

Freedom in the World 2014 - Malaysia

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2014 Scores

Status: Partly Free

Freedom Rating (1 = best, 7 = worst): 4.0

Civil Liberties (1 = best, 7 = worst): 4

Political Rights (1 = best, 7 = worst): 4

Trend Arrow: ↓

Malaysia received a downward trend arrow due to electoral fraud and structural obstacles designed to block the opposition from winning power, a decision by an appellate court to forbid non-Muslims from using the term "Allah" to refer to God, and worsening hostility and prejudice faced by the LGBT community.

OVERVIEW

In 2013, the ruling Barisan Nasional (BN) coalition used a combination of economic rewards, and continued harassment of opposition leaders to ensure victory in the general elections on May 5. The BN won a minority of the popular vote, but took 60 percent of the seats in Parliament; and 10 out of 13 state governments.

The BN government has engaged in suppressing political opposition and dissent. In October, Parliament passed legislation that allows indefinite detention of suspects without trial. Critics argued that the provision was a bid to re-impose the most draconian elements of the Internal Security Act (ISA), which was repealed in 2012. Also in October, an appeals court ruled that non-Muslims cannot use the term "Allah" to refer to God which impacts freedom of speech and freedom of worship for all non-Muslims in Malaysia. In 2013 we also saw increasing attacks on Shiite practitioners, houses of Shiite adherents were raided, and the Youth wing of UMNO called on the Government to amend the Constitution's definition of Islam to specify Sunni Islam as the official religion. There was also increased government pressure on news media. The weekly publication

The Heat was issued a 'show cause' letter for an article on the Prime Minister and his wife's financial status. The publication was ordered to cease publishing on December 19. The LGBT community also faced increasing harassment from state and national government offices.

POLITICAL RIGHTS AND CIVIL LIBERTIES

Political Rights: 19 / 40 (-1)

A. Electoral Process: 6 / 12

The leader of the coalition that wins a plurality of seats in legislative elections becomes prime minister. Executive power is vested in the prime minister and cabinet. The paramount ruler, the titular head of state, is elected for five-year terms by fellow hereditary rulers in 9 of Malaysia's 13 states. Tuanku Abdul Halim Mu'adzam Shah was elected to the post in December 2011. The upper house of the bicameral Parliament consists of 44 appointed members and 26 members elected by the state legislatures, serving three-year terms. The lower house, with 222 seats, is popularly elected at least every five years.

The Election Commission (EC) is frequently accused of manipulating electoral rolls and gerrymandering districts to aid the ruling coalition, and the Registrar of Societies arbitrarily decides which parties can participate in politics. The first-past-the-post voting system also increases the power of the largest grouping. In April 2012, a government committee issued recommendations for electoral reforms, many of which had been called for by the Coalition for Free and Fair Elections (Bersih) – an alliance of civil society organizations working for electoral reforms, transparency in government, and an end to corruption. However, there was widespread skepticism that the existing EC could be trusted to implement the recommended changes. For example, one change implemented was the use of indelible ink to mark who had already voted, however, some voters and electoral watchdog groups charged that this ink was easily washed off.

The BN won the May 2013 parliamentary elections, capturing 133 seats in the lower house despite receiving only 47 percent of the overall popular vote. Among the three main opposition parties, the Democratic Action Party (DAP) took 38 seats, the People's Justice Party (PKR) took 30, and the Pan-Malaysian Islamic Party (PAS) won 21. The opposition and observers accused the BN of electoral fraud, citing irregularities like phantom voting and power outages that occurred in vote-tallying centers in a number of constituencies that the opposition parties hoped to win. There is also criticism of gerrymandering and other structural flaws in the electoral system which helps to ensure victory for the ruling coalition. To air grievances about the 2013 election, the Malaysian Electoral Roll Analysis Project (MERAP) published a report of the electoral irregularities, and in September a People's Tribunal was held to hear evidence in public from anyone who had a story to tell about electoral problems. Other heavy-handed tactics against opposition parties include the Registrar of Societies' (RoS) censure of the DAP for the conduct of their last two party elections.

B. Political Pluralism and Participation: 7 / 16 (-1)

The BN coalition and its pre-1973 predecessor organization have governed Malaysia since independence. Most of its constituent parties have an ethnic or regional base, including the dominant United Malays National Organization (UMNO) and the United Traditional Bumiputera Party (PBB), whose stronghold is in Sarawak.

In addition to the skewed electoral framework, the three main opposition parties face obstacles such as unequal access to the media, restrictions on campaigning and freedom of assembly, and politicized prosecutions, all of which make it difficult for them to compete on equal terms with the BN. The effectiveness of these barriers in preventing a rotation of power was underscored by the 2013 election results.

PKR leader Anwar Ibrahim has been dogged by claims that he "sodomized" a young male aide in June 2008, a charge he said was a politically motivated fabrication. It followed a similar case against him in 2000. He was acquitted of the 2008 charges in January 2012, but a government appeal of the acquittal was pending at the end of 2013.

C. Functioning of Government: 6 / 12

Government favoritism and blurred distinctions between public and private enterprises create conditions conducive to corruption. Officials regularly move back and forth between the private and public sectors, fostering many opportunities for improper collusion and graft. Political parties are allowed to own or have financial holdings in corporate enterprises. Government and law enforcement bodies have suffered a series of corruption scandals in recent years. The Malaysian Anti-Corruption Commission (MACC) has itself come under scrutiny for its interrogation practices, as two suspects have died after falling from MACC office buildings since 2009. Inquests ruled one death a suicide and the other an accident. Malaysia was ranked 53 out of 177 countries surveyed in Transparency International's 2013 Corruption Perceptions Index. The Whistleblower Protection Act took effect in December 2010, but it did not significantly improve transparency. Corruption continues to be a significant problem. In 2013, new corruption allegations surfaced against former chief minister of Sarawak, now Governor, Abdul Taib Mahmud. The recent charges relate to a company linked to his son Mahmud Abdul Bekir that may have been used to as a front to receive RM6.6 million in commissions for a waste disposal project involving a state government joint venture with the German firm Trienekens GMBH. The charges were made by the rights group Global Witness.

Civil Liberties: 28 / 60

D. Freedom of Expression and Belief: 8 / 16 (-1)

Freedom of expression is constitutionally guaranteed but restricted in practice. Parliament amended the 1984 Printing Presses and Publications Act (PPPA) in April 2012, retaining the home minister's authority to suspend or revoke publishing licenses but allowing judicial review of such decisions. The amendments also eliminated the requirement that publications and printers obtain annual operating permits. A 2012 amendment to the 1950 Evidence Act holds owners and editors of websites, providers of web-hosting services, and owners of computers or mobile devices used to publish content online accountable for information published on their sites or through their services. Malaysian press freedom advocates, bloggers, and opposition politicians staged a 24-hour internet blackout to protest the legislation. Critics of the amendment also charged that it would effectively shift the burden of proof to the accused.

Most private print outlets are controlled by parties or business groups allied with the BN. Privately owned television stations also have close ties to the BN and generally censor programming according to government guidelines. State outlets reflect government views. Books and films are

directly censored or banned for profanity, violence, and political and religious material. Publications often face harassment from the government. In December of 2013, the Home Ministry temporarily suspended *The Heat* (a weekly news magazine) from publishing. This was in reaction to the magazine's publication of a front-page story on PM Najib and his wife's activities and spending of tax payer money. The publication was first issued a 'show-cause' letter and then later told to cease publishing. The media outlet was suspended indefinitely. The internet has emerged as a primary outlet for free discussion and for exposing cases of political corruption. The government has responded in recent years by engaging in legal harassment of critical bloggers, charging them under defamation laws, the Official Secrets Act, and the Sedition Act, all of which can draw several years in prison. The Malaysian Communication and Multimedia Commission (MCMC), an agency responsible in part for regulating the internet, has been known to monitor online content and order outlets or bloggers to remove material it views as provocative or subversive. The government responds unevenly to cyber-blogging activity and sensational issues: sometimes allowing information to stay up, and sometimes censoring it.

While the BN government continues to articulate the need for a tolerant and inclusive form of Islam, religious freedom is restricted in Malaysia. Ethnic Malays are defined by the constitution as Muslims, and practicing a version of Islam other than Sunni Islam is prohibited. Muslim children and civil servants are required to receive religious education using government-approved curriculums and instructors. Proselytizing among Muslims by other religious groups is prohibited, and a 2007 ruling by the country's highest court effectively made it impossible for Muslims to have their conversions to other faiths recognized by the state; in very rare exceptions, non-Malays have been allowed to revert to their previous faiths after converting to Islam for marriage. Non-Muslims are not able to build houses of worship as easily as Muslims, and the state retains the right to demolish unregistered religious statues and houses of worship. Mainstream media outlets regularly attack the Shiite minority, with the newspaper *Utusan Malaysia* labeling Shiite beliefs as "deviant teachings" and "serious threats."

Discrimination against Shiites increased significantly in late 2013. Homes of Shiite adherents were raided, inflammatory sermons were given at Friday prayers denouncing Shiite believers and practices, and 16 people were arrested for supposedly spreading Shiite teachings, this reflects Malaysia's ban on the spreading of Shiite beliefs and practices. After the assassination of a religious affairs officer in November, UMNO amplified its effort to portray itself as a pious party by tabling a constitutional amendment that would identify Malaysia as a Sunni Muslim nation, and by calling for a government commission to protect Sunni Islam against "deviant" religious sects and the LGBT (lesbian, gay, bisexual, and transgender) community.

A court ruling in late 2009 overturned a government ban prohibiting non-Muslims from using the word Allah to refer to God, touching off a wave of January 2010 arson attacks and vandalism that struck Christian churches as well as some Muslim and Sikh places of worship. After much delay, an appeals court ruled in October 2013 that non-Muslims cannot use the word Allah to refer to God. The decision was seen as a devastating blow to both freedom of religion and freedom of private discussion, as Malay-speaking Christians had long used the word in their scriptures (in Malay language Christian bibles) and daily life but would now face potential criminal sanctions. As of the end of 2013 a final appeal was still pending.

The government restricts academic freedom; teachers or students espousing antigovernment views or engaging in political activity have long been subject to disciplinary action under the Universities

and University Colleges Act (UUCA) of 1971. However, following a 2011 court finding that the constitution protected students' involvement in political campaigns, Parliament in April 2012 amended the UUCA to allow students to take part in political activities off campus. Students were especially targeted for participating in talks and meetings by opposition political parties, and in arrests following post-election rallies, known as the 'Black 505' rallies demonstrating anger and opposition to the conduct and results of the May 2013 General Election.

Freedom of expression has also come under fire in 2013 when the director of a documentary on the Sri Lankan atrocities against the Tamil Tigers had a screening of her film shut down by the Censorship Board and some of the Malaysian organizers were taken into custody for questioning.

E. Associational and Organizational Rights: 6 / 12 (+1)

Freedoms of assembly and association are limited on the grounds of maintaining security and public order. The Peaceful Assembly Act, passed in late 2011, lifted a rule requiring police permits for nearly all public gatherings. However, other provisions were seen as a bid to restrict rather than safeguard freedom of assembly, including a prohibition on street protests and the levying of excessive fines for noncompliance with this rule. In addition, the law delineates 21 public places where assemblies cannot be held – including within 50 meters of houses of worship, schools, and hospitals – and prohibits persons under the age of 15 from attending any public assembly.

Demonstrations surrounding the 2013 elections attracted crowds up to 120,000 people. On May 22, at least 18 peaceful protesters and seven organizers were arrested and charged under the Peaceful Assembly Act. Some (including student leader Adam Adli) were also charged under the Sedition Act. Possible penalties could include various fines up to RM5,000 (approx. \$1,800) and/or 3 years jail time. Despite these threats and harassment of opposition leaders and civil society activists, repression of these activities was not as bad as in 2012. Thus, there seems to be somewhat more space to protest, this is particularly true on less political issues such as concerns over the environment. For example, protests were allowed to be carried out in Sarawak protesting the construction of the Baram Dam. Local residents and environmental organizations are upset about the possible environmental impact of the dam and the displacement of 10,000's of indigenous people.

The Societies Act of 1996 defines a society as any association of seven or more people, excluding schools, businesses, and trade unions. Societies must be approved and registered by the government, which has refused or revoked registrations for political reasons. Numerous nongovernmental organizations operate in Malaysia, but some international human rights organizations are forbidden from forming Malaysian branches. Suaram, one of the leading human rights groups in the country, faced government harassment in 2012, including allegations of financial irregularities. This harassment continued in 2013 with staff members being investigated for their working to expose problems of corruption like the Scorpene case. Likewise, civil society groups and their leaders were detained and harassed for protesting the conduct and results of the 2013 election.

Most Malaysian workers – excluding migrant workers – can join trade unions, but the law contravenes international guidelines by restricting unions to representing workers in a single or similar trade. The director general of trade unions can refuse or withdraw registration arbitrarily, and the union recognition process can take from 18 to 36 months. Collective bargaining is limited.

Unions in essential services must give advance notice of strikes; various other legal conditions effectively render strikes impossible. Amendments to the Employment Act further weakened workers' rights in 2011 by removing responsibility from employers and allowing greater use of subcontracting arrangements.

F. Rule of Law: 5 / 16

Judicial independence is compromised by extensive executive influence. Arbitrary or politically motivated verdicts are common, with the most prominent example being the convictions of opposition leader Anwar Ibrahim in 1999 and 2000 on charges of corruption and sodomy. The 2000 sodomy conviction was overturned in 2004, and Anwar was released from prison, but the corruption charge was upheld, delaying his return to elected office until 2008. A second charge of sodomy against him began that year, and although he won an acquittal in January 2012, the government's appeal of the verdict was pending at the end of 2013.

Malaysia's secular legal system is based on English common law. However, Muslims are subject to Sharia (Islamic law), the interpretation of which varies regionally, and the Constitution's Article 121 stipulates that all matters related to Islam should be dealt with in Sharia courts. This results in vastly different treatment of Muslims and non-Muslims regarding "moral" and family law issues.

The 1960 Internal Security Act (ISA) gave the police sweeping powers to hold any person acting "in a manner prejudicial to the security of Malaysia" for up to 60 days, extendable to two years without trial. The law was used to jail mainstream politicians, alleged Islamist militants, trade unionists, suspected communist activists, ordinary criminal suspects, and members of "deviant" Muslim sects, among others. Detainees have reported cases of torture while in custody; official documentation of these claims is rare. The ISA was replaced in June 2012 with the Security Offences (Special Measures) Act, which abolished preventive detention but left the definition of "security offences" so broad as to raise serious concerns about the intent of the measure. The new law allows police to detain anyone for up to 28 days without judicial review, and suspects may be held for 48 hours before being granted access to a lawyer. In October 2013 Parliament passed an amendment to the Prevention of Crime Act (PCA), a law ostensibly aimed at combating organized crime. The amendment allows a five-member board to order the detention of individuals listed by the Home Ministry for renewable two-year terms without trial or legal representation. The existing PCA had allowed detentions of 72 days. A New Year's Eve demonstration held December 31, 2013 to protest price increases on food, fuel, and tolls was organized by rights organizations such as Turun and was interpreted as anti-government, seditious, activity and organizers were facing arrest at year's end.

Although the constitution provides for equal treatment of all citizens, the government maintains an affirmative action program intended to boost the economic status of ethnic Malays and other indigenous people, known collectively as bumiputera. Bumiputera receive preferential treatment in areas including property ownership, higher education, civil service jobs, and business affairs, and bumiputera-owned companies receive the lion's share of large government contracts. In September 2013, the government announced a new "bumiputera economic empowerment" agenda, devoting close to 30 billion ringgits (\$9.2 billion) in new funding to support for bumiputera-owned businesses.

LGBT people face discrimination and harassment. In 2012, Prime Minister Najib called the LGBT community an example of a "deviant culture" that threatens Malaysia. His remarks were consistent with those found in the country's mainstream media. Same-sex sexual relations are punishable by up to 20 years in prison under the penal code, and some states apply their own penalties to Muslims under Sharia statutes. In 2013, the government continued its increased attacks on LGBT individuals, the Ministries of Health and Education initiated "educational" campaigns warning parents, teachers, counselors, and young people to work to "prevent, overcome, and correct" symptoms of homosexuality in children. The Ministry of Information banned TV and radio shows depicting gay characters.

G. Personal Autonomy and Individual Rights: 9 / 16

Women are underrepresented in politics, the professions, and the civil service. Violence against women remains a serious problem. Muslim women are legally disadvantaged because their family grievances are heard in Sharia courts, where men are favored in matters such as inheritance and divorce; women's testimony is not given equal weight. Despite some progress in investigating and punishing sex-trafficking offenses, government efforts to combat trafficking are inadequate.

Foreign household workers are often subject to exploitation and abuse by employers. An estimated two million foreigners work in Malaysia illegally. If arrested and found guilty, they can be caned and detained indefinitely pending deportation. Questions are also being raised about indigenous rights in the planned displacement of possibly tens of thousands of people from the construction of the Baram Dam in Sarawak.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

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