



# MALAYSIA

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 31<sup>ST</sup> SESSION OF THE UPR WORKING GROUP, NOVEMBER 2018

### FOLLOW-UP TO THE PREVIOUS REVIEW

Malaysia received a total of 232 recommendations during its review in 2013.<sup>1</sup> Of these it accepted, in full or partially, 149 recommendations, and rejected 83 recommendations.<sup>2</sup> Despite receiving numerous recommendations to repeal or restrict the death penalty, the government notably rejected all of them, though it did implement limited reforms in early 2018.<sup>3</sup>

#### Right to fair trial

In its previous review, Malaysia accepted a recommendation to improve domestic legislation in order to guarantee the right to a fair trial.<sup>4</sup> Despite this, the government enacted the Prevention of Terrorism Act (POTA) in 2015, reminiscent of the Internal Security Act (ISA), abolished in 2012, which had been used previously to arbitrarily detain government critics and create a climate of fear. The POTA allows for indefinite detention without charge or trial and does not include the necessary safeguards to ensure a fair trial and other human rights guarantees.<sup>5</sup>

In 2016, the National Security Council Act also came into effect, granting the authorities further powers to carry out arrests, and search and seizure of property without a warrant, and to impose a curfew within undefined areas of the country. The law centralizes military, policing and emergency powers under the Prime Minister and also allows for the dispensation of inquests following the use of lethal force by officials.<sup>6</sup>

#### Human Rights Action Plan

In March 2018, the government launched a National Action Plan, making good on its acceptance of a recommendation to do so in 2013.<sup>7</sup> The plan is a positive step, addressing important human rights concerns in the country. However, it fails to address other challenges such as improving civic space and repealing restrictive laws on freedom of expression, assembly and association, as well as protecting human rights defenders.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Malaysia, A/HRC/25/10, recommendations 146.1-146.232.

<sup>2</sup> Report of the Working Group on the Universal Periodic Review, Malaysia, Addendum, A/HRC/25/10/Add.1.

<sup>3</sup> A/HRC/25/10, recommendation 146.108-146.124 (Australia, Bulgaria, Sweden, Cyprus, Belgium, Spain, Germany, UK, Albania, Switzerland, Mexico, Norway, Montenegro, Chile, France).

<sup>4</sup> A/HRC/25/10, recommendation 146.147 (Japan).

<sup>5</sup> Amnesty International, Malaysia: New anti-terrorism law a shocking onslaught against human rights, 7 April 2015, <https://www.amnesty.org/en/latest/news/2015/04/malaysia-new-anti-terrorism-law-a-shocking-onslaught-against-human-rights/>

<sup>6</sup> Amnesty International, Malaysia: National Security Council Act gives authorities unchecked and abusive powers, 1 August 2016, <https://www.amnesty.org/en/latest/news/2016/08/malaysia-national-security-act-abusive-powers/>

<sup>7</sup> A/HRC/25/10, recommendation 146.57 (Kazakhstan).

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

To date, Malaysia has ratified only three core human rights treaties.<sup>8</sup> Its poor ratification record signals a continued refusal to align national legislation with international human rights law. In its second review, Malaysia rejected recommendations to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others.<sup>9</sup>

In 2012, the government committed to repeal the Sedition Act and to replace it with the National Harmony Bill. However, it failed to deliver on this pledge and instead strengthened the Sedition Act in 2015, increasing jail terms from three years to up to seven years on conviction and up to 20 years if a suspect is convicted of sedition with causing bodily harm or damage to property. It also brought electronic media and social media under the Act.<sup>10</sup>

The Human Rights Commission of Malaysia (SUHAKAM) is mandated to monitor and investigate reports of human rights abuses in the country. However, it is impeded by a lack of political will and support from policy makers to address many of its recommendations.<sup>11</sup>

## PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### The death penalty

The death penalty continues to be retained as the mandatory punishment for 12 offences, including drug trafficking, murder and discharge of firearms with intent to kill or harm in certain circumstances. Judges have discretion to apply the death penalty for ten additional offences, including treason, kidnapping and rape when these result in death, and trafficking of firearms.<sup>12</sup> The use of the death penalty for crimes that do not meet the threshold of the “most serious crimes” under international law, as well as the imposition of mandatory death sentences, are prohibited under international law.<sup>13</sup>

The authorities do not regularly publish figures on the use of the death penalty, nor do they provide public notification of scheduled executions, either before or after these have been carried out. Detailed information – including the names of prisoners, the offences of which they were convicted, legal and clemency appeal status and dates of scheduled executions – is publicly available only for an extremely limited number of cases. International standards require that in countries which have not yet abolished the death penalty, authorities must ensure that prisoners under sentence of death

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<sup>8</sup> These are the UN Convention on the Rights of the Child, Convention on the Elimination of all forms of Discrimination against Women and the Convention on Rights of Persons with Disabilities.

<sup>9</sup> Report of the Working Group on the Universal Periodic Review, Malaysia, A/HRC/25/10, recommendation 146.1-146.28 (Spain, New Zealand, Italy, Chad, Kazakhstan, Poland, Latvia, Sierra Leone, Benin, Australia, Brazil, Maldives, Switzerland, Albania, Finland, Guatemala, Hungary, Ecuador, Maldives, Czech Republic, France, Costa Rica, Uruguay, Tunisia, Algeria, Ireland, Slovenia, Afghanistan, Liechtenstein, Djibouti, Norway, Tanzania, Philippines, Egypt, Bolivia, Slovakia, Thailand, Botswana, USA).

<sup>10</sup> Amnesty International, Malaysia: End unprecedented crackdown on hundreds of critics through the sedition act, 11 March 2016 <https://www.amnesty.org/en/latest/news/2016/03/malaysia-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act/>

<sup>11</sup> Free Malaysia Today, “You have failed the Orang Asli Suhakam tells the government”, 4 April 2017 <http://www.freemalaysiatoday.com/category/nation/2017/04/04/you-have-failed-the-orang-asli-suhakam-tells-the-government/>

<sup>12</sup> Penal Code of Malaysia, as amended by Act 574 of 2006; Dangerous Drugs Act of Malaysia, 1952, revised 1980; Firearms (Increased Penalties) Act of Malaysia, 1971.

and their families are given reasonable notice ahead of a scheduled execution.<sup>14</sup> The notification period should be sufficient to allow the prisoner to take any further recourse that may be available at the national or international level.<sup>15</sup>

On 30 November 2017, the Lower House of the Parliament adopted Bill D.R.45/2017, amending the Dangerous Drugs Act, 1952. The Senate followed suit on 14 December, and the King gave his assent on 27 December. The amended law introduces some sentencing discretion for judges in limited circumstances of drug trafficking, which could result in a reduction in the number of death sentences. However, the law retains the mandatory death penalty for all but the narrow circumstances of those convicted of merely transporting, sending or delivering a prohibited substance and who are also found to have cooperated with law enforcement in disrupting drug trafficking activities. When such discretion is an option, life imprisonment and 15 strokes of the whip - a cruel punishment prohibited under international law - is the only alternative.

Moreover, the revised law applies only to individuals convicted after it came into force in March 2018 while those already under sentence of death for drug trafficking will remain on death row. Under international law and standards they should also benefit from the reform.<sup>16</sup>

### **Freedom of expression**

Restrictions on the right to freedom of expression intensified dramatically after the general elections in 2013, when the United Malays National Organisation coalition lost the popular vote, but still returned to power.

In August 2014, the authorities began a crackdown on freedom of expression using restrictive laws, including the Sedition Act, to investigate, charge and imprison human rights defenders, opposition politicians, journalists, academics and students.<sup>17</sup> Despite Prime Minister Najib Razak's public commitment to repeal the Sedition Act in 2012, the government instead sought to strengthen this repressive law in 2015. Government critics targeted under the Act include political cartoonist Zunar, who faces nine counts of sedition for tweets criticizing a Federal Court decision which upheld the conviction and five year prison sentence of Anwar Ibrahim.<sup>18</sup>

In March 2016, the independent news portal, *The Malaysian Insider*, was shut down after being blocked by the government. This followed critical coverage of a corruption scandal linked to the government and the misappropriation of funds from state-owned investment company 1Malaysia Development Berhad (1MDB).<sup>19</sup>

In 2017, more than 60 individuals were arrested, charged or imprisoned for peacefully exercising their right to freedom of expression under national law. On 22 March 2017, activist Lena Hendry was found guilty of breaching the Film Censorship Act and fined RM 10,000 (\$USD 2,260) by the Kuala Lumpur Magistrates Court for screening a film on war crimes and

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<sup>14</sup> See, for example, UN Human Rights Council resolution 30/5 of 1 October 2015.

<sup>15</sup> Human Rights Committee, [Pratt and Morgan v Jamaica](#), Communications No. 210/1986 and 225/1987, UN Doc. Supp. No. 40 (A/44/40) at 222, 6 April 1989

<sup>16</sup> This is contrary to, among other examples, Safeguard no.2 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984; Article 15(1) of the ICCPR; Rome Statute of the International Criminal Court, Article 24(2), European Court of Human Rights *Case of Scoppola v. Italy* No. 2 (Application no. 10249/03), European Court of Human Rights, Grand Chamber judgment of 17 September 2009, para. 108

<sup>17</sup> Amnesty International, Malaysia: End unprecedented crackdown on hundreds of critics through the sedition act, <https://www.amnesty.org/en/latest/news/2016/03/malaysia-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act/>

<sup>18</sup> Amnesty International, Malaysia: Drop charges against cartoonist for tweets, 5 November 2015, <https://www.amnesty.org/en/latest/news/2015/11/malaysia-drop-charges-against-cartoonist-for-tweets/>

<sup>19</sup> Amnesty International, Malaysia: Authorities must end suppression of media to silence critical reporting, 26 February 2016, <https://www.amnesty.org/en/documents/asa28/3536/2016/en/>

crimes against humanity committed in Sri Lanka.<sup>20</sup> The Printing Presses and Publications Act (1984) has been used to set restrictions on and suspend media outlets and publishing houses and to ban materials critical of the government.

In March 2018, the government introduced a bill to deal with “the spread of fake news and lies on social media”. The bill’s definition of ‘fake news’ is broad and vague and could easily include honest or marginal mistakes as well as statements that may be merely a matter of opinion. Acts falling under this definition would be punished severely with a fine of RM 500,000 or up to six years imprisonment, or both, adding another law that the government can use to silence dissent.<sup>21</sup>

### **Freedom of association and peaceful assembly**

The Peaceful Assembly Act and Sections 120, 124b, 124c 141 and 143 of the Penal Code have been used separately or in combination to arrest and charge those involved in peaceful protests.

In August 2015, activists from the Coalition of Youth for Malaysia gathered for the “Tangkap Najib” rally in Kuala Lumpur. When protesters peacefully chanted for PM Najib’s resignation, police began arresting individuals with unnecessary force, resulting in minor injuries to several protesters. More than 30 protesters were arrested and investigated. In 2016, students also faced penalties under university by-laws, for participating in the follow-up Tangkap MO1 rally which took place a year later.<sup>22</sup>

In November 2016, a day before a major rally, the police raided the offices of *Bersih*, the coalition for free and fair elections, arresting its Chairperson Maria Chin Abdullah, its Secretary Mandeep Singh and some other activists. Maria Chin Abdullah was held in solitary confinement under the Prevention of Terrorism Act and the Security Offences (Special Measures) Act (SOSMA) and only released after 11 days in detention.<sup>23</sup>

### **Freedom of movement**

Restrictions on movement continue to be imposed on government critics. These restrictions are secretive, arbitrary and not subject to appeal. In July 2017, the Court of Appeal ruled that the government had absolute discretion to bar any citizen from travelling abroad without needing to provide a reason.<sup>24</sup> This discretion has facilitated violations of the right to freedom of movement and impeded the work of human rights defenders, including cartoonist Zunar and Member of Parliament Tony Pua.<sup>25</sup> Human rights defenders have also been prevented from entering and freely travelling within the country. In 2016, several opposition politicians were prevented from entering the state of Sarawak, ahead of state elections.<sup>26</sup>

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<sup>20</sup> Amnesty International, Malaysia: Convicted of screening human rights documentary: Lena Hendry, 9 March 2017, <https://www.amnesty.org/en/documents/asa28/5827/2017/en/>

<sup>21</sup> Amnesty International, Malaysia: Anti-fake News Bill a dangerous crackdown on freedom of expression, 28 March 2018, <https://www.amnesty.org/en/documents/asa28/8143/2018/en/>

<sup>22</sup> See for example, Amnesty International, Malaysia: End far reaching crackdown in wake of corruption scandal, 4 August 2015 <https://www.amnesty.org/en/latest/news/2015/08/malaysia-end-far-reaching-crackdown-in-wake-of-corruption-scandal/>; and Free Malaysia Today, Tangkap MO1 rally, court says UKM did not violate students rights, 28 August 2017 <http://www.freemalaysiatoday.com/category/nation/2017/08/28/tangkap-mo1-rally-court-says-um-ukm-didnt-violate-students-rights/>

<sup>23</sup> Amnesty International, Malaysia: Defender released but still at risk, 1 December 2016, <https://www.amnesty.org/en/documents/asa28/5240/2016/en/>

<sup>24</sup> Arbitrary travel bans are a blatant violation of the rights to freedom of movement and association and a heavy handed attempt to stifle the right to freedom of expression, all enshrined in the Universal Declaration of Human Rights and the Malaysian Federal Constitution. Article 13(2) of the UDHR states: “Everyone has the right to leave any country, including his own, and to return to his country.”

<sup>25</sup> Amnesty International, Malaysia: Drop travel ban on Zunar and other government critics, 19 October 2016, <https://www.amnesty.org/en/latest/news/2016/10/malaysia-drop-charges-against-zunar/>

<sup>26</sup> Amnesty International, Malaysia: Freedom of movement into Sarawak state unjustifiably restricted ahead of elections, 5 May 2016 <https://www.amnesty.org/en/documents/asa28/3979/2016/en/>

### **Arbitrary arrest and detention**

In February 2015, the Federal Court upheld the conviction and five-year prison sentence of prominent opposition politician Anwar Ibrahim on politically motivated sodomy charges dating back to 2008. Anwar Ibrahim has been harassed by the authorities for years in a blatant attempt to bar him from participating in elections. He is due to be released in June 2018, but will not be eligible to run for election for another five years, unless granted a royal pardon.<sup>27</sup>

Laws allowing preventive detention, such as the POTA and the SOSMA, continue to be used to detain, prosecute and imprison people alleged to have committed security offences. On 23 September 2015, Khairuddin Abu Hassan, a former UMNO leader, was arrested under the SOSMA, for reporting corruption.<sup>28</sup> He was later bailed, and in 2017 the Federal Court ruled that he could not be tried under the Act.

On 26 April 2017, the Kuala Lumpur High Court sentenced student Siti Noor Aishah to five years' imprisonment for possession of 12 books, under a sweeping provision of the SOSMA prohibiting the possession, custody or control of any item associated with any "terrorist group" or the commission of a "terrorist act". Her books had not been banned by the government, which raises further concerns about the arbitrary nature of the law and the way it is applied.<sup>29</sup>

### **Deaths in custody, torture and other ill-treatment by state security forces**

The authorities have failed to put in place robust safeguards to protect detainees and to end the culture of impunity within the police; the lack of accountability continues for numerous cases of deaths in custody, unlawful killings, and torture and other ill-treatment.

Preventive detention laws, including the POTA and SOSMA create situations where there is a risk of torture and other abuse. Investigations into reports of police abuses are rare, and are only carried out when there is extensive media coverage or pressure from human rights organizations. External police oversight bodies, including the Enforcement Agency Integrity Commission do not have adequate powers to bring to justice those responsible for such offences.<sup>30</sup>

### **Refugees and asylum-seekers**

Malaysia continues to breach the international prohibition against *refoulement* by forcibly returning refugees and asylum-seekers to countries where they have been at risk of serious human rights violations.

In May 2015, Malaysia faced international criticism as thousands of refugees and migrants from Myanmar and Bangladesh attempted to land on Langkawi Island, Kedah state. Malaysia and Indonesia eventually agreed to provide humanitarian assistance and temporary shelter to the boat people, some of whom were thought to be Rohingya refugees. The majority of the boat people were repatriated, but the process to determine who was a refugee remains unclear.<sup>31</sup>

In May and August 2015, the authorities uncovered more than 100 bodies in mass graves about 500 metres from Malaysia's northern border as well as numerous human trafficking camps. The remains are believed to be those of young Bangladeshi migrants seeking work and Rohingya refugees fleeing persecution in Myanmar, who appeared to have died

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<sup>27</sup> Amnesty International, Malaysia: Anwar Ibrahim decision a bleak day for justice, March 2014, <https://www.amnesty.org/en/latest/news/2014/03/malaysia-anwar-ibrahim-decision-bleak-day-justice/>

<sup>28</sup> Amnesty International, Free politician held for exposing corruption, 25 September 2015, <https://www.amnesty.org/download/Documents/ASA2824892015ENGLISH.pdf>

<sup>29</sup> Amnesty International, Malaysia: Student convicted for possession of 'illegal' books, 28 April 2017 <https://www.amnesty.org/en/documents/asa28/6136/2017/en/>

<sup>30</sup> Amnesty International, Malaysia: End impunity for deaths in custody, 15 February 2017 <https://www.amnesty.org/en/documents/asa28/5698/2017/en/>

<sup>31</sup> Amnesty International, Ensure the safety of refugees and migrants, 3 June 2015, <https://www.amnesty.org/en/documents/asao1/1786/2015/en/>

from torture and starvation. Almost two years later the Deputy Prime Minister informed the public that those originally arrested in 2015 had been released due to lack of "strong evidence".<sup>32</sup>

Asylum-seekers and refugees continue to face arbitrary detention and have no legal right to work in Malaysia. In 2017, in a positive development, a pilot scheme allowed 300 Rohingya refugees to work.<sup>33</sup>

### **Indigenous Peoples' rights**

In 2013, after a national inquiry by SUHAKAM, the government acknowledged the need to reform policies relating to Indigenous Peoples, and adopted 17 of 18 recommendations by a Taskforce it had set up. Local and international observers, including the UN, hailed the adoption of these recommendations as a step towards resolving the problems faced by Indigenous Peoples.<sup>34</sup> However, in April 2017 SUHAKAM declared that the government had failed in its duty towards Indigenous Peoples by not implementing the recommendations, and that this had led to an increase in incidents between Indigenous communities and the authorities.<sup>35</sup>

In June 2016, opposition politician and human rights activist Bill Kayong was shot dead in his car at a traffic light in Miri, Sarawak state. Kayong had been a vocal advocate for Indigenous rights. In June 2017, Miri High Court acquitted three of the four persons charged with his killing, to the dismay of national and international observers. The fourth person remains on trial.<sup>36</sup>

In January 2017, following peaceful protests against logging licences granted by local authorities, 21 Indigenous human rights defenders from the Temiar people were detained in the northern state of Kelantan. Two journalists were also arrested. They were released within 48 hours, but the rights of the Temiar to their customary lands remain under threat and logging activities on the lands continue without the free, prior and informed consent of the communities.<sup>37</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Malaysia to:**

#### *National human rights framework*

- Ratify international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### *The death penalty*

- Establish an official moratorium on executions with a view to abolishing the death penalty;
- Ensure rigorous compliance in all death penalty cases with international fair trial standards;
- Disclose detailed data on the use of the death penalty to the public on an annual basis.

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<sup>32</sup> Malaysiakini, Two years on, still no accountability for mass graves, 24 May 2017 <https://www.malaysiakini.com/news/383305>

<sup>33</sup> The Star, Allowing refugees to work a positive step – Amnesty, 22 February 2017, <https://www.thestar.com.my/news/nation/2017/02/22/amnesty-international-allowing-rohingya-refugees-in-malaysia-to-work-a-positive-step/>

<sup>34</sup> See for example, UN News, "Malaysia must protect environment, indigenous peoples as it reduces poverty – UN expert", 18 December 2013

<sup>35</sup> SUHAKAM, Annual Report 2016, p. 2 <https://drive.google.com/file/d/oB6FQ7SONa3PRLVfyOHoyODcoeDg/view>

<sup>36</sup> Free Malaysia Today, Amnesty wants probe into Kayong murder reopened, 7 June 2017, <http://www.freemalaysiatoday.com/category/nation/2017/06/07/amnesty-calls-for-investigations-to-reopen-over-kayong-murder/>

<sup>37</sup> Amnesty International, End harassment of indigenous rights defenders, 25 January 2017, <https://www.amnesty.org/en/documents/asa28/5549/2017/en/>

#### *Freedom of expression*

- Amend or repeal the Sedition Act, any Anti-Fake News laws, and amend all other legislation that unduly restricts the right to freedom of expression to ensure that they comply with international human rights standards.

#### *Freedom of association and peaceful assembly*

- Revise or repeal the Peaceful Assembly Act and relevant sections of the Penal Code to allow peaceful street protests without unnecessary restrictions, and to accord the right to peaceful assembly to all people in Malaysia, without discrimination.

#### *Freedom of movement*

- End harassment and intimidation of human rights defenders and government critics, including by abolishing arbitrary travel bans.

#### *Arbitrary arrests and detention*

- Repeal or radically amend the Security Offences (Special Measures) Act (SOSMA) and the Prevention of Terrorism Act (POTA) to ensure they fully comply with international human rights law and standards.

#### *Deaths in custody, torture and other ill-treatment by state security forces*

- Ensure that all reports and complaints of criminal offences involving human rights violations by state security forces, including unlawful killings, deaths in custody and torture, are promptly investigated through the criminal justice system and those responsible brought to justice;
- Establish an independent police complaint and misconduct commission, independent of the Royal Malaysia Police, and ensure there is a clear, independent and impartial system for hearing complaints of suspected human rights violations by the police and the security forces.

#### *Refugees and asylum-seekers*

- End the systematic detention and discrimination of undocumented migrants, trafficked persons, asylum-seekers and refugees and recognize their right to work in domestic legislation and policies;
- Ratify the UN Convention Related to the Status of Refugees and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

#### *Indigenous Peoples' rights*

- Protect the rights of Indigenous Peoples, including their right to their traditional lands, as well as their economic, social and cultural rights, including to free, prior and informed consent.