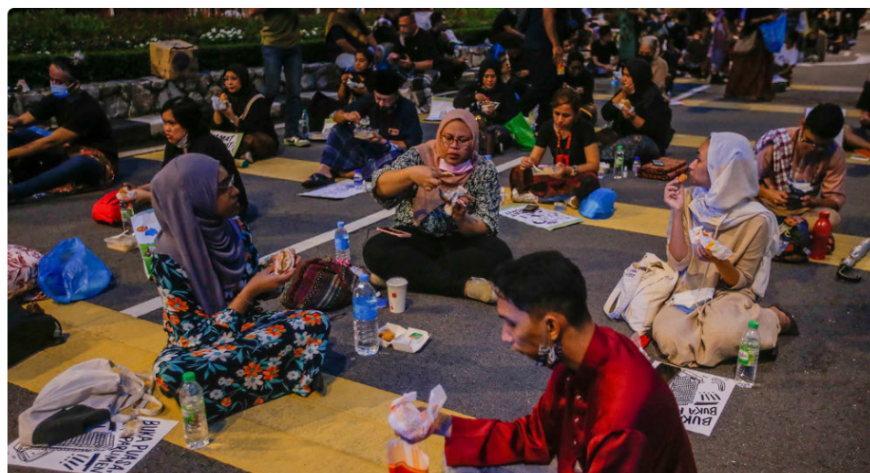
Key instances of police interventions, pre, during and post-peaceful gatherings:

- On 29 March 2021, 11 individuals who peacefully protested outside Parliament on 27 March 2021 against the government's decision to postpone the implementation of UNDI18 and automatic voter registration, were [summoned](#) for questioning for alleged violations of COVID-19 SOPs and the Peaceful Assembly Act 2021. The 11 included prominent civil society activists and opposition politicians.
- On 1 May 2021, the police [announced](#) they would question participants of the 30 April 2021 "Buka Puasa Buka Parlimen" demonstration under the Peaceful Assembly Act 2021.
- On 10 May 2021, five Parti Sosialis Malaysia (PSM) members and activists were [investigated](#) over a Labour Day gathering at Dataran Merdeka on 1 May 2021.
- From July to August 2021, organisers and participants of the series of #LAWAN protests experienced numerous investigations pre- and post- the events. Full details can be found in the [#Lawan Protest Monitoring Report](#).

Cops call in around 90 who broke fast in front of Parliament yesterday urging for its reopening, end of Emergency

Saturday, 01 May 2021 07:08 PM MYT

BY ZURAIRI AR



Screengrab of [Malay Mail article](#)



mk NEWS

Alyaa Alhadjri | malaysiakini.com

Cops identify 29 individuals in #Lawan rally probe

Published: Aug 1, 2021 1:20 PM · Updated: 4:09 PM

Screengrab of [Malaysiakini article](#)



mk NEWS

Cops visit homes of #Lawan participants, organiser decries 'unethical intimidation'

Published: Aug 4, 2021 5:30 PM · Updated: 6:11 PM

Screengrab of [Malaysiakini article](#)

B. MEDIA FREEDOM

Press freedom in Malaysia started off on a low in 2021. February saw the infamous Federal Court ruling that found Malaysiakini [guilty](#) of contempt of court and fined the news portal RM500,000⁹. The decision posed [multiple implications](#) for the media, online portals in particular. Then followed Malaysia's [deterioration](#) in the annual Reporters Without Borders' (RSF) annual press freedom index in April. Malaysia's press freedom index moved down 18 places to 119 (out of 180 countries ranked). For context, Malaysia's best ranking was just one year ago in 2020 (101st place), following much-needed media reforms (albeit at a slow pace) that took place after the 2018 change in government.



Malaysiakini fined RM500,000 for contempt of court

Hidir Reduan Abdul Rashid

Published: Feb 19, 2021 11:28 AM · Updated: Feb 21, 2021 9:06 AM

Screengrab of [Malaysiakini article](#)

The State's decision to prosecute Malaysiakini, complemented with the latest international ratings, truly signified the sorry state of media freedom in Malaysia in 2021. Already we saw a trend of journalists and news portals being investigated by the police and charged in court over their reporting in 2020. This year, we observed more and more journalists being at risk of unnecessary investigations and harassment from the State simply for doing their job.

⁹ The case revolved around third-party comments made by Malaysiakini readers on a story published on the news portal that were deemed as offensive to the judiciary. Malaysiakini was found to be guilty under Section 114A of the Evidence Act (Amendment) (No.2) 2012, which presumes Malaysiakini as the publisher of the impugned comments in question.

Restricted access to official briefings and Parliament

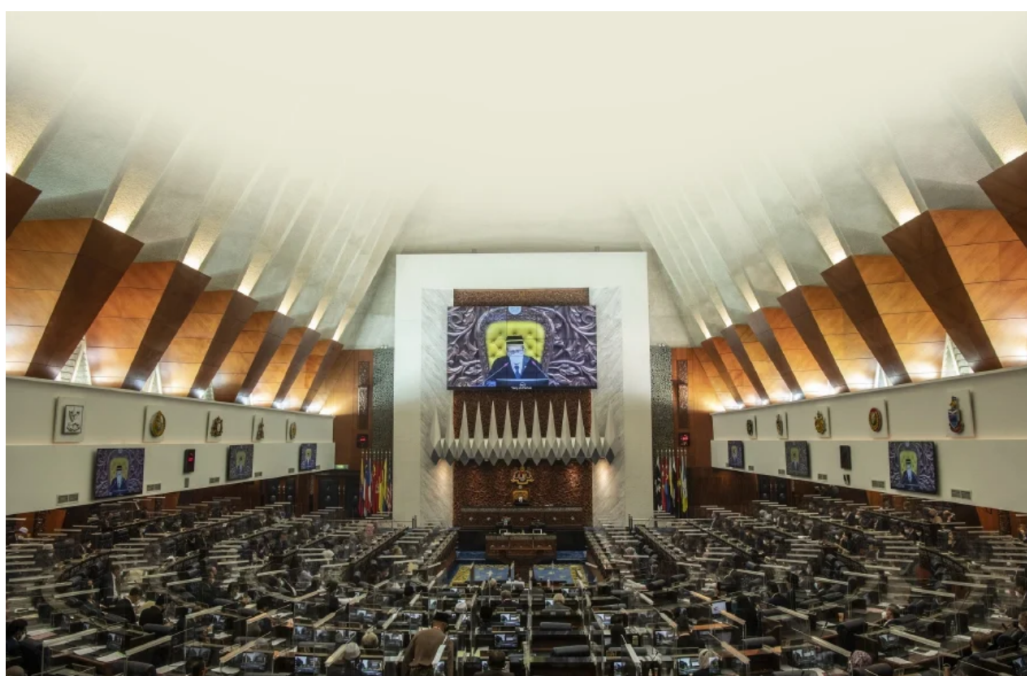
As was the case last year, press conferences after high-level briefings by senior ministers continued to be mostly restricted to only “official” State-owned media. The trend of sidelining the more independent and alternative forms of media, including news portals which operate exclusively online, which are often more critical of the State and its policies, continued. We also saw the bizarre instance of the [media being barred](#) from covering a public hearing being hosted by a city council in April 2021, continuing the trend of restricting public disclosure of information without clear reasons or justifications for doing so.

Despite some positive developments this year¹⁰, we continued to see unfair restrictions in the access of media to parliament or state assembly sittings. September 2021's parliament sitting marked yet another dark day for media freedom in Malaysia when the Dewan Rakyat sitting [excluded several news organisations](#) from covering the proceedings, including News Straits Times and Utusan Malaysia, a first for both newspapers in their respective histories. The decision was similar to what happened during the previous parliament sitting in October 2020, with only minor changes to the permitted list of media. There was no explanation as to how the selection for permitted media outlets was conducted, raising questions on the double standards and transparency of the process.

Dewan Rakyat: Media attendance limited; NST snubbed for first time



By Arfa Yunus - September 8, 2021 @ 6:22pm



Screengrab of [News Straits Times article](#)

¹⁰ Despite the restricted media access to Parliament still in place, the Dewan Rakyat speaker in July [announced](#) the setting up of hybrid press conference platform facilities and exclusive interactive interview sessions with MPs via Zoom to accommodate the reporters who were not there in person.

Lack of access to official events by most media would mean that the news that is being reported is monopolised by either State media or State-friendly media, thus, only reflecting the tone and messages put forth by the government without critical analysis or balanced reporting. This also leads to a one-sided message or perception - which is often the State's narrative if only State-owned media are able to report on the ground. Such restrictions also mean there is less room for accountability from the State or the authorities, without the media there to ask the tough questions and be critical of their policies or decisions. This is crucial now more than ever with the pandemic and with greater concerns around actions taken to mitigate the spread of COVID-19 and vaccination efforts by the State.

Restricted media access negatively impacts the public as well, as they will be crippled in constructively participating in any debate or discussions related to decision-making processes on the issues that affect them by no longer having multiple sources of information to base a decision or opinion on. This is crucial in enabling a right to information (RTI regime). RTI reflects the fundamental premise that all information held by the State and related governmental institutions is, in principle, public and may only be withheld or have restricted access if there are legitimate reasons for not disclosing it, such as for purposes of State security or privacy. In essence, our right to access crucial public information must be a given and should not be arbitrarily restricted.

Harassment of journalists and media organisations

An alarming trend we noticed this year was how journalists were constantly summoned for police investigation over their pieces - either as witnesses in ongoing investigations or as targets of the investigations. We consider such actions as harassment and intimidation tactics that are aimed in silencing and causing fear among journalists. The following list illustrates the journalists who were harassed this year and what for. Almost all of them were called up if they had stories that were seen as challenging the authorities, critical, giving fair comments and remarks or highlighting grouses with the aim of changing the status quo.

- On 27 April 2021, the home ministry said it would [call up Malaysiakini and China Press](#) to get clarification on what it deemed as "inaccurate news reports" over a quote by the deputy inspector-general of police on a rape threat against a teenager.
- On 30 April 2021, Astro Awani confirmed that one of its newscasters was [being investigated](#) for allegedly making slanderous remarks over two RM50,000 compounds issued in Kelantan*.
- On 10 May 2021, a Malaysiakini Bahasa Malaysia desk editor and broadcast journalist were [summoned](#) by the police for questioning in relation to their article that quoted allegations made during a press conference by the then-outgoing top cop.
- On 18 May 2021, two Malaysiakini journalists were [summoned](#) by the police to give their statements over three articles relating to the death of a milkman who died while seeking treatment in the hospital following his police arrest. A [third journalist](#) was summoned later on for questioning as well*.
- On 19 May 2021, then-outgoing Gombak police chief Arifai Tarawe [threatened to sue](#) Free Malaysia Today for RM10 million over two articles it published about his transfer to the integrity unit at the federal police headquarters in Bukit Aman following a death in police custody case at his station. Arifai later [doubled-down](#) on his threat.

- On 28 July 2021, it was reported that the police had [launched an investigation](#) into health news site CodeBlue over an article highlighting claims that a vaccination centre was not reporting COVID-19 cases. Its editor-in-chief was called in to give a statement*.

*An asterix indicates that the police are also investigating the journalists and media organisations under repressive laws such as Section 233 of the Communications and Multimedia Act (CMA) for abuse of network facilities, Section 504 of the Penal Code for insults intended to provoke a breach of peace, and Section 505 of the Penal Code for statements that cause alarm to the public.

Gombak police chief warns FMT of RM10mil suit over transfer story

FMT Reporters · May 20, 2021 1:31 PM

3.1k
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3k



148



22



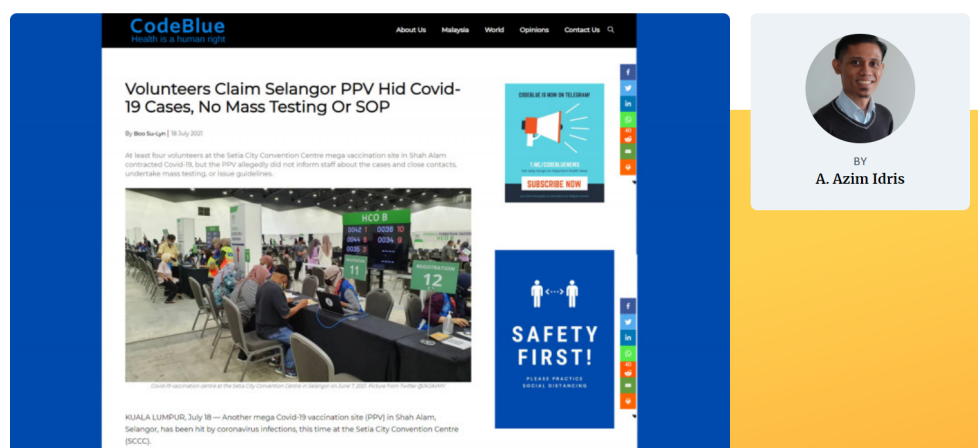
Screengrab of [Free Malaysia Today article](#)

Stop investigations and drop charges against CodeBlue editor: KJ

Science minister will discuss matter with relevant bodies and authorities

Updated 4 months ago · Published on 28 Jul 2021 5:22PM · 0 Comments

113
Shares



Screengrab of [The Vibes article](#)

PDRM Is Investigating An Astro Awani News Anchor For Allegedly Slandering Cops On Air

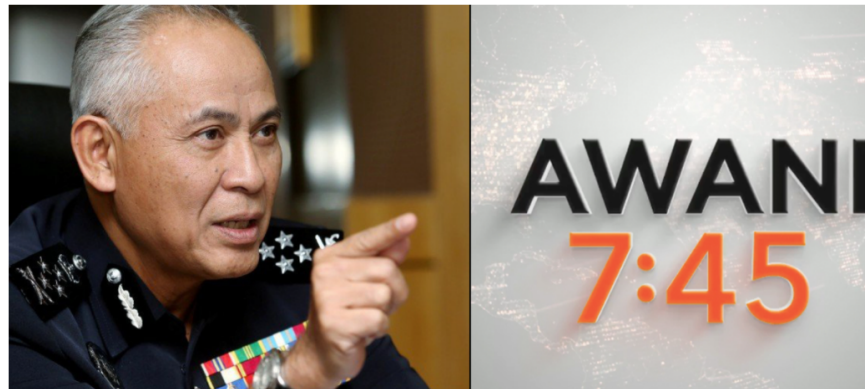
The news anchor, being investigated under multiple charges, faces three years in jail, fine, or both.



By [Sadho Ram](#) — 01 May 2021, 02:36 PM — Updated 7 months ago



[#news](#) [#PDRM](#) [#newsanchor](#) [#newscaster](#) [#astroawani](#) [#COVID19](#) [#COVID2019](#) [#kelantan](#) [#controversy](#)
[#freedomofpress](#) [#freedomofspeech](#)



Screengrab of [SAYS article](#)

Curbing media space and attempting to intimidate media into silence are elements of a failing state. An open and effective media serves to improve the environment for long-term social, political, and economic stability. This would facilitate the right to seek and exchange ideas, opinions and information that would enable the public to form their own opinions and allow for dissenting or alternative positions, and ultimately, aid in the promotion of good governance and in holding the State and its officials to higher account, which is, what is expected of a democratic State.

If the authorities are of the view that they have been misquoted or misrepresented, they are entitled to clarify their statement - as is the prerogative of anyone who has been quoted by the media. However, the media should not be subjected to being summoned by the government or threatened with action simply because the authorities are dissatisfied with the manner in which a report was presented. At the same time, the government should be proactive in responding to allegations and claims highlighted by the media, given the media's key role in addressing and preventing the perpetuation of misinformation and disinformation. Leaders must withstand critique, differences of ideas and dissenting opinions as well as increased demand for greater information transparency - and in fact, they should promote such spaces and standards.

C. COVID-19 AND EMERGENCY

The world came to a standstill when a worldwide lockdown was imposed to combat COVID-19, and efforts were undertaken to restrict certain freedoms and rights. Similarly, we were alarmed by the announcement of the Emergency Proclamation in Malaysia from 12 January 2021 to 1 August 2021, and its repercussions on our fundamental liberties.

No doubt, public health emergencies leading to threats to the lives of the common people may warrant the need for restrictions to our rights to movement, education and work, or increased surveillance. In Malaysia, these restrictions ranged from restricted movements, travel bans, closing of learning institutions to even utilising military force. However, some of these measures seemed rather disproportionate and unnecessary at times.

For instance, there was the former prime minister's [announcement](#) in January 2021 that Parliament proceedings and state assembly sittings would be suspended during the emergency period. Unfettered powers of the executive during the emergency period and the void of parliamentary oversight meant that we lost the necessary checks and balances as the government attempted to overcome the pandemic. Furthermore, as seen in many countries around the world, parliamentary sittings could still take place, safely, during pandemics, without leading to a spike in COVID-19 cases. It appeared as if there was no political will from the government's end to ensure democracy was not crippled during such an important time as the pandemic.

Emergency Ordinance No. 2 (EO2)

By and large, the most damning development during the emergency was the criminalisation of COVID-19 "fake news" under [Emergency \(Essential Powers\) \(No. 2\) Ordinance 2021](#) [EO2], which came into effect on 12 March 2021. This particular Emergency Ordinance (EO), among others, provides for an RM100,000 fine, three-year imprisonment term or both, for the publication and distribution of "fake news" relating to COVID-19 or the Emergency Proclamation. It also gives anyone found to have published "fake news" a 24-hour notice to take down said post or be liable to an RM100,000 fine and allows for the police (subject to a court order) to take "necessary measures" to take down "fake news". "Fake news" is not clearly defined in the law either, opening the real possibilities of abuse through arbitrary arrests, investigations and punitive actions being taken.

There were other major issues with EO2 as well. It was bad enough that the EOs were not even approved by Parliament but bulldozed into legislation through the unfettered powers of the prime minister during the emergency; to make matters worse, EO2 included similar elements - almost word-for-word in some clauses - of the controversial and since-repealed [Anti-Fake News Act 2018](#).

According to [official government data](#), 30 investigation papers under EO2 were opened between 12 March and 6 December 2021. Of these, 12 cases were brought in court, 16 were classified as "no further action" (NFA). These numbers may seem small and not a cause for concern - comparatively, these figures were far less than what was reported in 2020. In 2020, under various other laws, there were [274 investigation papers](#) on COVID-19

"fake news", 35 prosecutions, 21 individuals were found guilty, 90 NFA cases, and 137 open cases.

Teacher becomes first to be charged under 'fake news' Emergency Ordinance

Wednesday, 02 Jun 2021 12:21 PM MYT
BY SOO WERN JUN



Screengrab of [Malay Mail article](#)

30 probe papers on fake news opened under emergency ordinance: Wan Junaidi

Law minister says court proceedings to continue even after repeal

Updated 1 month ago · Published on 25 Oct 2021 5:01PM · 0 Comments



BY
A. Azim Idris

Screengrab of [The Vibes article](#)

Besides that, some of the EO2 cases reported could have been addressed through existing laws and regulations, demonstrating the rather unnecessary need for the EO2. Take, for instance, the [EO2 investigation in May 2021](#) against a Facebook user who allegedly made an inaccurate post about passenger flights arriving into Malaysia from India despite a travel ban. When this case was announced by the police, another, similar case was highlighted. In this second case, a Facebook user had allegedly insulted the government by branding it "foolish" and claiming it was not taking the pandemic seriously by supposedly allowing the flights from India. This case was investigated under Section 504 of the Penal Code and Section 233 of the Communication and Multimedia Act (CMA) 1998¹¹. Since the scope of both laws were adequate in dealing with this case (despite its controversial and arbitrary scope and usage by the State), and both cases, at a cursory glance, are rather similar, a pertinent question to ask is: why the need for another law?

On 25 October 2021, the Dewan Rakyat [approved a motion](#) to annul all EOs. On 8 December 2021, the Dewan Negara [did the same](#), leading to the official revocation of all EOs in Malaysia now that both houses of Parliament had put the decision to vote. While we welcome this long-awaited development, we are concerned over [reports](#) that the revocation of the EOs would not obstruct cases under investigations as well as ongoing court proceedings, to allow the law to take its course. While we respect the courts and understand the need for due processes, we would also argue that the use of unnecessary laws and investigations that mainly aim to serve a political motive and which directly infringe on our rights and liberties must be discouraged and strongly criticised.

¹¹ Section 504 of the Penal Code criminalises intentional insults that are intended to provoke a breach of peace, while Section 233 of the CMA criminalises any misuse of internet and network facilities.

D. RECOMMENDATIONS TO THE GOVERNMENT

1. As we continue to navigate COVID-19 responses, ensure that measures such as lockdowns, quarantine, travel bans, military intervention and restrictions to our constitutional freedoms of speech and assembly:
 - a. have a legal basis
 - b. comply with human rights norms and international human rights standards
 - c. are based on absolute necessity and are not arbitrary in nature, and
 - d. are reviewed constantly to be proportionate in achieving the sole objective of stalling the spread of COVID-19;
2. Create a safe environment for robust civic discourse and healthy democracy by refraining from using scare tactics and arbitrary applications of repressive laws to sanction and intimidate those who criticise, question or belittle the government, including ordinary netizens, opposition politicians and human rights defenders (HRDs);
3. Focus on education and dissemination of public information countering the alleged “fake news” as is being done by the Communication and Multimedia Ministry, and not on prosecution;
4. Place a moratorium on the use of repressive laws infringing on media freedom and right to information (RTI) and which the State must review and amend, such as Section 233 of the CMA, the Printing Presses and Publications Act (PPPA) 1984, the Sedition Act 1948, the Official Secrets Act (OSA) 1972, Section 114A of the Evidence Act (Amendment) (No.2) 2012 and the National Film Development Corporation (Finas) Act 1981, among others;
5. Create an enabling environment for the media to function with independence and with no fear of repercussion for carrying out their reporting functions by dropping all investigations and pledging to stop all future acts of intimidation and adverse actions against the media and journalists, and;
6. Move ahead with the establishment of the Malaysian Media Council as a transparent and independent self-regulatory body for the industry.

APPENDIX

A list of selected freedom of expression incidents from January to November 2021

January

Cartoonist Zulkiflee Anwar Alhaque or “Zunar” published a cartoon on his Twitter account criticizing the Kedah Menteri Besar Muhammad Sanusi Md Nor over the latter’s statement to cancel the public holiday for Thaipusam this year due to the Movement Control Order (MCO). The caricature depicts Sanusi slamming butcher’s knife on a table where several representatives of Malaysia’s different ethnic groups are seated, along with a quote attributed to Sanusi that said, “No Thaipusam”. There was another quote as well, “Kedahans lived peacefully before he (Sanusi) came.” Zunar is being [investigated](#) under Section 505 (c) of the Penal Code and Section 233 of the Communications and Multimedia Act (CMA) 1998 and has been questioned by the police in Kedah. His handphone has also been [confiscated](#).

February

Former attorney-general Tommy Thomas launched his memoir, “My Story: Justice in the Wilderness”. [Various parties](#) then claimed that the book defames, insults as well as tarnishes the integrity and reputation of legal institutions and legal officers and should therefore be banned. [134 reports have been made](#) to the police nationwide concerning his memoir. Investigations are underway under Section 500 of the Penal Code, Section 8 of the Official Secrets Act 1972 and Section 4(1) of the Sedition Act 1948.

March

In the wake of the government’s reported delay in implementing the UNDI18 bill from June to September 2022, a peaceful protest took place. The protestors, numbering around 200, and the organisers of the rally went to Parliament. They are currently all under investigation. So far, [11 people have been questioned](#) under Section 9(5) of the Peaceful Assembly Act 2012 for alleged failure to inform the police before holding the assembly.

April

Graphic artist Fahmi Reza created a jealousy-themed Spotify playlist, in response to Malaysia’s Queen Azizah Aminah Maimunah Iskandariah’s infamous, “Dengi, ke?” remark on Instagram. After police reports were made, Fahmi Reza was [arrested](#) by around 20 policemen who broke into his house, damaged his front door and confiscated all his devices before locking him up for one day of interrogation. He was probed under Section 4(1) of the Sedition Act 1948 and Section 233 of the CMA. The sedition charge was later [dropped](#) in August, with the case being classified as “No Further Action (NFA)”.

May

The police opened an investigation into a news anchor from ASTRO Awani who supposedly [criticised the authorities](#) in response to news of the authorities fining a burger seller

RM50,000 for allegedly violating existing SOPs. He is being Section 504 of the Penal Code and Section 233 of the CMA.

Sarawak PKR member Iswardy Morni was [arrested](#) at his house and remanded over his alleged remarks in a YouTube video that was seen as insulting the Yang di-Pertuan Agong. The case was investigated under Section 4(1) of the Sedition Act, Section 504 of the Penal Code and Section 233 of the CMA. He later [claimed trial](#) in court to a sedition charge.

Those who attended and organised the #BukaPuasaParlimen sit-in protest outside Parliament were investigated under the Peaceful Assembly Act 2012 for allegedly holding an assembly without notice. Those investigated and questioned by the police include former Kedah menteri besar Mukhriz Mahathir, MUDA pro tem secretary-general Amir Hariri Abd Hadi, Pejuang's Khairuddin Abu Hassan, Kampung Tunku assemblywoman Lim Yi Wei, Parti Sosialis Malaysia (PSM) committee member Sharan Raj and UNDI18 founder Tharma Pillai

June

Tuition teacher Mohd Nazaruddin Yusoff, was [charged](#) for allegedly posting "fake news" on Facebook related to COVID-19. He had claimed that a traffic policeman died after receiving his second COVID-19 vaccination shot (the post-mortem report later stated the man died because of a heart attack). Nazaruddin is believed to be the first individual to be charged under the Emergency (Essential Powers) (No. 2) Ordinance 2021.

July

The police [opened investigations](#) into the online black flag campaign, set up for social media users to collectively protest against the government. Campaigners also called for the resignation of then-Prime Minister Muhyiddin Yassin, for a Parliament sitting to be convened and to lift the state of emergency. Investigations were opened under Section 4(1) of the Sedition Act 1948, Section 505(c) of the Penal Code and Section 233 of the Communications and Multimedia Act 1998.

The Lawan rally was investigated by the police, following which 29 individuals were asked to give their statements. Full details of this case and other Lawan related incidents can be found in the [#Lawan Protest Monitoring Report](#).

August

Several MPs were [investigated](#) under Section 9 (5) of the Peaceful Assembly Act 2012 for their involvement in a rally where they called for the resignation of then-Prime Minister Muhyiddin Yassin and his entire Cabinet, and for the Parliament special sitting to resume.

September

Graphic designer and artist Fahmi Reza was [arrested](#) once more, this time over a cartoon of Prime Minister Ismail Sabri Yaakob's "Keluarga Malaysia" brand. He was questioned under Section 233 of the CMA and Section 504 of the Penal Code. Fahmi has been investigated several times this year over his work - up to at least nine times according to our monitoring.