

UPR Submission: Malaysia
March 2018

While Malaysia has taken some positive steps since its last UPR review in 2013, the situation for freedom of speech and peaceful assembly has undergone a significant deterioration. Genuine efforts are needed not only to improve respect for these basic rights, but also regarding police abuse and impunity, the rights of lesbian, gay, bisexual and transgender (LGBT) persons, trafficked persons and refugees, and religious freedom.

Freedom of Expression and the Media

Although Malaysia accepted recommendations on raising the standards of press freedom, strengthening the rights of journalists and bloggers, and enhancing the exercise of civil and political rights,¹ the situation for freedom of expression in Malaysia has deteriorated dramatically since 2013, as documented in our 2015 report "[Creating a Culture of Fear: The Criminalization of Peaceful Expression in Malaysia](#)," and our follow-up 2016 report, "[Deepening the Culture of Fear](#)." Human rights defenders, activists, opposition politicians and journalists have faced harassment and prosecution, with those criticizing the administration of Prime Minister Najib Razak, the prosecution of former opposition leader Anwar Ibrahim, or the government's handling of the 1 Malaysia Development Berhad (1MDB) corruption scandal a particular target.

Despite accepting a recommendation that it repeal the Sedition Act,² the government instead amended the law in April 2016 to increase the penalties for violations and make it easier to use against online speech. To date the government has not set a date on which the law will come into effect. The Sedition Act has been repeatedly used to investigate and prosecute those who criticize the government or the judiciary or make remarks the government considers to be derogatory toward the sultans (traditional Malay state rulers) or disrespectful of religion. For example:

- Mohammed Fakrulrazi, vice president of the opposition Parti Amanah Negara, was convicted of sedition and sentenced to eight months in prison for calling for the release of Anwar Ibrahim;
- Cartoonist Zulkiflee Anwar Ulhaque, better known as Zunar, was charged with nine counts of sedition for tweets criticizing the Federal Court decision upholding Anwar Ibrahim's sodomy conviction;
- Susan Loone, assistant editor for the online news website *Malaysiakini*, was investigated for sedition in 2014 for reporting statements by the Penang State executive councillor about his treatment when he was arrested.

The Communications and Multimedia Act (CMA) has been used repeatedly to investigate and arrest those who criticize government officials or the sultans on social media, with use of the law soaring in

¹ Recommendations 146.169, 146.160 and 146.163 from Malaysia's Second Universal Periodic Review.

² Recommendation 146.48.

the past two years. Both section 233(1) and section 211 of the CMA provide criminal penalties of up to one year in prison for a communication that “is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person.”

The government has used the CMA to block access to websites posting material critical of the government. In July 2015, the Malaysian Communications and Multimedia Commission blocked access to London-based website *Sarawak Report*, which has reported extensively on the 1MDB corruption allegations. The website remains blocked in Malaysia. The authorities has also blocked *Medium*, which was posting articles from *Sarawak Report*, *Malaysia Chronicle*, a website reporting on Malaysian political issues that had been critical of the government, the regional news website *Asia Sentinel*, and several local blog sites commenting on political matters.³

Malaysia’s Film Censorship Act has been used to limit and penalize freedom of expression. In March 2017, a court sentenced Lena Hendry to pay a fine of RM10,000 (US\$2,062) or serve one year in prison for her role in arranging a showing of the award-winning documentary film “No Fire Zone,” about abuses during Sri Lanka’s civil war. In August, authorities used the act to require the deletion of scenes from a film by a Malaysian investigative journalist implicating Malaysian immigration officials in the trafficking of ethnic Rohingya girls.

The government has also used provisions of the Penal Code against opposition politicians. In January 2016, opposition Member of Parliament Rafizi Ramli was convicted of “insulting” the United Malays National Organization (UMNO), the leader of the ruling coalition. The decision was overturned in July 2017, but in the meantime Ramli was prosecuted under the Official Secrets Act for disclosing a page of an audit report into 1MDB and sentenced to 18 months in prison. In March 2017, opposition MP Tian Chua was convicted of “insulting the modesty of a police officer” for allegedly swearing when his mobile phone was seized during an arrest for sedition, and fined RM3,000 (US\$770) – sufficient to disqualify him from Parliament under Malaysian law.

Recommendations

- Amend the Malaysian Communications and Multimedia Act to:
 - restrict application of sections 211(1) and 233(1) to clearly defined categories of speech that pose a real risk to national security or public order, and where the restriction on speech is proportionate to the risk the speech creates, ensuring that terms used in the law are clearly defined and limited in scope;
 - limit the government’s ability to block online content under section 263(2) or otherwise to content that poses a real risk to national security or public order;
 - eliminate the requirement that online “content applications providers” obtain a license.
- Repeal the Sedition Act and ensure that any replacement legislation complies with international human rights standards;
- Repeal the Printing Presses and Publications Act, which requires government licensing of publications and permits interference with content, and the banning of publications.

³ MCMC appears to have relied on section 263(2) of the CMA, which provides that a licensee shall “upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offense under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security.”

- Repeal section 9(5) of the Film Censorship Act to eliminate criminal penalties for showing unapproved films;
- Repeal sections 499-502 of the Penal Code to eliminate the offense of criminal defamation.
- Revoke amendment 114A to the Evidence Act, which extends culpability for internet content to intermediate users;
- Repeal section 504 of the Penal Code to eliminate the criminal penalties for “insulting” speech;
- Amend section 505(b) of the Penal Code to criminalize only speech that is intended to incite violence or serious public disorder, and clearly define those terms to ensure that they conform to international standards;
- Amend section 505(c) of the Penal Code to limit application of the provision to speech intended to and likely to incite violence, discrimination, or hostility against an individual or clearly defined group of persons in circumstances in which such violence, discrimination, or hostility is imminent and alternative measures to prevent such conduct are not reasonably available;
- Amend the Official Secrets Act to criminalize only disclosures of clearly defined categories of documents, to require proof by the government that the disclosure poses a real and identifiable risk of causing harm to national security, to allow a defense of public interest, and to eliminate criminal penalties for receipt or disclosure of information by those who are not government personnel.

Peaceful Assembly

Although Malaysia accepted recommendations made during the last UPR cycle that it better protect the right to freedom of assembly,⁴ Malaysian authorities regularly prosecute individuals who hold peaceful assemblies without giving notice to the authorities, in violation of the international norm that no one should be criminally prosecuted for the mere act of organizing or participating in a peaceful assembly.

At least five opposition politicians have been prosecuted and fined for organizing the so-called “Black 505” rallies to protest the outcome of the 2013 general election. Jannie Lasimbang, the vice-chairperson of the Coalition for Clean and Fair Elections (Bersih), was convicted in August 2017 of failing to give notice of a 2015 Bersih rally even though, at the time of the rally, the Court of Appeal had held the notice requirement unconstitutional in a decision later reversed by another panel of the Court of Appeal. In September 2015, more than six months after a series of mass protests against the imprisonment of Anwar Ibrahim, the government charged eight activists and opposition politicians with unlawfully participating in street protests. The case is still pending.

Recommendations

- Revise the Peaceful Assembly Act so that it preserves freedom of peaceful assembly in line with international law and standards by:
 - permitting “moving” assemblies;
 - eliminating the criminal penalties for failing to give prior notice of an assembly;
 - eliminating the pre-determined list of proscribed places, narrowing permissible police restrictions to clearly defined acts to maintain public safety and order;

⁴ Recommendations 146.163 and 146.164.

- allowing participation in public assemblies by children and non-citizens.

Justice System

Administrative Detention

Malaysia continues to detain individuals for prolonged periods without trial. Both the 1959 Prevention of Crime Act and the 2015 Prevention of Terrorism Act give government-appointed boards the authority to impose detention without trial for up to two years, renewable indefinitely, to order electronic monitoring and to impose other significant restrictions on freedom of movement and freedom of association, with no possibility of judicial review.

In August 2017, the government passed amendments to the Prevention of Crime Act that effectively eliminated the right of a detainee to be heard. The amendments abolished the detainee's right to appear before or make representations to either the inquiry officer responsible for presenting the case for detention or to the government-appointed Prevention of Crime Board that makes the detention decision. The Security Offences (Special Measures) Act (SOSMA), which allows for preventive detention of up to 28 days with no judicial review for a range of "security offenses," was renewed for an additional five years in April 2016 and has been used against individuals exposing corruption and calling for free and fair elections.

Police Abuse

Malaysia accepted a recommendation that the country ensure police conduct is in line with international human rights standards, asserting that police were already trained to do so.⁵ However, police torture of suspects in custody, in some cases resulting in death, continues to be a serious problem, as does a lack of accountability for such offenses.⁶ While the Enforcement Agency Integrity Commission (EAIC), which Malaysia cited in its last review as rendering moot the recommendation for an independent police complaints and misconduct commission, has recommended prosecution in several cases, it does not have the power to ensure that prosecution takes place, and impunity continues to be the norm.

Recommendations

- Immediately release, or charge and prosecute under appropriate provisions of the penal code, all those being held under the Prevention of Terrorism Act (POTA), the Prevention of Crime Act (POCA), and the Security Offences (Special Measures) Act (SOSMA);
- Repeal the provisions of the Prevention of Terrorism Act, the Prevention of Crime Act and the Security Offense (Special Measures) Act that authorize detention without trial;
- Create an independent, external commission tasked solely to receive and investigate complaints about police misconduct and abuse and endow the commission with all necessary powers to investigate, compel cooperation from witnesses and government agencies, subpoena documents, and submit cases for prosecution;
- Immediately impose a moratorium on the use of the death penalty, enact legislation to eliminate the mandatory death penalty for all offenses, and take steps towards abolition.

⁵ Recommendation 146.76.

⁶ See Human Rights Watch, *No Answers, No Apology: Police Abuses and Accountability in Malaysia*, April 2014, <https://www.hrw.org/report/2014/04/01/no-answers-no-apology/police-abuses-and-accountability-malaysia>.

- Ratify the Rome Statute of the International Criminal Court and implement the statute in national legislation.

Sexual Orientation and Gender Identity

Although Malaysia accepted a recommendation that it continue efforts to “combat all forms of discrimination,”⁷ discrimination against LGBT people is pervasive in Malaysia. Federal law prohibits “carnal knowledge against the order of nature,” punishable by up to 20 years in prison and whipping. Sharia laws in numerous states criminalize LGBT people, including laws prohibiting a “man posing as a woman,” a “woman posing as a man,” and same-sex sexual relations.

Both religious and civil police have perpetrated abuses against trans women, including physical and sexual assaults during arrest or while in custody or parading them before the media. In cases in which trans women are sentenced to prison, they are usually placed in male wards, where they face sexual assault at the hands of both wardens and male prisoners.

Violence against LGBT people remains a serious concern, highlighted by the [murder of a transgender woman](#), Sameera Krishnan, in February 2017 and the June 2017 rape and murder of 18-year-old T. Nhaveen, whose assailants taunted him with anti-gay slurs.

In February 2017, the Ministry for Islamic Development (JAKIM) endorsed so-called “conversion therapy,” claiming that gay men should seek guidance from God, “repent,” and enter into heterosexual marriages. In December, the state of Terengganu announced plans for a “conversion therapy” course aimed at encouraging transgender women to “[return] to normal lives.”

An openly lesbian singer from Hong Kong, Denise Ho, was banned from performing in Malaysia in February 2018 because of her outspokenness on LGBT rights.

Recommendations

- Repeal provisions within state Sharia enactments that criminalize transgender people for expressing their gender identity;
- Stop conducting raids targeting transgender people;
- Allow transgender people to change the names and sex markers on their identity cards based on their expressed gender identity;
- Cease efforts, through outdoor boot camps or other initiatives, to “convert” transgender people to cisgender;
- Repeal article 377B of Malaysia’s penal code, which criminalizes adult consensual “carnal intercourse against the order of nature,” and replace it with a gender-neutral rape law in line with international best practices.

Children’s Rights

Malaysia rejected recommendations that it take steps to discourage early, forced and child marriage⁸ as “factually inaccurate,” saying that child marriage “has never been a trend in Malaysia.” However, as the response acknowledged, girls 16 and older can marry with permission of their state’s chief minister. The trend in child marriages in Malaysia is hard to ascertain since Malaysia is one of the few countries that does not provide annual data on child marriage to UNICEF, but in May

⁷ Recommendation 146.97.

⁸ Recommendations 146.150 and 146.151.

2016 the government admitted that more than 9,000 of those married in the previous five years were younger than 18.

Recommendations

- Ban marriage for everyone under the age of 18, with no exceptions;
- Create a national action plan for meeting SDG target 5.3 of ending all child marriage by 2030.

Women's Rights

Malaysia accepted a recommendation that it further strengthen legal provisions to effectively protect women who are victims of domestic violence⁹ and, in 2017, amended its domestic violence law to do so. However, Malaysian law still does not criminalize marital rape, and domestic violence is still not a separate offense under the penal code.

Recommendations

- Amend the definition of rape in the Penal Code to criminalize the full range of sexual assault including penetration and non-penetrative offenses including rape with objects and marital rape;
- Enact legislation to make rape during marriage a criminal offense;
- Amend the penal code to make domestic violence a separate and distinct offense;
- Pass a comprehensive law on sexual harassment covering women workers in organized and unorganized sectors.

Refugees, Asylum Seekers, Migrants and Trafficked Persons

Malaysia rejected recommendations that it ratify the 1951 Refugee Convention. Refugees and asylum seekers have no legal rights or status in the country. However, over 150,000 refugees are registered with the UN High Commissioner for Refugees in Malaysia but are unable to work, travel, or enroll in government schools. Asylum seekers arrested by authorities are treated as “illegal migrants” and locked up in overcrowded and unhealthy immigration detention centers.

No Malaysians have been held responsible for their role in the deaths of over 100 ethnic Rohingya trafficking victims whose bodies were found in 2015 in remote jungle detention camps on the Thai-Malaysian border. The 12 policemen initially charged in the case were all exonerated and released in March 2017.

While Malaysia accepted recommendations regarding support and assistance to victims of trafficking,¹⁰ it has failed to take the necessary administrative steps to fully implement the 2015 amendments to the anti-trafficking law that empower the authorities to grant a trafficked person under an interim protection order permission to move freely and to work. As a result, not all trafficked persons who wish to work and to move freely are able to do so.

Recommendations

⁹ Recommendation 146.130.

¹⁰ Recommendations 146.142 and 146.143.

- Sign and ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and enact domestic refugee law in line with international standards;
- Respect the international legal prohibition against refoulement;
- Permit refugees and asylum seekers the right to work and ensure the provision of education services for all refugee children.

Religious Freedom

Although Malaysia accepted a recommendation to combat religious discrimination and protect religious minority groups,¹¹ Ahmadiyya and Shia Muslims continue to suffer harassment and discrimination. Malaysian religious authorities have issued fatwa decreeing both groups to be “deviant” and, as a result, Ahmadiyya and Shia Muslims are forbidden from propagating their religious beliefs and cannot perform religious rituals or even possess religious texts without risking criminal prosecution.

¹¹ Recommendation 146.97.