GISWatch
10th anniversary

# GLOBAL INFORMATION SOCIETY WATCH

*National and Regional Internet Governance Forum Initiatives (NRIs)*

Association for Progressive Communications (APC)

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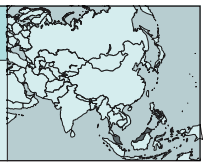
A special edition of GISWatch, "Internet governance from the edges: NRIs in their own words", is being published as a companion edition to the 2017 GISWatch annual report. It looks at the history, challenges and achievements of NRIs, as recounted by their organisers. It is available at https://www.giswatch.org

# MALAYSIA

## INTERNET GOVERNANCE IN MALAYSIA: STRUGGLING TOWARDS SELF-REGULATION AND INCLUSIVE DECISION MAKING



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## Introduction

Framed as an economic infrastructure and opportunity, the internet has flourished in Malaysia. A survey conducted in 2016 shows that 77.6% of the Malaysian population has access to the internet.[1] A survey by international content-delivery network service provider Akamai ranked Malaysia's average internet connection speed as the 10th fastest in the Asia-Pacific region.[2]

As much as the Malaysian government wants to treat the internet as part of economic and development policy, various stakeholders, especially civil society, activists, feminists, independent media and diverse non-conforming communities, have quickly found out how the internet expands social and political spaces, amplifies their voices, and better enables activism and community mobilisation to defy authoritarianism and oppressive norms. The lack of centralised governance and control of the internet, which is uncharacteristic for the government's authoritarian treatment of the older media technology (i.e. broadcast and print), allows for the flourishing of dissenting voices and sets the backdrop for a vibrant social movement.

But we are seeing more frequent attempts by the government to regain its authoritarian control over participation and access; a growing number of techno-centric policies that are detached from the lived realities of marginalised communities; and an increasingly complex and close cooperation between state and the private sector. This report will discuss the power relations between multiple stakeholders in internet governance in the Malaysian context and the concurrent conditions for the respect of human rights, particularly for marginalised groups who do not have access to the internet.

1 Malaysian Communications and Multimedia Commission. (2016). Internet Users Survey. https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS2016.pdf

2 The Sun Daily. (2017, 1 June). Malaysia's internet connection is the Asia-Pacific's 10th fastest. *The Sun Daily*. www.thesundaily.my/news/2017/06/01/malaysias-internet-connection-asia-pacifics-10th-fastest

## Policy and political background

The heart of the expansion of the internet and other information and communications technologies (ICTs) in Malaysia is the Multimedia Super Corridor (MSC). Launched in 1997, this is an ambitious programme envisioned by then Prime Minister Tun Dr Mahathir Mohammad to "leapfrog [Malaysians] into the Information Age...and to attract world-class companies to use it as a regional multi-cultural information age hub."[3] The new informational mode of development was seen as a catalyst to thrust Malaysia among the developed countries of the world and to educe the nation of its Third World past. As a result, the flurry of institutions, legislation and policies set up was framed in terms of economic development and global competition.

Along with tax breaks and other incentives, the Malaysian government gave the promise of no internet censorship in a 10-point MSC Bill of Guarantees.[4] This was part of the effort to establish an ICT-friendly, progressive and open government policy when it comes to the internet. The Malaysian government lived up to this spirit and its no-censorship commitment for a long time – even through the *Reformasi*[5] protest in 1998.

## Crackdown on civil society and dissenting voices

However, much has changed since then. In the context of the government's pseudo-democratic and weak human rights practices, the internet has come under threat in recent years with an increase in censorship and the blocking of websites and other online platforms; the criminalisation and regulation of political and social expressions; rampant gender-based online violence against women and queer persons, along with the failure of the criminal justice system to address this; state and social surveillance, including the moral policing of women

3 www.cyberjayamalaysia.com.my/about/the-story

4 https://www.mdec.my/msc-malaysia/bill-of-guarantees

5 Thousands protested across Malaysia after the sacking and subsequent arrest of former Deputy Prime Minister Anwar Ibrahim. The *Reformasi* incident drew significant civil society reactions, and led to the strengthening of the opposition. Anwar Ibrahim transitioned to the opposition as the de facto leader. *MalaysiaKini*, the first alternative online news portal, was born a year after *Reformasi*.

and queer persons; and inadequate protection of users' privacy and personal data, among others.

Civil society has attempted to defend the shrinking spaces, but with very limited success, as the government often operates in secrecy when it comes to amending or proposing legislation and policies for the internet. Businesses, in most cases, have complied with the regulations and requests from the government when it comes to blocking content or providing user information, as long as their operations are not affected. It remains unclear whether the government is making these requests after obtaining court orders.[6]

## Moving forward and leaving some behind

More critical are the questions on access. Internet penetration in Malaysia is nearly 78%[7] and is expected to increase to 195% by 2025, due both to the Internet of Things (IoT) and population growth.[8] The trajectory is in line with the government's next long-term development programme, *Transformasi Nasional*, or Malaysia's TN50 plan, that aims to advance Malaysia technologically, economically and socially. The plan strives to distinguish itself from past practices by promising a "bottom-up" process of wide engagement with Malaysians, especially the youth, and a commitment to produce a roadmap with detailed, concrete targets. With public resources at its disposal and public engagement as its process, the final TN50 policy document will guide and steer the nation's development priorities and policies.

The TN50 initiative proposes grand plans that capitalise on technological innovation and communications networks – a future where "people work mostly from pods as they are connected virtually; people implant nanotechonology chips in their body [to] fight cancer cells [...]; industries and organisations turn to robotics and AI for physical tasks; consumption of services via digital platforms such as education, healthcare and virtual tourism become pervasive."[9]

The initiative promotes techno-centric economic and social policies without situating them within the lived realities of the people on the ground, including the struggles for social justice, good governance and gender equality – frameworks that have been absent from the TN50 process so far. Without articulating progress and development across a full range of economic and social spheres, including human rights and gender equality, it remains a piecemeal strategy that generates feel-good outcomes for government officials. Most importantly, the question around bringing meaningful access to the internet remains largely missing from the TN50 engagement.

Internet access is not even across the board: despite Malaysia's population being split almost evenly between men and women, less than half of internet users (42.6%) are women. A majority of internet users are within the 20-34 age range, with numbers dropping off after the 40-year mark.[10] The government and private sector have yet to provide affordable access to communications to the indigenous communities, who are also the more marginalised and economically disadvantaged segments of the population in this country.

More so, for the indigenous peoples in Peninsular Malaysia, who call themselves Orang Asli. Other than issues of lack of affordable, reliable and fast connectivity to the internet, Orang Asli women in particular face issues compounded by the intersectionality of their identity as poor, indigenous women. Their freedom to influence decision making at the village level can be severely impeded by patriarchal oppression and disempowerment, which in turn is largely dependent on the leadership style and approach of the government-appointed Tok Batin (village head). Symptomatic of all of these challenges is the lack of access to timely and accurate information to better enable decision making and participation in the public sphere by Orang Asli women.

## Internet governance in Malaysia

The chief authority in telecommunications and the internet is the Malaysian Communications and Multimedia Commission (MCMC), an independent body established in 1998 under a convergence regulation model to consolidate regulations around media broadcasting, telecommunications and the internet. Two laws were enacted to give effect to the new regulatory model: the Communications and Multimedia Act 1998 (CMA) which set out a new regulatory licensing framework for the industry, and the MCMC Act which created the MCMC and comes under the purview of the Ministry of Communications and Multimedia. MCMC has been criticised

6 Venkiteswaran, G. (2016, 18 May). [Malaysia] A trend toward censorship and control. *SEAPA*. https://www.seapa.org/a-trend-toward-censorship-and-control

7 Malaysian Communications and Multimedia Commission. (2016). Op. cit.

8 MIMOS Berhad. (2014). *National Internet of Things (IoT) Strategic Roadmap*. www.mimos.my/iot/National_IoT_Strategic_Roadmap_Book.pdf

9 https://mytn50.com/?language=eng

10 Malaysian Communications and Multimedia Commission. (2016). Op. cit.

for complying with government instructions to shut down websites or to conduct criminal investigations over dissenting voices online.

Within the MCMC, the Communciations and Multimedia Content Forum (CMCF)[11] was set up to meet the objective of fostering a self-regulatory framework for the communications and multimedia industry. It is supposed to govern electronic content and address content-related issues, based on a voluntary content code. It is made up of six "Ordinary" Member categories: Advertisers, Audiotext Hosting Service Providers, Broadcasters, Civic Groups, Content Creators/Distributors and Internet Access Service. Civil society participated in the Content Forum, but the forum is generally weak in influencing decisions made by the MCMC.

The MCMC is connected to the Ministry of Science, Technology and Innovation (MOSTI), a ministry that leads the national science, technology and innovation agenda – which includes ICT policy, cybersecurity, biotechnology and space technology. MOSTI plays a key role in integrating and mainstreaming technology and ICTs within the government and among businesses. Though MOSTI has been active in its engagement with IT students, tech companies and researchers specialised in science and technology, dialogue with civil society and think tanks on integrating human rights and a gender perspective into its work remains missing.

## The national Internet Governance Forum (MYIGF)

The limitations faced by civil society are further apparent in the manner in which the Malaysian government organised its Malaysia Internet Governance Forum (MYIGF). The first MYIGF was held in 2014, and it was largely a government initiative with very little information available to the public.[12]

A second MYIGF[13] was held recently in October 2017. It was a one-day event at the MCMC building in Cyberjaya, organised in collaboration with the University Utara Malaysia and themed "Cyber Security for Trusted Digital Economy". Civil society was neither consulted during the organising process, nor was there an open call for workshops or sessions. In addition, a participation fee was imposed: MYR 600 (about USD 150) for international participants, MYR 400 (about USD 100) for local participants, and MYR 100 (USD 25)for students. While there was no restriction on civil society participating, the participation fee, which is uncommon at most IGF events, is a financial burden to most local civil society organisations, more so for grassroots communities located outside of the state of Selangor. In effect, it deterred meaningful participation from civil society.

The Working Group on Internet Governance (WGIG) provides that internet governance "is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet."[14] The multistakeholder approach to internet governance is grown from the internet's own DNA and it is what allows the expansion and vibrancy of the internet. As our countries and communities turn digital and our identities are reduced to algorithms and data, it is imperative that all relevant stakeholders are included in the process and vision of national-level internet governance processes. It is alarming that the government is using the term "multistakeholder" (as stated on the national IGF website) in the absence of participation from a much wider net of stakeholders.

At the international and regional level, the Malaysian government has been absent from the internet governance space, making it a challenge for local civil society to engage with policy makers around internet governance in the country.[15]

## World-class cybersecurity and the missing civil society

Cybersecurity is a major agenda for Malaysia. According to the Global Cybersecurity Index (GCI) 2017,[16] Malaysia is ranked third among 193 countries in terms of its commitment to cybersecurity, behind Singapore and the United States. The ranking is assessed based on five pillars, namely legal, technical, organisational, capacity building and cooperation.[17]

The earlier institutions and policies dealing with cybersecurity were designed to accommodate the national socioeconomic strategy. Under the

11 www.cmcf.my/home.php

12 www.giplatform.org/events/malaysia-myigf

13 myigf2017.socuumcas.net

14 Working Group on Internet Governance. (2005). *Report of the Working Group on Internet Governance*. https://www.wgig.org/docs/WGIGREPORT.pdf

15 Venkiteswaran, G. (2016, 18 May). Op. cit.

16 https://www.itu.int/en/ITU-D/Cybersecurity/Pages/GCI-2017.aspx

17 The Star. (2017, 6 July). Report: Malaysia's cybersecurity is third best globally. *The Star Online*.
www.thestar.com.my/news/nation/2017/07/06/malaysia-rank-high-cybersecurity-commitment/#VA4RBBjWSeOeelo8.99

purview of MOSTI, CyberSecurity Malaysia[18] – a registered company – was set up as a specialist agency to provide cybersecurity services in preventing or minimising disruptions to critical information infrastructure in order to protect the public, the economy and government services.

This has since changed, especially with the establishment of a National Cyber Security Agency (NCSA) under the National Security Council on 1 February 2017.[19] Cybersecurity is now regarded by the Malaysian government as part of the national security agenda. The government, lamenting that there are no cybersecurity-specific laws in Malaysia, has proposed a new law aimed at "protecting Malaysians from cybersecurity threats."[20] This would include consolidating efforts around cybersecurity and threats with the NCSA as the single agency. The new bill (which remains unavailable for public consultation at the time of writing) is expected to be tabled in parliament in October 2017.

Many of the government's policies and initiatives around cybersecurity are developed and implemented without broader consultation with the public and civil society. Though collaboration and engagement with women's rights and children's rights organisations and a telco company was seen under its CyberSAFE initiative, an awareness and outreach campaign on online harassment and cyberbullying, the initiative takes on a protectionist approach and stops short of challenging the politics and status quo on gender-based discrimination.[21]

With the widening and deepening definition of cybersecurity in Malaysia, the voice and power of civil society as a stakeholder in the national governance process is at stake. National security in Malaysia has always been seen as the sole responsibility of the state and it is no surprise that the government's approach is antithetical to a multistakeholder system. The lack of open, participative, consensus-driven governance and transparency around the formation of cybersecurity legislation and policy stems from sweeping secrecy laws, combined with a rampant abuse of powers, a lack of accountability among civil servants, and excessive restrictions on information which severely impair the flow of information or any efforts in consulting the public.

## The missing link at regional and international levels

The perception of the regional and international IGFs is that the voices of Southeast Asia are not represented or included, especially in advanced discussions on big data, net neutrality, platform economies, etc. Given that the IGF is a United Nations-backed mechanism, there is a tendency to assume that the discourses and debates taking place within the process are reflective of the struggles on the ground. With that, it is often perceived that civil society from Southeast Asia has to "catch up" with the global internet governance discourse.

The realities are more complex than that. Civil society and activists in Southeast Asia, especially those from the more marginalised communities, have long roped in the internet in their struggles for human rights and gender equality; and they are defending hard against the shrinking spaces faced by human rights advocates globally.

For instance, network discrimination is a real and growing concern in Timor-Leste. Telkomcel, one of the major internet service providers in Timor-Leste, has partnered with Facebook to launch Free Basics in the country.[22] Compelled by economic realities in the country and much slower access to other websites and platforms, internet users inevitably perceive Facebook as "the internet" and it is becoming the main source of information and news. In EMPOWER's last encounter with activists in Timor-Leste during the ASEAN People's Forum 2016, journalists and activists on the ground were fighting hard to counter misinformation spread on social media and to encourage internet usage beyond Facebook.

It is unrealistic to expect civil society or activists who are less well-resourced to be able to present or reflect their stories in the international arena. Among other reasons, there is a lack of immediate relevance of the IGF to their struggles, there are language barriers, and there is a competitive workshop selection mechanism.

To move towards a more inclusive and open IGF, we need to critically rethink the mechanism and model of the IGF, and to find a way to proactively capture these valuable voices in the global movement for internet rights and governance.

The internet is no longer a tool, but an integral part of our activism, identities and rights. Success in the increasingly digitised political, social and economic realms requires a comprehensive and multistakeholder approach to foster inclusion.

18 www.cybersecurity.my/en/index.html

19 The Star. (2017, 9 June). Zahid: Malaysia to introduce new cybersecurity law. *The Star Online*. www.thestar.com.my/news/nation/2017/06/09/zahid-malaysia-to-introduce-new-cybersecurity-law

20 Ibid.

21 www.cybersafe.my/pdf/youth/cyberstalking.pdf

22 www.telkomcel.tl/free

Either this or we will have a scenario where the most marginalised groups will have to bear the consequences of political, economic and social inequalities resulting from top-down, unfair, non-inclusive policies.

## Action steps

The following action steps are recommended for civil society:

- Research and explore with indigenous communities the potential of setting up community networks in Malaysia, as an act of exercising power and to develop an internet that accommodates their needs and lives.
- Continue conversations and dialogue among civil society activists and human rights defenders on the intersection of ICTs, gender, human rights and good governance at the national level.
- Raise awareness on internet rights and digital inclusion among the public and key institutions and actors such as the media, university students, national human rights institutions, lawyers, independent content creators, and tech developers, among others.

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# National and Regional Internet Governance Forum Initiatives (NRIs)

National and Regional Internet Governance Forum Initiatives (NRIs) are now widely recognised as a vital element of the Internet Governance Forum (IGF) process. In fact, they are seen to be the key to the sustainability and ongoing evolution of collaborative, inclusive and multistakeholder approaches to internet policy development and implementation.

A total of 54 reports on NRIs are gathered in this year's Global Information Society Watch (GISWatch). These include 40 country reports from contexts as diverse as the United States, the Democratic Republic of Congo, Bosnia and Herzegovina, Italy, Pakistan, the Republic of Korea and Colombia.

The country reports are rich in approach and style and highlight several challenges faced by activists organising and participating in national IGFs, including broadening stakeholder participation, capacity building, the unsettled role of governments, and impact.

Seven regional reports analyse the impact of regional IGFs, their evolution and challenges, and the risks they still need to take to shift governance to the next level, while seven thematic reports offer critical perspectives on NRIs as well as mapping initiatives globally.

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