

MALAYSIA

In a nationally televised speech on Malaysia Day in September 2011, Prime Minister Seri Najib Tun Razak called for a Malaysia “which practices functional and inclusive democracy, where peace and public order are safeguarded in line with the supremacy of the Constitution, the rule of law and respect for basic human rights and individual rights.” However he added that there had to be “checks and balances ... between national security and personal freedom,” and ensuing reforms have favored security over internationally recognized human rights.

Parliamentary elections must be held no later than April 2013, and political tensions were already high in November with both the opposition and the government alleging engagement by their political opponents in election-related intimidation and violence.

Preventive Detention

In his September 2011 speech, Prime Minister Najib pledged to replace the notorious Internal Security Act (ISA), which permitted long-term detention without trial, and other rights-restricting legislation. The Banishment Act 1959 and the Restricted Residence Act 1933 were the first to be rescinded, followed by three emergency declarations and the emergency-related laws they made possible. One of the rescinded laws, the Emergency (Public Order and Crime Prevention) Ordinance 1969, had been regularly used to hold criminal suspects indefinitely without charge or trial.

The Security Offences (Special Measures) 2012 Act (SOSMA) replaced the ISA on July 31, 2012. On a positive note, SOSMA reduced initial detention without charge from 60 to no more than 28 days, and required that a suspect be charged in court or released thereafter. However, other provisions reduce human rights protections, including an overly broad definition of a security offense, allowing police rather than courts to authorize interception of communications during investigations, and permitting prosecutors to conceal the source of evidence and to keep the identities of witnesses

secret, thereby preventing cross-examination. Even if a suspect is acquitted under SOSMA, the law permits a series of appeals, with bail disallowed, that could result in a suspect's indefinite detention. Malaysian authorities, using transitional authority at the time SOSMA replaced the ISA, still hold 27 ISA detainees.

Freedom of Assembly and Association

In 2012, the government continued to violate rights to free association and peaceful public assembly. While Prime Minister Najib agreed in September 2011 to review section 27 of the Police Act, which mandated police permits for public assemblies, the government hastily drafted and passed a replacement Peaceful Assembly Act on December 20, 2011.

The new law rescinded the requirement for a permit but also introduced major new restrictions, including a broad ban on “moving assemblies” of any kind. Static protests are also prohibited closer than 50 meters from many prohibited sites, making it virtually impossible to hold an assembly in an urban setting. Other restrictions include empowering the police to set assembly conditions such as time, place, and date after taking into consideration other groups’ objections or “any inherent environmental factor.” Police were also given the power to use all “reasonable force” to break up a protest.

City and federal officials sought to prevent an April 28 sit-in sponsored by Bersih 3.0, the Coalition for Clean and Fair Elections. They barred Bersih from using Dataram Merdeka (Independence Square) in central Kuala Lumpur and barricaded the area. Nevertheless, marchers numbering in the tens of thousands walked peacefully toward the barricaded square and when the announcement came that the rally was over began a peaceful dispersal. However, a small group breached the barricades. The police reacted with excessive force in what became a four-hour onslaught of tear gas, water cannon, and indiscriminate beatings and arrests.

On July 1, 2011, Home Affairs Minister Hishammuddin Hussein declared Bersih an illegal organization under the Societies Act. On July 24, 2012, the Kuala Lumpur High Court overturned that decision, ruling that the original decision was “tainted with irrationality.”

Freedom of Expression

Most major newspapers and television and radio stations remain controlled by media companies close to political parties in the government coalition. A recent amendment to the Evidence Act has raised fears that intermediary liability on the internet will further decrease freedom of expression. The provision creates a legal presumption that an owner, administrator, host, editor, or subscriber to a network service who has in their custody or control any computer from which any publication originates is presumed to have published or republished the content of the publication unless the contrary is proven.

The Printing Presses and Publications Act (PPPA) retains its potency despite some reforms, such as ending the need to renew licenses annually and adding judicial oversight to what was the home minister's unchecked power to approve or reject license applications. New publications still require initial approval and licenses still may be arbitrarily revoked. Other means of control include calls from the ministry offering "advice" to editors and prison terms and fines for "maliciously" printing so-called false news. The home minister maintains absolute discretion over licensing of printing presses.

In 2012, Malaysian courts partially advanced the right of free expression. *Malaysiakini*, the largest online newspaper in Malaysia, had repeatedly and unsuccessfully applied to publish a daily print version. On October 1, the Kuala Lumpur High Court ruled the home minister's refusal was "improper and irrational" and the application should be resubmitted. In a significant statement contradicting the prevailing government view, the judge said that a license to publish was "a right, not a privilege." The attorney general's chambers and the Home Ministry appealed the court's decision.

Sisters in Islam, a local nongovernmental organization, also won a significant victory in July when the Court of Appeal dismissed a government appeal to overturn a 2010 High Court decision lifting the ban on *Muslim Women and the Challenge of Islamic Extremism*, a book of essays originally banned in 2008.

A civil court's decision that the arrest of political cartoonist Zunar under the Sedition Act and the PPPA in September 2012 was lawful had a more negative impact, reinforcing the

unwillingness of printing presses, publishers, and bookstores to be associated with controversial books.

Police Abuses and Impunity

Human Rights Watch and local civil society groups have documented police abuses, including excessive use of force during arrests, suspicious deaths in custody, failure to adequately investigate such incidents and to hold accountable those responsible; and inadequate post-mortem inquiries and investigations. Victims of police violence reported few effective avenues for redress and decried an apparent culture of police impunity for mistreatment.

Trial of Anwar Ibrahim

On January 9, 2012, a Kuala Lumpur court acquitted Anwar Ibrahim, parliamentary leader of Malaysia's political opposition, of sodomy on the grounds that it could not "be 100 percent certain that the [DNA] evidence can be accepted, as there could have been tampering." An appeal by the attorney general's chambers, could add months, if not years, to resolution of the case.

Human Rights Defenders

On July 3, 2012, government agencies initiated a multi-pronged investigation into Suaram, one of Malaysia's leading human rights NGOs. Government officials and civil servant investigators accused Suaram of financial irregularities, accepting foreign donations to undermine the Malaysian government, and hiding an illegal association behind the group's registration as a company. Regulatory agencies, including the Companies Commission of Malaysia and the Registrar of Societies, demanded information and documents going back years, and interrogated Suaram staff and board members. No one had been charged at this writing.

Many observers believe the investigation was prompted by Suaram's decision in 2010 to become involved in a French judicial investigation examining alleged corruption in Malaysia's purchase of submarines from a French defense company.

Throughout September and October, pro-government media alleged that Suaram and a number of other NGOs critical of the government were receiving foreign funding in an attempt to destabilize the government.

Refugees, Asylum Seekers, and Trafficking Victims

Malaysian immigration law does not recognize refugees and asylum seekers. The government is not a party to the 1951 Refugee Convention and lacks domestic refugee law and asylum procedures. Malaysia refuses to permit refugees to work or to allow for education of refugee children.

In February, Malaysia denied the *United Nations High Commissioner for Refugees* (UNHCR) access to asylum seeker Hamza Kashgari, who appeared to be an asylum seeker from Saudi Arabia. He had fled after it was learned he had tweeted messages that some deemed insulting to the Prophet Muhammad. Kashgari was deported amid execution calls in his homeland. At this writing, he was still imprisoned.

The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act conflates trafficking and people smuggling, and fails to provide meaningful protection to victims of either crime. The government confines trafficking victims in sub-standard government shelters without access to services and assistance until legal cases they are involved with are adjudicated.

Detention and Drugs Policy

The Dangerous Drugs (Special Preventive Measures) Act continues to authorize preventive detention. During 2012, an estimated 700 people were held under the act.

The National Anti-Drugs Agency maintains over 20 *puspens* (drug detention centers) where users are held for a minimum of two years. Rates of relapse in Malaysia have been estimated at 70 to 90 percent and those re-arrested as users face long prison terms combined with caning. Drug traffickers face mandatory death sentences, but the number of people executed is not publicly available.

Sexual Orientation and Gender Identity

In 2012, discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons reached new levels of intensity. On June 25, Prime Minister Najib publicly stated that LGBT activities do not “have a place in the country.” On July 19, speaking before 11,000 imams and mosque committee members, he stated that “it is compulsory for us to fight” LGBT behavior.

In March, the High Court dismissed the application of the LGBT group Seksualiti Merdeka for a review of the police ban on their November 2011 festival, leaving the future of the annual festival in doubt.

Two October court rulings concerning transsexuals also caused alarm: in one, a transsexual was refused the right to change the gender recorded on her national identity card; and in the other it was ruled that Muslims born as males may not dress as females.

The government refuses to consider repeal of article 377B of the penal code which criminalizes adult consensual “carnal intercourse against the order of nature,” or to replace article 377C on non-consensual sexual acts with a modern, gender-neutral law on rape.

Key International Actors

The United States has not strongly pressed Malaysia over its failure to honor international human rights standards. Other than its demands for a fair trial for Anwar Ibrahim, the US has allowed concern for security cooperation to trump speaking out about human rights. During Trans-Pacific Pact free trade negotiations, the US has failed to hold Malaysia accountable for its human rights violations.

Malaysia is a member of the UN Human Rights Council (HRC), but has not signed or ratified most core human rights treaties. The government has also opposed including protections on the basis of sexual orientation or gender identity in the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration and has blocked consideration of a comprehensive agreement to protect the rights of all migrant workers in ASEAN.