



Stakeholder submission of Commonwealth Human Rights Initiative (CHRI) for the 2013
Universal Periodic Review of Malaysia

Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights across the Commonwealth. CHRI was founded in 1987 by Commonwealth professional associations. It is headquartered in New Delhi, India and has offices in Accra, Ghana and London, UK. CHRI is an NGO in Special Consultative Status with the Economic & Social Council of the United Nations

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Commonwealth Human Rights Initiative (CHRI) stakeholder submission for the Universal Periodic Review of Malaysia (2013)

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1. This UPR stakeholder submission for Malaysia includes information on the following areas: cooperation with UN human rights mechanisms, core international human rights instruments and their monitoring bodies; freedom of information; police; media freedom; and the criminalisation of same-sex conduct.
2. **Co-operation with UN human rights mechanisms**
3. At its previous UPR session in 2009, Malaysia rejected recommendations to issue a standing invitation to all UN Human Rights Council special procedures. Malaysia did state that it is open to the possibility of further discussions with the various special procedures and is willing to consider requests for visits on the merit of each proposal.
4. Recommendation:
5. CHRI recommends that Malaysia:
 - a. Immediately extends a standing invitation to all special procedures of the UN Human Rights Council.
 - b. Cooperates fully with the special procedures of the UN Human Rights Council.
6. **Core international human rights instruments and their monitoring bodies**
7. During its last UPR session, Malaysia accepted recommendations to work more actively to accede to core international human rights instruments. The Malaysian Government stated that specific recommendations to ratify the ICCPR, CAT, UN Convention on the Status of Refugees, UN Convention on the Rights of Persons with Disabilities would need further consideration. Malaysia also stated that the specific recommendations to withdraw all reservations to CEDAW, CRC and to accede to the Rome Statute of the International Criminal Court would need further deliberation.
8. While Malaysia ratified the UN Convention on the Rights of Persons with Disabilities in July 2010, it has not become party to any other international human rights instrument.
9. Malaysia has two overdue reports under CEDAW from 2008 which remain overdue in 2013.
10. Recommendations:
11. CHRI recommends that Malaysia:
 - a. Urgently ratifies all core international human rights instruments including: ICCPR, ICESCR, CAT and UN Convention on the Status of Refugees.
 - b. Withdraws all reservations to CEDAW and CRC.
 - c. Ensures that domestic legislation is in conformity with international human rights standards as contained in the core international human rights instruments which include: ICCPR, ICESCR, CAT, CEDAW, CRC, UN Convention on the Status of Refugees and the UN Convention on the Rights of Persons with Disabilities.
 - d. Submits its two overdue reports to CEDAW and commits to meeting deadlines in relation to future reports.
12. **Freedom of information**
13. Malaysia does not presently have any freedom of information legislation at the federal level. However two Malaysian states, Selangor and Penang do have freedom of information legislation¹. Malaysia did not adopt a clear position, at its UPR session in 2009, on recommendations to adopt freedom of information legislation.

¹ University College London, Constitution Unit, Research on Freedom of Information in Malaysia: <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/malaysia> as on 22 February 2013

14. The Official Secrets Act 1972² has further created obstacles for freedom of information in Malaysia³. The Act impedes the sharing of information by imposing criminal sanctions on officials; and thereby entrenches a climate of secrecy. Under the Act, an 'official secret' includes documents such as cabinet documents, records of decisions and deliberations including those of cabinet committees; state executive council documents, records of decisions and deliberations including those of State Executive Council committees.⁴ The restrictions imposed by the Act are contrary to international standards on the right to freedom of expression, which includes the right to seek information.
15. Recommendations:
- a. The Government of Malaysia should enact and implement a Freedom of Information Act at the federal level in accordance with international best practice. In such an Act:
 - i. Exemptions should be clearly stated and only apply to specific information that protects the public interest and be subjected to the harm test.
 - ii. An independent commission must be established to oversee the implementation of the Act.
 - iii. The time frame for providing information should not be unduly long.
 - iv. The appeal process should be flexible and not deter citizens from accessing information.
 - b. Malaysia must amend provisions of the Official Secrets Act that impede the right to freedom of expression
16. **Media freedom and freedom of expression**
17. There were numerous instances where media freedoms came under attack during the reporting period. On 31st August 2012, the Kuala Lumpur High Court ruled that the arrest of the political cartoonist Zunar was lawful even though confiscating and keeping his books was unlawful⁵. Reporters Without Borders stated that Zunar's arrest set a 'dangerous precedent for media freedom in Malaysia'⁶.
18. In August 2010, the Home Minister refused to grant Malaysiakini, an online newspaper a licence to publish a print version. This decision was subsequently overturned by the Kuala Lumpur High Court on the basis that interfered with the right to free expression as enshrined in the National Constitution.⁷
19. In April 2010, BBC's coverage of the Bersih 3.0 protests by the Coalition for Free and Fair Elections was heavily censored and barely covered in mainstream Malaysian media⁸.
20. At its 2009 UPR session, Malaysia adopted an ambiguous position towards recommendations to guarantee freedom of the media and freedom of expression. Malaysia did not respond to recommendations to review and amend laws such as the Sedition Act, the Printing Press and Publications Act and the Official Secrets Act.
21. Recommendations:
22. CHRI recommends that Malaysia:
- a. Guarantees the right to freedom of expression as enshrined in Article 10 of its National Constitution.
 - b. Fully protects the rights of members of the opposition, human rights defenders and journalists critical of the government
 - c. Reviews and amends laws such as the Sedition Act, the Printing Press and Publications Act, and the Official Secrets Act, to enable the exercise of the right to freedom of expression.

² Official Secrets Act, Act 88, 1972, Laws of Malaysia: <http://www.agc.gov.my/Akta/Vol.%202/Act%2088.pdf> as on 22 February 2013.

³ University College London, Homepage, Constitution Unit, Research on Freedom of Information in Malaysia: <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/malaysia> as on 22 February 2013

⁴ Malaysia Official Secrets Act, 1972, See Section 2 (1) and Schedule Section 2A. See Also: University College London, Homepage, Constitution Unit, Research on Freedom of Information in Malaysia: <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/malaysia> as on 22 February 2013

⁵ "Court's Ruling on Cartoonist Suit Sets Disturbing Precedent for Media Freedom", Reporters Without Borders, 31 July 2012

⁶ "Court's Ruling on Cartoonist Suit Sets Disturbing Precedent for Media Freedom", Reporters Without Borders, 31 July 2012

⁷ Malaysia, "Media Freedom in Malaysia is Far From Assured Open Letter tells PM," Reporters Without Borders, 15 May 2012; See also "Malaysiakini Wins Right to Start Newspaper", Daily Express, October 2 2012: <http://www.dailyexpress.com.my/news.cfm?NewsID=82733> as on 22 February 2013.

⁸ Malaysia, "Media Freedom in Malaysia is Far From Assured Open Letter tells PM", Reporters Without Borders, 15 May 2012.

23. Police

24. Malaysia either rejected or remained ambiguous on recommendations made in relation to police reform at its last UPR session. It also specifically adopted no position on UPR recommendations to establish an independent police complaints commission in accordance with the recommendations of Malaysia's Royal Commission on police reform.
25. The need for urgent police reform became ever more apparent in the reporting period. There were numerous reported instances of extra-judicial killing and custodial deaths. In April 2010 a 15 year old boy was shot dead by the police, when he attempted to flee as he allegedly did not have a driving licence⁹. Another case was that of A. Kugan who died less than a week after his arrest in January 2009. The first post-mortem described the cause of death as being fluid in the lungs but the second post-mortem contradicted this and attributed the death to severe beating¹⁰. In October 2009 a police officer was charged with causing grievous bodily hurt to Kugan¹¹. It was reported that A. Kugan had sustained 42 marks from burns and lacerations to his feet and head, including from a hot object¹².
26. Police were also allegedly complicit in intimidation and harassment of opposition politicians and those critical of the government¹³. Opposition activist, Teoh Beng Hock, died in July 2009 after falling off the building of the Malaysia Anti-Corruption Commission. Allegations of foul play followed and in October 2009, a pathologist found that marks on Teoh Beng Hock's body suggested that he had in fact been tortured and strangled.¹⁴
27. In addition, many recommendations made by the 2004 Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police and SUHAKAM (Malaysia's NHRI) have not been complied with.¹⁵ The recommendation that an Independent Police Complaints and Misconduct Commission (IPCMC) be set up was not implemented¹⁶. Instead, the Enforcement Agency Integrity Commission was created in July 2009; this has been criticised as a diluted version of the IPCMC¹⁷.
28. Recommendations:
29. CHRI recommends that Malaysia:
- a. Takes all necessary measures to prevent extrajudicial killings and custodial deaths by police.
 - b. Works to ensure the successful functioning of an independent police oversight mechanism and an impartial police complaints and misconduct commission in accordance with the recommendations of the Royal Commission on police reform

30. The criminalisation of same-sex conduct

31. The Malaysia Penal Code, 1998, Section 377A¹⁸ criminalises "carnal intercourse against the order of nature". The penalty includes imprisonment for a term of not more than 20 years and the person shall also be liable to whipping.¹⁹ Section 377D also criminalises any person that commits, attempts to

⁹ "Malaysian policeman charged with killing teenager", Bloomberg Business Week, 10 May 2010: <http://www.businessweek.com/ap/financialnews/D9FJRGG1.htm> as on 22 February 2013

¹⁰ "Kugan's mum fails to hand petition to King", The Star, 11 March 2010: <http://thestar.com.my/news/story.asp?file=/2010/3/11/nation/5841040&sec=nation> as on 22 February 2012

¹¹ "Kugan's mum fails to hand petition to King", The Star, 11 March 2010: <http://thestar.com.my/news/story.asp?file=/2010/3/11/nation/5841040&sec=nation> as on 22 February 2012

¹² "2nd post-mortem: Kugan beaten to death (updated)", The Star, 3 March 2009: <http://thestar.com.my/news/story.asp?file=/2009/3/3/nation/20090303151615&sec=nation> as on 22 February 2013

¹³ Commonwealth Human Rights Initiative, "Easier Said Than Done", 2010, Pg 112, Section 3.1

¹⁴ "Malaysia opposition aide Theo Beng Hock's body exhumed", BBC News, 21 November 2009:

<http://news.bbc.co.uk/2/hi/asiapacific/8371865.stm> as on 22 February 2013.

¹⁵ "Wake up call for the police", MySin Chew.com, 27 June 2009 : <http://www.mysin Chew.com/node/26482> as on 22 February 2013

¹⁶ "Wake up call for the police", MySin Chew.com , 27 June 2009 : <http://www.mysin Chew.com/node/26482> as on 22 February 2013

¹⁷ "Why the EAIC is unconstitutional", The Nut Graph, 9 July 2009: <http://www.thenutgraph.com/why-the-eaic-is-unconstitutional> as on 22 February 2013

¹⁸ Malaysian Penal Code, 1936 (Rev ed 1997): http://www.commonlii.org/my/legis/consol_act/pc1997141/ as on 22 February 2013.

¹⁹ Malaysian Penal Code, 1936 (Rev ed 1997): Section 377B http://www.commonlii.org/my/legis/consol_act/pc1997141/ as on 22 February 2013.

commit or abets the commission of “gross indecency”, whether in public or private, with up to 2 years imprisonment.²⁰ It also criminalises same-sex conduct between men and same-sex conduct between women with up to 3 years imprisonment in addition to whipping.²¹

32. In 2012, the government strengthened its anti-homosexuality stance with a series of statements targeting the LGBT community.²² In July 2012, it was reported that the Ministry of Education planned to introduce social and reproductive health education in school curriculums, which was viewed as an attempt to sensitise the youth about ‘dangers and threats’ of LGBT activity.²³ The government has denied endorsing or issuing guidelines to control the LGBT “phenomenon,” but still attended a seminar organised by NGO groups on these guidelines where it was stated that “LGBT symptoms” should be made known to teachers and parents to tackle the issue.²⁴
33. In June 2012, the Deputy Minister in the Prime Minister’s department, Dr. Mashitah Ibrahim, stated that constitutional protection against gender discrimination does not extend to discrimination based on sexual orientation.²⁵ Dr. Mashitah Ibrahim also stated that the government would control the spread of homosexuality through prevention efforts and legal enforcement, including rehabilitation and treatment courses.²⁶ Civil society groups criticised these statements as it would only inhibit access to sexual health services and information.²⁷
34. In April 2012, an anti-LGBT rally was organised by the group, Jaringan Melayu Malaysia, at the University Putra Malaysia, to protest against leaders, politicians and activists that support the lifestyles of sexual minorities.²⁸ With such a climate of repeated threats against the community by religious groups and attempts to curtail their rights to freedom of assembly²⁹ the LGBT community in Malaysia has reported security concerns.³⁰

²⁰ Malaysian Penal Code, 1936 (Rev ed 1997): Section 377B http://www.commonlii.org/my/legis/consol_act/pc1997141/ as on 22 February 2013.

²¹ Lucas Paoli Itaborahy, ‘State-sponsored Homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults’, ILGA, May 2012, p. 45: http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2012.pdf as on 22 February 2013.

²² See “Letter to Prime Minister Dato’ Sri Mohammed Najib bin Tun Abdul Razak regarding discriminatory LGBT rights policy.” Human Rights Watch, 4 December 2012: <http://www.hrw.org/node/111845> as on 22 February 2013. Homosexuality ‘will not be tolerated’ in Malaysia, says PM”, Bikya Masir, 19 July 2012 :<http://goo.gl/pQ9B9>; “Dr Mashitah: No constitutional protection for LGBT”, The Star Online, 19 June 2012: <http://thestar.com.my/news/story.asp?file=/2012/6/19/nation/20120619165313>; “Great response to efforts to heal LGBTs”, The Malay Mail, 20 June 2012: <http://www.mmail.com.my/story/great-response-efforts-heal-lgbts>; “Malaysia’s opposition leader Anwar Ibrahim says LGBT rights un-Islamic”, Bikya Masir, 20 July 2012: <http://goo.gl/WWsnj> as on 22 February 2013.

²³ “Malaysia Schools To Get Sex Education To Combat LGBT Dangers And Threats”, ILGA Asia, 20th July 2012: <http://ilga.org/ilga/en/article/nDladoK155> as on 22 February 2013. See also “Social And Reproductive Health Education Introduced In Schools Soon”, Bernama, 5 July 2012: <http://bernama.com.my/bernama/v3/printable.php?id=678370> as on 22 February 2013.

²⁴ “Malaysia wants to stop homosexuality from spreading,” Business Standard, 20 September 2012: http://www.business-standard.com/article/pti-stories/malaysia-wants-to-prevent-homosexuality-from-spreading-112092000423_1.html as on 22 February 2013. See also “Education ministry committed to preventing LGBT phenomenon in schools,” The Malaysian Insider, 20 September 2012: <http://www.themalaysianinsider.com/malaysia/article/education-ministry-committed-to-preventing-lgbt-phenomenon-in-schools> as on 22 February 2013. See also “Letter to Prime Minister Dato’ Sri Mohammed Najib bin Tun Abdul Razak regarding discriminatory LGBT rights policy.” Human Rights Watch, 4 December 2012: <http://www.hrw.org/node/111845> as on 22 February 2013.

²⁵ “Dr Mashitah: No constitutional protection for LGB,” The Star, 19 June 2012: <http://thestar.com.my/news/story.asp?file=/2012/6/19/nation/20120619165313> as on 22 February 2013.

²⁶ “Putrajaya reigning in LGBT spread, says deputy minister,” The Malaysian Insider, 19 June 2012: <http://www.themalaysianinsider.com/malaysia/article/putrajaya-reining-in-lgbt-spread-says-deputy-minister> as on 22 February 2013. See also “Letter to Prime Minister Dato’ Sri Mohammed Najib bin Tun Abdul Razak regarding discriminatory LGBT rights policy.” Human Rights Watch, 4 December 2012: <http://www.hrw.org/node/111845> as on 22 February 2013

²⁷ “NGO: Mashitah ‘narrow-minded’”, The Malay Mail, 20 June 2012: <http://www.mmail.com.my/story/ngo-mashitah-narrow-minded> as on 22 February 2013.

²⁸ Leven Woon, “Anti-LGBT rally: News and Opinions”, Seksualiti Merdeka, 21 April 2012: <http://www.seksualitimerdeka.org/2012/04/anti-lgbt-rally-news-and-opinions.html> as on 22 February 2013. See also, “3,000 turn up at anti gay protest”, New Straits Times, 22 April 2012: <http://www.nst.com.my/nation/general/3-000-turn-up-at-anti-gay-protest-1.76388> as on 22 February 2013.

²⁹ Alisha Hassan, “LGBT, liberalism are un-Islamic, says Malaysia PM”, Bikya Masir, 23 July 2012: <http://www.bikyamasr.com/73473/lgbt-liberalism-are-un-islamic-says-malaysia-pm/> as on 22 February 2013. See also “No IDAHO in Malaysia due to ‘security concerns’”, Gay Star News, 11 May 2012 <http://www.gaystarnews.com/article/no-idoaho-malaysia-due-%E2%80%98security-concerns%E2%80%99110512> as on 22 February 2013

³⁰ “No IDAHO in Malaysia due to ‘security concerns’”, Gay Star News, 11 May 2012 <http://www.gaystarnews.com/article/no-idoaho-malaysia-due-%E2%80%98security-concerns%E2%80%99110512> as on 22 February 2013. See also “Malaysia LGBT says no IDAHO this year”, Bikya Masr, 14 May 2012: <http://www.bikyamasr.com/68721/malaysia-lgbt-says-no-idoaho-this-year/> as on 22 February 2013.

35. In October 2012, four transgender Muslims who had been charged with cross-dressing under Sharia law had their petition to overturn Sharia law provisions struck out by the High Court. The applicants alleged that provisions under Sharia law violated their rights to non-discrimination, expression and dignity under the constitution. The High Court ruled that as the transgender applicants were Muslim and born male they must adhere to Sharia law.³¹
36. The Criminal Code has also been used to harass the opposition. Opposition leader, Anwar Ibrahim, has been charged twice for sodomy, which he claimed was politically motivated. He was acquitted of the most recent charge in January 2012.³²
37. In November 2011, police ordered gay rights activists to cancel the fourth annual ‘Seksualiti Merdeka’ (Sexual Diversity) arts festival aimed at fighting discrimination after it received criticism from faith-based groups that it would obstruct public order.³³ Activists petitioned the court to review the ban³⁴, but it was upheld.³⁵ Also in November, the Pan-Malaysian Islamic Party called for the country to ban an Elton John concert, an openly gay music icon, saying the singer's homosexuality would corrupt young Muslims.³⁶
38. In April 2011, school authorities sent 66 Muslim teenage boys to a correctional camp to prevent them from becoming gay or transvestites after their teachers identified them as effeminate.³⁷
39. At the UPR in 2009, Malaysia rejected recommendations to decriminalise consensual same-sex activity between consenting adults and to prohibit discrimination based on sexual orientation. The criminalisation of same-sex conduct is incompatible with international human rights law and the mere existence of such laws encourages and reinforces intolerance, abuse and discrimination against the LGBT community in Malaysia. Laws that penalise same-sex conduct stigmatise LGBT persons and make it difficult for them to claim and assert their rights.
40. Recommendations
41. CHRI recommends that Malaysia:
 - a. Embarks on a process of repealing Section 377A, Section 377B and Section 377D of the Malaysian Penal Code that criminalise consensual same-sex conduct between adults.
 - b. Promotes and facilitates constructive dialogue on decriminalisation of same-sex conduct, sexual orientation and gender identity with government ministries, civil society actors, religious leaders and other relevant stakeholders.

³¹“Malaysia: Muslim transsexuals lose legal battle to wear women’s clothes” Business and Law, 11 October 2012: <http://www.ibtimes.co.uk/articles/393218/20121011/malaysia-muslim-transsexuals-court-dress-woman-clothes.htm> as on 22 February 2013. See also “Malaysia High Court denies request to declare Sharia law prohibiting cross-dressing unconstitutional” Human Rights Law Centre Australia, 11 October 2012: <http://www.hrlc.org.au/malaysia-high-court-denies-request-to-declare-sharia-law-prohibiting-cross-dressing-unconstitutional> as on 22 February 2013. See also “Malaysian AIDS Council criticises transgender court ruling”, Gay Star News, 18 October 2012: <http://www.gaystarnews.com/article/malaysian-aids-council-criticizes-transgender-court-ruling-decision181012> as on 22 February 2013.

³² “Anwar Ibrahim acquitted of sodomy”, BBC, 9 January 2012: <http://www.bbc.co.uk/news/world-asia-16463989> as on 22 February 2013.

³³ Sean Yoong, “Police ban gay arts festival in Malaysia”, The Washington Post, 3 November 2011: <http://www.webcitation.org/62wd9cgTY> as on 22 February 2013.

³⁴ “Malaysian Gay Arts Festival Ban Challenged In Court” Huffington Post, 1 October 2012: http://www.huffingtonpost.com/2012/01/10/malaysian-gay-arts-festival-ban-challenge-court_n_1197562.html as on 22 February 2013.

³⁵ “Court upholds police ban on gay festival in Malaysia”, Bikya Masir, 1 March 2012: <http://www.bikymasir.com/59791/court-upholds-police-ban-on-gay-festival-in-malaysia/> as on 22 February 2013. See also, “Malaysian Court Upholds Ban on Sexuality Rights Festival, ‘Seksualiti Merdeka’ IGLHRC, 3 September 2012: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1497.html> as on 22 February 2013.

³⁶ “Malaysian Islamic party protests Elton John show”, Ahram Online, 25 October 2011: <http://english.ahram.org.eg/News/25054.aspx> as on 22 February 2013.

³⁷ “Malaysia sends 66 teen boys to anti-gay counselling”, Jakarta Globe, 19 April 2011: <http://www.thejakartaglobe.com/home/updated-malaysia-sends-66-teen-boys-to-anti-gay-counseling/436313> as on 22 February 2013. See also “Malaysia sends 66 teen boys to anti-gay counselling”, The Telegraph, 20 April 2011: <http://www.telegraph.co.uk/news/worldnews/asia/malaysia/8462391/Malaysia-sends-66-teen-boys-to-anti-gay-counseling.html> as on 22 February 2013.