



UNITED NATIONS HUMAN RIGHTS COUNCIL

45th Session of the Working Group on the Universal Periodic Review

January – February 2024

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE
UNIVERSAL PERIODIC REVIEW OF MALAYSIA**

Submitted on 18 July 2023

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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Background

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Malaysia. With respect to this, the ICJ draws the attention of the HRC and the Working Group on the UPR to concerns relating to:
 - (i) Freedom of expression online;
 - (ii) The human rights of lesbian, gay, bisexual and transgender (LGBT) people; and
 - (iii) International human rights instruments.

Freedom of expression online

2. Following its Third Review under the UPR, Malaysia accepted two recommendations relating to freedom of expression,¹ including one calling upon Malaysia to review laws that unduly restrict freedom of expression. Additionally, Malaysia partially accepted seven recommendations urging it to guarantee the right to freedom of expression, particularly for journalists and human rights defenders.²
3. However, since 2018, Malaysia has failed to adequately implement these recommendations. The authorities have continued using laws that are not human rights compliant to arbitrarily restrict the right to online freedom of expression by investigating, arresting, charging, and convicting those who post content deemed critical of the authorities. They have also blocked access to websites and online content extrajudicially.

Communications and Multimedia Act

4. Section 233 of the Communications and Multimedia Act 1998 (CMA) criminalizes the creation and transmission of content that is "obscene, indecent, false, menacing or offensive" with "intent to annoy, abuse, threaten or harass another person". Those terms, however, are left undefined, contrary to the principle of legality, particularly given their vagueness, and may thus result in the unlawful restriction of protected expression.³ Since 2018, section 233 has been impermissibly used to arbitrarily restrict online expression for alleged "improper use of network facilities or services". Section 233 has been used to investigate, arrest,⁴ charge,⁵ and convict individuals for posting online material deemed critical of the government and the monarchy.⁶ In 2022, section 233 was used in at least 114 documented cases to investigate human rights defenders and social media users.⁷ Even when they were eventually discharged or acquitted by the courts,⁸ the individuals concerned may have been put through lengthy, costly and stressful criminal investigations and judicial proceedings.
5. The government has used section 263(2) to restrict access to online content to "preven[t] the commission or attempted commission of an offence under any written law of Malaysia or otherwise [to] enforc[e] the laws of Malaysia", such as those under section 233 of the CMA. The implementation of access blocking does not require prior approval from an independent and impartial judicial authority.⁹ Sinar Project, a non-governmental organization, reported that websites containing political criticism, news outlets and LGBT-related content were blocked in some instances.¹⁰
6. Despite civil society's repeated calls to repeal or substantially amend section 233,¹¹ in March 2023 reports indicated that the government was seeking to expand the Malaysia Communications and Multimedia Commission's (MCMC) powers and increase the severity of punishments under section 233.¹²

Sedition Act

7. The Sedition Act 1948 (Sedition Act) contemplates restrictions on the exercise of freedom of expression that are overbroad and inconsistent with basic rule of law and human rights principles.¹³ Section 3 of the Act criminalizes speech with a "seditious tendency", a term that is ambiguously defined to mean any kind of speech or publication that causes "hatred or contempt, or excite disaffection" against the monarchy or the government or promotes "ill will and hostility between the different races or classes".¹⁴
8. During its previous UPR cycle, Malaysia stated that it had established a "Special Committee" to review several laws, including the Sedition Act.¹⁵ While the government promised to repeal the Sedition Act,¹⁶ the Act continues to be used to restrict freedom of expression, as demonstrated by the numerous criminal investigations,¹⁷ arrests,¹⁸ charges,¹⁹ and convictions against individuals for posting online content deemed "seditious" against the Malaysian monarchy and government.²⁰
9. As of July 2023, the constitutionality of the Sedition Act was being challenged in the Court of Appeal in connection with the criminal conviction of preacher Wan Ji,²¹ who was sentenced to one year's imprisonment in 2019 for Facebook posts that were found to be seditious against the Sultan of Selangor.²²

Sections 504 and 505(b), Penal Code (Breach of the peace)

10. Section 504 criminalizes anyone who "intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence", with up to two years' imprisonment, a fine, or both. Similarly, section 505(b) criminalizes "whoever makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause, fear or alarm to the public... whereby any person may be induced to commit an offence against the State or against the public tranquillity", with up to two years' imprisonment, a fine, or both.
11. The Malaysian authorities have resorted to both provisions to launch criminal investigations against journalists for reporting on the mass arrests of migrant workers and refugees, and deaths in custody.²³ Such investigations threaten media freedom in Malaysia, as journalists may be hesitant to report on issues deemed critical of the authorities for fear of being prosecuted.²⁴

Contempt of Court

12. Malaysia's contempt of court doctrine continues to be used unlawfully against lawyers in relation to their freedom of expression and the legitimate discharge of their professional duties. Malaysia's contempt of court offence rests on a common law doctrine that is not statutorily codified, and a clear definition of criminal contempt of court has not emerged from the case law.²⁵
13. The absence of legal certainty has allowed for wide judicial discretion when applying the doctrine, resulting in misapplication of the law to arbitrarily restrict the free expression of lawyers,²⁶ in their role as officers of the court, in contravention of the UN Basic Principles on the Role of Lawyers.²⁷

Section 114A, Evidence Act

14. Online intermediaries are at risk of being held liable for user content posted on their platforms, due to Section 114A of the Evidence Act 1950 (Evidence Act) and the precedent set in the case of *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Another* (2020).
15. Section 114A provides that anyone who "in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the

publication unless the contrary is proved".²⁸ This section reverses the burden of proof requiring the defendant to prove that they were not the "publisher" of the content, in violation of the presumption of innocence.²⁹ In February 2021, the Federal Court found Malaysiakini, an independent news outlet, guilty of criminal contempt of court purporting that it was the publisher of five comments posted by third parties that criticized the judiciary, imposing a fine of RM 500,000 (approx. USD 124,000).³⁰

16. This decision creates an onerous burden on online intermediaries to proactively filter user-generated content to avoid disproportionate and unnecessary legal sanctions, disincentivizing them from performing their roles as platform providers for the free flow of information and ideas.³¹

Criminal and civil defamation provisions

17. Malaysia has both criminal and civil defamation provisions, which have been used to silence human rights defenders, journalists and social media users.
18. Criminal defamation provisions, pursuant to sections 499 and 500 of the Penal Code, have been used to investigate and/or charge human rights defenders and journalists. For instance, criminal investigations were launched against individuals who posted a caricature of a government official,³² and a statement criticizing raids against refugees and migrant workers.³³ In 2022, a journalist, who had been charged with two counts of criminal defamation for articles exposing stock market manipulation, was acquitted on one count and given a discharge not amounting to an acquittal for the other.³⁴
19. Civil defamation lawsuits, pursuant to the Defamation Act 1957,³⁵ have been used by private actors to silence environmental human rights defenders who express concern about their business activities through manifestly unfounded strategic litigations against public participation (also known as SLAPP).³⁶ Independent media outlets have also been targeted, and there are concerns that the Federal Court's 2021 decision in the case of *Mkini Dotcom Sdn Bhd v Raub Australian Gold Mining Sdn Bhd* poses a threat to media freedom³⁷ through its narrow interpretation of the legal defences available to journalists for their reporting.³⁸

Censorship and targeting of LGBT-related expression

20. Since 2018, Malaysian authorities have targeted LGBT-related expression, restricting access to online and offline content, and investigating and/or charging individuals who publish LGBT-related expression. For example, in 2022, at least two individuals faced criminal investigations and charges under section 233 of the CMA for posting videos reportedly featuring LGBT persons.³⁹
21. Section 7(1) of the Printing, Presses and Publications Act 1984 (PPPA) authorizes the Malaysian government to prohibit "undesirable publications".⁴⁰ Furthermore, the Ministry of Home Affairs' (MOHA) "Guidelines on Film Censorship" explicitly prohibit portraying "homosexual and unnatural sex" and "transgender behaviour and lifestyle".⁴¹ The MOHA has applied these two instruments to ban books, films and products purportedly containing LGBT-related content.⁴² In February 2022, the High Court revoked the government's ban against the book "Gay is OK! A Christian Perspective", on the basis that the government had "failed to show evidence of actual prejudice to public order that had occurred".⁴³ However, the MOHA has since appealed the decision.⁴⁴

The human rights of LGBT people

22. Following its third UPR, Malaysia noted nine recommendations calling on it to guarantee the human rights of LGBT individuals.⁴⁵ Since 2018, apart from censoring and targeting LGBT-related expression, the Malaysian authorities have continued discriminating against LGBT people and have not taken adequate steps to protect LGBT people from violence and discrimination by private actors.

Criminalization of consensual same-sex sexual conduct and gender non-conformity

23. In Malaysia, consensual same-sex sexual conduct is criminalized at both the federal and state level. At the federal level, sections 377A and 377B of the Penal Code criminalize “carnal intercourse against the order of nature”, defined as “the introduction of the penis into the anus or mouth of the other person”, with a maximum imprisonment of twenty years and whipping. Section 377D criminalizes acts of “gross indecency” committed in public or private with imprisonment of up to two years.⁴⁶
24. At the state level, all 13 states and the federal territory criminalize consensual same-sex relations and gender non-conformity through state Syariah laws, which are only applicable to Muslims.⁴⁷ State Syariah laws on “encouraging vice”, “indecent acts” and “insulting Islam” have also been used to target gender non-conforming persons as attested by reports of arbitrary arrests, detentions and criminal charges.⁴⁸
25. In February 2021, the Federal Court declared section 28 of the Selangor Syariah Criminal Offences Enactment, which banned acts of “unnatural sex”, unconstitutional.⁴⁹ The Court found that the enactment of section 28 was beyond state legislatures’ law-making powers.⁵⁰ This decision may set a precedent for further challenges to state Syariah laws on “unnatural sex”.

Online violence and “hate speech” against LGBT people

26. Online violence and “hate speech” are commonplace against LGBT people in Malaysia.⁵¹ Government officials have reportedly spread anti-LGBT rhetoric, further fueling anti-LGBT sentiments among the general population.⁵²
27. There have been numerous reports of LGBT people facing online harassment, doxing, death threats and incitement to violence,⁵³ for which they are unable to seek effective redress for fear of outing themselves. Violence against LGBT people also takes place offline with people facing violence from their own families, and numerous reports of LGBT people being attacked, bullied, harassed and killed by private individuals.⁵⁴
28. LGBT people in Malaysia face significant barriers to accessing justice when their human rights are violated or abused online and/or offline, due to the hostile legal environment against them and the absence of a comprehensive legal framework that protects them on the basis of their sexual orientation, gender identity and gender expression. Victims/survivors of violence and harassment are often hesitant to report their case to the authorities for fear of reprisals, and when they do, authorities often reportedly fail to address their complaints.⁵⁵

State-sponsored sexual orientation and gender identity “conversion”

29. The Malaysian authorities have continued to adopt and promote harmful “conversion practices”, which may amount to torture and cruel, inhuman or degrading treatment.⁵⁶
30. Since 2011, the Department of Islamic Development (JAKIM) and other state Islamic departments have organized *mukhayyam*, a series of “retreats” for LGBT people aimed at “rehabilitating” or “converting” them, particularly targeting trans women.⁵⁷ In March 2022, Google removed from its Google Play store an application endorsed by JAKIM that promoted “conversion practices” and featured anti-LGBT sentiments.⁵⁸

International human rights instruments

31. Following its Third Review, Malaysia accepted six recommendations pertaining to the ratification of international human rights instruments,⁵⁹ including ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

32. However, to date, Malaysia has failed to become a party to any one of these international human rights instruments.⁶⁰

Recommendations

33. In light of the above-mentioned concerns, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:

On freedom of expression online

34. The legislature should repeal or substantially amend legal provisions that unduly restrict the right to freedom of expression – including sections 499 – 502 of the Penal Code, section 233 of the CMA, section 4 of the Sedition Act, the contempt of court doctrine, and section 114A of the Evidence Act – to bring them in line with international human rights law;

35. The prosecuting authorities and the judiciary should immediately cease ongoing criminal investigations, drop all existing charges and revoke or otherwise reverse civil and/or criminal penalties imposed against individuals for violation of domestic provisions that are inconsistent with Malaysia's obligations under international human rights law guaranteeing the rights to freedom of expression and information;

36. The government should refrain from restricting or blocking online content unless the blocking decision has been undertaken following a full analysis that applies international standards concerning legality, legitimate purpose, necessity, proportionality and non-discrimination, and has been authorized pursuant to an order by an independent and impartial judicial authority, in accordance with due process with the express guarantee of the right to appeal.

On the human rights of LGBT people

37. The legislature should repeal or substantially amend all laws, at both the Federal and state level, that are discriminatory or have been applied in a discriminatory manner towards LGBT persons, including laws criminalizing consensual same-sex sexual conduct and gender non-conformity, and have been applied to restrict LGBT-related expression – such as sections 377A, 377B and 377D of the Penal Code and section 7(1) of the PPA;

38. The government should abolish discriminatory practices that violate the human rights of LGBT people, including *mukhayyam* and any other State-sanctioned programmes aimed at forcibly "converting" LGBT people;

39. The legislature to adopt specific legislation to prohibit, investigate and prosecute online and offline violence against LGBT people, in line with international human rights law and standards;

40. The prosecuting authorities and the judiciary should guarantee the right to an effective remedy for LGBT persons who have suffered actual damages as a result of online and offline violence; and; and

41. All branches of the State should refrain from using messages of intolerance or expressions that may incite violence, hostility or discrimination against LGBT people, and speak out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.

On international human rights instruments

42. The government should become a party to core international human rights instruments and their Optional Protocols – including the ICCPR, ICESCR, ICERD, CAT, CMW, International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol of the CAT, and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

¹ Responses in A/HRC/40/11/Add.1. Accepted recommendations: 151.139 Take further steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets (Austria); 151.143 Accelerate consultations within the Government in order to review the following legislation: the Sedition Act, the Printing Presses and Publications Act, the Prevention of Crime Act, the Special Offence Act, the Peaceful Assembly Act and the Prevention of Terrorism Act (Georgia).

² Partially accepted recommendations: 151.137 Rescind or revise the Sedition Act, Security Offences Act and Communications and Multimedia Act, which negatively affect freedoms of expression, association and peaceful assembly (United States of America); 151.138 Continue developing efforts in order to guarantee the freedoms and safety of human rights defenders (Uruguay); 151.140 Consider revising national legislation, including the Communications and Multimedia Act 1998, in order to bring it into conformity with international human rights law regarding the right of freedom of expression online and offline (Brazil); 151.141 Amend existing provisions that limit the freedom of expression, the Evidence Amendment Act, Peaceful Assembly Act, and the cessation of arbitrary detention and apprehensions without charges following legislative reforms in accordance with international standards (Spain); 151.144 Continue efforts in the area of free speech to create a safe and enabling environment for the media and civil society and, in this regard, repeal the Printing and Publication Act, as previously recommended (Ireland); 151.145 Review its legislation with the aim of ensuring that civil society, including human rights defenders and journalists, could freely exercise their rights to freedom of expression, both online and offline, association and peaceful assembly (Lithuania); 151.146 Better protect journalists and human rights defenders, in particular by abolishing travel bans they are subject to and amending certain laws, such as the Peaceful Assembly Act and the Penal Code (Switzerland).

³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), article 29(2).

⁴ Free Malaysia Today, "Cops raid Freedom Film Network's office, cartoonist's home", 2 July 2021, available at: <https://www.freemalaysiatoday.com/category/nation/2021/07/02/cops-raid-freedom-film-networks-office-cartoonists-home/>; Civicus, "Malaysia: Use of Restrictive Laws and Harassment of Protesters Persist under New Government Despite Reform Commitments", 5 April 2023, available at: <https://monitor.civicus.org/explore/malaysia-use-of-restrictive-laws-and-harassment-of-protesters-persists-under-new-government-despite-reform-commitments/>.

⁵ Centre for Independent Journalism, "CIJ rejects actions of the State that silence dissenting voices", 9 June 2020, available at: <https://cijmalaysia.net/cij-rejects-actions-of-the-state-to-silence-dissenting-voices/>.

⁶ International Commission of Jurists, "Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia", December 2019 ("Dictating the Internet Report"), pp. 109 – 110, available at: <https://www.icj.org/wp-content/uploads/2019/12/Southeast-Asia-Dictating-the-Internet-Publications-Reports-Thematic-reports-2019-ENG.pdf>.

⁷ Centre for Independent Journalism, "Press Statement: Hasten reform of Section 233 of the Communications and Multimedia Act", 15 February 2023, available at: <https://cijmalaysia.net/hasten-reform-of-section-233-of-the-communications-and-multimedia-act/>.

⁸ Malay Mail, "Refugee activist Heidy Quah given discharge not amounting to acquittal for improper use of network facilities", 25 April 2022, available at: <https://www.malaymail.com/news/malaysia/2022/04/25/refuge-activist-heidy-quah-given-discharge-not-amounting-to-acquittal-for-i/2055559>; Free Malaysia Today, "Ex-MyWatch chief Sanjeevan acquitted of circulating offensive remarks against police", 5 May 2023, available at: <https://www.freemalaysiatoday.com/category/nation/2023/05/05/ex-mywatch-chief-sanjeevan-acquitted-of-circulating-offensive-remarks-against-police/>.

⁹ UN Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression", UN Doc. A/HRC/38/35, 6 April 2018, para. 7, available at: <https://www.undocs.org/A/HRC/38/35>.

¹⁰ Sinar Project, "iMAP State of Internet Censorship Report 2022 - COUNTRY: MALAYSIA", 2022, p. 11, available at: <https://imap.sinarproject.org/reports/2022/imap-state-of-internet-censorship-country-report-2022-malaysia/2022-malaysia.pdf>.

¹¹ New Straits Times, "Activists want ambiguity in Communications and Multimedia Act cleared up", 2 March 2023, available at: <https://www.nst.com.my/news/nation/2023/03/885208/activists-want-ambiguity-communications-and-multimedia-act-cleared>.

¹² The Star, "MCMC asked to review amendments to Communications and Multimedia Act", 17 March 2023, available at: <https://www.thestar.com.my/news/nation/2023/03/17/mcmc-asked-to-review-amendments-to-communications-and-multimedia-act>.

¹³ International Commission of Jurists, "Malaysia: ICJ condemns the use of sedition to suppress freedom of expression, calls for the abolition of the Sedition Act", 4 September 2014, available at: <https://www.icj.org/malaysia-icj-condemns-the-use-of-sedition-to-suppress-freedom-of-expression-calls-for-the-abolition-of-the-sedition-act/>.

¹⁴ Section 4, Sedition Act 1948.

¹⁵ A/HRC/40/11/Add.1, para. 16.

¹⁶ Dictating the Internet Report, p. 78. In 2022, Pakatan Harapan issued an election manifesto indicating that one of its priorities if re-elected (which it was) would be "reviewing and repealing draconian provisions of acts that can be abused to restrict free speech such as the Sedition Act 1948, Communications and Multimedia Act 1998, and Printing Press and Publications Act 1984." See, ARTICLE 19, "Malaysia: Repeal Sedition Act in the Court of Appeals", 26 May 2023, available at: <https://www.article19.org/resources/malaysia-repeal-sedition-act-in-the-court-of-appeals/>

¹⁷ TheStar, "Sedition Act: 367 probed, only five charged since 2018, says Home Minister", 28 February 2023, available at: <https://www.thestar.com.my/news/nation/2023/02/28/sedition-act-367-probed-only-five-charged-since-2018-says-home-minister>.

¹⁸ Dictating the Internet Report, pp. 73, 79.

¹⁹ Malaymail, "In Kuala Lumpur, Sarawak PKR member Iswardy Morni pleads not guilty to insulting King", 1 June 2021, available at: <https://www.malaymail.com/news/malaysia/2021/06/01/in-kuala-lumpur-sarawak-pkr-member-iswardy-morni-pleads-not-guilty-to-insul/1978788>; New Straits Times, "Man charged with seditious social media posts against King", 1 March 2023, available at: <https://www.nst.com.my/news/crime-courts/2023/03/884630/man-charged-seditious-social-media-posts-against-king>.

²⁰ Dictating the Internet Report, pp. 72 – 75, 77 – 79.

²¹ Article 19, "Malaysia: Repeal Sedition Act in the Court of Appeals", 26 May 2023, available at: <https://www.article19.org/resources/malaysia-repeal-sedition-act-in-the-court-of-appeals/>.

²² Malaymail, "Court sets April 7 to hear preacher Wan Ji's Sedition Act challenge", 17 January 2023, available at: <https://www.malaymail.com/news/malaysia/2023/01/17/court-sets-april-7-to-hear-preacher-wan-jis-sedition-act-challenge/50693>.

²³ Amnesty International, "Criminal investigation against journalist threatens press freedom", 4 May 2020, available at: <https://www.amnesty.my/2020/05/04/criminal-investigation-against-journalist-threatens-press-freedom/>; Malaysiakini, "Ganapathy's death: Cops summon two Mkini journalists for statements", 18 May 2021, available at: <https://www.malaysiakini.com/news/575071>.

²⁴ Committee to Protect Journalists, "Malaysian journalist faces six years in prison over COVID-19 Facebook posts", 5 May 2020, available at: <https://cpj.org/2020/05/malaysian-journalist-faces-six-years-in-prison-ove/>.

²⁵ Dictating the Internet Report, pp. 100 – 101.

²⁶ Dictating the Internet Report, pp. 100 – 101; International Commission of Jurists, "Malaysia: contempt of court action abused to harass human rights lawyer Charles Hector", 30 March 2021, available at: <https://www.icj.org/malaysia-contempt-of-court-action-abused-to-harass-human-rights-lawyer-charles-hector/> (the charges against Charles Hector have been withdrawn, see: <https://lawyersforlawyers.org/en/contempt-of-court-action-against-charles-hector-withdrawn/>).

²⁷ Principle 23, UN Basic Principles on the Role of Lawyers 1990, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

²⁸ Section 114A(1), Evidence Act 1950. Section 114A(1) provides: "A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved."

²⁹ UN Human Rights Council, *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Abid Hussain*, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28(f).

³⁰ *Attorney General of Malaysia v Mkini Dotcom Sdn Bhd and another* [2021] 3 LRC, paras. 110 and 158.

³¹ International Commission of Jurists, "The aftermath of the Malaysiakini decision", 18 March 2021, available at: <https://www.icj.org/the-aftermath-of-the-malaysiakini-decision/>.

³² Fahmi Reza, a graphic artist, was later charged under section 233(1)(a) of the CMA, but was given a discharge not amounting to an acquittal in August 2022: see, Free Malaysia Today, "Fahmi Reza given DNAA over ex-health minister Adham's case", 26 August 2022, available at: <https://www.freemalaysiatoday.com/category/nation/2022/08/26/fahmi-reza-given-dnaa-over-ex-health-minister-adhams-case/>.

³³ Heidy Quah, a refugee aid worker, was questioned by the police for posting a statement on the raids and the treatment of migrant and refugee children on social media: see, ICJ, "Malaysia: End harassment and intimidation of media workers and critics", 11 July 2020, available at: <https://www.icj.org/malaysia-end-harassment-and-intimidation-of-media-workers-and-critics/>.

³⁴ Free Malaysia Today, "Court acquits, discharges The Edge's ex-chief editor", 22 November 2022, available at: <https://www.freemalaysiatoday.com/category/nation/2022/11/22/court-acquits-discharges-the-edges-ex-chief-editor/>.

³⁵ It is worth noting that defamation is also criminalized in Malaysia, although civil defamation lawsuits are typically used instead. Section 499 of the Penal Code criminalizes anyone who "makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation". The crime of defamation carries a punishment of maximum two-years imprisonment and/or a fine.

³⁶ Mongabay, "Sarawak Indigenous NGO squeezed by defamation case, silenced from reporting alleged logging", 16 May 2023, available at: <https://news.mongabay.com/2023/05/sarawak-indigenous-org-squeezed-by-defamation-case-silenced-from-reporting-alleged-logging/>. See also, *Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the rights of indigenous peoples*, Ref: AL MYS 2/2022, 29 August 2022, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=27493>.

³⁷ Thomas Philip Advocates & Solicitors, "Defamation: The Separation of Responsible Journalism and Reportage

in *Malaysiakini v Raub Australian Gold Mining*", 3 August 2021, available at: <https://www.thomasphilip.com.my/articles/defamation-the-separation-of-responsible-journalism-and-reportage-in-malaysiakini-v-raub-australian-gold-mining/>.

³⁸ *Mkini Dotcom Sdn Bhd & Ors v Raub Australian Gold Mining Sdn Bhd* [2021] 7 CLJ 145. In particular, the court treated the *Reynolds* defence (responsible journalism) and the protection of neutral reportage as mutually exclusive, such that each defence must be pleaded separately.

³⁹ Free Malaysia Today, "Aliff Syukri claims trial to uploading offensive content", 13 October 2022, available at: <https://www.freemalaysiatoday.com/category/nation/2022/10/13/aliff-syukri-claims-trial-to-uploading-offensive-content/>; TheStar, "Vida pleads not guilty to uploading offensive video", 8 November 2022, available at: <https://www.thestar.com.my/news/nation/2022/11/08/vida-pleads-not-guilty-to-uploading-offensive-video>.

⁴⁰ Section 7(1), Printing, Presses and Publication Act 1984.

⁴¹ Ministry of Home Affairs, "Garis Panduan Penapisan Filem", 2010, available at: [https://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM\(1\).pdf](https://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM(1).pdf).

⁴² Justice for Sisters, "Swatch raid over Pride-themed watches calls for a review of the Printing, Presses and Publication Act (PPPA)", 26 May 2023, available at: <https://justiceforsisters.wordpress.com/2023/05/26/swatch-raid-over-pride-themed-watches-calls-for-a-review-of-the-printing-presses-and-publication-act-pppa/>; Variety, "After 'Thor' and 'Lightyear,' Malaysia Government Commits to Banning More LGBTI Films", 11 August 2022, available at: <https://variety.com/2022/film/news/malaysia-ban-LGBTI-films-thor-lightyear-1235338721/>.

⁴³ Free Malaysia Today, "Publisher, author win bid to quash ban on 'Gay is OK' book", 22 February 2022, available at: <https://www.freemalaysiatoday.com/category/nation/2022/02/22/publisher-author-win-bid-to-quash-ban-on-gay-is-ok-book/>.

⁴⁴ Free Malaysia Today, "Court of Appeal reserves judgment on 'Gay is OK!' book ban", 18 May 2023, available at: <https://www.freemalaysiatoday.com/category/nation/2023/05/18/court-of-appeal-reserves-judgment-on-gay-is-ok-book-ban/>.

⁴⁵ Noted recommendations: 151.77 Take the necessary measures to establish in its national legislation a comprehensive legal framework for effective protection against discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons (Argentina); 151.78 Take necessary measures to protect lesbian, gay, bisexual, transgender and intersex persons, in law and in practice, against any form of violence, harassment or discrimination and ensure the full enjoyment of all their fundamental human rights and freedoms (Austria); 151.79 Review and repeal laws that directly or indirectly criminalize consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity (Canada); 151.80 Decriminalize consensual sexual relations between adults of the same sex (Chile); 151.81 Ensure respect for the fundamental rights of all, without discrimination, including in relation to lesbian, gay, bisexual, transgender and intersex persons by decriminalizing homosexuality (France); 151.82 Repeal all legislation that discriminates on the basis of sexual orientation or gender identity to guarantee that lesbian, gay, bisexual, transgender and intersex persons can enjoy all human rights without facing discrimination with regard to work, health, education, housing and other policy (Germany); 151.83 Repeal all laws that criminalize persons based on their sexual orientation and gender identity (Iceland); 151.84 Undertake efforts to guarantee and protect the human rights of lesbian, gay, bisexual, transgender and intersex persons in line with international obligations (Ireland); 151.85 Take concrete steps to protect lesbian, gay, bisexual, transgender and intersex persons from discrimination and violence, including through the enactment of explicit non-discrimination provisions in law, the development of public awareness programmes, and allow for the recognition of the gender of transsexual persons (Netherlands).

⁴⁶ Sections 377A, 377B, and 377D, Penal Code. While section 377A and 377B presumably apply only to consensual same-sex sexual conduct between men, it is possible for section 377D to apply to such acts between women given its open-ended formulation. However, the ICJ is not aware of any instances of section 377D being used in this manner.

⁴⁷ Human Rights Watch and Justice for Sisters, "Annex I: Laws Criminalizing Sexual Orientation and Gender Identity in Malaysia", available at: https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822_annexI.pdf.

⁴⁸ Straits Times, "Malaysian transgender entrepreneur arrested in Thailand", 20 September 2021, available at: <https://www.straitstimes.com/asia/se-asia/malaysian-transgender-entrepreneur-arrested-in-thailand>; New Straits Times, "Malaysian authorities raid LGBTI Halloween party", 30 October 2022, available at: <https://www.nst.com.my/news/crime-courts/2022/10/845036/malaysian-authorities-raid-LGBTI-halloween-party>.

⁴⁹ Human Rights Watch, "Malaysia's Highest Court Strikes Down State Gay Sex Ban", 25 February 2021, available at: <https://www.hrw.org/news/2021/02/25/malysias-highest-court-strikes-down-state-gay-sex-ban>.

⁵⁰ Malay Mail, "Federal Court unanimously declares Selangor Shariah law criminalising 'unnatural sex' void, unconstitutional", 25 February 2021, available at: <https://www.malaymail.com/news/malaysia/2021/02/25/federal-court-unanimously-declares-selangor-shariah-law-criminalising-unnat/1952701>.

⁵¹ UN Human Rights Council, "Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective", UN Doc. A/HRC/38/47, 18 June 2018, paras. 50 – 61, available at: <https://www.undocs.org/A/HRC/38/47>.

⁵² Thilaga Sulathireh, "Anwar Ibrahim is Perpetuating the Weaponization of LGBTPhobia in Malaysia, Putting

Lives in Danger", Coconuts KL, 9 January 2023, available at: <https://coconuts.co/kl/features/anwar-ibrahim-is-perpetuating-the-weaponization-of-lgbtphobia-in-malaysia-putting-lives-in-danger-opinion/>.

⁵³ Freedom House, "Freedom on the Net 2022: Malaysia", available at: <https://freedomhouse.org/country/malaysia/freedom-net/2022>; SCMP, "Transgender Malaysian Nur Sajat gets death threats, disappears after Facebook video appears to show her renouncing Islam", 5 May 2021, available at: <https://www.scmp.com/week-asia/people/article/3124318/transgender-malaysian-nur-sajat-gets-death-threats-disappears>; Serene Lim, "Queering Malay Identity Politics in the Malaysian Digital Space", Heinrich Böll Stiftung, 14 May 2021, available at: <https://th.boell.org/en/2021/05/14/queering-malaysian-digital-space>; Coconuts KL, "Doxxing is a crime in Malaysia, except for when it targets the LGBTQ community", 16 August 2022, available at: <https://coconuts.co/kl/news/doxxing-is-a-crime-in-malaysia-except-for-when-it-targets-the-lgtbg-community/>.

⁵⁴ Human Rights Watch and Justice for Sisters, "'I Don't Want to Change Myself': Anti-LGBTI Conversion Practices, Discrimination, and Violence in Malaysia", August 2022, pp. 48 – 50, available at: https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf; Asia-Pacific Transgender Network, "Conversion Therapy Practices in Malaysia", 31 March 2021, p. 6, available at: https://weareaptn.org/wp-content/uploads/2021/03/Conversion-Therapy-2020-Malaysia_29Dec.pdf.

⁵⁵ Human Rights Watch and Justice for Sisters, "'I Don't Want to Change Myself': Anti-LGBTI Conversion Practices, Discrimination, and Violence in Malaysia", August 2022, pp. 49 – 52, available at: https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf.

⁵⁶ UN Human Rights Council, "Practices of so-called 'conversion therapy': Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity", 1 May 2020, UN Doc. A/HRC/44/53, paras. 62 – 65, available at: <https://www.undocs.org/A/HRC/44/53>.

⁵⁷ Human Rights Watch, "'I Don't Want to Change Myself' Anti-LGBTI Conversion Practices, Discrimination, and Violence in Malaysia", 10 August 2022, pp. 19-20, available at: https://www.hrw.org/sites/default/files/media_2022/08/malaysia0822web_0.pdf.

⁵⁸ Malay Mail, "Jakim-endorsed LGBT conversion therapy 'app' yanked off Google Play Store", 17 March 2022, available at: <https://www.malaymail.com/news/malaysia/2022/03/17/jakim-endorsed-lgbt-conversion-therapy-app-yanked-off-google-play-store/2047998>.

⁵⁹ Accepted recommendations: 151.5 Continue efforts to accede to international treaties related to civil, political and cultural rights (Iraq); 151.6 Accelerate the process of ratification of the key international human rights instruments (Kazakhstan); 151.9 Speed up its deliberations on the signature and ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Turkey); 151.24 Continue exploring possibilities to extend its international commitments, in particular consider ratification of the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court, as previously recommended (Latvia); 151.26 Move forward towards the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Chile); 151.31 Consider ratifying core international human rights treaties to which it is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Philippines).

⁶⁰ See: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=en, accessed 8 June 2023.