

BRIEFING NOTES

FROM THE REPORT ON THE
*INTERNATIONAL DAY
FOR UNIVERSAL ACCESS TO INFORMATION
(IDUAI) FORUM 2022 IN MALAYSIA*

Global Theme: Artificial Intelligence, E-Governance and Access to Information

PUTRAJAYA, 20 OCTOBER 2022

Published by:
Centre for Independent Journalism
L13A-1, Menara Sentral Vista
150, Jalan Sultan Abdul Samad, Brickfields
50470 Kuala Lumpur
Malaysia

Email: cijmalaysia@gmail.com
Website: <https://cijmalaysia.net>
Facebook: <https://www.facebook.com/CIJ.MY>
Twitter: https://twitter.com/CIJ_Malaysia
Instagram: https://www.instagram.com/cij_malaysia
YouTube: <https://www.youtube.com/cijmalaysia>

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.

All Rights Reserved © 2023 Centre for Independent Journalism. This report may not be copied or duplicated in whole or part by any means without express prior agreement in writing from CIJ. Some photographs in this report may be copyrighted or the property of others. In such cases, acknowledgement of those copyrights or sources have been given.

Author

Tashia Peterson

Editors

Lee Shook Fong
Wathshlah Naidu

Cover and Layout Design

Joelle Majanil

Published in Kuala Lumpur in November 2023

Acknowledgements

We thank the IDUAI 2022 Forum co-organisers Legal Affairs Division of the Prime Minister's Department (BHEUU), and UNESCO, session panelists, moderators and participants their input during the forum.

BRIEFING NOTES

From the Report on the International Day for Universal Access to Information (IDUAI) Forum 2022 in Malaysia

Global Theme: Artificial Intelligence, E-Governance and Access to Information

[Putrajaya, 20 October 2022]

TABLE OF CONTENTS

BRIEFING NOTE 1 _____ 5

Complexities of the changing information landscape focusing on the intersections between the use of AI, e-governance and right to information. _____ 6

 Emerging trends and related risks _____ 6

 Legal landscape _____ 7

 Concerns on the use of AI _____ 8

BRIEFING NOTE 2 _____ 10

Current and necessary standards and processes that can influence the use of AI in a more accountable and ethical way. _____ 11

BRIEFING NOTE 3 _____ 14

Recommendations for moving forward with the changing information landscape focusing on the intersections between the use of AI, e-governance and right to information. _____ 15

 Law reform and key principles _____ 15

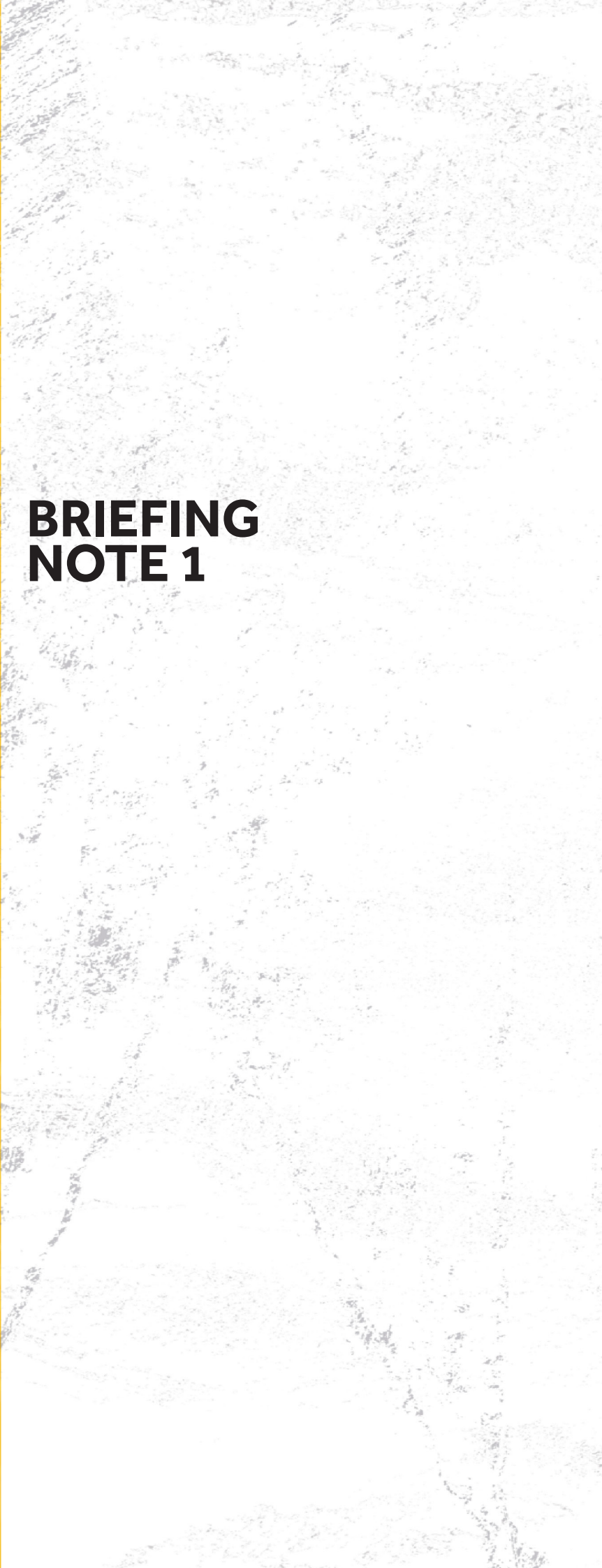
 Processes _____ 15

 Institutional _____ 16

 Building capacity and changing mindsets _____ 17



BRIEFING NOTE 1



BRIEFING NOTE 1

Complexities of the changing information landscape focusing on the intersections between the use of AI, e-governance and right to information.

Emerging trends and related risks

- 1.1 In the digital age, data-driven policies **can contribute to a more responsive governance, greater development, and an informed robust society**. Technological innovations have brought advancements in geo-tagging, biometric surveillance, mining, engineering, and commercialisation of personal data, amongst others.
- 1.2 The **Covid-19 pandemic accelerated the use of technology** and saw the most data driven and digital intensive pandemic management in history. It demonstrated the critical need and heavy reliance on accurate and timely data and information.
- 1.3 **MOH made use of AI, implemented e-governance and made information accessible publicly**. The MySejahtera app with 30 million users was driven by AI and able to digitally contact trace 47 million cases. This allowed for
 - a) data-driven decision making
 - b) algorithms that could predict and identify new hotspots for pre-emptive action
 - c) digital surveillance and reporting of cases along with a check-in facility
 - d) virtual patient care which significantly reduced caseloads at Covid-19 centres
 - e) management of antiviral dispensing criteria

MySejahtera has since transitioned to a public health app with a focus on preventive medicine. Recent modules launched within the app are for organ donor pledges and blood donation records.

- 1.4 As a lot of data was being collected through the apps responding to Covid-19, there arose the **risk of personal data being misused** by the state or by whoever was collecting data, especially when it was discovered that a third party from the private sector was managing the MySejahtera app.
- 1.5 Related to this is the concern around **information asymmetry** where one party has more information than the other. If one does not even know what information the other party has, one would not know what to ask or demand access to. From an ethical perspective it is problematic to have too much information centred in one group of people like the government or private sector.
- 1.6 Therefore, **right to information (RTI) in the context of AI** could include the right to an explanation about the collection, storage, use of data and its conversion into meaningful information. Further, how are human rights impacted by the design and working of AI algorithms.
- 1.7 The challenge for the public sector would be to balance between promoting data sharing and preserving data protection and negotiating the **conflict between RTI and data protection**.

- 1.8 A crucial consideration in relation to the **governance of AI** is the independence of the agencies that oversee and monitor data protection processes.
- 1.9 There are also **ethical issues within AI coordination and implementation**. Ethical principles should be a consideration at the technological level as well as the business level; not just in the context of how the technology is designed but also what is appropriate technology to be used. While there is a need to optimise digital tools, it is important to ensure it does not deprive the marginalised population/ disempower the underprivileged. It **should fundamentally reflect the needs of the people and adopt a human rights centred approach**.

Legal landscape

- 1.10 There is **no single legislative framework for AI** which leaves a lot of grey areas around the issue of liability. For example, there have been challenges from the intellectual property (IP) aspect where the “personhood” of AI is being debated as creator of the IP. It is critical to have discussions around ethics, regulation and working towards a robust legal system that governs the adoption of AI.
- 1.11 Without legal accountability, replacing decision making processes with AI could be problematic. AI can help sort data and aid decision-making processes but **ultimately there has to be the human element involved in decisions and be legally accountable for that decision**.
- 1.12 **Malaysia’s Artificial Intelligence (AI) Roadmap** has prioritised key AI projects in health-care, agriculture, education, smart city transportation and public service. It forms one of five national technology roadmaps to intensify Malaysia’s efforts to become a technology developer.
- 1.13 The **ecosystem of AI in the country is scattered with a diverse range of players**: The Department of Statistics handling big data analytics; MAMPU (public sector), MDEC (private sector) and the Ministry of Communications and Multimedia (K-KOMM) handling the National Big Data Framework; MAMPU is in charge of the Malaysian Government Central Data Exchange (MyGDX) and Open Government Data; K-KOMM also handles the Personal Data Protection Department and the Malaysian Communications and Multimedia Commission; and K-KOMM oversees the digitalising of all government activity with MOSTI providing the technological perspective.
- 1.14 The Malaysian AI roadmap is **guided by 7 principles of responsible AI**: (i) Fairness; (ii) Reliability, safety and control; (iii) Privacy and security; (iv) Inclusivity; (v) Transparency; (vi) Accountability; (vii) Pursuit of human benefits and happiness.
- 1.15 Challenge for Malaysia in its potential adoption of the RTI law, is **how not to undermine the gains of the information era** by the transition into AI and digital age.
- 1.16 A lot of information remains classified. The **Official Secrets Act (OSA) and section 203(A) of the Penal Code** criminalise government civil servants for revealing information without permission. This remains a barrier to transparency. Even though not all data is secret or



restricted, some agencies find it easier to classify information as restricted. More emphasis is needed on finding a **balance between promoting data sharing and preserving data protection**. For details on how to classify information as restricted (*terhad*), confidential (*sulit*), or secret (*rahsia*), public agencies can refer to:

- a. Chief Government Security Officer's (CGSO) security directive (*Arahan Keselamatan*),
- b. Security and data aspects within the Data Driven Governance framework
- c. Standards formulated by MAMPU.

1.17 The Personal Data Protection Act (PDPA) governs commercial transactions and does not apply to dealings with the government. One of the concerns is that data is being shared across different ministries without any accountability should there be a breach. Other limitations include:

- (i) It does not apply to non-commercial transactions, therefore may not apply to foundations.
- (ii) If the company does not use the data, they will not be held liable for breaches. Therefore, breaches that arise from transmitting data through the cloud might not be covered either.

1.18 One of the **principles of the PDPA is the security of data**. Within the framework of PDPA, safeguards for health data mean that it is considered sensitive personal data and processing/storing the data requires explicit consent from the patient. PDPA is enforced by the PDPA commissioner and fines are imposed on businesses that breach the law.

1.19 There is a direct **link between spikes in cyber scams / fraud and breaches of personal data**. For that authorities have tried to use the Cybercrimes Act and Penal Code. In terms of personal remedies there is the tort of negligence via civil action to claim the state / agency has been negligent in handling the data. This is however an expensive recourse of action to take.

1.20 Could there be a framework for **independent investigations into the viability of government AI machine learning systems** especially when it affects the public?

1.21 A lot of the **technology is cross-border in nature**. This raises the issue of international data flows which complicates decisions on national legislation. This also impacts the ability to govern and safeguard data especially when breaches occur in jurisdictions outside the country. Malaysia needs to take a more active and vocal role in the international discourse regarding AI ethical principles so that they will reflect local concerns.

Concerns on the use of AI

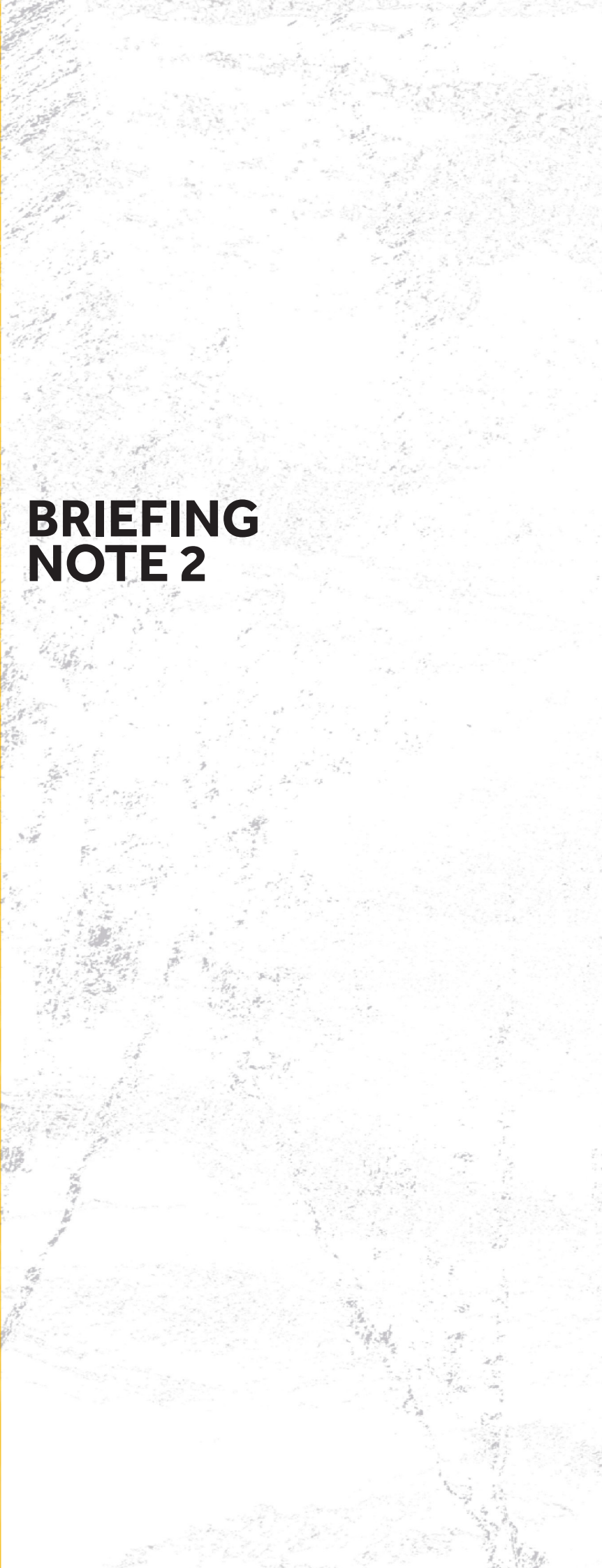
1.22 The viability of the **media industry is seen as under threat from AI**, especially with the big tech players using algorithms to control the information ecosystem. With these players controlling, moderating, disseminating, distributing, curating, and shaping the content that people are creating and consuming, it is challenging for the media industry who see themselves not just as a business but also having a role in serving public interest.

- 1.23 There are **opportunities to harness AI to improve** on the quality and relevance of content produced. Currently, industry players are using AI on their digital assets, for example to personalise news feeds. However, there is a gap in skill and expertise and the need to retrain journalists to be able to apply AI in their work.
- 1.24 There is a **legal framework for journalists to access information**, but the government can do more like adopt proactive disclosure. This is particularly useful when a lot of data is interconnected between different government departments and journalists need to know how to access that data.
- 1.25 There is a need to **improve AI literacy among journalists** so as to be able to harness what is good about AI and to also be able to highlight when there are biases in AI models.
- 1.26 Advantages in using digital technologies in facilitating provision of public services and right to information include reduction in service delivery time, better prediction of information needed for decision-making, personalisation and precision of information, better retention and retrieval of information, enabling wider reach of audience and engaging citizens in two-way communication with a feedback mechanism by the state. However, digitalisation of access to information can bring **new digital divides including digital gender and socio-economic divides**. Policy makers have to address political, socio-economic, linguistic and cultural barriers that might prevent equal access to information and communication technologies. This requires investment to understand digital and non-digital barriers to access to information and to ensure remedies are tailored to respond to context specific barriers.
- 1.27 One of the issues is that when fairness, transparency, privacy is considered it is usually applied to the narrow context of how the technology is designed and not what is the appropriate technology to be used. There is a need to also ask **is the technology beneficial and are there people who will be marginalised by this technology**. How to ensure the trade-off between those who benefit from the technology and those who do not is not too stark?
- 1.28 AI needs to be rigorously tested, validated and verified. Good for the government to **proactively disclose the AI models and make it transparent** / have access to the algorithm. What was the model, how was the AI trained and with what datasets? RTI pathway is important for pushing AI / algorithmic accountability. The more information available on how decisions are made, the better for everyone.
- 1.29 Aside from data protection and privacy, it is important to employ frameworks that give enough information to interrogate the impacts these technologies have on society. Even if there are strong data protection frameworks in place, **what are the power dynamics that become solidified in the implementation of these systems?**





BRIEFING NOTE 2



BRIEFING NOTE 2

Current and necessary standards and processes that can influence the use of AI in a more accountable and ethical way.

- 1.1 International human rights law specifically recognises **the right of access to information**. Article 19 of the International Covenant on Civil and Political Rights protects everyone’s right to seek, receive and impart information of all kinds. It is essential that the design and implementation of tools like AI are transparent, ethical, and accountable. **People have the right to know how the algorithms affecting their lives are designed and what kind of data is collected about them.**
- 1.2 The right to information is most fully realised when access to governmental information is **guaranteed by legislation that is based on international standards**. The core underpinning principle is maximum disclosure with limited exceptions. This means that legal provisions granting access should be interpreted as broadly as possible, and supported by a general presumption of disclosure. Provisions that allow the public interest to override disclosure should only apply where the harm demonstrably outweighs the overall interest in disclosure.
- 1.3 Three important aspects of the **right to information framework**:
 - (i) Have a **clear procedural framework** designed to facilitate access in an efficient, user-friendly, and affordable manner. Requester should be given an explanation and information about options for appeal if their request is refused.
 - (ii) Include a **specialised oversight body**, such as an information commission / commissioner, with the power to hear and determine appeals against refusals of access or other infringements of the law. As well as wider powers and adequate resources to implement the law.
 - (iii) Include **administrative rules** to facilitate effective implementation at state and subnational levels. These should include obligations to appoint specialised officials to receive and process requests, provide training for staff, maintain records and report annually on the implementation of the law.

1.4 Recommendation on the Ethics of Artificial Intelligence

- (i) A normative instrument on ethical implementation of AI, was developed by UNESCO in November 2021 and adopted by 193 countries (including Malaysia).
- (ii) It is based on a number of inter-connected values and principles.
 - **Values:** respect, protection and promotion of human rights and fundamental freedoms and human dignity under the ethical approach to AI.
 - **Principles:** human oversight and determination; right to data protection and privacy; awareness and literacy.
- (iii) In national strategies for AI in Southeast Asia, while there is focus on digital economy and economic growth, there is a lot of inherent value in considering human rights principles and how AI can contribute to that space.
- (iv) Recommendation is that AI systems should exist for the improvement of human lives, human conditions and improve societies – not the other way around.



1.5 To support the implementation of the Recommendation on the Ethics of Artificial Intelligence, UNESCO also has:

- (i) **Ethical Impact Assessment** to assess if algorithms are aligned with the values, principles and guidance in the Recommendation and ensure transparency around how AI systems are developed to the public,
- (ii) **Readiness Assessment Methodology** for governments to assess their laws, policies and institutions in addressing AI risks.

1.6 Internet Universality ROAM Principles

- (i) These **principles guide the values, norms and policies that are relevant to access to information legislation**. The internet and ICT technologies should be aligned with rights [R], openness [O], accessibility [A] and multi-stakeholder [M] governance.
- (ii) Since 2018 UNESCO adopted a **set of indicators to assess the implementation** of ROAM Principles at the country level including indicators for assessing access to information in digital contexts. These examine issues like affordability, local content language capabilities.
- (iii) UNESCO is working on **updated guidelines for open data** and will be addressing whether private data collecting entities should be treated as legal data fiduciaries with responsibility to secure data against breaches and to adhere to a code of conduct for how they use this data.

1.7 **UN Secretary-General's 2018 high level panel on digital cooperation** stated that autonomous and intelligent systems should be designed in ways that enable their decisions to be explained and humans to be accountable for their use. This means that data processing operations have to be communicated in not only a comprehensive but generally understandable language for the general public.

1.8 **Malaysia's AI Roadmap** is guided by 7 principles:

- (i) Fairness
- (ii) Reliability, safety & control
- (iii) Privacy & security
- (iv) Inclusivity
- (v) Transparency
- (vi) Accountability
- (vii) Pursuit of human benefits & happiness.

1.9 MAMPU is **formulating an action plan for the AI Roadmap** for emerging technologies such as AI, robotics, IoT, Big Data, Cloud Computing. They are also, in the process of **publishing blockchain guidelines for public sector**.

1.10 Coordination & implementation of the AI Roadmap should include:

- (i) **Collaboration** - between government, academic, industries and society
- (ii) **Engagement** - with marginalised and underprivileged.



1.11 Malaysia's **public data ecosystem**

(i) Data Driven Government (DDG) 2022-2025 **framework for efficient data management** in public sector

- Malaysian Government Central Data Exchange (MyGDX) – Data sharing platform that provides data integration services across agencies to facilitate the provision of End to End (E2E) online services.
- Dasar Perkongsian Data Sektor Awam – Policy and guidelines for public sector data sharing initiatives
- Analitis Data Raya Sektor Awam (DRSA) – To facilitate big data deployment in the public sector agencies
- Data Terbuka Sektor Awam – To promote sharing of public sector open data
- Public Sector Data Dictionary (DDSA) – A standard for data attribute naming in the application systems in the public sector
- MyGovEA – A Guideline for EA implementation in the public sector
- Government-Wide Reference Architecture – Framework to facilitate data categorisation based on data custodian and services
- Garis Panduan Pengurusan Keselamatan Maklumat Melalui Pengkomputeran Awan (Cloud computing) dalam Sektor Awam – For data security in cloud computing and explain the data categorisation for electronic data sharing

(ii) [Open Data Portal](#) (12,840 datasets as of 17/10/23)

(iii) [Online services gateway](#) – information on life events (birth – death)

(iv) Informed by global standards & references - including UN SDGs, [OECD's The Path of Becoming Data-Driven Public Sector](#) and [UN-EGDI Report](#).

1.12 A progressive AI Roadmap – but needs frameworks on:

(i) **Access to information**

(ii) **Interrogating impact of technology**

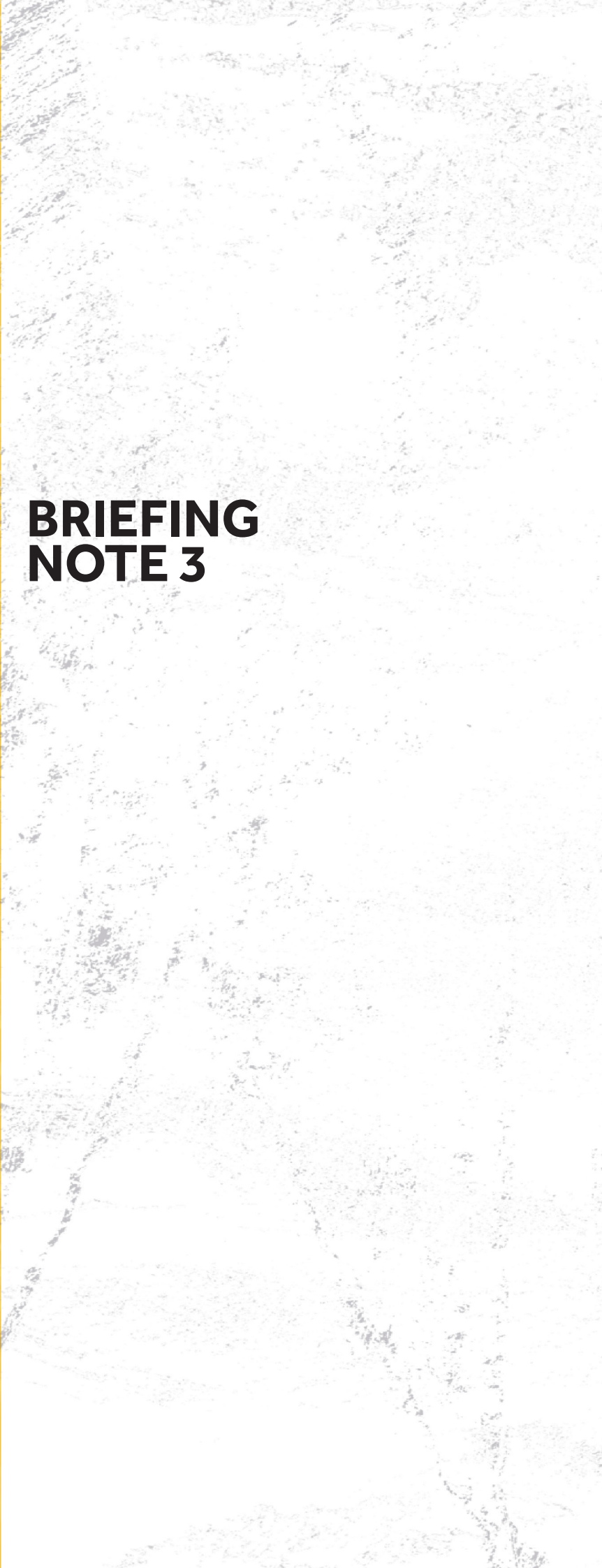
1.13 Currently there is no RTI law at Federal level – a **progressive RTI pathway is critical for AI** accountability.

1.14 PDPA requires strengthening, especially to **improve accountability within government & for non-commercial transactions**.





BRIEFING NOTE 3



BRIEFING NOTE 3

Recommendations for moving forward with the changing information landscape focusing on the intersections between the use of AI, e-governance and right to information.

Law reform and key principles

- 1.1 To **enact RTI legislation** that can provide a framework for government to refer to on disclosure of information other than the OSA. To also learn from Sri Lanka where they conducted a six-month trial period before implementing the law and also engaged with marginalised communities to use the law. Civil servants need to be able to balance between information that should be protected and national security, sensitive issues. Clear and proper guidelines are needed.
- 1.2 The **PDPA needs to be amended to impose a certain level of accountability** or liability on government agencies that handle personal data. A lot more can be done in terms of securing personal data and holding government accountable.
- 1.3 To **develop an IDPA – IoT Data Protection Act** as there is no legislation governing this data collection. With an IDPA and the PDPA, there can then be created a true value proposition in how to manage the forward trajectory of AI development.
- 1.4 Improve collaboration between media and the government in terms of sharing data by **formalising clear guidelines around open data** which include assurances that digital technology like MySejahtera is not being used as a form of surveillance on the journalists.
- 1.5 UNESCO calls on all digital stakeholders to implement digital policies that are guided by the principles with a particular focus on **ensuring accessibility and inclusion for marginalised communities**.
- 1.6 The design of any **new technology needs to fundamentally reflect the needs of the people** – what it can do for us and not the other way around. It also needs to take a human rights approach, centred on the human interest and public interest.
- 1.7 To look into the **grey area of liability** when something goes wrong (with the use of AI). There is no legislation / answer to this as yet.

Processes

- 1.8 UNESCO reminds that while there are universal ethical norms that we can agree on but in terms of national context and priorities, they can differ. There is a need for **national-led conversations, guided by universal norms embedded in human rights principles**. Similarly, the contexts of other countries in North America and Western Europe are different from East and Southeast Asia and this needs to be kept in mind when discussing ethics.

- 1.9 While high-level normative frameworks offer good guidance, there is a need to address the **political economy of data and question the incentives or disincentives that exist towards implementing ethical guidelines**. Otherwise, these broad high-level principles can fall short of what is required to govern technology.
- 1.10 To be more **inclusive and engage with a wider range of stakeholders** (e.g., gig workers) to understand their concerns using certain platforms. This includes acknowledging accessibility issues faced by the rural community due to the large digital divide and geographical disparity.
- 1.11 For policies to work, there is the need for **buy-in from the civil servants** from the top to bottom levels.
- 1.12 There should be a **forum where people could get together** and have comprehensive consultations with all stakeholders before any policies or designs are finalised. There should be more networking to connect with more investigative journalists who work on AI and technology / data issues. Collaboration between government, academia, industries, and society. Under the AI implementation unit, the government has six sub-committees headed by leaders in sectors like policy, legal and regulation.
- 1.13 To ensure all individuals can seek, receive and relay information, to **provide content in local languages and in different formats**. Also fostering media and information literacy skills to enable individuals to critically and effectively engage and combat disinformation.

Institutional

- 1.14 UNESCO to promote the **need for a ministry of data as data becomes increasingly critical**. The centralised collection of data at the ministry will provide a massive dataset for AI based on a simulation of historical data. The ministry can regularly test, verify and finetune an AI tool before launching it.
- 1.15 In situations where AI is making decisions (e.g., cases of sexual or drug related cases), it is important to **have an oversight body** and not leave these decisions to be carried without human intervention.
- 1.16 For the government of Malaysia to **develop a mobile app to bridge the digital divide** as mobility is the way forward.
- 1.17 To raise awareness among government civil servants and promote the **correct use of data categorisation** [e.g., restricted (*terhad*), confidential (*sulit*), secret (*rahsia*), top secret (*rahsia besar*)] so as not to restrict all information by default. There are guidelines within the Arahan Keselamatan CGSO.

Building capacity and changing mindsets

- 1.18 To **change the mindset towards using AI** so as not to look at it as something to be feared but rather something to take advantage of to make the world a better place. For example, to use it to address the four pain points of the country: food security; ageing; climate and environment; digital divides – between urban and rural, between SMEs and MNCs, between enterprises and government agencies.
- 1.19 To **build capacity and fill the knowledge gap** in understanding what AI means, raise awareness around consumer rights as technology users and avoid working in silos. To introduce AI curriculum into communication studies to nurture talent like skilled investigative journalism.
- 1.20 To shift the business mindset from solely focusing on profit to **including environmental, social and governance (ESG) considerations**. Both the government and the private sector have to prioritise value over the cheapest cost in government procurement processes.

