

Manifesto Rakyat Pillar 2: Promote, Improve & Defend Civil Rights & Liberties

2a: Freedom of Expression

Preamble

The Federal Constitution guarantees the right to freedom of expression in Malaysia but also allows limits set by Parliament, largely relating to public order and national security. Over the years, the ruling party since Independence has kept adding to this legal arsenal, ostensibly in the interest of maintaining ethnic and religious harmony, but really to increase its grip on political power.

The small window of freedom opened by the reformist Pakatan Harapan government that was elected to power in May 2018 was soon shut after an internal coup in February 2020. As the volatile political situation heats up with more jostling for power through new political alliances in the state and federal governments, there has been a slew of renewed threats against freedom of expression, including the increased weaponising of repressive laws to harass, intimidate and silence dissenting voices. The ensuing government under Perikatan Nasional's Tan Sri Mahiaddin Yasin declared a national emergency and suspended Parliament in January 2021, then enacted a draconian law ostensibly to combat fake news—both actions were purportedly necessary to curb the COVID-19 pandemic. Parliament was only reconvened seven months later following pressure from all levels of society, right up to the Yang di-Pertuan Agong. Ordinary citizens have been at the receiving end of the state's arbitrary tactics to restrict freedom of expression, as evidenced by the multiple investigation papers opened to investigate netizens over social media posts that are critical of the government, royalty or politicians. The authorities have repeatedly cited the pandemic as a pretext for curbing peaceful assemblies, despite organisers taking pains to enforce mask-wearing, social distancing and other preventive health measures. This regressive trend continues under the current government led by Barisan Nasional's Dato' Sri Ismail Sabri Yaakob, who

was appointed prime minister following Tan Sri Mahiaddin Yasin's resignation over losing majority support in Parliament.

I: Legal Framework on Freedom of Expression

For a country that aspires to be a developed nation by 2025, Malaysia should be confident enough to commit to democratic principles based on respect for universal human rights and freedom of expression, assembly and speech. It is high time the government initiate a programme of legislative reform to harmonise the legal framework with Malaysia's international human rights obligations by doing the following:

1. Immediately end the intimidation, harassment and sanctioning of journalists, human rights defenders and other civil society actors in Malaysia who exercise their right to speak out, dissent and demand accountability from the state.

2. Implement an immediate moratorium on the use, and move towards the repeal, of laws that suppress freedom of expression.

Examples are the Sedition Act 1948, the Official Secrets Act (OSA) 1972, the Printing Presses and Publications Act (PPPA) 1984...

(Lew Guan Xi, Proposal 2A-1)

...as well as Section 233 of the Communications and Multimedia Act (CMA) 1998, which penalises comments that cause any person's annoyance, and Section 114A of the Evidence Act (Amendment) (No. 2) 2012.

(Bilqis Hijjas, ReformARTsi, Proposal 2A-2)

3. Reform or amend the Section 504 and 505(b) of the Penal Code, which have overly broad provisions criminalising speech that leads to a breach of "public peace" and "public tranquillity".

(Bilqis Hijjas, ReformARTsi, Proposal 2A-2)

4. Reform the Universities and University Colleges Act (UUCA) 1971 in regards to students' freedom of expression.

Public universities in Malaysia should aspire to cultivate the highest levels of intellectual discourse by nurturing critical thinking and encouraging open debate, unfettered by narrow moralistic values and religious or political doctrines. Societies and faculties of public universities in Malaysia should be allowed to organise talks, debates, and other campus events without arbitrary oversight or risk of cancellation. There should be clear guidelines pertaining to the chain of command in universities, and a transparent system that determines who is authorised to cancel an event and on what grounds.

(Bilqis Hijjas, ReformARTsi, Proposal 2A-3)

5. Develop a concrete timeline and plan of action towards immediate ratification of international human rights treaties.

In particular, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

6. Only restrict freedoms of speech and assembly if there is a legal basis for it and it is absolutely necessary and in compliance with human rights norms.

As we continue to navigate COVID-19 responses and other crisis, any restrictions to our constitutional freedoms of speech and assembly must:

- i. have a legal basis;
- ii. comply with human rights norms and international human rights standards;
- iii. be based on absolute necessity and not be arbitrary in nature; and
- iv. be reviewed constantly to ensure that all actions taken are proportionate to the sole objective of stalling the spread of COVID-19 or other crises.

(Wathshlah Naidu & Nalini Elumalai, Policy Town Hall Meeting, 2 October 2021)

7. Focus on education and dissemination of public information countering fake news.

Follow the example set by the Ministry of Communications and Multimedia, instead of focusing on criminalisation and persecution. Make fact-checking websites easily accessible.

(Lew Guan Xi, Policy Town Hall Meeting, 2 October 2021)

II: Progressive Information Regime

The right to information 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 restricted if there are legitimate reasons, such as for the purposes of state security or privacy.

There must be a basic guarantee of open and transparent access to information held by public authorities. Any measures to restrict access to information must be legal, necessary, proportionate and timebound. Before restricting access to information and criminalising its disclosure, a substantial harm test should always be administered to prove that the disclosure of the information would cause substantial harm to a legitimate aim which may justify non-disclosure.

(Wathshlah Naidu, Policy Town Hall Meeting, 2 October 2021)

8. Enact a right to information law without further delay and abolish secrecy laws that suppress expression.

9. Review and amend the Whistleblower Protection Act 2010 to broaden the scope of immunity.

(Arief Hamizan, Policy Town Hall Meeting, 2 October 2021)

III: Enabling Environment to Promote Media Freedom

The media must be able to function independently and without fear of negative repercussions for publishing or disseminating information and ideas, including those critical of the government, as part of their duty.

10. Drop all investigations into and pledge to stop all acts of intimidation against the media and journalists.

11. Move ahead with the establishment of the proposed Malaysian Media Council.

The Council will act as a transparent and independent self-regulatory body for the industry.

(Lew Guan Xi, Proposal 2A-1)

12. Repeal the PPPA and Section 233 of the CMA.

(Lew Guan Xi, Proposal 2A-1)

The PPPA gives sweeping discretion to the Minister of Home Affairs to ban publications without due regard for legitimacy and has created a chilling environment for print media. Section 233 of the CMA criminalises “improper use of network facilities or services”.

13. Adopt and implement the UN Plan of Action on the Safety of Journalists and the Issue of Impunity and other related UN Human Rights Council resolutions.

Do this in consultation with key stakeholders.

(Nalini Elumalai, Policy Town Hall Meeting, 2 October 2021)

IV: Censorship

Review, reform and align the regulatory framework on censorship which often conflicts with artistic creative expression and creates a stifling environment for arts practitioners.

14. Do not censor publicly accessible artistic content; instead, regulate them with content ratings.

The content ratings should be classified according to age, and be based upon a single set of clear and explicit guidelines consistent with international standards. The ratings should be self-applied and made public by the artists involved, rather than requiring onerous and time-consuming licensing. Penalties should be

imposed only upon defaulters. This will allow local audiences to opt in voluntarily with informed consent about the material that they choose to consume.

(Bilqis Hijjas, ReformARTsi, Proposal 2A-4)

15. Review and amend all licensing systems and legal frameworks to reduce the burden on artistes.

Remove all undue burden upon local artistes, including restrictions on their creative capacity and requirements that pose additional financial burdens and severely limit freedom of expression, such as the Entertainment (Federal Territory of Kuala Lumpur) Act 1992 and Film Censorship Act 2002.

(Bilqis Hijjas, ReformARTsi, Proposal 2a-5; Arief Hamizan, Policy Town Hall Meeting, 2 October 2021)

16. Form an independent, professional, transparent and accountable body of qualified industry members, artistes and civil society to regulate films.

The decisions of this independent regulatory body can also be challenged in court.

V: Potential of Arts in Human Development

The arts should be prioritised in the national agenda and recognised as an important element of personal, community and national development rather than viewed as merely an economic tool.

17. Recognise the rights of artists and protect their freedom of expression.

18. Develop a contemporary arts and culture policy.

Start with developing a roadmap based on inclusive, diverse consultation with a broad range of stakeholders, and implement the policy via effective programmes and incentives.

19. Give funding support to institutions involved in the development of the arts and culture.

This includes both public and private institutions, as well as community projects.

20. Set up formal channels for funding support and a mechanism to provide for the social security of freelance artists.

This includes establishing a national registry of artists.

21. Allocate resources to expand arts education in the national education system, from primary up to tertiary levels.

(June Tan, ReformARTsi, Proposal 2A-6)