

FREEDOM OF EXPRESSION IN MALAYSIA

JOINT STAKEHOLDER REPORT TO THE
UNITED NATIONS UNIVERSAL
PERIODIC REVIEW FOR THE 45TH
SESSION OF THE UPR WORKING
GROUP 2018 - 2023

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

Joint submission by¹:

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

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

A. Introduction

1. The submitting organisations note that since the last Universal Periodic Review (UPR) in 2018, Malaysia has seen little to no improvement in its promotion and protection of freedom of expression and assembly.
2. As Malaysia went through a time of political uncertainty with frequent changes in government leadership and the added challenges of the COVID-19 pandemic, freedom of expression and information integrity suffered. Repressive laws were used to silence dissenting voices, with the government enacting strict legislation to combat “fake news”.² The Sedition Act 1948, Communications and Multimedia Act 1998 (CMA) and other laws were arbitrarily used to arrest and investigate critics, human rights activists, and media personnel and resulted in undue restrictions on the dissemination and access to information.
3. Despite Malaysia's election to the United Nations Human Rights Council for the 2022-2024 term, there are still ongoing abuses of power and restrictions on fundamental freedoms within the country.
4. Malaysia held its 15th general election on 19 November 2023. No coalition managed to secure a majority, resulting in a hung parliament. Pakatan Harapan (PH) and Barisan Nasional (BN) agreed to form a unity government. Anwar Ibrahim, from PH was appointed Prime Minister alongside Ahmad Zahid as Deputy Prime Minister from United Malays National Organisation (UMNO/BN).
5. This unprecedented alliance meant that UMNO, ridden with allegations of corruption, was back in power. The Malaysian Islamic Party (PAS) and Malaysian United Indigenous Party (Bersatu) of the right-wing Perikatan Nasional (PN) coalition became the opposition coalition.
6. PAS and Bersatu had dominated the narratives of Malay supremacy and nationalism. The PN coalition used Islamic values to level attacks against LGBTQ+ (lesbian, gay, bisexual, transgender, and queer) people. PAS had also accused the largely Chinese-led, Democratic Action Party (DAP) of the PH coalition of being communist and pro-secularism.

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

7. Attacks against LGBTQ+ people, refugees and migrants continued to dominate the actions of the State as well as the narratives of the politicians. Gendered disinformation was also used to discredit and undermine women political candidates effectively.
8. The media landscape remains highly political, with various factions using information platforms for their propaganda. Social media has become the primary source of information but it also raises the risks of disinformation, hate speech, digital surveillance, privacy violations, and online gender-based violence. Social media was highly instrumentalised during the election period to garner the support of young voters.
9. While digital infrastructure and awareness allowed for broader engagement and dissemination of information, there was also a digital divide amongst the different states as well as based on socio-economic factors in Malaysia, particularly between the Peninsular and East Malaysia.

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

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

C. Media Freedom and Information Justice

11. During the last UPR, Malaysia had “outright accepted” recommendations to “take steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets”⁶ and to “create a safe and enabling environment”.⁷ However, no progress has been made in terms of legislative changes to foster a better environment for the media in Malaysia. Section 233 of the Communications and Multimedia Act 1998 (CMA), the Printing Presses and Publications Act 1984 (PPPA), the Official Secrets Act 1972 (OSA), Section 114A of the Evidence Act, and defamation laws under sections 499 and 500 of the Penal Code continue to stifle media freedom.⁸
12. The abovementioned laws have been used to suppress dissent, curtail investigative reporting, and create an environment of self-censorship. These legal measures are inconsistent with international standards on freedom of expression and hinder the role of the media as a watchdog and a forum for democratic discourse.
13. The PPPA has numerous issues, one of which pertains to the current system for granting permits. The definition of what is considered “prejudicial to public order or national security” in section 13(1) is unclear and subjective. The vague definition of “publications” in section 2 also poses a problem where it can be arbitrarily used to

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

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

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

⁶ Recommendation 151.139 (Georgia)

⁷ Recommendation 151.149 (Ireland)

⁸ Refer to case examples in Annex 3.

restrict space for public discourse of ideas. The PPPA is also used extensively to restrict publications, namely relating LGBTQ+ related discourse and expressionⁱ.

- a) On 22 May 2023, Swatch reported raids on 11 of their outlets by the Home Ministry to confiscate their limited edition Pride collection watches. A total of 164 watches were seized for violating the PPPA. These watches were considered a “publication” under the broad definition provided under section 2 of the PPPA.ⁱⁱ
14. The absence of job security, unsustainable working conditions, and delayed salary payments undermine the independence of the media industry. In 2022, a former journalist with the state news agency (BERNAMA), went public with the labour discrimination she experienced, resulting in being publicly labelled as being “mentally ill”ⁱⁱⁱ by the Deputy Communications and Multimedia Minister. This underscores the urgent need for labour reform in Malaysian media companies. Such reforms are necessary to ensure fair treatment, job security, and better working conditions, ultimately leading to a more robust media industry in Malaysia^{iv}.
15. In March 2023, the Ministry of Communications and Digital (KKD) committed to the establishment of a Media Council.^v However, there is no guarantee that the Media Council will retain an independent governance and self-regulatory framework. This is imperative to ensure that any regulation of the media industry remains free from the influence of any business or government, thus preserving media freedom.

D. Threats to Information Justice

16. During Malaysia's 15th General Elections (GE15), the Centre for Independent Journalism's (CIJ) social media monitoring project^{vi} discovered alarming findings regarding the proliferation of hate speech. The project revealed that politicians played a significant role in amplifying racial and religious narratives and using them as a divisive tool against LGBTQ+ people.
17. During this period, significant engagement was seen on Facebook, Twitter and TikTok. Unfortunately, some users posted hateful comments that further divided society along racial and religious lines and even incited violence. TikTok faced criticism for not effectively moderating harmful content and disinformation, with some fearing a repeat of past racial riots. In response, TikTok blocked 857 videos during the campaign period and removed 130 videos on polling day. After the elections, 1,126 videos were removed by TikTok upon the request of the Malaysian Communications and Multimedia Commission (MCMC) during the volatile period between 20 and 26 November 2023.^{vii}
18. Gendered disinformation is also prevalent in Malaysia and was used to silence and undermine women politicians. For instance, one TikTok video was made to spread disinformation and discredit the former Minister of Women, Family and Community Development, stating that her only contribution as Minister was losing weight over helping the people. A statement was also made by the Kedah Chief Minister of women representatives' inability to help their constituency during the flood based on harmful gender stereotypes.^{viii} The State, including the Election Commission of Malaysia failed to censure such acts and these harmful stereotypes and narratives continue to prevail.
19. At the same time, the term hate speech and disinformation is often instrumentalized by majority groups to silence expression, that is protected under international law, specifically on race, religion and royalty (3R). Political dissent is frequently punished,

and people and organisations who criticise the government, State officials, or a particular religion, even without resorting to hate speech, are typically silenced.

E. Right to Information

20. During the last UPR, Malaysia received several recommendations⁹ pertaining to the right to information (RTI) and “fully accepted” two of these recommendations from Slovakia and Austria. Malaysia has “taken note” of Czechia’s recommendation to repeal and/or bring specific problematic legislation in line with international human rights law.¹⁰ While the State is making early attempts to enact federal legislation on RTI, it has not made any tangible efforts towards readdressing the information ecosystem in its entirety.
21. The government enables a culture of secrecy and lack of transparency amongst its agencies which poses severe challenges to RTI. Accessing information on crucial matters such as land and environmental issues, development projects, and transportation infrastructure is daunting for some individuals and organisations.^{ix} This is particularly true when there is a lack of avenues for public access to information, thus limiting affected communities’ public participation and also human rights defenders’ capacity to call out practices that infringe on human rights.
22. Legal restrictions such as the Official Secrets Act 1972 (OSA), Section 203A of the Penal Code, and limited protection under the Whistleblower Protection Act 2010 further limit the right to information.
 - a) The OSA is the primary law that defines the current informational environment,^x mainly because the OSA awards arbitrary powers to a federal government Minister or Chief Minister to designate and classify any government document as secret. Boo Su-Lyn, editor-in-chief of health news portal *CodeBlue*, was investigated under the OSA after publishing articles that covered “declassified findings” of an investigation into the Sultanah Aminah Hospital (HSA) fire that occurred in 2016 in Johor Bahru.^{xi}
 - b) Section 203A of the Penal Code criminalises the disclosure of “any information or matter” that a person has obtained “in the performance of his duties or the exercise of his functions under any written law”. Government officials often cite this law as a means of preventing leaks of confidential information based on national security. It discourages proactive and maximum disclosure of information held by public authorities as a matter of public interest. It is open to abuse as it could be used to prosecute whistleblowers or those who report on the disclosed information, specifically if it is related to government wrongdoing.
23. The issue arises where restrictive laws persist in Malaysia’s legal framework without a federal RTI law. When the Pakatan Harapan (PH) government was in power from 2018 to 2020, it aspired to join an Open Government Partnership (which requires a Freedom of Information (FOI) law) and to repeal the OSA.^{xii} The subsequent governments, while proceeding with plans to enact an RTI legislation, retracted the earlier promise to repeal the OSA.

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

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

24. Penang and Selangor have had state-level FOI enactments (FOIE) since 2010 and 2011 respectively. However, there remain concerns:
- a) Keywords such as "public bodies" and "information" are defined too broadly in the FOIEs, and the exemption list is non-exhaustive.
 - b) The existing FOIEs impose costly application fees and processing costs which limit public access to information. This fails to promote equality when some cannot afford the fees imposed or forfeit said fees if information is denied.
 - c) These FOIEs allow the public to obtain most information owned by the respective state governments, however without a federal level RTI guarantee, the OSA supersedes the FOIEs, and the prevalence of corruption continues to undermine the FOIEs. Thus, the implementation of the FOIEs lack effectiveness and further inhibit the public's right to access information.

F. Data Protection and Privacy

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

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

adopted to protect the rights of the people and provide the necessary remedy when there is a breach.

31. Additionally, many people need more digital literacy, especially when it comes to issues of privacy, security, and surveillance. This knowledge deficit puts them at risk of online threats and undermines their ability to protect their personal information effectively.

G. Censorship

32. Despite several recommendations by several countries to reform laws that limit freedom of expression, no progress has yet to be made since the last UPR.¹² Unfortunately, there has been widespread use of Section 233 of the Communications and Multimedia Act 1998 (CMA), the Sedition Act, and sections 504, 505(b) and 298A of the Penal Code.
33. Individuals and organisations who express dissenting opinions or criticise the government are often targeted for prosecution. This includes activists and political figures facing legal action or harassment for their online activities.
34. An alarming trend that we have noticed is the use of section 233 of the CMA, alongside section 505(b) of the Penal Code as a tool to initiate investigations and take legal action against media practitioners, human rights defenders and online users. The CMA is broader in scope than the Sedition Act, encompassing offenses related to the improper use of network facilities and services, including transmitting offensive or false content electronically. The rise of digital communication and social media has also led to increased online communication, necessitating laws that adequately address these emerging challenges. Its broad scope also enables authorities to use this law as an intimidation/harassment tactic by using it to initiate investigations, without comprehensively adopting the international principles of legitimacy, necessity and proportionality.
35. Based on media monitoring,^{xviii} the Sedition Act^{xix} continues to be used to prohibit speech with a 'seditious tendency,' which includes causing hatred, contempt, or disaffection towards the royalty or government and creating discontent or disaffection among the people. However, the terms 'hatred,' 'contempt,' 'discontent,' and 'disaffection' are vague and can be arbitrarily used. Additionally, Malaysian courts have imposed unreasonable fines on those found liable under the Sedition Act.
 - a) In 2021, section 4(1) of the Sedition Act was used to arrest Iswardy Morni, a Parti Keadilan Rakyat member, who produced a YouTube Live video titled 'Total Lockdown: *Apa Yang Kerajaan Gagal Belajar Dalam Setahun*' (What the Failed Government Learned in One Year). He pleaded not guilty before the Sessions Court and risks facing a fine of up to RM5,000 if found guilty.^{xx}
36. In addition, Malaysia has laws to address **speech considered blasphemous**, such as section 298A of the Penal Code which holds individuals accountable for promoting negative emotions towards religion, such as hostility or prejudice. However, these laws have been criticised. Laws favouring certain religions or beliefs violate human rights,

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

including the freedom to criticise religious leaders or doctrines. The right to freedom of expression cannot be limited to protect religions or their ideas from criticism or shield believers from criticism or offence.^{xxi}

- a) Malaysian authorities detained Siti Nuramira Abdullah and her partner, Alexander Navin Vijayachandran, for a video of Siti performing stand-up comedy at Crackhouse Comedy Club, which was deemed insulting to Islam.^{xxii} Comedy club owner Rizal Van Geyzel was arrested for three stand-up comedy films addressing racial prejudices and eventually fined RM8000 after pleading guilty to one out three charges.^{xxiii xxiv}

37. **LGBTQ+ persons in Malaysia experienced state-imposed restrictions** on their freedom of expression and association. The criminalisation of LGBTQ+ people under section 377A of the Penal Code and various Syariah laws, CMA, and PPPA creates an environment that promotes discrimination and bias, leading to stigmatisation, marginalisation and censorship of the community against LGBTQ+ people with impunity.

38. Additionally, the authorities often conduct arbitrary raids, harassment, and arrests of LGBTQ+ friendly venues, both deter and intimidate LGBTQ+ persons from gathering, socialising, and expressing themselves freely.

- a) In 2022, a raid was carried out by the Federal Territories Islamic Religious Department (JAWI) and the police at a Halloween party.^{xxv} The guests at the party were allegedly subjected to heavy intimidation and humiliation by the authorities. JAWI arrested 20 people and put them in a truck to be transported to a holding facility for further questioning.

39. Freedom of expression, especially relating to plurality/diversity and non-patriarchal interpretation of Islam and LGBTQ+ people is curtailed under various laws state Syariah criminal offences enactments and act. For example, at least 4 provisions under the Syariah Criminal Offences (Federal Territories) Act 1997, criminalise opinions contrary to fatwa, publications against Islamic laws, contempt of religious authorities, and insulting Islam.

40. In the Iki Putra case^{xxvi}, the Federal Court affirmed that while state legislatures can enact laws 'against the precepts of Islam' it must abide by the preclusion clause in the same line, which states, "except in regard to matters included in the Federal List". the court decision calls for a review of the constitutionality of many state Syariah laws.

41. **Strategic lawsuits against public participation (SLAPP)** have also been used to discourage and silence public participation in Malaysia for decades. It is thus a severe threat to exercising human rights and fundamental freedoms such as freedom of expression, information, association, and the right to protest.

- a) In June 2021, the Samling Group filed an RM5 million defamation lawsuit against SAVE Rivers¹³ and four of its leaders for allegedly defamatory articles published between June 2020 and March 2021. The articles, among others, suggested that

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

the Samling Group needed to consult the indigenous communities in and around two concessional forests and had logged-in areas that were part of indigenous land. The trial dates have been adjourned twice on Samling Group's request and postponed twice by the court.¹⁴ The trial has now been set for 18 to 20 September 2023.^{xxvii}

42. Malaysian authorities also constantly weaponise the law as a fear tactic to prohibit free speech. This can have a chilling effect on the people's freedom of expression and gives disproportionate power to the authorities to take control of human rights' narratives. There is also a chilling effect of SLAPP on whistleblowers, human rights defenders (HRDs) and the media. SLAPP is not limited to the use of civil defamation claims but also extends to criminal investigations and prosecutions under laws such as Sedition Act 1948, section 233 of the CMA to mount pressure on their targets to silence them.^{xxviii}

H. Film Censorship and Artistic Freedom

43. The issue of film censorship in Malaysia poses a threat to artistic freedom. The Film Censorship Board's (LPF) guidelines are seen as strict and conservative, which can result in movies being heavily edited or banned if they are critical of the ruling government and authorities, violent and sexually explicit, or religiously controversial. This heavy religious and moral policing has led filmmakers to self-censor to avoid getting into trouble with the authorities.
44. The Film Censorship Act 2002 (FCA) regulates all films and content meant for public viewing in cinemas and television in Malaysia, giving the government the authority to ban films entirely. All films for public viewing are subjected to prior censorship and must be approved by the LPF before being screened. Films also undergo double censorship whereby films are censored and further classified for age-suitability.¹⁵
45. The LPF sits under the Home Ministry, whose primary concern is the security and peace of the nation. It is also clear that the LPF needs more independence because its members are appointed by the Minister of Home Affairs, who additionally has the executive authority to override the decisions of the LPF. Moreover, the findings of the LPF and the Minister are final and cannot be challenged in a court of law, further emphasising the lack of independence and depriving filmmakers of their right to legal recourse.
46. Filmmakers are subjected to multiple layers of censorship. It is worth noting that apart from the Home Minister, the Minister of Communications and Digital and the Police also intervene in creative content cases. In addition, the Federal Islamic Authority (Jabatan Kemajuan Islam Malaysia or JAKIM) is responsible for reviewing any portrayal of Islam and its teachings in films. They also review content related to the supernatural that falls under "religion." Experts on Islamic matters from the religious authorities serve on the LPF review board.

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

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

47. The FCA, which restricts the content of films, has forced many filmmakers to screen their work privately or through online streaming services to avoid censorship by authorities. While this offers an alternative option, filmmakers and creators are still vulnerable to censorship. The FCA has faced criticism for being outdated and infringing upon the right to free expression. In response to these concerns, there have been calls for reform in recent years as the existing legal framework on film censorship restricts creativity and negatively impacts the screen industries.^{xxxix}
48. The independent production 'Mentega Terbang' and its filmmakers and actors, including a 15-year-old child actor, were subjected to multiple police investigations under sections 233 of the Communications and Multimedia Act 1998 (CMA), 505(b) and 239A of the Penal Code, as well as physical harassment^{xxx} by members of the public. Additionally, regulatory bodies such as the National Film Development Corporation Malaysia (FINAS) and religious bodies like the Department of Islamic Development Malaysia (Jabatan Kemajuan Islam Malaysia) and the Federal Territory Islamic Religious Council (MAIWP) conducted their investigations into the film.^{xxxi}
49. The restrictive laws in Malaysia significantly impact artists, limiting their ability to push boundaries and express themselves artistically. For example, Fahmi Reza is an artist and activist who constantly faces legal action for his political graphics. Based on media monitoring done, Fahmi Reza has been investigated a total of nine times in 2021 and 2022.^{xxxii} In 2022, he was charged for social media posts criticising a former health minister and calling for a ban on alcohol sales. The authorities have used various laws, such as the Sedition Act of 1948, section 233 of the CMA, and Section 504 of the Penal Code, to investigate him.^{xxxiii xxxiv} He pleaded not guilty but was still detained and restricted from travelling.^{xxxv}

I. Academic Freedom

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

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

authority. Wong Yan Ke spoke for less than five minutes before the university authority forcibly cut off the sound system and abruptly ended the event.^{xxxvii}

J. Freedom of Assembly and Association

54. Compared to the previous UPR reporting period, there are some changes to the Peaceful Assembly Act 2012 (PAA), but it still threatens freedom of assembly in Malaysia. We commend the recent amendment to the PAA in 2019 by the Ministry of Home Affairs to decriminalise 'street protests' and reduce the notification period from ten to five days. Despite the amendments, there are still several issues that arise.
- a) The PAA hinders spontaneous and urgent assembly in response to sudden events.
 - b) Although no provision in the PAA states that assemblies held without fulfilling the notice requirement are unlawful, the authorities still decide whether an assembly is lawful.
 - c) Authorities still use excessive force to hinder public assemblies from being conducted, such as roadblocks, armed weapons and vehicles, blocking of public transport and video and picture taking of participants during protests.
 - d) Citizens under 15 are not allowed to attend assemblies, and those under 21 cannot organise them.
55. Law such as the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 was invoked to limit assembly in the name of public health. Although the Order is no longer in use, it violated democracy and civic spaces. In 2021, this Order and the PAA were used in tandem to investigate and arrest participants of assemblies.
- a) A group of 31 participants gathered for a vigil organised by the Sekretariat Solidariti Rakyat (SSR), commemorating those who had lost their lives to Covid-19 at Dataran Merdeka. The authorities exercised excessive force to arrest them by dragging them into crowded armoured vehicles.^{xxxviii}
 - b) A movement called 'Hartal Doktor Kontrak' held a mass protest to call for better treatment of contract doctors and was met with heavy police intimidation.^{xxxix}
56. After the Order was revoked in 2022, protests were still met with heavy intimidation by law enforcement. Police still use the PAA to conduct investigations.
- a) Approximately 200 individuals, including NGOs, university students, and politicians, gathered to request the dismissal or criminal prosecution of ministers responsible for the failed littoral combat ship (LCS) project. Following the protest, 13 individuals were identified by Dang Wangi police for further investigation under the PAA.^{xl}
57. The Registrar of Societies (RoS) under the Home Ministry needs to be revised in Malaysia. One of the main concerns is transparency and accountability in the registration process. The RoS has been criticised for exercising broad discretionary powers, leading to inconsistent and arbitrary decisions.
- a) The lack of clear guidelines and criteria for registration makes it hard for civil society organisations and political parties to attain registered status.
 - b) Another issue is the excessive control exerted by the government over the registration of societies and political parties. The independence and impartiality of

RoS as a government department remains questionable, raising doubts about the fair treatment of applicants and the possibility of political interference in the registration process.

- c) Moreover, the lengthy and uncertain timeframe for registration decisions poses a challenge for organisations seeking legal recognition. Delays can hinder the effective functioning and activities of associations, limiting their ability to exercise their right to freedom of association.
- d) The Malaysia United Democratic Alliance (Muda) applied to be a registered political party in Malaysia in 2021. However, their application was rejected by the RoS without any explanation. This rejection follows a similar decision by RoS to reject the application of Parti Pejuang Tanah Air, led by former Prime Minister Tun Dr Mahathir Mohamad.^{xlii}

K. Recommendations

A) Strengthening Freedom of Expression

1. Ensure that any attempts to limit people's constitutional rights to free speech, expression and right to information adhere to established human rights principles and international standards and meet the following criteria:
 - (i) they are grounded in a legal framework;
 - (ii) they are based on absolute necessity and not arbitrary; and
 - (iii) they are proportionate and serve the public's interest.
2. Enable a secure and transparent space for people to engage in open and constructive discussions while upholding democratic values. Using fear-mongering or unjust enforcement of restrictive legislation to suppress or bully individuals who express dissenting opinions or disrespect the government is unacceptable and must be avoided at all costs.
3. Stop censorship and banning of arts and artistic performances, including satire.
4. Initiate a comprehensive legislative reform based on Malaysia's international human rights obligations, and amend or repeal the following laws:
 - Film Censorship Act 2002
 - National Film Development Corporation (FINAS) Act 1981
 - Official Secrets Act (OSA) 1972,
 - Peaceful Assembly Act 2019,
 - Printing Presses and Publications Act 1984
 - Sedition Act 1948,
 - Section 211 and 233 Communications and Multimedia Act 1998,
 - Section 114A of the Evidence Act (Amendment) (No.2) 2012,
 - Section 203A of the Penal Code,
 - Section 298A of the Penal Code,
 - Section 500, 504, and 505(b) of the Penal Code.
5. Establish a moratorium on the use of these laws while undergoing reform initiatives.
6. Promote a progressive information regime and open governance by enacting a Right to Information (RTI) law.
7. Ratify all outstanding international human rights treaties and their optional protocols.

8. Establish anti-SLAPP legislation and foster an environment of zero tolerance towards retaliation against human rights defenders and media practitioners.
9. Decriminalise defamation and allow defamation proceedings to fall under the purview of civil law, not criminal law.
10. Develop a national action plan or framework to address women's and girls' freedom of opinion and expression online/in digital spaces by eliminating and preventing online gender-based violence.
11. Undertake an assessment of the state syariah laws to ensure compliance of the state syariah laws with human rights standards and the Federal Constitution. Any laws or enactments doing so should be declared invalid and unconstitutional.
12. Repeal all discriminatory laws and discriminatory measures, including misinformation, raids, and censorship against LGBTQ people on the basis of their SOGIE.
13. End arbitrary raids on spaces for LGBTIQ+ people.
14. Amend the Universities and University Colleges Act 1971 (AUKU) to foster a better environment for students to have debates and express ideas by removing government interference from the administration of the universities and university colleges which fall under the purview of AUKU.

B) Strengthening Media Freedom

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

C) Combating Disinformation and Hate Speech

19. Establish an independent multistakeholder committee that can comprehensively evaluate the underlying reasons for hate speech and construct effective solutions in conformity with international standards, such as the Rabat Plan of Action, Human Rights Council Resolution 16/18, and the Camden Principles on Freedom of Expression and Equality.

20. Work with rights-based CSOs to implement precise fact-checking mechanisms to efficiently debunk false and misleading narratives before they can go viral.
21. Focus on educating and disseminating public information to counter the alleged mis/disinformation and hate speech, and not rely on disproportionate responses in punitive measures.
22. Engage with social media platforms and multi-stakeholder experts to strengthen the current social media standards and mechanisms to ensure effective responses in situations of disinformation and hate speech and to request social media platforms to conduct a human rights impact assessment of their use of AI in content moderation.

D) Providing better data and digital protection

23. Set up an independent regulator empowered to enforce transparency requirements under data protection laws and provide a check and balance to prevent abuse by the state.
24. Strengthen reporting requirements for listed and unlisted companies, including human rights impact assessments of their products and services.
25. Amend the Personal Data Protection Act 2010 (PDPA) to require companies to disclose data breach policies, including commitments to notify affected individuals about the nature of breaches, and any remedial measures the companies undertake to ensure accountability for such breaches.
26. Establish legal and policy frameworks to prevent discrimination resulting from personalisation and targeting of products and services leading to discrimination.

E) Upholding Freedom of Association and Assembly

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

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ANNEX 1

Information on Submitting Organisations

1) Centre for Independent Journalism (CIJ)

- *Established in 1998, 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. CIJ primarily works on areas of Freedom of Expression, Media Freedom, Right to Information (RTI) and community media*
- Email: cijmalaysia@gmail.com
- Website: <https://cijmalaysia.net/>

2) Freedom Film Network (FFN)

- *Freedom Film Network, a not-for-profit body established to support and develop social documentary filmmaking within the context of freedom of expression and values contained in the Universal Declaration of Human Rights (UDHR) in Malaysia. Freedom Film Network aims to develop a sustainable model for social filmmaking, through a network that supports, inspires and produces powerful and relevant films at the boundaries of our constraints.*
- Email: info@freedomfilm.my
- Website: <https://freedomfilm.my/>

3) Gerakan Media Merdeka (GERAMM)

- *Geramm is a loose coalition of media practitioners and supporters of press freedom in Malaysia and across the South East Asian region.*
- Email: geramm.media@gmail.com
- Website: <https://mediageramm.com/>

4) Kryss Network (KRYSS)

- *KRYSS Network is a not-for-profit organization that has observed and researched how there is unequal access to freedom of opinion and expression in Malaysia, particularly for women, girls and marginalised communities such as LGBTIQ persons. Their work focuses on, among*

others, promoting safer online spaces for all peoples to freely express their lived realities, experiences, opinions, and thoughts without threats of harassment and violence.

- Email: info@kryss.network
- Website: <https://kryss.network/>

5) Malaysia Centre for Constitutionalism and Human Rights (MCCHR)

- *The Malaysian Centre for Constitutionalism and Human Rights (MCCHR) is a non-partisan and non-profit organisation. It was established on 19 March 2011 with the mission to provide an integrated approach towards the protection and promotion of human rights in Malaysia via its UndiMsia! and strategic litigation programmes.*
- Email: pusatrakyatlb@mcchr.org
- Website: <https://mcchr.org/>

6) Suara Rakyat Malaysia (SUARAM)

- *SUARAM (Suara Rakyat Malaysia) is an independent human rights organisation that specialises in civil and political rights such as educational programs and trainings on freedom of expression, peaceful assembly and association; right to fair trial; freedom from torture, extra-judicial killings and cruel punishment; public accountability and genuine democracy-building.*
- Email: suaram@suaram.net
- Website: <https://www.suaram.net/>

7) Justice for sisters (JFS)

- *Formed in 2010, Justice for Sisters is a grassroots campaign organized by concerned members of the public to raise public awareness about issues surrounding violence and persecution against the Transperson community in Malaysia. The campaign also aims to raise funds to finance court cases that have been brought up against transgenders who have been charged in Syariah court.*
- Email: justiceforsisters@gmail.com
- Website: <https://justiceforsisters.wordpress.com/>

8) Sisters in Islam (SIS)

- *SIS was founded in 1988 by a group of Muslim women who came together to address the injustice women face under the Shariah (Islamic law) system. Our critical reading of the Al-Quran through a hermeneutical approach opened a world of Islam that we could recognise: a world for women that was filled with love and mercy, and with equality and justice.*
- Email: sis@sistersinislam.org
- Website: <https://sistersinislam.org/>

9) Amnesty International Malaysia (AIM)

- *Amnesty International is a global movement of more than 10 million people who campaign for a world where human rights are enjoyed by all. Their vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. AI are independent of any government, political ideology, economic interest or religion.*
- Email: amnesty@amnesty.my
- Website: <https://www.amnesty.my/>

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ANNEX 2

Laws Referred to in the Report

Section 233, Communications and Multimedia Act 1998	Prohibits the posting of offensive content online with the intent to annoy, abuse, threaten or harass. The section has a broad and extremely subjective definition of “improper use of network facilities or network services”, criminalising “obscene”, “indecent”, “false”, “menacing” or “offensive content”
Sedition Act 1948	Criminalises anything of a “seditious tendency” without requiring proof of intent, including exciting disaffection against the Ruler, to promote feelings of ill-will and hostility between different races or classes and to question any matter relating to the use of Malay as the official language and the special position of the Malays and natives of Sabah and Sarawak. What is “seditious” is extremely vague and open to subjective interpretation of words such as “hatred”, “contempt” and “discontent”.
Printing Presses and Publications Act (PPPA) 1984	Licences required for publishing a newspaper which is issued by the Ministry of Home Affairs. The law gives wide powers to the Home Minister to curtail news and content published. The licence can be revoked or suspended by the Home Ministry which can issue show cause letters to the publisher to justify why action should not be taken against them. The Act also allows for banning of books and other publications.
Official Secrets Act 1972	Criminalises the dissemination of information classified as an official “secret”. Allows any document to be classified as secret; with no requirement for harm and without requiring any relation to national security, international relations, or defence. No time limits for documents classified secret and the Act ousts the court’s jurisdiction to review the classification of the document.
Section 203A, Penal Code	An offence to disclose any information obtained in the performance of any duties or functions any written law attracting a fine of up to RM1 million and imprisonment for up to one year.
Section 500, Penal Code	Criminalises defamation.
Section 504, Penal Code	Criminalises “intentional insults with intent to

	<p>provoke a breach of the peace". The law is used to criminalise all "insults", including legitimate and necessary comments for upholding democracy and ensuring accountability.</p>
<p>Section 505, Penal Code</p>	<p>Criminalises statements "conducting to mischief". The law criminalises the making of misleading or false statements or misinformation.</p>
<p>Section 298A, Penal Code</p>	<p>Criminalises speech for insulting religion on grounds of on causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion.</p>
<p>Section 114A, Evidence Act 1950</p>	<p>An Internet user is deemed the publisher of any online content unless proven otherwise. It also makes individuals and those who administer, operate, or provide spaces for online community forums, blogging and hosting services, liable for content published through their services.</p>

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ANNEX 3

Case Studies on Specific Issues Highlighted in the Report

Media Freedom and Information Justice (Page 3, paragraph 13)

- Recently, the Printing, Presses and Publication Act 1984 (PPPA) has been used by the Home Ministry to confiscate 164 [watches](#) worth RM64,255. This discriminatory act was enabled by the PPPA's wide definition of the term "publications".
- The PPPA has, in the past, been used by the Ministry to ban LGBTQ+ books on the basis that they constituted a threat to public morality, order, and [security](#).
 - In 2023, the Ministry [banned 3](#) publications titled '*The Tale of Steven*', '*Jacob's Room to Choose*' and '*Aku*' which were deemed to be "harmful to Malaysian morals". Two of these books contained LGBT elements.
 - In October 2022, the Ministry [banned](#) publications titled '*Chelsia Amanda (Berdasarkan Kisah Benar)*', '*Heartstopper Volume 2*', and '*Cekik*' based on section 7(1) of the PPPA. The first publication was claimed to contain obscene and immoral content that contradicts the cultural values and social norms of Malaysian society which places great emphasis on decency, whereas the latter two were viewed as an attempt to promote the LGBTQ+ culture besides containing obscene [elements](#).
 - In September and October 2017, the Ministry of Home Affairs imposed a ban on 22 publications, including three books issued by the Islamic Renaissance Front (IRF): a Malay translation of *Islam without Extremes: A Muslim Case for Liberty* by progressive Turkish scholar Mustafa Akyol and two volumes of IRF's *Wacana Pemikiran Reformis* series. The IRF includes among its aims 'advancing understanding of a compassionate and democratic Islam'. The Ministry's announcement of the ban indicated that the IFR publications 'promote the idea of liberalism' and 'deviate from the true teachings of Islam'.
 - Disney/Marvel films such as *Thor: Love and Thunder* were [rejected](#) by Malaysia's Film Censorship Board (LPF) because of their lesbian, homosexual, bisexual, and transgender (LGBT) content, and [Lightyear](#) received the same treatment after the censorship board requested Disney to edit the film to cut out LGBT scenes.

Media Freedom and Information justice (Page 2 Paragraph 14)

- In March 2022, the Federal Court unanimously [dismissed](#) Malaysiakini's application for a review of its previous decision in 2021, wherein Malaysiakini was fined RM500,000 for contempt of court over comments posted by readers on the news portal's comments section. Offending comments appeared in an article dated June 9, 2020, titled '*CJ orders all courts to be fully operational from July 1*'.
- In 2020, the Malaysian police [raided](#) Al Jazeera's Kuala Lumpur office based on an investigation for sedition, defamation, and violation of the CMA. This investigation was done regarding a *101 East* programme that aired on the 3rd of July, which examined the Malaysian government's treatment of undocumented migrant workers during the COVID-19 pandemic.
- Lalitha Kunaratnam, an investigative journalist, was [threatened](#) with lawsuits for her article in October 2021 that drew attention to the Malaysian Anti-Corruption Commission (MACC) Chief Commissioner Azam Baki's purchase of millions of shares in a company in 2015 and raised the issue of asset declaration by civil servants.¹
 - In January 2022, she received a letter of demand by the MACC Chief's lawyers for a public apology, retraction and RM10 million in damages over the allegations she made against him. A few days later, she was slapped with a defamation suit by Azam Baki. She was accused of making a false claim regarding her status as a researcher with the Center to Combat Corruption and Cronyism (C4) in a police report filed by Azam Baki in February 2022. She was investigated under Section 233 of the Communications and Multimedia Act 1998, as well as Section 505 of the Penal Code for publishing statements "conducting to public mischief" following various police reports lodged by MACC senior officials.
 - Around February 2022, Lalitha was further slapped with letters of demand by two businessmen, Lim Kok Han and Mohd Aswadi Mat Zain, who asserted that she had defamed them in her articles about alleged business ties with a top anti-graft chief, seeking damages of RM20 million and RM10 million respectively, as well as an apology within 14 days.

Data Protection and Privacy (Page 5 paragraph 24)

- In 2021, the Malaysian government's [MySejahtera](#) mobile application, used for Covid-19 tracking and management, contains a disclaimer stating that the government is not liable for any loss or damages resulting from the use of information obtained from the app. However, a lawyer has stated that this disclaimer does not protect the government from liability in cases of negligence or data breaches. The app's privacy policy is criticized for lacking details about data processing, storage, and retention periods, in contrast to the privacy policies of similar apps in other countries such as TousAntiCovid in France.
- In 2022, personal details of [22.5 million](#) Malaysians were sold on online markets which went viral on social media. The Home Ministry conducted an investigation and found that the data sold was obtained from other sources. It was stated that the individuals

involved in the sale of personal data will be summoned for further investigation, and the standard operating procedures for obtaining personal data through agencies under the NRD will be reviewed to prevent similar incidents in the future.

- In 2022, A group of hackers calling themselves the "grey hat cybersecurity organisation" claimed they could breach the [ePenyata Gaji](#) (ePaySlip) system used by civil servants in Malaysia, exposing loopholes in the system. They alleged having access to over one million identities, including personal information such as names, identification numbers, job positions, salaries, and contact details. The hackers also stated that they had contacted government officials but received no response, and planned to sell the extracted data starting September 19. The National Audit Department has reported the incident to the police, and the department assured the public that their information and data system's integrity remains intact.
- In 2022, [AirAsia](#), a budget airline based in Malaysia, experienced a ransomware attack that compromised the personal data of five million passengers and all employees. The hacker group responsible for the attack is called Daixin Team. The Ministry of Communications and Digital of Malaysia initiated an investigation to determine the source of the attack and its impact, while urging all data users to enhance their cybersecurity measures.

Censorship (Page 6 paragraph 34)

- In 2022, Tommy Thomas, former Attorney-General was [investigated](#) under Section 124(1) of the Penal Code; Section 4 of the Sedition Act 1948; Section 8 of the Official Secrets Act 1972; and Section 23 of the Malaysian Anti-Corruption Commission Act 2009¹ following a report by the special task force (STF) ordered by the Cabinet to look into Tommy Thomas' allegations against the judiciary; disclosure of "classified information" and official secrets; abuse of power and professional negligence; and for seditious statements in his autobiography "My Story: Justice in the Wilderness". The STF's report that was initially classified was declassified.
- In April 2022, Johor police [detained](#) a campaign worker for the opposition Democratic Action Party (DAP) on charges of sedition in connection with his comments on a Facebook post that allegedly encouraged ethnic Indians not to vote for the Malaysian Indian Congress, a party that is a part of the ruling coalition (BN).
- On August 2022, Muhammad Nur Taufiq Azhar was [charged](#) in the Sessions court in Kuala Lumpur for initiating a tweet calling for a rally during the Covid-19 pandemic the previous year. Taufiq Azhar, who was unrepresented, pleaded guilty and was charged a fine of RM7000. He was charged under Section 233 of the Communications and Multimedia Act 1998.

Censorship (page 6, paragraph 35)

- In April 2022, writer Uthaya Sankar SB was arrested for allegedly commenting on polygamy and Prophet Muhammad (PBUH) through an account on Facebook. Uthaya

was arrested at his home and had his devices and sim card confiscated. He was released after spending a night at the Dang Wangi police station. The case was investigated under Section 233 of the Communications and Multimedia Act 1998 and Section 298A of the Penal Code.

- The Malaysia Human Rights Commission (SUHAKAM) Chairman, Prof. Dato' Dr Rahmat bin Mohamad [filed a defamation](#) suit on 28 April 2023 against its Deputy Secretary Shahizad bin Sulaiman, allegedly following a formal complaint filed by Shahizad against Rahmat on allegations of racial discrimination and abuse of power in a new staff appointment. The Chairperson stated on 16 June 2023 that he would withdraw the lawsuit.

Film Censorship and Artistic Freedom (page 9, paragraph 47)

- In 2023, the state government of Terengganu in Malaysia [banned](#) the movie Pulau from being screened due to allegations of inappropriate scenes. Producer Fred Chong prepared an appeal and is waiting for a letter of support from the Malaysian National Film Development Corporation to convince the state officials to reverse the decision. Chong denied that the trailer, which has caused controversy, was posted on YouTube as a marketing strategy and hoped that the state government would view the movie in an objective manner.
- In 2021, graphic artist Fahmi Reza was [arrested](#) by the police over a social media posting mocking Queen Tunku Hajah Azizah Aminah Maimunah Iskandariah. He was taken to the Dang Wangi police station and was investigated under the Sedition Act and Communications and Multimedia Act.

Academic Freedom (page 9, paragraph 52)

- In 2022, UM Law student Nevyn Vinosh was [investigated](#) for an article on affirmative action in Malaysia that was posted on a blog website. The case was investigated under Section 233 of the Communications and Multimedia Act 1998.
- In May 2022, the [death](#) of a University Utara Malaysia (UUM) led to the university issuing a gag order to bar students from publicly organising or attending any events related to the death of the student. The students had organised to demand clarification from the university on the cause of death.

Freedom of Association and Assembly (page 10, paragraph 53)

- In January 2022, [78 individuals were identified](#) to be involved in the various #TangkapAzamBaki rallies which called for the authorities to investigate the allegations against the MACC chief. The protestors were investigated under Section 9(5) Peaceful Assembly Act 2012, Section 505(b) Penal Code, and Regulations 10 and 17 of the Prevention and Control of Infectious Diseases Regulations.
- In 2022, [Activist Wong Yan Ke and two Ukrainian nationals](#) were called up for investigation by the police after participating in a candlelight protest in solidarity with

Ukraine. Ukrainians and Malaysians gathered for a candlelight vigil at Dataran Merdeka to show solidarity with Ukraine and its people after the Russian attacks on their country. Investigations were carried out under Sections 4(1)(a) and 9(5) of the Peaceful Assembly Act, as well as the Prevention and Control of Infectious Diseases Regulations 2021.

- On April 2022, The [May Day](#) rally had 150 people attend the march from the Central Market to the Kuala Lumpur and Selangor Chinese Assembly Hall to call for greater social security for workers. Following the protest, police summoned four people for questioning over the rally. The 4 included 3 politicians and a human rights defender. They were investigated under the Peaceful Assembly Act 2012.
- In March 2023, police in Kuala Lumpur [investigated](#) an assembly and march in front of Sogo Complex and Dataran Merdeka. The march involved 300 individuals, including human rights activists, students, and political party members. The Dang Wangi district police headquarters Criminal Investigation Division opened an investigation paper under the Peaceful Assembly Act 2012, and the Minor Offences Act 1995.