

# MALAYSIA

## 1. PRESENTATION<sup>1</sup>

Basic Facts <sup>2</sup>	
Name of Country	Malaysia
Capital	Kuala Lumpur
Population	24,385,858
Area	329,750 sq km
Life Expectancy at Birth	73.2 years
Ethnic Groups	Malay 53.4%, Other Bumiputera 11.7%, Chinese 26.0%, Indian 7.7%, Other 1.2%
GDP per capita, PPP US\$ (2005 est.)	12,100
GDP, PPP US\$ (2005 est.)	290.2 billion
HDI 2003	Value: 0.796 Rank: 61
Adult Literacy	88.7
Gender-related Development Index (GDI)	Value: 0.791 Rank: 50

Community of Democracies	
Previous Participation	Warsaw 2000: Not invited Seoul 2002: Observer Santiago 2005: Participant

### Timeline of Recent Major Events in Malaysia:

- **2004** March – General elections take place. The United Malays National Organization (UMNO) of Prime Minister Abdullah and the ruling multiethnic coalition of 14 parties (Barisan Nasional, BN) win a landslide victory; the opposition Parti Islam SeMalaysia (PAS) suffers a crushing defeat.
- **2004** September – Former Deputy Prime Minister Anwar Ibrahim is released from prison after a federal court overrules charges of sodomy.
- **2005** March – Government crackdown on illegal immigrants.
- **2005** April – Several books with religious content, written by foreign authors and deemed detrimental to public order, are banned.
- **2005** May – The government releases the much-awaited report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (RMP).

<sup>1</sup> Principal author: Bertelsmann Stiftung

<sup>2</sup> Source: *CIA World Factbook* at <https://www.cia.gov/cia/publications/factbook/geos/my.html> (accessed on July 5, 2006); Department of Statistics, Malaysia, *Population Distribution and Basic Demographic Characteristics*, Kuala Lumpur: Department of Statistics, 2001; UNDP, *Human Development Report 2005* at [http://hdr.undp.org/reports/global/2005/pdf/HDR05\\_HDI.pdf](http://hdr.undp.org/reports/global/2005/pdf/HDR05_HDI.pdf) (accessed on September 7, 2006).

## MALAYSIA

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- **2005** June – The main opposition party, PAS, holds intra-party elections. Whereas the PAS leadership was hitherto dominated by Islamic scholars, the election sees a group of young, progressive leaders sweeping to power on the ticket of reform.
- **2005** June – The Federal Court rejects *habeas corpus* applications by ISA (Internal Security Act) detainees. The court rules that there is no limitation period for detention orders issued against individuals under preventive law.
- **2006** January – The bodies of five migrant workers turn up in a lake following a raid in which the official People’s Volunteer Corps (*Ikatan Relawan Rakyat Malaysia*, RELA) participated.
- **2006** June – The government extends the detention of Azmi Khan Mahmood, Jaafar Saldin, Mat Sah Mohd Satray, Shakom Shahid, Yusrin Haiti, Mazlan Ishak, Syed Ali Syed Abdullah and Shamsuddin Sulaiman, who have been detained without trial since April 2002. The government accuses all eight of being members of Jemmah Islamiah, a militant Islamist group.
- **2006** July – The Prime Minister issues a directive to stop immediately all Article 11 forums on freedom of religion. Those who violate the ban, including the media, are liable to severe penalties.
- **2006** August – Prime Minister Abdullah issues a warning against Internet critics of the government.

## 2. BACKGROUND

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The independent Federation of Malaya came into being on August 31, 1957. In 1963 Malaya joined with Singapore, Sabah and Sarawak to form the Federation of Malaysia. All of these areas shared a common colonial heritage under Great Britain and all contained a complex ethnic mixture of Muslim Malays, indigenous groups (together referred to as Bumiputera or “sons of the soil”), and Chinese and Indian immigrants. The federation lasted only two years until August 1965, when Singapore was expelled for many complex reasons.

For most of the period after independence, combating the threat of communist insurgency (1946-1989), managing communal conflict in a multiethnic society and promoting national unity through economic development were the main challenges facing the national government. In fact, many of the restrictive regulations on political rights and civil liberties such as the Internal Security Act, the Official Secrets Act and the Sedition Act, under which “suspected communists” can be detained without trial, originated during the first emergency declared in response to the violent communist campaign. While the communist insurgency ended in 1989, communalism is still the dominant feature of Malaysian politics. In recent years, Islamic revivalism has been associated with a rise in fanaticism that could mean less tolerance for non-Muslims and an attitude toward women that may oppose gender equality in the future.

After communal riots in 1969, consociational democracy, which formed the basic pattern of democratic politics during the first decade of independence, collapsed when emergency rule was imposed and a new body, the National Operations Council, governed

## MALAYSIA

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Malaysia over the next 21 months. Believing that economic tensions between Malay and Chinese were mainly responsible for the communal riots, new policy initiatives were framed to restrict political liberties and entrench Malay political pre-eminence. The ruling National Alliance proposed the New Economic Policy (NEP) in 1971 to promote national unity and a just society by attacking poverty and increasing Malay participation in the economic sphere through affirmative action programs for Malays. The National Development Policy (NDP) replaced the NEP in 1990. The NDP continued the twin objective of poverty eradication and restructuring within the context of economic growth until it ended in 2000. While no new official policy has come into force to replace the NDP, affirmative action measures under the NEP and NDP continue until today.

Since independence, no other person has exercised as much influence and control over Malaysian politics than Dr. Mahathir Mohamed. Remaining in power for 22 years, he survived a long series of challenges along the way. The legacy he left behind after his retirement in 2003 includes successful economic development and communal peace, but also the entrenched and institutionalized practices of “semi-democracy” which systematically marginalised the non-Malay community, and a system of racial targeting and selective patronage, which some describe as a growing complex of endemic corruption and Malay cronyism.

In October 2003, UMNO politician Abdullah Ahmad Badawi succeeded Mahathir as prime minister. His government is keen on presenting Malaysia to the world as a “Modern Islamic state” meeting citizens’ expectations of a more liberal climate, effectively curbing corruption, and professionalizing the police and the government bureaucracy. While the UMNO and BN scored an overwhelming victory in the 2004 election, Abdullah’s reform agenda ran out of steam in 2005, resulting in disillusionment with the government’s potential to reform party politics and curb administrative corruption. The national police in particular have come under increasing criticism from civic groups and the public following allegations of widespread corruption and human rights abuses. There are several incidents of “policing morality” and raids by Islamic moral police, more than during Mahathir’s time. Furthermore, security forces, the executive and the judiciary continue to make use of the full weight of restrictive legislation and illiberal regulations to curtail democratic rights, tame public criticism, undermine democratic institutions and restrict the scope of political pluralism in the name of political stability, economic development and “racial harmony.”

Though Malaysia’s pattern of politics and governance, which combines authoritarian with democratic elements, has been stable from 2000 to 2006, the country’s Community of Democracies status has improved from not invited (Warsaw 2000) to observer (Seoul 2002) to participant (Santiago 2005). According to Freedom House’s *Freedom Index*, the period 2000-2006 saw some improvements in Malaysia’s political and civil freedoms. The *Bertelsmann Transformation Index 2006* and the *Countries at the Crossroads 2006* country report on Malaysia provide similar evaluations. The *Asia Democracy Index 2005* ranked Malaysia 13th of 16 countries—just above Nepal, Singapore and Myanmar. However, all of these democracy analyses converge in the assessment of Malaysia’s

polity as non-democratic, even by minimal standards of “electoral” or “defective democracy.”

### 3. ANALYSIS

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#### **Democratic Institutions and Processes**

##### *Elections*

At independence, Malaysia inherited a bicameral parliamentary system composed of a largely non-elected upper house (Dewan Negara) and a popularly elected house of representatives (Dewan Rakyat). The Dewan Rakyat consists of 219 members elected from single-member districts by universal suffrage. Each of Malaysia’s 13 states has an elected legislature.<sup>3</sup> However, the electoral procedures in Malaysia are often controversial. Gerrymandering, for example, exaggerates the weight of rural Malay districts, the areas in which the UMNO has historically reaped most of its votes.<sup>4</sup>

State resources and facilities have been used unashamedly by the BN camp, leaving poorly-funded opposition parties at a disadvantage. Although candidates are sufficiently free to contest and voters are sufficiently free to vote for their preferred candidate, the BN government exercises considerable and often controversial control over associational and political activities.<sup>5</sup> These controls contribute to a situation in which elections are so heavily loaded in favor of the government that opposition parties can gain entry to parliament but are prevented from winning the majorities necessary to control it.<sup>6</sup>

While the national election commission is *de jure* independent from the government, its neutrality and autonomy is compromised because the government dominates the commission through its control of the appointment procedures. Although the appearance of so-called “phantom voters” caused considerable concern regarding the accuracy of the electoral roll, in general the conduct of elections by the election commission is satisfactory.<sup>7</sup> The implementation of an improved year-round registration system by the election commission has helped to overcome problems of manipulation and processing delays in the 2004 election that prevented several hundred thousand new voters from voting in 1999.

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<sup>3</sup> Lim Hong Hai, “Electoral Politics in Malaysia: ‘Managing’ Elections in a Plural Society” in: Aurel Croissant, Gabi Bruns, and Marei John (eds.), *Electoral Politics in Southeast and East Asia*, Singapore: Friedrich-Ebert-Foundation 2002.

<sup>4</sup> Abdul Rashid Matoen and Tunku Mohar Mokhtar, “The 2004 General Elections in Malaysia” in: *Asian Survey* 46.2 (2006), pp. 319-340.

<sup>5</sup> Lim Hong Hai and Kiang-Min Ong, “The 2004 general election and the electoral process in Malaysia” in: Aurel Croissant and Beate Martin (eds.), *Between consolidation and crisis. Elections and democracy in five nations in Southeast Asia*, Hamburg: Lit Verlag 2006.

<sup>6</sup> William Case, *Politics in Southeast Asia. Democracy or Less*, Richmond: Curzon Press 2002, p. 120.

<sup>7</sup> “Mafrel’s Report on alleged phantom voters in Pengkalan Pasir” in: *Asia Democracy*, December 5, 2005 at [http://www.asiademocracy.org/content\\_view.php?section\\_id=1&content\\_id=601](http://www.asiademocracy.org/content_view.php?section_id=1&content_id=601) (accessed on August 4, 2006).

One may argue that the most serious problems with Malaysian elections lie elsewhere than in the mechanics of voting. Scholars, opposition parties and a significant proportion of the Malaysian public agree that the main problems with elections in Malaysia are the lack of fairness caused by overweighting of rural districts, gerrymandering and politically motivated constituency delimitation; inequities in the campaign process; and a wide range of political controls that hinder the efforts of Malaysian opposition parties to mobilize political support.

### *Multipartyism and Participation*

Malaysians are free to form democratic political parties that can participate in elections. The Communist Party is the only party declared illegal. However, in recent years, the government has put increasing pressure on Islamic parties such as the PAS, which, according to the government, threaten communal peace by promoting religious extremism. All of the major political parties in Malaysia are race-based. Traditionally, the opposition parties in Malaysia have been comparatively weak in terms of their structure and finances. Divisions through profound ideological differences associated with an ambiguous PAS concept of the Islamic state — which clearly frightens many non-Muslims such as the ethnic Chinese constituencies of the Democratic Action Party (DAP)—also weaken the opposition.

All resident citizens of Malaysia who are of the minimum age prescribed by law can participate in the political process. There are no exclusions based on ethnic or religious criteria. Although there are signs of increasing political activism among NGOs and civil society groups, there are several legal as well as informal constraints restricting their growth and development.<sup>8</sup> For example, Amnesty International has been denied permission to establish a branch in Malaysia, despite several applications. The same laws are used to restrict the growth of trade unions or other independent social organizations.<sup>9</sup> Freedoms of information, speech and assembly, etc., are restricted by law. The only area where the law has not caught up is the Internet, where most forms of political expression are grudgingly tolerated.<sup>10</sup>

### **Rule of Law**

The rule of law is generally respected in Malaysia with regard to commercial and economic activities, and as long as it does not interfere with the government's political agenda. The government can change the law at will because the ruling BN always has at least a two-thirds or larger majority in parliament. In the 1980s, the judiciary came under assault from the executive, resulting in the forced removal of the Chief Justice and two Supreme Court justices. The Abdullah administration has tried to restore confidence by

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<sup>8</sup> Johan Saravanamuttu, "Report on Human Rights in Malaysia" in: *Aliran Monthly* at <http://www.aliran.com/oldsite/hr/js1.html> (accessed on August 4, 2006).

<sup>9</sup> George, K., "Squeezed and silenced" in: *Aliran Monthly*, July 7, 2006 at <http://www.aliran.com/content/view/93/10/> (accessed on August 4, 2006).

<sup>10</sup> Article 19 and Suaram, *Freedom of Expression and the Media in Malaysia*, Kuala Lumpur, December 2005, pp. 43-45.

## MALAYSIA

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adopting a less politicized approach to the appointment of judges, but it will take many years for the Malaysian judiciary to regain its reputation. A black spot on the judiciary, the jailing of former Deputy Prime Minister Anwar Ibrahim, was mitigated somewhat by his release by an appeals court in September 2004.

Corruption is a key threat to the rule of law. The perception that corruption is prevalent among the nation's political and business elite is widespread. Malaysia received a score of 5.1 in Transparency International's 2005 *Corruption Perceptions Index*.<sup>11</sup> The government's affirmative policy of awarding huge infrastructure projects to selected Bumiputera (read Malay) businesses without open tender and giving special licenses to the same group has encouraged corruption.<sup>12</sup>

Released in 2005, the Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police noted that corruption and abuses of power in the police force are acute and provided more than one hundred recommendations for improving police standards.<sup>13</sup> However, these must be read in the context of a culture of endemic corruption in Malaysia's political economy. Both Prime Ministers Mahathir and Abdullah have underscored the need to fight corruption. In recent years, the government launched the National Integrity Plan with anti-corruption as one of its key platforms. In 2004, a few top officials were arrested by the Anti-Corruption Agency (ACA) and a federal minister was charged for corruption. However, during the first seven months of 2006, Abdullah's battle against "money politics" seemed to get tougher rather than easier.

### *Constitutionalism and Separation of Powers*

Malaysia has a written constitution to which the government adheres. However, the original system of constitutional supremacy has been replaced by a system of parliamentary supremacy. The highest court of the land, the Federal Court (formerly Supreme Court) has repeatedly declined to interfere with legislation passed, even when the provisions are blatantly unconstitutional, arbitrary or discriminatory. The Alliance/Barisan National governments since independence have possessed a majority that allows them to amend the constitution at will. For example, during the administration of Mahathir Mohamed, the federal constitution was amended almost annually. Judicial power to interpret the constitution has also been repealed, further eroding the separation of powers to the benefit of the executive. The Malaysian courts' exercise and affirmation of fundamental human rights, civil liberties and individual freedoms guaranteed under the constitution has been the exception rather than the norm.

The federal constitution provides for a horizontal separation of powers between a bicameral legislature, an executive branch and a judiciary. The constitution outlines

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<sup>11</sup> Transparency International, *Corruption Perceptions Index 2005* at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi) (accessed on August 4, 2006).

<sup>12</sup> Nathan, K.S., "Malaysia: The challenge of money politics and religious activism" in: *Southeast Asian Affairs*, 2006, Singapore: ISEAS, p.153.

<sup>13</sup> For a summary see Amnesty International, *Malaysia: Towards Human Rights-Based Policing*, AI Index: ASA 28/001/2005, April 7, 2005 at <http://web.amnesty.org/library/index/ENGASA280012005> (accessed on August 4, 2006).

## MALAYSIA

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additional separation of powers between the federal and 13 state governments. However, separation of powers does not mean much in practice given the executive's domination of parliament.<sup>14</sup> In addition, former Prime Minister Mahathir Mohamed strengthened the power of the executive branch by undermining two important institutional safeguards: the right of the head of state to veto legislation, and undermining the independence of the judiciary by replacing high court judges to assure a judiciary responsive to his demands.<sup>15</sup>

### *Equality before the law*

Part II of the Constitution, entitled "Fundamental Liberties", contains nine articles including equality under the law, the liberty of the person and freedom from discrimination, freedom of movement, freedom of speech, assembly and association. However, the authorities continue to deprive individuals' rights to justice with laws allowing detention without trial, including the Internal Security Act (ISA), the Emergency Ordinance (EO) and the Dangerous Drugs Act (DDA). Many of Malaysia's laws impinging on individual rights are repressive but the authorities use them selectively to concentrate on persons or organizations they regard as troublemakers. The ISA continues to be used against "deviant" religious groups. The EO is used frequently and detainees who manage to win their habeas corpus applications have been routinely re-arrested, in contempt of the courts. Inconsistencies in the government's policies and its agencies' disregard for equality before the law continue to affect refugees, asylum seekers and migrant workers.

### *Civilian democratic control of the military*

The Royal Malaysian Armed Forces and the National Police, classified by some observers as a police force rather than a police service because of its role as a counter-insurgency force, are under civilian control. Civilian supremacy is well accepted among officers and institutionalized. As is the case with all state institutions, Malays are heavily over-represented in the military and the police force.<sup>16</sup>

## **Human Rights**

The Malaysian Government has not ratified the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights

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<sup>14</sup> Khoo Boo Teik, "Limits to democracy: Political economy, ideology and ruling coalitions", in Mavis Puthuchery and Norani Othman (eds.), *Elections and Democracy in Malaysia*, Bangi: National University of Malaysia Press, 2005, p. 33.

<sup>15</sup> Article 19 and SUARAM, *Freedom of Expression and the Media in Malaysia*, Kuala Lumpur, December 2005, p.16.

<sup>16</sup> At present, ethnic Chinese Malaysians, who make up 26% percent of the population, are reported to comprise around 2.5 percent of police force personnel, while ethnic Indian Malaysians, who make up eight per cent of population, make up only 1,000 or a mere 1.25 percent of the 80,000-strong police force nationwide; see Malaysian Chinese Association Online, "Police Recruitment: Working on an Uphill Task", August 20, 2004 at <http://www.mca.org.my/story.asp?file=/articles/exclusive/2004/8/27904.html&sec=Exclusive> (accessed on August 4, 2006); Malaysian Indian Congress, "MIC wants independent inquiry for 'detention without trial' cases", Quoted from Athi Veerangan in: *Malaysiakini*, July 30, 2004, <http://www.mic.org.my/newsdetail.php?id=50&type=archive> (accessed on August 4, 2006).

since both came into force in 1976. The Human Rights Commission of Malaysia (SUHAKAM), established in 1999, has tried to deal with issues relating to human rights abuses. However, it has been ineffective, as there is no political will to implement the recommendations made. Various laws and legal instruments are available to the government to curb civil liberties.<sup>17</sup>

### *Freedom of expression*

*Reporters Sans Frontières* ranked Malaysia 113th of 167 countries in 2005.<sup>18</sup> Freedom of expression in Malaysia is limited by restrictive legislation, and by the concentration of media ownership in the hands of the ruling parties or those closely allied with them. All media are government-controlled, directly through ownership, or indirectly through individuals with political connections. Only officially sanctioned viewpoints are aired, and little space is given to marginalized groups and communities. Opposition parties have no access to the broadcast media and limited access to print media. Licensing is handled restrictively.<sup>19</sup> Defamation law is another tool used by powerful, well-connected individuals to undermine freedom of expression. Defamation suits are excessively punitive and can run into hundreds of millions of Ringgit.

The Sedition Act has a very broad definition of “sedition,” and places many limitations on freedom of expression, particularly regarding “sensitive” political issues. It has been invoked against critics of the government, including members of parliament who, under the act, can have their parliamentary immunity suspended.

The right to freedom of information is non-existent in Malaysia. Legislation allows almost any civil servant to classify any piece of information, without justification. The decision to classify information cannot be challenged in court. Expectations that Prime Minister Abdullah was ready to explore positive initiatives through his pledge to fight burdensome bureaucracy have not materialized. Rather, Malaysia’s biggest English-language newspaper, *The Star*, reported on August 2, 2006 that the prime minister had issued a warning against critics of the government, that those who spread untruths and slander on the Internet will face the law. If information in blogs, web sites and online portals were deemed incorrect, bordered on slander, caused a disturbance or compelled the public to lose faith in the nation’s economic policies, their authors would be detained for investigation.<sup>20</sup>

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<sup>17</sup> For an overview on constitutionally guaranteed rights and their legislative restrictions, see Johan Saravanamuttu, “Report on human rights in Malaysia” in: *Aliran Monthly* at <http://www.aliran.com/oldsite/hr/js1.html> (accessed on August 4, 2006).

<sup>18</sup> Reporters Without Borders, *World Press Freedom Index 2005* at [http://www.rsf.org/rubrique.php3?id\\_rubrique=554](http://www.rsf.org/rubrique.php3?id_rubrique=554) (accessed on August 4, 2006).

<sup>19</sup> Section 3 of the Printing Presses and Publications Act 1984 gives the Internal Security Minister absolute discretion to grant a license and absolute discretion to refuse any application for a license. See *Printing Presses and Publications Act 1984* (Act 301) as published by International Law Book Services on October 20, 2001.

<sup>20</sup> Ian McIntyre, “PM: Those who spread untruths on the net will be detained” in: *The Star*, August 2, 2006 at <http://thestar.com.my/news/story.asp?file=/2006/8/2/nation/15022918&sec=nation> (accessed on August 4, 2006); see also Chang Teck Peng, Editor-in-Chief of a Malaysia-based Chinese news portal, merdekareview.com, “The Long-awaited Freedom of Expression and Poverty Eradication: Malaysians

### *Freedom of assembly and association*

The constitutional right “to assemble peacefully and without arms” has in practice been restricted by subsequent legislation. The discretionary powers given to police officers in issuing and cancelling permits have led to repeated allegations of selective application of the law and political bias.

While some observers have noted improvements in the Royal Malaysian Police’s respect for freedom of assembly over recent years, administration and police periodically continue to adopt high-handed methods in cracking down on peaceful gatherings, as seen on May 28, 2006, when the police violently stopped a protest against fuel and electricity price hikes at the Petronas Twin Towers in Kuala Lumpur.<sup>21</sup> Members and supporters of opposition parties have also been subjected to repression and sometimes arrested for unlawful assembly.<sup>22</sup>

### *Freedom of thought, conscience, religion, and belief*

Islam is the official religion of Malaysia. Faiths of other religious groups are protected under the constitution. However, this constitutional guarantee conflicts with Islamic laws. The Constitution states that all Malays are Muslims. Thus Malays wishing to renounce Islam (apostasy) in favor of other faiths or beliefs are subject to criminal sanctions. The government typically labels individuals and groups holding views distinct from Sunni Islam as deviants.

Efforts by the Bar Council in 2005 to establish an Inter-Faith Commission (IFC) were sabotaged by the Muslim organizations including PAS and the Allied Coordinating Committee of Islamic NGOs, a loose coalition of 13 Muslim groups.<sup>23</sup> For all the government’s lip service to inter-cultural understanding, the prime minister concurred with their claim that implementing the IFC ran against the interest of national unity. On July 24, 2006, he issued a directive to stop all forums on freedom of religion, arguing that they cause tension in a multi-religious society. The government has threatened to use the ISA for those who violate the ban.<sup>24</sup> For the past two years the issue of Shariah courts versus civil courts has gained importance and increasingly became a problem of inter-religious or inter-ethnic relations.

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Challenge”, Background paper at [http://portal.unesco.org/ci/en/ev.php-URL\\_ID=21947&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-URL_ID=21947&URL_DO=DO_TOPIC&URL_SECTION=201.html) (accessed on August 4, 2006).

<sup>21</sup> Asia Forum for Human Rights and Development, *Press Release: Malaysia Should Act on Its Pledges to the Human Rights Council – Stop police violence and impunity*, May 29, 2006 at [http://www.forum-asia.org/news/press\\_releases/fa/29may06\\_malaysia.shtml](http://www.forum-asia.org/news/press_releases/fa/29may06_malaysia.shtml) (accessed on August 4, 2006).

<sup>22</sup> SUARAM, *Malaysia: Civil and Political Rights Report 2005*, pp. 15-16.

<sup>23</sup> Malik Intiaz Sarwar, “We are committed to dialogue. A response to criticism of the Interfaith Commission Initiative” in: *Aliran Monthly* 25.6 (2005) at <http://www.aliran.com/oldsite/monthly/2005a/6g.html> (accessed on August 4, 2006).

<sup>24</sup> Kadir, Syahril A., “Kabinet arah henti bincang isu sensitive” in: *Utusan Malaysia*, 26 July 2006 at [http://www.utusan.com.my/utusan/content.asp?y=2006&dt=0727&pub=Utusan\\_Malaysia&sec=Dalam\\_Negeri&pg=dn\\_01.htm](http://www.utusan.com.my/utusan/content.asp?y=2006&dt=0727&pub=Utusan_Malaysia&sec=Dalam_Negeri&pg=dn_01.htm) (accessed on August 4, 2006).

## MALAYSIA

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### *Freedom from arbitrary arrest*

In 2005 and 2006, the government continued to use preventive laws, including the ISA, the EO and the DDA to arrest and detain suspects without trial.<sup>25</sup> As of November 30, 2005, there were 108 known ISA detainees. Most of them were alleged members of religious extremist groups including Jemaah Islamiah; a significant number were detained for allegedly being involved in counterfeiting currency, in falsifying documents and in the black nuclear market.<sup>26</sup> At least 700 suspected criminals, including minors aged between 14 and 21, were reportedly held under detention orders renewable every two years.<sup>27</sup> In June 2005, the Federal Court ruled that there is no limitation period for detention orders issued against individuals under preventive law. In early 2006, the government extended the detention of 17 ISA detainees accused of belonging to Jemmah Islamiah.<sup>28</sup>

### *Right to a fair trial and freedom from being subjected to cruel, inhuman or degrading treatment or punishment*

In ordinary criminal cases, Malaysians receive a reasonably fair and public hearing by an independent and impartial tribunal established by law, and prosecutors are independent of political control. However, before suspects appear in court, they are often interrogated harshly by police, with forced confessions and deaths occurring in custody regularly. The government refuses to ratify the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture has been part of police and government culture since the first few decades following independence in 1957, but it has always been hidden from the public eye.<sup>29</sup> However, following the release of the Royal Commission Report on the Royal Malaysia Police, there has been growing public awareness of human rights abuses and torture following detention.

### *Gender equality and Rights of minorities*

Among the major international instruments for human rights, Malaysia has only ratified the U.N. Convention for the Elimination of All Forms of Discrimination against Women and the U.N. Convention on the Rights of the Child. The government's record on gender equity has been reasonably sound, with little evidence of official discrimination in

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<sup>25</sup> SUARAM, *Malaysia: Civil and Political Rights Report 2005*, Selangor 2006.

<sup>26</sup> Human Rights Watch, Country summary January 2006: Malaysia at <http://hrw.org/wr2k6/pdf/malaysia.pdf> (accessed on August 4, 2006); Human Rights Watch, "Detained without trial, Abuse of Internal Security Act detainees in Malaysia", September 2005, <http://hrw.org/reports/2005/malaysia0905/> (accessed on August 4, 2006).

<sup>27</sup> Amnesty International, *Report 2006, Malaysia* at <http://web.amnesty.org/report2006/mys-summary-eng> (accessed on September 12, 2006).

<sup>28</sup> Human Rights Watch, "Detained without trial, Abuse of internal security act detainees in Malaysia", September 2005 at <http://hrw.org/reports/2005/malaysia0905/> (accessed on August 4, 2006).

<sup>29</sup> Zaid Kamaruddin and Lim Guan Eng, *Country report – torture ascendant in Malaysia*, Asian Human Rights Commission at <http://www.ahrchk.net/pub/mainfile.php/torture2/62/> (accessed on August 4, 2006).

## MALAYSIA

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civil service. In 2006, three women held full ministerial posts in Malaysia's government. Women also held top positions in the state apparatus and are well represented throughout the civil service. On the other hand, Malaysia's Shariah courts, whose jurisdiction for Muslims is compulsory in some areas, have demonstrated egregious discrimination against women, especially in family law cases.

The land rights of indigenous non-Malay groups remain for the most part unprotected in areas targeted for development. In addition, the government has not ratified the U.N. Convention on the Status of Refugees and refuses to distinguish between illegal migrants and genuine asylum seekers. According to the World Refugee Survey conducted by the U.S. Committee for Refugees and Immigrants that was released in June 2005, Malaysia is one of the worst violators of refugee rights.<sup>30</sup>

Malaysia is a multiethnic, multilingual, and multi-religious country. The government has prescribed Sunni Islam as the only "true path" for Muslims in the country. The federal constitution states that Bahasa Malaysia is the national language. Article 160(2) of the constitution defines a Malay as "a person who professes the Muslim religion, habitually speaks the Malay language, and conforms to Malay customs." Many of the restrictions mentioned in previous sections are justified by the authorities with reference to maintaining "peace and harmony" between the religious and racial groups. Although Chinese and Indians, in accordance with the federal constitution, enjoy political and cultural rights and have their economic property rights guaranteed, political stability in society is based on political hegemony of the Malay majority over the various minorities.

### *Individual freedom*

Within the bounds laid down by law, individuals in Malaysia are ostensibly able to shape their own destiny free from illegitimate constraints. However, the authorities continue to police the private lives of Malaysian Muslims in the name of religion and morality. Raids by the religious authorities have subjected Muslim and non-Muslim women to degrading treatment and humiliation.

### *Respect for universally accepted labor standards*

Trade unions are permitted to form, with the Malaysian Trades Union Congress serving as an umbrella organization. However, strike actions are tightly regulated and street protests prohibited. In 2005, the International Labor Organization censured the Malaysian government for its indifference to repeated recommendations to amend certain provisions of the Trade Union Act 1959 and the Industrial Relations Act, which contradict the principles of freedom of association.

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<sup>30</sup> US Committee for Refugees and Immigrants, *World Refugee Survey 2005, Country Report Malaysia* at <http://www.refugees.org/countryreports.aspx?VIEWSTATE=dDwxMTA1OTA4MTYwOztsPENvdW50cnlERDpHb0JldHRvbjs%2BPrImhOOqDI29eBMz8b04PTi8xjW2&cid=1322&subm=&ssm=&map=&ct10%3ASearchInput=+KEYWORD+SEARCH&CountryDD%3ALocationList=> (accessed on August 4, 2006).

## 4. SUGGESTIONS FOR IMPROVEMENT

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As a consequence of the landslide victory of the BN in the March 2004 general elections, there is virtually no checks-and-balances mechanism. Positive developments during the period under review include a mushrooming of NGOs, a widening space for freedom of expression, attempts to combat corruption and increased judicial independence. But most shortcomings and deficits of democracy have not been reversed. In addition, the Abdullah government's reform agenda ran out of steam in late 2005. Despite the government's pledge to reform the police force, unlawful detention, abuse of detainees in custody, corruption and other forms of police misconduct remain extensive.

Fundamental political issues are cordoned off from public discussion and debate, and fundamental democratic principles and rights are restricted *de jure* and *de facto*. This gap has narrowed only slightly in past years. There has been no substantial improvement in the state of "semi-democracy" or "illiberal democracy" in Malaysia.

In the past two years, the Malaysian Human Rights Commission, SUHAKAM, Amnesty International, the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police and many Malaysian NGOs made a number of concrete suggestions for improving human rights, rule of law and democracy in Malaysia. These include:

### *Elections and Multipartyism*

- The independence of the national election commission should be strengthened through improving transparency of the appointment procedures; in addition the EC should report to parliament where the opposition can discuss the issues, and not to the Prime Minister.
- BN and the UMNO should make electoral reform a top priority in their agenda to increase the fairness of the electoral system.

### *Rule of law and separation of powers*

- The independence of the judiciary should be fully recognized by the executive. The government should refrain from criticizing judges and the Bar Council.
- Judicial appointments should be made as transparent and independent as possible. The government should adopt the national Human Rights Commission's proposal of July 2005 for setting up an independent judicial service commission to ensure the transparency of appointments.
- The attorney general's office should gain independence from the executive by making public the criteria by which it institutes, conducts or discontinues hearings.
- The Anti-Corruption Agency should be removed from the Prime Minister's Department.
- The Integrity Management Committee should be given enforcement powers.
- Officials and politicians should be required to declare their assets publicly, and whistle-blowers should not be threatened with prosecution.

## MALAYSIA

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### *Freedom of speech and expression*

- The licensing system associated with the Printing Presses and Publication Act should be abolished to encourage greater media scrutiny of the government.
- Safeguards should be put in place to reduce the partisanship of libel cases.
- The definition of “official secret” should be rendered far more precise; cabinet and State Executive Council decisions should not remain classified as “official secrets” after final adoption; the OSA provisions that allow prolonged detention without charge should be repealed.
- Parliament should adopt a Media Council bill that allows establishing a fully independent press or media council that includes representatives from a cross-section of stakeholders such as journalists, editors, owners and the public.
- A comprehensive access to information law, in line with international standards, should be adopted.
- Safeguards should be put in place to reform the defamation regime in Malaysia and reduce the partisanship of libel cases.

### *Freedom of assembly and association*

- The Police Act should be applied equally and without discrimination.
- The Royal Malaysian Police methods of crowd dispersal should be reviewed, and the police ordered to act with restraint.

### *Freedom from arbitrary arrest, right to a fair trial and freedom from being subjected to cruel, inhuman or degrading treatment or punishment:*

- The ISA and EO should be repealed or amended to no longer allow for arrest and detention of those peacefully expressing religious or political beliefs.
- Those arrested under the ISA or other “emergency laws” should be given prompt and regular access to legal representation.
- The ISA, EO and ODD Act should be repealed or amended so that those suspected of threatening national security or public order can defend themselves in proceedings that meet international standards of fairness.
- The government should adopt in full the recommendations of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police.
- National legislation relevant to policing, including the Police Act and the Criminal Procedure Code should be made consistent with the U.N. Standard of Minimum Rules for the Treatment of Prisoners

### *Gender equality and rights of the weak*

- All reports of violence against women, whether perpetrated by police and other officials or private individuals should be promptly, impartially and thoroughly investigated with a view to holding the perpetrators to account.
- To curb and ultimately end gender bias in the police force, adequate gender-sensitive training should be provided to both senior staff and new recruits to enable them to deal sensitively with complaints of violence against women.

## MALAYSIA

- To include full and equal labor protections for domestic workers, the Malaysian government should amend the Employment Act of 1955, the Workmen's Compensation Act, and other labor laws.
- The Malaysian Ministry of Home Affairs should allow independent and regular inspections of immigration detention centers and visits to migrant workers in custody. They should ensure that conditions meet international standards on the treatment of prisoners.

### 5. STATISTICS AND INDICATORS

World Bank Institute Governance Indicators 2005	Malaysia Score	Key
Voice and Accountability	34.3	Range 0-100 (Lower value indicates weak voice and accountability; higher value indicates strong voice and account)
Political Stability and Absence of Violence	62.3	Range 0-100 (Lower value indicates weak political stability and high violence; higher value indicates opposite)
Government Effectiveness	80.4	Range 0-100 (Lower value indicates weak government effectiveness; higher value indicates strong govt. effectiveness)
Regulatory Quality	66.8	Range 0-100 (Lower value indicates weak regulatory quality; higher value indicates strong regulatory quality)
Rule of Law	66.2	Range 0-100 (Lower value indicates weak rule of law; higher value indicates strong rule of law)
Control of Corruption	64.5	Range 0-100 (Lower value indicates weak control of corruption; higher value indicates strong control of corruption)

Freedom House: Freedom in the World 2007	Malaysia Score	Key
Political Rights	4	Range 1-7 (Lower value indicates good system of political rights; higher value indicates bad system political rights)
Civil Liberties	4	Range 1-7 (Lower value indicates good system of civil liberties; higher value indicates bad system civil liberties)
Status	PF	3 Categories: F (Free); PF (Partly Free); NF (Not Free)

Freedom House: Freedom of the Press 2005	Malaysia Score	Key
Total Score	69NF	Range 0-100 (Lower value indicates total free press; higher value indicates less freedom) / 3 Categories: F (Free); PF (Partly Free); NF (Not Free)

Reporters Without Borders	Malaysia Score	Key
Total Score 2004	39.83	0-100 (Lower value free, higher value less free)
Rank 2004	122	167 countries
Total Score 2005	33.00	0-100 (Lower value free, higher value less free)
Rank 2005	113	167 countries

## MALAYSIA

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Countries at Crossroads 2005	Malaysia Score	Key
Accountability and Public Voice	3.04	Scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance
Civil Liberties	2.97	
Rule of Law	4.01	
Anticorruption and Transparency	2.87	

Bertelsmann Transformation Index 2006	Malaysia Score	Key
Stateness	8.5	Range 0-10 (Lower value indicates negative democratic development; higher value indicates positive democratic development)
Political Participation	4.3	
Rule of Law	5.3	
Stability of Democratic Institutions	2.0	
Political and Social Integration	5.3	
Total Score Political Transformation	5.07	Range 0-10 (Lower value indicates negative democratic development; higher value indicates positive democratic development) / Arrow shows trend in democratic development (↑Improved; ↓Worsened)
Total Score Political Management	5.56	Range 0-10 (Lower value indicates lower quality of political management; higher value indicates higher quality of political management)

Corruption Perceptions Index 2006	Malaysia Score	Key
Total Score	5.0	Range 0-10 (lower value indicates high corruption; higher value indicates lower values of corruption)
Rank	44	163 countries

Asia Democracy Index 2005	Malaysia Score	Key
Score	41.93	0-100 (Lower value low democracy level, higher value high democracy level)
Rank	13	16 countries

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