



January 2011

country summary

## Malaysia

Nearly two years after Malaysian Prime Minister Seri Najib Tun Razak assumed office pledging to “uphold civil liberties,” there has been only limited progress. Promised amendments to the Internal Security Act (ISA) and other laws permitting preventive detention have not been enacted. Restrictions on freedom of expression continue to be used to limit the right of government critics to express their views. Local police chiefs continue to restrict public assemblies and processions, often on political grounds.

### Detention without Charge or Trial

Malaysia’s 50-year-old ISA permits indefinite detention without charge or trial of any person deemed by officials to be a threat to national security. Officials in 2010 reiterated their opposition to repeal of the ISA but agreed to consider reforms in five areas, including limiting detention without trial, providing guarantees against mistreatment of detainees, and more precisely defining what behavior triggers application of the ISA. However, in March the home minister declared that the ISA could not be amended without also reviewing six other laws affecting security and permitting preventive detention, including the Emergency (Public Order and Crime Prevention) Ordinance, the Dangerous Drugs (Special Preventative Measures) Act, and the Restricted Residence Act.

The United Nations Working Group on Arbitrary Detention visited Malaysia in June 2010 and reported that it was “seriously concerned” by the laws permitting preventive detention and recommended their repeal or, if amended, their “conformity with article 10 of the Universal Declaration of Human Rights.” The working group expressed concerns that Malaysian authorities resort to the Emergency Ordinance even when the alleged crimes, such as stealing, fighting, or involvement in organized crime, fall under the purview of Malaysia’s penal code.

### Migrant Workers, Refugees, Asylum Seekers, and Trafficking Victims

The Malaysian Immigration Act 1959/1963 fails to differentiate between refugees, asylum seekers, trafficking victims, and undocumented migrants. While other laws and policies provide some protections for some groups, the government does not effectively or

consistently screen alleged immigration offenders; resulting in many ostensibly protected individuals end up arrested, detained, and deported.

In October 2010, in an attempt to “prove to the international community Malaysia’s commitment to fighting human trafficking,” police used the ISA to detain seven Malaysian immigration officers and two foreigners for trafficking offenses. The same month the government implemented amendments to the Anti-Trafficking in Persons Act that conflate trafficking victims with smuggled migrant workers, reduce protections for both groups, and make it less likely that trafficking victims will be able to cooperate in identifying and prosecuting perpetrators. The government continues to hold trafficking victims in closed shelter facilities that resemble detention centers.

Despite announcements to the contrary, some 300,000 migrant domestic workers in Malaysia still lack important protections. Domestic workers are excluded from key protections under Malaysia’s Employment Act, including limits on working hours, public holidays, a mandatory day off per week, annual and sick leave, maternity protections, and fair termination of contracts.

In 2009 Indonesia suspended migration of domestic workers to Malaysia until a 2006 Memorandum of Understanding could be revised with stronger protections for workers. Negotiations have stalled repeatedly over the establishment of a minimum wage structure, employees’ rights to retain their passports, and division of responsibility for recruitment and placement costs.

## **Drug Policy**

The National Anti-Drugs Agency maintains some 28 *Puspens* (drug detention centers) where detainees are held for a minimum of two years. Although rates of relapse to drug use have been estimated in Malaysia at 70-90 percent, people who are subsequently rearrested for drug use face long jail terms and caning.

## **Freedom Of Assembly and Police Abuse**

Police continued in 2010 to restrict the right to peaceful assembly guaranteed in Malaysia’s constitution. On several occasions, local police refused to issue permits to activists for public assemblies, marches, and meetings, and used excessive use of force to break up unlicensed events.

On August 1, police dispersed eight candlelight vigils commemorating the 50th anniversary of the ISA, detaining more than 30 people. At some sites, they failed to give proper warning or allow sufficient time for participants to disperse. Lawyers on hand to represent detained individuals were prevented from doing so.

There was no progress on plans announced in August 2009 by Home Minister Hishamuddin Hussein to remove restrictions on public gatherings at certain designated locations.

## Freedom of Expression and the Media

As blogs, Twitter, YouTube, and other websites continue to challenge mainstream newspapers, television, and radio for readers and listeners, officials continue to fall short in fulfilling their pledge to preserve an open internet and to realize Prime Minister Najib's vision of a media sector in which journalists are "empowered to report what they see, without fear of consequence."

Officials in 2010 harassed journalists, confiscated published materials for "review," and banned publications outright or suspended them for activities allegedly beyond the scope of their publishing licenses. The 1984 Printing Presses and Publications Act requires that all publications renew their licenses annually.

In September Najib explained the gap between his rhetoric and the government's noticeably more vigorous crackdown on free expression, saying, "I did say that press must be responsible. I did not say that we will waive all the laws in Malaysia... if you go against the law, whether it is defamation or whether it is inciting racial hatred, religious hatred, then you have to be responsible for your action."

In June and July the government temporarily shut down newspapers published by the opposition coalition's three major parties. Printing license renewals came with restrictive conditions, such as requirements that sales be limited to party offices and party members.

Also in June, the Home Ministry banned *1Funny Malaysia*, a book of political cartoons, and two other books by *Malaysiakini* cartoonist Zulkifli Anwar Ulhaque, popularly known as Zunar. In September, hours before the launch of *Cartoon-o-phobia*, a another Zunar book, police raided his office, seized copies of the work, and arrested him on sedition charges for publishing books detrimental to public order. In October Home Minister Hishamuddin denied application for yet another book by Zunar.

That same month the Malaysian Communications and Multimedia Commission investigated *Malaysiakini*, a popular online newspaper often critical of government policy, over its reporting on Prime Minister Najib's opening speech at the general assembly of the ruling coalition, the United Malays National Organization. The Home Ministry has repeatedly refused *Malaysiakini's* applications to publish a daily print version.

## **Sexual Orientation and Gender Identity**

The government continued to reject efforts to repeal article 377 of the penal code, which criminalizes consensual "carnal intercourse against the order of nature," or to replace the law's section on non-consensual sexual acts with a modern, gender-neutral law on rape. The government ceased banning gay-themed films, but only if certain acts are not depicted and gay characters repent by the movie's end.

## **Due Process and Trial of Anwar Ibrahim**

The trial of Anwar Ibrahim, leader of Malaysia's political opposition, continued on the charge of "sodomy" in a case involving alleged consensual homosexual conduct. The prosecution refused to hand over documents crucial to the defense, including a list of witnesses, witness statements, and clinical notes and specimens from the medical examination of the accuser two days after the alleged incident took place. Malaysia's Criminal Procedure Code, section 51A, includes a provision requiring the prosecution to turn over "any" document it will use as evidence and a written statement of facts favorable to the defense with the exception of any act that "would be contrary to public interest."

## **Freedom of Religion**

Although Islam is Malaysia's official state religion, the constitution affirms that Malaysia is a secular state protective of religious freedom for all. However, Malaysia's dual-track legal system permits Sharia courts, in which non-Muslims have no standing, to rule on religious and moral offenses involving Muslims and on issues involving marriage, inheritance, divorce and custody battles, and burial rites, many of which involve interreligious disagreement. In a widely publicized and potentially far-reaching decision in March, Malaysia's high court awarded custody of three children to a Hindu woman whose husband had, without her knowledge, converted to Islam and had the children converted, but other cases remained mired in the courts.

## Key International Actors

United States officials emphasized trade and investment, nuclear non-proliferation, and regional security in discussions in 2010 with their Malaysian counterparts, but did address some concerns relating to human rights, democracy, and rule of law. In a visit in November US Secretary of State Hillary Clinton did not meet with human rights groups or with Anwar Ibrahim.

Malaysia invited the UN Working Group on Arbitrary Detention to visit but then tried to stop civil society representatives from meeting privately with visiting group members.

In May Malaysia was elected to the UN Human Rights Council.

Malaysia continued to play the primary role in thwarting efforts by the intergovernmental Association of Southeast Asian Nations (ASEAN) Committee on Migrant Workers to negotiate a legally binding ASEAN instrument for the protection and promotion of the rights of migrant workers.