

MALAYSIA



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Part 1: Overview of Malaysia

A. Country Background

Malaysia Facts	
Geographical size	329,758 sq km
Population	31.19 million ¹
Ethnic breakdown ²	Main ethnic groups: Bumiputera (Malays and other non-Malay indigenous peoples) – 68.6% Chinese – 23.4% Indian – 7% Other – 1%
Official language	Bahasa Malaysia
Literacy rate (aged 15 and above)	94.6% ³
Life expectancy	75.2 ⁴
GDP	US\$296.36 billion (per capita US\$9,502) ⁵
Government	Federal representative democratic constitutional monarchy modelled on the Westminster parliamentary system. Bicameral parliament consists of the House of Representatives and the Senate.
Political and social situation	Supposed separation of powers of the executive, judicial, and legislative branches is counteracted by executive influence over the appointment of court judges and the Election Commission, thus precluding free and fair elections.

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¹ Data from 2016. 'Malaysia' The World Bank, available at <https://data.worldbank.org/country/malaysia>, accessed on 7 November 2017.

² Data from 2016. 'Current population estimates, Malaysia 2014-2016: Ethnic composition' Department of Statistics Malaysia, Official Portal, available at https://www.dosm.gov.my/v1/index.php?r=column/cthem&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09&bul_id=OWlxdEVoYlJCS0hUZzJyRUcvZEYxZz09, accessed on 7 November 2017.

³ Data from 2015. 'Human development reports' United Nations Development Programme, available at <http://hdr.undp.org/en/countries/profiles/MYS#>, accessed on 7 November 2017.

⁴ Data from 2015. The World Bank (see note 1 above).

⁵ Data from 2016. The World Bank (see note 1 above).

System of governance

Malaysia was established in 1963 and consists of eleven states on the Peninsular, two states in East Malaysia (Sarawak and Sabah), and three Federal Territories, occupying a total landmass of 329,758 square kilometres.⁶ The country is both a federation of states and a representative democratic constitutional monarchy with the King (or Yang di Pertuan Agong) as its head of state and the Prime Minister as its head of government. Malaysia's parliamentary system is modelled after the Westminster parliamentary system consisting of a bicameral parliament with a House of Representatives and a Senate. The House of Representatives comprises 222 members elected from single member constituencies in general elections that are held every 5 years.⁷

Under the Federal Constitution, the government adopts the principle of separation of powers; those powers being the executive, judiciary, and legislature. Federal legislative power is divided between federal and state legislatures. In theory, the judiciary is independent of the executive and the legislature but in reality, the former can influence the appointment of court judges as the Judicial Appointments Commission assists the Prime Minister in advising the King on such matters. Ultimately, the Prime Minister, as part of the executive, has the power to decide or approve appointment of every Superior Court judge, the Chief Justice, the President of the Court of Appeal, and the Chief Judge. The executive also influences the Election Commission, which although theoretically free and independent, is actually appointed by the King upon the advice of the Prime Minister.⁸

Population, ethnic groups, and language

In Sabah and Sarawak, indigenous people or bumiputeras make up about two-thirds and over half of the total populations respectively. In Peninsular Malaysia, Orang Asli aboriginal groups are smaller in number, only accounting for about 205,000 members. Indigenous peoples in Sarawak constitute about 1,899,600 or 70.1% of the state's total population while indigenous peoples in Sabah make up about 2,203,500 or 60% of the region's total population.⁹

At the beginning of 2015, 29.6% of Malaysia's total population were below 15 years of age, 5% were above 64 years of age, and the rest were within the 15-64 age range. As

⁶ 'Malaysia' Nations Encyclopedia, 2016, available at <http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Malaysia.html>, accessed on 24 May 2016.

⁷ 'My constitution: Judges and the judiciary' The Malaysian Bar, 30 December 2010, available at http://www.malaysianbar.org.my/constitutional_law_committee/my_constitution_judges_and_the_judiciary.html, accessed on 28 May 2016.

⁸ 'Executive summary: Human rights and elections' The Malaysian Bar, 16 August 2011, available at http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=3314, accessed on 28 May 2016.

⁹ Nah, A, 'Recognising indigenous identity in post-colonial Malaysia law: Rights and realities of the Orang Asli (Aborigines) of Peninsular Malaysia' White Rose University Consortium, United Kingdom, 2008, available at http://eprints.whiterose.ac.uk/79092/1/22134379_164_02_03_s03_text.pdf, accessed on 29 May 2016.

of 31 December 2015, the total male population stood at 15,502,561, while females numbered 15,069,905. The sex ratio of the total population was 1.029 meaning there were 1,029 males for every 1,000 females.¹⁰

The national and official language of Malaysia is Bahasa Malaysia; other languages or dialects spoken include English, Mandarin, Cantonese, Hakka, Hainan, Foochow, Tamil, Telugu, Malayalam, and Punjabi. Other languages spoken include the native languages of the Orang Asli and the indigenous populations of Sabah and Sarawak.¹¹ Malaysia is also reported to have an impressive 94.6% literacy rate among those 15 years and older.¹²

Economic development

In 2014, Malaysia's gross domestic product (GDP) grew at a rate of 6.0% with a GDP per capita of US\$11,062. However, GDP dropped to 4.5% in the final quarter of 2015.¹³ The unemployment rate was reported at 3.1% as of June 2015, and 3.4% as of December,¹⁴ while inflation was pegged at 2.1% in 2015.¹⁵

The poverty rate in Malaysia stood at 0.6% in 2014, its lowest level since independence in 1957, registering 0.1% for Chinese, 0.6% for Indians, 0.8% for bumiputeras, and 0.9% for others.¹⁶ Although it would appear poverty levels have decreased across the board, the United Nations Millennium Development Goals (MCG) report for Malaysia (2015) stated that in general, non-Malay bumiputeras did not fare as well with the poverty rates of Orang Asli households at 34%, and the Sabah and Sarawak indigenous communities at 20% and 7.3% respectively.¹⁷

Political and legal situation

Malaysia has been governed by the same ruling coalition for almost six decades since independence in 1957. The Barisan Nasional (BN) or National Front coalition which is dominated by Malay ethnic party, the United Malays National Organization (UMNO), has a track record of utilising suppressive laws and enactments to maintain its hold

¹⁰ 'Malaysia population' Trading Economics, 2016, available at <http://www.tradingeconomics.com/malaysia/population>, accessed on 28 May 2016.

¹¹ 'Languages of Malaysia' Wikipedia, 14 May 2016, available at https://en.wikipedia.org/wiki/Languages_of_Malaysia, accessed on 28 May 2016.

¹² 'Field listing: Literacy' The World Fact Book, CIA, available at https://www.cia.gov/library/publications/the-world-factbook/fields/print_2103.html, 2016, accessed on 20 May 2016.

¹³ 'Malaysia GDP growth weakest in 2-1/2 years' Trading Economics, 18 February 2016, available at <http://www.tradingeconomics.com/articles/02182016053943.htm>, accessed on 20 May 2016.

¹⁴ 'Key indicators: Unemployment rate' Department of Statistics, Malaysia Official Portal, 2015, available at <https://www.statistics.gov.my/#>, accessed on 20 May 2016.

¹⁵ The World Bank (see note 1 above).

¹⁶ 'The measure of poverty' Economic Transformation Program, 18 May 2015, available at http://etp.pemandu.gov.my/Transformation_Unplugged-@-The_measure_of_poverty.aspx, accessed on 20 May 2016.

¹⁷ 'Malaysia millennium development goals report 2015' Economic Planning Unit, Prime Minister's Department Malaysia, January 2016, available at http://un.org.my/upload/undp_mdg_report_2015.pdf, accessed on 25 May 2016.

over the nation. For example, some of these laws (the Internal Security Act 1960 (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance (EO), the Printing Presses and Publications Act (PPPA), the Sedition Act 1984, the Police Act 1967, and the Societies Act 1966) were used in the 1980s and 1990s to suppress dissent.¹⁸ In the 1960s and 70s, the government used the ISA to crack-down on dissidents and critics including members of opposition political parties, e.g. the Democratic Action Party (DAP) and the Parti Sosialis Rakyat Malaysia (PSRM). Reports indicate about 3,000 persons were administratively detained under the ISA since its enactment in 1960 up until 1981 when former Prime Minister Tun Mahathir Mohamed took power. He then launched a nationwide crackdown codenamed 'Operation Lalang' in October and November 1987, jailing a further 106 political opponents and human rights activists.

For example, the PPPA and the Sedition Act were used on DAP parliamentarian, Lim Guan Eng, in 1994 when he was jailed for 18 months under s.8A(1) of the PPPA for "maliciously printing" a pamphlet containing allegedly false information, and under s.4(1)(b) of the Sedition Act for causing "disaffection with the administration of justice in Malaysia." Lim then went on to criticise the government's handling of rape charges involving a high-ranking UMNO leader. Another high-profile case involved the late Irene Fernandez (the then director of a women's and migrant rights organisation, Tenaganita) who was charged with "false reporting" under the PPPA in connection with a report she published on the mistreatment of migrant workers in Malaysia's immigration centres. The trial, which lasted for almost seven years, ended in a guilty verdict when she was sentenced to a year in prison.¹⁹

Similarly, the Police Act was used to control the holding of rallies and peaceful assemblies as it required organisers to apply for permits from the police who were also authorised to use force to break up "illegal assemblies or gatherings." This provision was used regularly to ban and stop opposition political party rallies or non-governmental organisation (NGO) activities. In July 2001, the government announced a ban on all political rallies, stating they would undermine the country's security.²⁰

In 2003, Mahathir relinquished the premiership after 22 years to his deputy, Abdullah Ahmed Badawi, during which Malaysians continued to be haunted by a repressive atmosphere and a culture of fear. For example, the Malaysian Communications and Multimedia Commission (MCMC) ordered internet services to block online news

¹⁸ Human Rights Watch, *Creating a Culture of Fear: The Criminalisation of Peaceful Expression in Malaysia*, 26 October 2015, available at https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia#_ftn2, accessed on 21 May 2016.

¹⁹ 'Update (Malaysia): Irene Fernandez sentenced to jail for 12 months' Asian Human Rights Commission, Malaysia Update, 19 October 2003, available at <http://www.humanrights.asia/news/urgent-appeals/UP-44-2003/?searchterm>, accessed on 22 May 2016.

²⁰ Human Rights Watch (see note 18 above).

portal, Malaysia Today, for printing “slandorous statements that threaten public order.” Likewise, the government also: detained critics, including the editor of Malaysia Today and opposition politician, Teresa Kok, under the ISA; suspended several opposition party newspapers from publication for three months under the PPPA; and refused to grant Bersih 2.0 (an NGO coalition advocating clean, free, and fair elections) a permit for a rally demanding electoral reform and later arrested many who proceeded to organise or participate in the peaceful rally anyway. However, in his farewell speech to the UMNO annual general assembly, Badawi vehemently expressed a need for the ruling government and UMNO to change their ways in order to regain the people’s trust, saying, “[S]adly, there are still those who feel that we do not need to pursue reforms. They believe that UMNO will regain its glory if we revert to the old ways, the old order, by restricting the freedom of our citizens and by silencing their criticism.”²¹

In 2008, the 12th General Election saw a dramatic shift in the political landscape when the opposition party coalition, Pakatan Rakyat (PR), won 5 out of 13 state governments, 10 out of 11 parliamentary seats in the Kuala Lumpur Federal Territory constituency, while also managing to deny the ruling coalition a two thirds majority in parliament. In response, the BN government, realising its appeal was fast declining, embarked on a strategy to improve its image among the masses. Thus, when Najib Razak took over the premiership in April 2009, he took care to project an image of a liberal prime minister, even promising reforms and changes to his administration through economic measures (including 11 gifts to the rakyat (people) and liberalisation measures).²² In addition, he lifted bans on opposition party newspapers and released 13 people held under the ISA, while pledging to review it and other repressive security laws. Najib then took steps to reform and repeal some laws such as the EO in 2011 and the ISA in 2012. His government also passed the controversial Peaceful Assembly Act (PPA) in December 2010 which eliminated the need for a police permit and some of the more draconian elements of the Police Act. Similarly, the government eliminated the annual renewal of printing licences requirement in the PPPA and lifted the ban on student participation in politics through amendments to the 1971 University and University Colleges Act. In the run-up to the 2013 election, Najib even promised to repeal the Sedition Act and replace it with a “National Harmony Act.” Despite these measures, although the BN government maintained its parliamentary majority, it won only 47.38% of the popular vote with the opposition coalition capturing 50.97% of the popular vote.²³

²¹ ‘Southeast Asia’ Asia Times Online, 28 March 2009, available at http://www.atimes.com/atimes/Southeast_Asia/KC28Ae03.html, accessed on 21 May 2016.

²² ‘Najib’s first 100 days: Long on form, short on substance’ East Asia Forum, 20 July 2009, available at <http://www.eastasiaforum.org/2009/07/20/najibs-first-100-days-long-on-form-short-on-substance/>, accessed on 4 October 2017.

²³ ‘Malaysian general elections results’ Wikipedia, 26 May 2016, available at https://en.wikipedia.org/wiki/Malaysian_general_election,_2013, accessed on 29 May 2016.

Notwithstanding Najib's promises of reform and his efforts to respect civil liberties after being appointed Prime Minister in 2009, repressive measures and restrictions on civil society activities, media, opposition party activities, and public assemblies soon continued. For example, the police refused to issue a permit for Bersih's 'Walk for Democracy' on 9 July 2011, threatening to take stern action against any participants. The Home Affairs Minister also declared Bersih an "illegal organisation" under the Societies Act, and prior to the rally, the police used the Sedition Act, the Police Act, the Societies Act, and the PPPA to arrest 270 supporters for selling, wearing, or being in possession of Bersih's yellow T-shirts or any other Bersih paraphernalia such as posters, pamphlets or other items promoting the rally and its aims. The police also raided Bersih's office, arrested staff, seized computers and other items, and summoned rally organisers for questioning. During the rally itself, police used baton charges and tear gas to break up the peaceful gathering and arrested nearly 1,700 people.²⁴

Matters came to a head in 2015 when Najib found himself at the centre of a serious political controversy. Involving almost MYR2.6 billion discovered in his personal bank account from an undisclosed source, the Prime Minister came under intense pressure to resign from forces within his own political party, opposition party politicians, and many civil society organisations despite claiming the funds were not for his personal enrichment but had been channelled to politicians or projects to help the ruling party win the 2013 election. While the origin of the funds remains unclear, different sources reported that hundreds of millions of dollars were used in unreported political spending to ensure Najib's UMNO party stayed in power. For example, he was believed to have funnelled at least US\$140 million to charity projects such as schools and low-cost housing. Moreover, many also believe funds were channelled through government agencies, banks, and companies linked to the 1Malaysia Development Berhad (1MDB) fund which, as a result, has been the focus of probes in at least six countries, including Malaysia itself.²⁵

B. International Human Rights Commitments and Obligations

Since achieving independence in 1957, Malaysia has signed and ratified only a handful of core human rights treaties (as seen in Table 1 below). Moreover, the government attached reservations, many of which have been described as unjustified, thus, negating the significance of treaty ratification in the first place.²⁶

²⁴ Human Rights Watch (see note 18 above).

²⁵ In Malaysia, the probe was carried out by the nation's anticorruption body, its central bank, the Auditor General, and a parliamentary committee. See, '1MDB and the money network of Malaysian politics' The Wall Street Journal, 28 December 2015, available at <http://www.wsj.com/articles/the-money-network-of-malaysian-politics-1451355113>, accessed on 30 May 2016.

²⁶ Malaysia is also a non-permanent member of the United Nations Security Council (UNSC) for the term 2015-2016, having been elected to sit on the Council for the fourth time on 16 October 2014. See, 'Resolution 2225 (2015): Children and armed conflict' UNSC 2015-2016, 2015, available at <http://malaysiaunsc.kln.gov.my/index.php/news-documents/unsc-resolutions/item/192-resolution-2225-2015-children-and-armed-conflict>, accessed on 28 May 2016.

Table 1: Ratification Status of International Instruments – Malaysia²⁷

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		5 Jul 1995 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention on the Rights of the Child (CRC)		17 Feb 1995 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		12 Apr 2012 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		12 Apr 2012 (a)
Convention on the Rights of Persons with Disabilities (CRPD)	8 Apr 2008	19 Jul 2010

²⁷ 'Ratification status for Malaysia' United Nations Human Rights Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN, accessed on 29 May 2016.

The Malaysian Bar welcomed the government's ratification of the CRPD in 2010 but also criticised it for attaching reservations to Art 3 (general principles), Art 5 (equality and non-discrimination), Art 15 (freedom from torture or cruel, inhuman, or degrading treatment/punishments), Art 18 (liberty of movement and nationality), and Art 30 (participation in cultural life, recreation, leisure, and sport). Thus, this was deemed a "hollow ratification since such reservations take away from [the] fundamental principles that underpin CRPD."²⁸

Malaysia also withdrew reservations to Arts 1, 13, and 15 of the CRC but it continues to attach five others, namely, Art 2 on non-discrimination, Art 7 on name and nationality, Art 14 on freedom of thought, conscience, and religion, Art 28(1)(a) on free and compulsory education at the primary level, and Art 37 on torture and deprivation of liberty. The government also withdrew reservations to Arts 5(a), 7(b), and 16(2) of CEDAW but continued to keep five other reservations as regards: equal rights for women to pass their nationality onto their children (Art 9(2)); equal rights to enter into marriage (Art 16(1)(a)); equal rights and responsibilities during marriage and at its dissolution (Art 16(1)(c)); equal rights and responsibilities as regards guardianship, wardship, trusteeship, and the adoption of children (Art 16(1)(f)); and the same personal rights in a marriage, including the right to choose a family name, one's profession, and an occupation (Art 16(1)(g)).²⁹

In its 2015 annual report, SUHAKAM's (Malaysian Commission on Human Rights) Law Reform and Treaties Division, which monitors the country's implementation of CEDAW, CRC, and CRPD, clearly reiterated calls to the government "to expedite the submission of the State Reports to the relevant Treaty bodies and the withdrawal of the remaining reservations to the three treaties rectified." SUHAKAM has also consistently engaged the government in round table discussions on ICESCR and CAT but to no avail. More disappointingly, despite the fact the Human Rights Commission of Malaysia Act (HRCMA) granted SUHAKAM statutory powers to advise and assist the government in formulating legislation, it was not consulted during the government's review of preventative laws such as the Prevention of Terrorism Act 2015 (POTA), the National Security Council Act 2015 (NSC), and the proposed amendments to the Child Act 2001, all of which directly affect public safety and the protection of human rights.³⁰

²⁸ 'Press release: Time to remove all reservations and sign the Optional Protocols' The Malaysian Bar, 8 July 2010, available at http://www.malaysianbar.org.my/press_statements/press_release_time_to_remove_all_reservations_and_sign_the_optional_protocols.html, accessed on 29 May 2016.

²⁹ 'Perbincangan meja bulat reservasi terhadap konvensyen antarabangsa CEDAW, CRC, dan CRPD' (Round table discussion on reservations to the international conventions, CEDAW, CRC, and CRPD), SUHAKAM, 2015, available at <https://drive.google.com/file/d/0B6FQ7SONa3PRaDF2bkdWanJWSDQ/view>, accessed on 28 May 2016.

³⁰ 'SUHAKAM annual report 2015' SUHAKAM, available at http://drive.google.com/file/d/0B_iu0JnQlclBQW5OZTRhTF9XTnc/view?pref=2&pli=1, accessed on 29 May 2016.

The ICESCR, which was adopted by the United Nations General Assembly on 16 December 1966, came into force on 3 January 1976 and was acceded to by 164 countries, although 6 have signed but not ratified it. Malaysia is one of 27 countries to have taken no action regarding the ICESCR.³¹ Another vital treaty is the ICCPR which strongly emphasises freedom of expression and the free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives. For example, Art 19 clearly spells out the right to a free press and media, enabling commentary on public issues without censorship or restraint, including the right to seek, receive, and impart information and ideas of all kinds including the activities of elected bodies and their members. However, Malaysia has yet to sign and ratify this covenant.³²

Likewise, Malaysia has also not signed or ratified the International Convention on the Elimination of Racial Discrimination³³ (ICERD) which was adopted by the UN on 21 December 1965, entering into force on 4 January 1969. Malaysian civil society organisations have been advocating and campaigning for this treaty to be ratified for the past 6 years but again to no avail, although ironically Malaysia accepted in full recommendations to improve national unity and social cohesion in the country during the 2nd cycle of its Universal Periodic Review (UPR) in 2013.³⁴ These mainly focused on non-discrimination, and the strengthening of mutual respect, tolerance, and social cohesion among the country's diverse cultural and religious social reality.³⁵

In addition, Malaysia has also reaffirmed the ASEAN Human Rights Declaration (AHRD) in which Provisions 2, 3, 9, 22, and 31(3) clearly outline the rights and freedom of every person in accordance to the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation, and the avoidance of double standards, and politicisation.³⁶ Although the AHRD details ASEAN nations' commitments to human rights, it has been criticised by civil society organisations for failing to consult with ASEAN civil society during its drafting process and for its lack of transparency.³⁷

³¹ 'A modest proposal: A call for Malaysia to sign on to the ICESCR' Malay Mail Online, 16 December 2015, available at <http://www.themalaymailonline.com/malaysia/article/a-modest-proposal-a-call-for-malaysia-to-sign-on-to-the-icescr#sthash.6j8E2Him.04zjRDvB.dpuf>, accessed on 30 May 2016.

³² 'International Covenant on Civil and Political Rights' UN Human Rights Office of the High Commissioner, 2016, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed on 29 May 2016.

³³ 'International Convention on the Elimination of All Forms of Racial Discrimination' UN Human Rights Office of the High Commissioner, 2016, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, accessed on 27 May 2016.

³⁴ Recommendation Nos 146.87, 146.88, 146.89, 146.90, 146.91, 146.92, and 146.93.

³⁵ 'Malaysia racial discrimination report 2015' Pusat KOMAS, 21 March 2016, available at <http://komas.org/v2/wp-content/uploads/2013/06/Malaysia-Racial-Discrimination-Report-2015.pdf>, accessed on 30 May 2016.

³⁶ 'ASEAN Human Rights Declaration (AHRD) and the Phnom Penh statement on the adoption of the AHRD and its translations' The ASEAN Secretariat, 2013, available at <http://www.asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20%287.%20Jul%29%20-%20ASEAN%20Human%20Rights%20Declaration%20%28AHRD%29%20and%20Its%20Translation.pdf>, accessed on 29 May 2016.

³⁷ 'ASEAN Human Rights Declaration' Wikipedia, 10 September 2015, available at https://en.wikipedia.org/wiki/ASEAN_Human_Rights_Declaration#cite_note-2, accessed on 30 May 2016.

A unique process, the UPR involves a periodic review of the human rights records of all 193 UN member states.³⁸ In terms of Malaysia's second cycle in 2013, the country accepted 150 recommendations in full, in part, and in principle, while rejecting 82, representing 64.66% of the total made. However, many recommendations were not specific, measurable, attainable, realistic, and time-bound (SMART). In fact, only 64 of the accepted recommendations were measurable, with 17 calling for specific actions to be taken by the government.

C. National Laws Threatening Human Rights

The Federal Constitution

*Article 10 (1)*³⁹ provides that: (a) every citizen has the right to freedom of speech and expression; and (b) all citizens have the right to assemble peaceably and without arms. However, as regards freedom of assembly, the Constitution also allows parliament to impose "such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof of, public order or morality." As such, some have argued that constitutional protection for these rights is inadequate and inconsistent with international law as it allows parliament to impose restrictions and determine what is considered "expedient" to protect national security, public order, public health or morals, or the rights and reputations of others.⁴⁰

Article 153: while this provision spells out the special position of bumiputeras, it also includes protection for other ethnic communities, stating:

It shall be the responsibility of the Yang di-Pertuan Agong [i.e. the King] to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.

In addition, Art 153(2) stipulates that the King shall ensure this special position for Malays and the natives of Borneo (since 1963) in:

³⁸ 'Malaysia's 2016 UPR mid-term review' Coalition of Malaysian NGOs, 16 May 2016, available at <http://www.suaram.net/wordpress/wp-content/uploads/2016/05/COMANGO-2016-UPR-Mid-Term-Review.pdf>, accessed on 29 May 2016.

³⁹ Federal Constitution 2010, Government of Malaysia, 18 September 2010, available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20%28BI%20text%29.pdf>, accessed on 28 May 2016.

⁴⁰ Human Rights Watch (see note 18 above).

such proportion as he may deem reasonable of positions in the public service ... and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and ... any permit or license for the operation of any trade or business as required by federal law ...

But Art 153(4) clearly states that:

*In exercising his functions under this Constitution and federal law ... the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.*⁴¹

Moreover, the scope of Art 153 is limited by Art 136, which requires civil servants be treated impartially regardless of race. Furthermore, Art 153(5) specifically reaffirms this by specifying that all persons of whatever race in the same grade of service shall, subject to the terms and conditions of their employment, be treated impartially. In particular, Art 153(9) affirms that parliament cannot restrict business or trade solely for the purpose of Malay reservations.

While such provisions appear contrary to the notion of equality, the Reid Commission insisted they were only temporary and would be reviewed after 15 years with the findings presented to parliament to determine whether to retain, reduce, or discontinue the quotas entirely. However, following the 13 May 1969 riots, the New Economic Policy was introduced to eradicate poverty irrespective of race in order to divide the economic pie more fairly, that is, to give Malays a 30% equity share in the economy, as opposed to the 4% they had held in 1970. Again, although this policy was supposed to expire in 1991, because it was believed targets had not yet been reached, it was continued under the new name of the National Development Policy.

Security Offences (Special Measures) Bill 2012

The Security Offences (Special Measures) Bill 2012 or SOSMA provides special measures to combat security offences for the purpose of maintaining public order and security, and all related matters. Created under Art 149 of the Federal Constitution to handle internal security issues including public order, acts of terrorism, sabotage, and espionage, a police officer may, without warrant, arrest and detain any person he has reason to believe is involved in security offences but he cannot do so solely by

⁴¹ Federal Constitution 2010, Art 153(4).

reason of the person's political belief or political activity. As such, individuals may be detained for 24 hours for investigation purposes, a period which may be extended by not more than 28 days. At the same time, bail shall not be granted to those charged with security offences and all such cases shall be tried by the High Court. Further amendments were introduced in April 2015 covering, e.g. the seizure of documents and the interception of communications. Despite strong protest from civil society organisations and opposition party parliamentarians, the government rationalised the changes would strengthen POTA and five other related bills, including one combating terrorist activities conducted by Malaysians on foreign soil.⁴²

In 2015, there were 20 documented cases of persons charged under this Act. One such case involved the arrest and detention of Dato' Sri Khairuddin Abu Hassan, a politician and vocal critic of 1MDB, who was remanded on 18 September 2015 under s.117 of the Criminal Procedure Code (CPC) for six days. Initially alleged to have committed an offence under s.124C of the Penal Code (i.e. attempting to commit activities detrimental to parliamentary democracy) for lodging reports of alleged financial impropriety relating to 1MDB with law enforcement authorities in Switzerland, United Kingdom, France, Singapore, and Hong Kong, Dato' Sri Khairuddin was subsequently released by the Magistrates Court on 23 September 2015 without charge. However, he was immediately re-arrested under s.4 of SOSMA and detained for up to 28 days for alleged offences under ss.124K (sabotage) and 124L (attempt to commit sabotage) of the Penal Code.⁴³

Prevention of Terrorism Act 2015

The Prevention of Terrorism Act 2015 or POTA is an anti-terrorism law passed on 7 April 2015 to enable Malaysian authorities to detain terror suspects without trial for a period of 59 days to two years. Further, instead of having access to judicial review, detainees would be subject to a special Prevention of Terrorism Board. Thus, the Act was accused of being a new incarnation of the notorious Internal Security Act 1960 which had been revoked in 2012. The Act was justified by the government as necessary to prevent actions, both inside and outside the country, deemed prejudicial to the security of Malaysia or any part of Malaysia.⁴⁴ For example, dozens of citizens were arrested in 2014-2015 for suspected links to 'Islamic State (IS).' However, many fear that POTA, like the ISA, gives the police and the appointed board too much power to detain suspects without warrant or judicial review for extended periods of time.

⁴² 'SOSMA amendments passed despite stiff opposition' The Rakyat Post, 8 April 2015, available at <http://www.therakyatpost.com/news/2015/04/08/sosma-amendments-passed-despite-stiff-opposition/>, accessed on 30 May 2016.

⁴³ 'Press release: SOSMA must not be misused to silence critics of 1MDB' The Malaysian Bar, 2 October 2015, available at http://www.malaysianbar.org.my/press_statements/press_release_-_sosma_must_not_be_misused_to_silence_critics_of_1mdb.html, accessed on 4 October 2017.

⁴⁴ 'Prevention of Terrorism Act 2015' Wikipedia, 27 April 2016, available at https://en.wikipedia.org/wiki/Prevention_of_Terrorism_Act_2015, accessed on 28 May 2016.

Prevention of Crime Act 1959

The Prevention of Crime Act 1959 or POCA was designed to control and prevent organised crime by targeting “criminals, members of secret societies, terrorists, and other undesirable persons” by granting police power to arrest and detain individuals without trial for a period of up to 60 days. Consisting of a preliminary arrest period of 24 hours, the Act also allows extensions of 21 and 38 days to enable further investigation. After the detention period, cases will be heard before a Prevention of Crime Board which may sentence detainees for a period of not more than two years, a period which may be extended if further detention is deemed necessary to protect public order, public security, or to prevent crime. The Board can either issue a restraining order or discharge the detainee. In 2015, POCA was amended to include terrorism as an offence.⁴⁵ In that same year, according to the Inspector-General of Police, 808 people were arrested for various POCA offences. Of that number, 188 were subject to detention orders and 403 to restraining orders. 257 of the 403 detainees were required to wear electronic monitoring devices while the rest are still under action. 57 cases involved gambling, 18 were pimps, and 42 were held under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.⁴⁶

Sedition Act 1948

Originally enacted by the Malayan British colonial authorities in 1948, the Sedition Act criminalised speech with “seditious tendenc[ies]” including words bringing into “hatred or contempt or to excite disaffection against” the government or engender “feelings of ill-will and hostility between different races.” Seditious tendency includes the questioning of certain portions of the Constitution, namely, Art 153 covering special rights for the bumiputera. The 2015 amendments added a new s.3(a)(ea), making expression with a tendency “to promote feelings of ill will, hostility or hatred between persons or groups of persons on the grounds of religion” part of the definition of seditious tendency. The amendments caused concern as it was feared many government critics would fall within the catchall areas of race or religion; indeed, it was felt even economists could become targets of the Sedition Act. Those charged prior to the 2015 amendments faced the possibility of up to three years in prison and a fine of MYR5,000 for a first offence, and up to five years in prison for any subsequent offence. Post amendment charges will face a minimum sentence of three years’ and a maximum of seven years’ imprisonment.⁴⁷

⁴⁵ ‘The Prevention of Crime Act 1959’ SUARAM, available at http://www.suaram.net/?page_id=8000, accessed on 27 May 2016.

⁴⁶ ‘IGP: 808 held under Prevention of Crime Act in 2015’ Malay Mail Online, 5 January 2016, available at <http://www.themalaymailonline.com/malaysia/article/igp-808-held-under-prevention-of-crime-act-in-2015#sthash.KjjdVZGU.dpuf>, accessed on 28 May 2016.

⁴⁷ ‘Malaysia: Sedition Act upheld in further blow to free expression’ Article 19, 6 October 2015, available at <https://www.article19.org/resources.php/resource/38131/en/malaysia:-sedition-act-upheld-in-further-blow-to-free-expression>, accessed on 29 May 2016.

On 6 October 2015, Malaysia's apex court ruled the 1948 Sedition Act constitutional. The legal challenge was brought by Professor Azmi Sharom who was then facing criminal prosecution for comments he made in a Malay Mail interview regarding a political crisis in the state of Selangor.⁴⁸ This decision meant other sedition cases involving opposition party politicians, academics, and civil society members could also go ahead. Some of the more prominent cases included: political cartoonist, Zunar; Bersih chairperson, Maria Chin; human rights lawyer, Eric Paulsen; and opposition parliamentarians, Tian Chua, Teresa Kok, and Nurul Izzah. In 2015 alone, at least 91 individuals were arrested, charged, or investigated for sedition – almost five times as many as during the law's first 50 years of existence.⁴⁹ Further, the Sedition Act is often used together with the Communications and Multimedia Act (CMA) 1998 when a "seditious" work is made available online, carrying a penalty of RM50,000 and/or one year in prison.⁵⁰

Peaceful Assembly Act 2012

The Peaceful Assembly Act 2012 or PAA has been used by the government to crackdown on participants of peaceful public assemblies, especially civil society members and opposition party politicians. Although the PAA, which replaced s.27 of the Police Act 1967, no longer requires police permits for mass assemblies, organisers must now notify the officer in charge of the police district within 10 days of the gathering date, or be found guilty under s.9(5) and face a maximum fine of MYR10,000. Under s.10(c), a copy of the consent letter from the owner or occupier of the place of assembly must also be acquired. In addition, the PAA bans any street protests and any gatherings within 50 meters of "prohibited places" such as hospitals, petrol stations, airports, railway stations, places of worship, and schools.⁵¹ In 2015, several high profile cases included the charging of Bersih chairperson, Maria Chin for organising the 2-day Bersih 4 rally on 29 August 2015,⁵² and PKR opposition party politician, Nik Nazmi Nik Ahmad, for failing to notify authorities of the 'Black 505' rallies protesting alleged electoral fraud in the 2013 General Election.⁵³

⁴⁸ In February 2016, the Attorney-General discontinued its prosecution of Azmi Sharom. See, 'AG drops sedition case against Azmi Sharom' Malay Mail Online, 12 February 2016, available at <http://www.themalaymailonline.com/malaysia/article/ag-drops-sedition-case-against-azmi-sharom#sthash.ySW8hzyI.dpuf>, accessed on 30 May 2016.

⁴⁹ 'Malaysia: End unprecedented crackdown on hundreds of critics' Amnesty International, 11 March 2016, available at <https://www.amnesty.org/en/press-releases/2016/03/malaysia-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act/>, accessed on 29 May 2016.

⁵⁰ 'Sedition Act 1948' Wikipedia, 27 April 2016, available at https://en.wikipedia.org/wiki/Sedition_Act_1948, accessed on 29 May 2016.

⁵¹ 'Peaceful Assembly Act 2012' Wikipedia, 27 April 2016, available at https://en.wikipedia.org/wiki/Peaceful_Assembly_Act_2012, accessed on 29 May 2016.

⁵² 'Bersih 2.0 chief claims trial to breach of Peaceful Assembly Act' Malay Mail Online, 3 November 2015, available at <http://www.themalaymailonline.com/malaysia/article/bersih-2.0-chief-claims-trial-to-breach-of-peaceful-assembly-act#sthash.mqKdO7uX.dpuf>, accessed on 29 May 2016.

⁵³ 'Nik Nazmi again to stand trial for breach of Peaceful Assembly Act' Malay Mail Online, 3 November 2015, at <http://www.themalaymailonline.com/malaysia/article/nik-nazmi-again-to-stand-trial-for-breach-of-peaceful-assembly-act#sthash.PXYVAlU.dpuf>, accessed on 29 May 2016.

Penal Code (s.124 amendments)

The Penal Code amendments were tabled by then de-facto Law Minister, Nazri Aziz, on 10 April 2012, entering into effect on 31 July 2012. The new sections were meant to deal with offences previously governed by the ISA, albeit with modifications. The section empowers authorities to take action not only against individuals but also against print and electronic media practitioners. Moreover, s.124B affirms anyone involved in an “activity detrimental to parliamentary democracy” can be imprisoned to a term that may extend to 20 years while those attempting to do so may be imprisoned up to 15 years.⁵⁴ However, in reality, the Act has been arbitrarily used against peaceful protestors. For example, 17 persons (16 of whom were university students) were arrested and detained for merely participating in a peaceful sit-in outside parliament on 25 August 2015. Critics felt s.124B was devised to cover violent offences such as the assassination of a head of state, a coup d'état, an armed insurgency, guerrilla warfare, and breaches of constitutional provisions. In particular, it was felt the Act should not be misused to reduce the power of constitutional rights enshrined in Arts 10(1)(b) and 10(2)(b) guaranteeing the right to assemble peaceably without arms. There were also worries that abuse of s.124B would cause fear or anxiety amongst members of the public.⁵⁵

Printing Presses and Publications Act 1984

The Printing Presses and Publications Act 1984 or PPPA gives absolute discretion to the Home Affairs Minister to grant or revoke a licence for the possession or use of a printing press. It can also restrict or ban publications likely to endanger national security interests or create social unrest. Violators can be imprisoned for up to three years and/or fined up to MYR20,000. Permits are normally granted for a one-year period, and cannot be transferred without permission of the Minister. In 2012, the PPPA was amended removing the requirement for annual printing permits but the Home Minister continues to hold absolute power to suspend and revoke licences of media outfits and printing houses. It must be said the Malaysian government continues to use the PPPA to control the media and publishing houses and to ban materials critical of the government. For example, in July 2015, the Act was evoked to suspend two publications under The Edge Media Group for their reporting of the controversial state-owned firm, 1MDB. The courts later overturned the order declaring the Home Ministry had acted irrationally and illegally. Similarly, in 2013, the government ordered the suspension of news weekly, The Heat, due to its front page story on excessive spending by Prime Minister Najib Razak. It wasn't until January 2016 that this suspension was lifted.⁵⁶

⁵⁴ 'Azmi Sharom: University students risk expulsion over vague law protecting 'parliamentary democracy' HAKAM, 20 May 2016, available at <http://hakam.org.my/wp/index.php/2016/05/20/azmi-sharom-university-students-risk-expulsion-over-vague-law-protecting-parliamentary-democracy/#more-7238>, accessed on 30 May 2016.

⁵⁵ 'Don't use section 124B of Penal Code to curb freedom' Malaysiakini, 28 August 2015, available at <https://www.malaysiakini.com/news/310323>, accessed on 30 May 2016.

⁵⁶ 'Printing Presses and Publications Act' Wikipedia, 11 May 2016, available at https://en.wikipedia.org/wiki/Printing_Presses_and_Publications_Act_1984, accessed on 29 May 2016.

Trade Union Act 1959 and Industrial Relations Act 1967

Although the Constitution guarantees the right of all Malaysians to form and join trade unions, such rights are regulated by the Trade Unions Act 1959 (TUA) and the Industrial Relations Act 1967 (IRA). The TUA does not permit general unions for workers; rather membership is confined to employees of a particular industry, establishment, trade, or occupation. Although temporary and contract (including foreign) workers may join unions, most are afraid to do so for fear their work permits or contracts may be cancelled or revoked. Managerial, executive, confidential, and security employees cannot be members of a non-executive union and they cannot be represented by a union for the purpose of collective bargaining.

Under the IRA, employers are allowed to prohibit management, executives, and those working in a confidential or security capacity, from joining a union, but definitions of such classifications are left to the employer's discretion. In reality, many consider all clerical staff to work in a confidential capacity and all production workers to be working in a security capacity (since they oversee their machines). Such measures and the fact government policies segregate trade unions have kept the movement under constant scrutiny and control. Accordingly, only 3% of private sector workers are trade union members and less than 2% are covered by collective agreements. The increase in the number of trade unions in the country is largely due to the formation of in-house unions which often comprise less than 100 members.⁵⁷

The 28,000 member strong National Union of Bank Employees (NUBE)⁵⁸ serves as a classic example of managements' union busting tactics. For the past 5 years, NUBE has battled with the country's prominent Maybank Berhad, challenging registration of the bank's in-house union, the Mayneu (Maybank Non-Executives Union). On 17 September 2014, the Court of Appeal quashed the decision of the Director-General of Trade Unions (DGTU) dated 3 January 2011 pursuant to s.12(1) of TUA, setting aside the registering of Mayneu as an in-house union because the decision had been made without consulting NUBE. Thus, the Court of Appeal allowed NUBE's appeal with costs of MYR20,000 to be paid by the DGTU and Mayneu respectively.^{59, 60}

⁵⁷ 'Trade unions in Malaysia' Wikipedia, 26 October 2014, available at https://en.wikipedia.org/wiki/Trade_unions_in_Malaysia, accessed on 30 May 2016.

⁵⁸ 'National Union of Bank Employees' NUBE, 2015, available at <http://nube.org.my/membership/>, accessed on 30 May 2016.

⁵⁹ 'Yellow union at Maybank: Registered by government (2012)' ITUC CSI IGB, 2013, available at <http://survey.ituc-csi.org/Yellow-union-at-Maybank.html>, accessed on 29 May 2016.

⁶⁰ 'NUBE hails appellate court decision on Mayneu' Malaysiakini, 22 September 2014, available at <https://m.malaysiakini.com/letters/275331>, accessed on 30 May 2016.

Part 2: Outstanding Human Rights Issues

A. Racism and Non-Discrimination

Combating racism and xenophobia in a multi-racial and multi-religious country like Malaysia is a mammoth challenge, involving multiple stakeholders. As part of its efforts to confront this issue, the government established the National Unity Consultative Council (NUCC)⁶¹ in 2013 to prepare a blueprint for national unity and social cohesion. Comprised of selected representatives from different government agencies, members of academia, and civil society organisations, the group conducted many consultations and dialogues on sensitive topics such as the use of the word ‘Allah’ by non-Muslims, housing issues, Sabah and Sarawak, and constitutional matters including Art 153 (protecting the special privileges of both Malay and non-Malay bumiputeras). Unfortunately, the NUCC’s recommendations to the Prime Minister were never made public and the Council disbanded after completing its tasks with no clear indication of whether their recommendations would be acted upon.⁶²

Civil society organisations combating racism and xenophobia have urged the government to seriously and genuinely address this urgent issue by adhering to and ensuring the non-discrimination principles spelled out in the Federal Constitution, as well as universally accepted documents such as the UDHR and the ICERD. Thus, it was seen as a positive step forward when the government agreed to fulfil recommendations strengthening national unity and social cohesion made by other member states in the second cycle of its UPR in 2013.

B. Indigenous Peoples’ Land Rights

It is estimated indigenous peoples accounted for 13.9% of Malaysia’s total population of 31 million in 2015. Indigenous people’s customary land rights on the Peninsular and in Sarawak and Sabah have always been the cause of much tension in the country. Many claim the government tends to favour plantation and logging company owners who often encroach on their ancestral lands. Further, the Malaysian National Land Code does not clearly mention the customary land rights of indigenous people. It is interesting to note that Malaysia voted for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶³ and endorsed the Outcome Document of

⁶¹ ‘10 things to know about the NUCC’s Harmony Bills’ Poskod.my, 2010, available at <http://poskod.my/cheat-sheets/national-unity-consultative-council/>, accessed on 29 May 2016.

⁶² ‘Malaysia racial discrimination report 2015’ Pusat KOMAS, 21 March 2016, available at <http://komas.org/v2/wp-content/uploads/2013/06/Malaysia-Racial-Discrimination-Report-2015.pdf>, accessed on 29 May 2016.

⁶³ ‘United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)’ United Nations, 8 August 2008, available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, accessed on 30 May 2016.

the World Conference on Indigenous Peoples, but has still not ratified ILO Convention 169 on Indigenous Peoples Right to Land.⁶⁴

The principal act governing Orang Asli land and welfare issues is the Aboriginal Peoples Act 1954 (Act 134). This Act gives supreme powers to state authorities to gazette and revoke lands as “aboriginal reserves” (s.7), “aboriginal areas” (s.6), or “aboriginal inhabited places.” Thus, state authorities have the power to order any aboriginal community to leave Malay Reservations Land (s.10), or to excise, alienate, grant, lease, or otherwise dispose of land aboriginal communities have used – with compensation being limited to fruit and rubber trees (s.11). In addition, s.12 allows state authorities to grant compensation for losses if land is excised from aboriginal areas or reserves; this may be paid to the Director General of the JHEOA (Department of Orang Asli Affairs) to be held in a common fund.⁶⁵

For many years, indigenous peoples, both in Peninsular and East Malaysia, have been locked in legal battles and mass actions against local government agencies and business companies encroaching on their ancestral land. One significant case involved headman, Nohing, of the Bukit Rok community, who in 2007 filed a claim against the Director of the State Land and Mines Office, the state government, the Director-General of the Department of Orang Asli Development (JAKOA), and the federal government seeking to find the state authority had failed to administratively gazette 2,023 hectares of their traditional lands which, he claimed, had been approved for gazetting in 1974. Instead the state had awarded a significant portion of this land to FELCRA Berhad (Federal Land Consolidation and Rehabilitation Authority, a fully government-owned company) for development as an oil palm plantation. After 5 years of litigation, the court ruled in the Orang Asli’s favour, upholding the pre-existing native title rights of the Semelai people. It also held they had native title rights to their customary lands as long as those lands had been settled, planted, occupied, and controlled by the Semelai people. However, ‘roaming lands’ (kawasan rayau) which they did not occupy or exercise control over were not considered part of their tanah adat or customary lands.⁶⁶

Similar trends are happening in Sarawak and Sabah. On 9 September 2015, the Federal Court heard the Sarawak government’s appeal that pre-existing rights under native laws and customs (governed by common law) should not go beyond felled and cultivated lands, and therefore should not include rights to land, trees, hunting, fishing, grazing areas and other uncultivated areas to gather food and forest produce within broader territorial domains or communal areas. It also argued that the legislative or executive

⁶⁴ ‘Indigenous and tribal peoples’ ILO, available at <http://www.ilo.org/global/topics/equality-and-discrimination/indigenous-and-tribal-peoples/lang--en/index.htm>, accessed on 29 May 2016.

⁶⁵ Nah (see note 9 above).

⁶⁶ ‘Indigenous peoples in Malaysia’ IWGIA, 19 May 2016, available at http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2016/Malaysia_IW2016_web_redu.pdf, accessed on 29 May 2016.

arms of the Sarawak state government need not apply the force of the law to these “non-codified native customs.” Sarawak government’s legal counsel, JC Fong, said the government did not recognise these areas as native customary lands as they failed to satisfy the legal requirement of continuous occupation. The case is ongoing as the Federal Court deferred its decision without setting a date to consider the arguments presented.

Indigenous peoples have also fought against the building of hydroelectric dams in East Malaysia – successfully, when Sarawak’s Chief Minister was forced to shelve the proposed 1,000 MW Baram dam in 2015 after two years of protests and blockades by the Baram community, and less successfully as regards the 1,200 MW Baleh dam which is due to start construction in 2018. Likewise, construction of the Kaiduan dam in Sabah continued to be the focus of local protests throughout 2015 with the government insisting it would bring an end to state water shortages. Despite the protests, in November 2015, it was announced the dam project would go ahead as planned.⁶⁷

C. Refugees, Asylum Seekers, and Human Trafficking

Malaysia’s immigration law does not recognise asylum seekers or refugees and the government is not party to the International Refugee Convention. Accordingly, it is not responsible or compelled to provide education, health services, or housing facilities to refugees or migrant children; nor is it required to give them legal permission to work. Matters came to a head in May 2015 when thousands of refugees and migrants from Myanmar and Bangladesh attempted to land on Langkawi Island in Malaysia. Although initially reluctant to receive them or provide aid, the government later agreed, in conjunction with Indonesia, to provide humanitarian assistance and temporary shelter for up to 7,000 refugees and migrants for up to one year.

As regards human trafficking, the United States government demoted Malaysia to Tier 3 in its ‘Trafficking in Persons’ report in 2014,⁶⁸ but upgraded it to Tier 2 a year later. The full horror of the practice was laid bare in May and August of 2015 when more than 100 mass graves were found on the Thai-Malaysian border. As such, many claim the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 fails to meaningfully protect victims of trafficking.

Several months before the discovery of the mass graves, the UN Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, officially visited Malaysia in February 2015. While complimentary in her preliminary

⁶⁷ IWGIA (see note 66 above).

⁶⁸ ‘World report 2015: Malaysia’ Human Rights Watch, 2015, available at <https://www.hrw.org/world-report/2015/country-chapters/malaysia>, accessed on 29 May 2016.

findings report⁶⁹ for Malaysia's "resolve to fight against trafficking in persons, as reflected by the country's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)," she also outlined areas for improvement including the introduction of treatment and support services for victims of trafficking and several other measures such as the need to "fast track the amendment of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act and other relevant regulations" to set up "a comprehensive anti-trafficking legal framework in compliance with the requirements of the Protocol." She also noted the need for amendments to allow victims in shelters to move outside the facilities and the right to stay and work while awaiting the outcome of legal proceedings and beyond; compensation during criminal procedures that are not dependent on conviction; victims' non-criminalisation for actions undertaken in relation to their status as victims; and the possibility of permitting NGOs to contribute more to anti-trafficking work by allowing them into MAPO (i.e. the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, a multi-sectoral committee with members drawn from relevant line ministries and government departments, chaired by the Secretary-General of the Ministry of Home Affairs).

As a result, parliament passed an amendment to the country's anti-trafficking law in July 2015 to improve conditions for victims. This new measure will provide better protection to victims by allowing NGOs to shelter them, giving victims the freedom to move and work while in government shelters, and extending the period investigators have to determine the veracity of human trafficking claims. Victims would also be given transitional housing for one month, a living allowance, and convicted traffickers would be forced to pay court-ordered damages. Moreover, formalisation of a "high-level" government committee to work on trafficking issues was also advocated.⁷⁰

D. Persecution or Criminalisation of Persons

Gender identity and sexual orientation discrimination

State and societal discrimination against lesbian, gay, bisexual, and transgender (LGBT) people is very prevalent in Malaysia. In particular, transgender persons constantly face arbitrary arrest, physical and sexual assault, imprisonment, discriminatory denial of healthcare and employment, and other abuses. Malaysian law currently penalises homosexual acts involving either men or women with whipping and imprisonment for up to 20 years. For example, s.377A describes offences committed against the "order

⁶⁹ 'Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro visit to Malaysia (23-28 February 2015)' UN-OHCHR, 2 March 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15631&LangID=E>, accessed on 30 May 2016.

⁷⁰ 'Facing pressure ahead of trade deal, Malaysia actually takes steps to improve human trafficking record' Huff Post Politics, 18 June 2015, available at http://www.huffingtonpost.com/2015/06/18/malaysia-human-trafficking_n_7616702.html, accessed on 28 May 2016.

of nature” as “[a]ny person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person ...” Sections 377B, C, and D spell out the punishments for such offences including imprisonment of not less than 5 but no more than 20 years and whipping. Under Sharia penal law, penalties for sodomy (liwat) and lesbian relations (musahaqat) include fines of MYR5,000, three years’ imprisonment, and six lashes of the whip.⁷¹

Prosecution of Anwar Ibrahim

Former Deputy Prime Minister, Anwar Ibrahim, who later became head of the opposition party coalition, was first charged with corruption and sodomy in 1998. In 2000, he was sentenced to nine years’ imprisonment for engaging in sodomy with his 19-year-old male chauffeur and his former male speech writer. After serving four years in prison, the Federal Court acquitted him of all charges. Domestically and abroad, the persecution and jailing of Anwar Ibrahim was seen as a government conspiracy to end his political career. Indeed, a mere four months after the opposition party coalition, Pakatan Rakyat, gained control of five states from BN in the 12th General Election of March 2008, Anwar was again arrested and charged with committing sodomy, this time with his male former aide. Acquitted by the High Court, he later won his former seat in parliament and became leader of the opposition,⁷² but at the beginning of 2015, Anwar was again arrested when the Court of Appeal overturned the acquittal and he was sentenced to five years in prison. Although the UN Working Group on Arbitrary Detention determined Ibrahim had been jailed illegally and called for his immediate release, concluding his imprisonment to be “arbitrary” because he had been denied a fair trial and was jailed for political reasons, the Federal Court upheld the decision and reaffirmed his sentence.⁷³

Lena Hendry charged under the Film Censorship Act 2002

On 19 September 2013, Lena Hendry of the NGO, Pusat Komnas, was charged under s.6 of the Film Censorship Act 2002 for organising a screening of the documentary, No Fire Zone: The Killing Fields of Sri Lanka about alleged human rights violations committed by the Sri Lankan military during the 2009 civil war. As such, she became the first human rights defender in Malaysia to be charged under a law criminalising the act of possessing or exhibiting films not approved by the Film Censorship Board of Malaysia, carrying a penalty of up to three years’ imprisonment, a fine not exceeding MYR30,000, or both. It was believed the charges brought against Lena Hendry were

⁷¹ ‘Anti-LGBTI laws: Malaysia’ Erasing 76 Crimes, available at <https://76crimes.com/anti-lgbt-laws-malaysia/>, accessed on 28 May 2016.

⁷² ‘Anwar Ibrahim’ Wikipedia, 28 May 2016, available at https://en.wikipedia.org/wiki/Anwar_Ibrahim, accessed on 28 May 2016.

⁷³ ‘United Nations determines detention of Malaysia’s Anwar Ibrahim ‘arbitrary’ and political’ ABC News, 2 November 2015, available at <http://www.abc.net.au/news/2015-11-02/un-determines-detention-of-malysias-anwar-ibrahim-arbitrary/6905994>, accessed on 29 May 2016.

directly linked to her work exposing human rights violations in Sri Lanka.⁷⁴ In March 2016, the Kuala Lumpur Magistrates Court acquitted the activist but authorities are appealing this decision.

Death penalty

In Malaysia, the death penalty continues to be the mandatory punishment for drug trafficking, murder, and the discharge of firearms with intent to kill or harm in certain circumstances. In November 2015, however, the government announced that legislative reforms to review the mandatory death penalty laws would be debated in parliament in early 2016. With 1,043 death row inmates nationwide as of May 2015,⁷⁵ many consider the debate long overdue especially as the authorities also announced that 33 executions had been carried out between 1998 and 2015. In response, Amnesty International urged the government to ensure the proposed amendments were “in line with international human rights law and standards, pending full abolition of the death penalty.”⁷⁶

Part 3: Conclusion

The Malaysian government depends heavily on its laws to check and control its people, often justifying questionable behaviour by the rationale of protecting “national security” and “maintaining racial harmony.” This alarming trend has resulted in the restriction, suppression, and violation of basic human rights, even those protected by the Constitution. Furthermore, many of these laws are not clearly or specifically defined, leaving implementation and interpretation to law enforcement officers and government ministers. Accordingly, many human rights defenders, government critics, and opposition party politicians have become its victims. The recently passed POTA is a case in point.⁷⁷

The ruling government has also used the time-tested colonial strategy of ‘divide and rule’ on its citizens by punishing or rewarding different ethnic groups. Accordingly, the government often turns a blind eye to obviously racist or bigoted remarks and acts by extremist groups in the country, thus, indirectly condoning such behaviour. For example, the infamous 16 September 2015 ‘Merah169’ or ‘red shirt’ rally—during which several thousand Malays marched in the streets, hurling racial insults at the Chinese whilst trying to enter Petaling Street (Chinatown)—is a clear case in point.

⁷⁴ ‘Case history: Lena Hendry’ Front Line Defenders, 14 March 2016, available at <https://www.frontlinedefenders.org/en/case/case-history-lena-hendry>, accessed on 29 May 2016.

⁷⁵ ‘Cornell Center on the death penalty worldwide’ Cornell Law School, 21 July 2015, available at <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=malaysia#f4-2>, accessed on 31 May 2016.

⁷⁶ ‘Malaysia must now act on death penalty reforms’ Amnesty International, 24 November 2015, available at <http://www.amnesty.org.au/news/comments/38470/>, accessed on 31 May 2016.

⁷⁷ ‘HRW slams Malaysia’s new ‘repressive’ anti-terrorism law’ Human Rights Watch, 7 April 2015, available at <https://www.hrw.org/news/2015/04/07/hrw-slams-malysias-new-repressive-anti-terrorism-law>, accessed on 29 May 2016.

Several high-ranking government officials, including the Prime Minister and his party, UMNO, were even suspected of backing the event. In fact, Najib was reported to have defended the rally saying “Malays also have rights” after being “slapped” four times.⁷⁸

Racial politics continue to prevail over the country’s political landscape and is often exploited by political parties on both sides of the divide. This decades old trend has created massive divisions within Malaysia’s multi-racial and multi-religious society and has made race-centric politics a mantra for many political parties and their members. Furthermore, the government often uses this clever but dangerous tactic to steer the country’s attention away from Prime Minister Najib and his alleged involvement in the 1MDB scandal.⁷⁹

As evidenced by the alleged involvement and convictions of various government officials, high-ranking ministers, and elected representatives, corruption in Malaysia is rife. For example, former Selangor State Chief Minister, Mohamad Khir Toyo, was convicted of corrupt practices in September 2015 and sentenced to 12 months by the Federal Court for misusing his position as Menteri Besar to obtain two plots of land and a bungalow in Shah Alam, worth MYR6.5 million. Despite this, after serving only 6 months, he was released on parole in March 2016.⁸⁰ This incident and others like it have led Malaysia to drop to 54 in Transparency International’s 2015 Corruption Perception Index, compared to its ranking of 50 in 2014, placing it behind other developing countries such as Jordan (45), Namibia (45), and Rwanda (44).⁸¹

Education and information play a vital role in the advocacy of human rights. Therefore, it is imperative citizens be informed and educated in the meaning and core values of basic human rights. Social media has become an important tool in this fight with 68% of Malaysians or 20.63 million people using the internet in 2015.⁸² However, the real challenge involves expanding this reach to the country’s rural hinterlands to ensure this population too is made aware of its basic rights.

⁷⁸ The Prime Minister was referring to the four Bersih rallies of 2007, 2011, 2012, and 2015. See, ‘The Economist: Malaysia ‘playing with fire’ with red-shirt rallies’ Malay Mail Online, 25 September 2015, available at <http://www.themalaymailonline.com/malaysia/article/the-economist-malaysia-playing-with-fire-with-red-shirt-rallies#sthash.K9ThVTED.dpuf>, accessed on 29 May 2016.

⁷⁹ ‘The big read: On Malaysia Day, a reminder of racial politics at play’ TODAY, 29 May 2016, available at <http://www.todayonline.com/world/asia/big-read-malaysia-day-reminder-racial-politics-play-0>, accessed on 29 May 2016.

⁸⁰ ‘Khir Toyo to be released from parole this Friday’ New Straits Times, 29 May 2016, available at <https://www.nst.com.my/news/2016/05/147810/khir-toyo-be-released-parole-friday>, accessed on 29 May 2016.

⁸¹ ‘Malaysia slides four rungs, at 54th spot in 2015 Corruption Index, behind Rwanda’ Malay Mail Online, 27 January 2016, available at <http://www.themalaymailonline.com/malaysia/article/malaysia-slides-four-rungs-at-54th-spot-in-2015-corruption-index-behind-rwa#sthash.Glj5Hmq0.dpuf>, accessed on 29 May 2016.

⁸² ‘Malaysia internet users’ Internet Live Stats, available at <http://www.internetlivestats.com/internet-users/malaysia>, accessed on 29 May 2016.

While a free flow of information and freedom of expression are vital to change, responsive and proactive attitudes also play a crucial role in the sustainability of human rights. As such, civil society organisations and concerned citizens must continue to be vigilant and steadfastly stand as countervailing forces to ensure human rights remain a top priority. For example, the Bersih 4 rally on 29-31 August 2015—which saw 200,000 people gathering for 3 days in the capital city to assert their right to clean, fair, and free elections—is a shining example of such vigilance. The event also called for government transparency, accountability, and much-needed institutional reforms to ensure people's civil liberties.⁸³

It is also imperative for the Malaysian government to make clear and genuine commitments to international human rights treaties to demonstrate its seriousness in ensuring that the universally accepted and constitutionally guaranteed rights of its people are recognised, respected, and upheld, e.g. by ratifying ICERD and acceding to ICESCR and ICCPR and their related protocols.⁸⁴ Finally, the government should immediately reveal the findings of the NUCC (which had previously compiled the thoughts and views of Malaysians on unity and social cohesion). Containing nine key outcomes, a proposal to enact a National Harmony Law, and another to establish a Reconciliation Commission, the report was submitted to Prime Minister Najib in 2015 without any further progress being made.⁸⁵

⁸³ 'Bersih 4.0 protest enters final hour ahead of National Day' Channel News Asia, 31 August 2015, available at <http://www.channelnewsasia.com/news/asiapacific/bersih-4-0-protest-enters/2086202.html>, accessed on 29 May 2016.

⁸⁴ 'A modest proposal: A call for Malaysia to sign on to the ICESCR' Malay Mail Online, 16 December 2015, available at <http://www.themalaymailonline.com/malaysia/article/a-modest-proposal-a-call-for-malaysia-to-sign-on-to-the-icescr>, accessed on 27 May 2016.

⁸⁵ 'G25: Time to consider NUCC recommendations' The Star Online, 23 July 2015, available at <http://www.thestar.com.my/news/nation/2015/07/23/g25-nucc-recommendations/>, accessed on 30 May 2016.

