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Malaysia

Country:

Malaysia

Year:

2018

Freedom Status:

Partly Free

Political Rights:

4

Civil Liberties:

4

Aggregate Score:

45

Freedom Rating:

4.0

Overview:

Although Malaysia holds regular elections, it has been ruled by the same political coalition since independence in 1957. Despite a vibrant political opposition, the ruling coalition has maintained power by manipulating electoral districts, appealing to ethnic nationalism, and suppressing criticism through restrictive speech laws and politicized prosecutions of opposition leaders.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 18 / 40

A. ELECTORAL PROCESS: 6 / 12

A1. Was the current head of government or other chief national authority elected through free and fair elections? 2 / 4

The prime minister is the head of government and chief executive. The leader of the coalition that wins a plurality of seats in legislative elections becomes the prime minister. Thus, the legitimacy of the prime minister generally rests on the conduct of elections.

The paramount ruler, the monarch and titular head of state, is elected for five-year terms by fellow hereditary rulers from 9 of Malaysia's 13 states. In 2016, a new king, Sultan Muhammad V, was sworn in. The role of the king is largely ceremonial, though he retains the power to approve the prime minister.

A2. Were the current national legislative representatives elected through free and fair elections? 2 / 4

The upper house of the bicameral Parliament, the Senate, or Dewan Negara, consists of 44 members appointed by the king and 26 members elected by the 13 state legislatures, serving three-year terms. The Senate has limited powers. The House of Representatives, or Dewan Rakyat, has 222 seats filled through regular elections, the most recent in 2013. The ruling National Front (BN) coalition won the 2013 parliamentary elections, capturing 133 seats in the lower house despite receiving only 47 percent of the overall popular vote. The opposition and observers accused the BN of electoral fraud, citing irregularities such as "phantom voting" and power outages in vote-tallying centers in a number of constituencies that opposition parties hoped to win.

A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 2 / 4

The Election Commission (EC) is officially independent but is comprised of the prime minister and government allies. In practice, it is subordinate to the United Malays National Organization (UMNO), which dominates the BN coalition. The EC is responsible for maintaining voter rolls, and has been accused of enabling "phantom voting" by creating duplicate records of some voters, or by leaving deceased persons on the rolls. The politicized delineation of electoral districts gives the UMNO a significant advantage over the opposition in national elections.

B. POLITICAL PLURALISM AND PARTICIPATION: 7 / 16

B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 2 / 4

Opposition parties have a long and vibrant history in Malaysia, and several state governments are under opposition control. New opposition parties regularly emerge, such as the Bersatu party, which was formed in 2016 and now counts several former leaders of the UMNO in its ranks.

However, opposition parties also face obstacles such as unequal access to the media, restrictions on campaigning and freedom of assembly, and politicized prosecutions. The main opposition coalition has struggled with cohesion since the 2014 re-imprisonment of its Anwar Ibrahim of the opposition People's Justice Party (PKR); Ibrahim has been dogged by claims that he "sodomized" a male aide in 2008, a charge seen as politically motivated

The Registrar of Societies (ROS) oversees the registration of political parties and in the past has issued politicized decisions. In 2017, it declared the 2013 internal leadership elections of the opposition Democratic Action Party (DAP) to be illegal, compromising the

party's ability to operate normally ahead of the 2018 polls. In November, the ROS indicated that it was weighing whether to deregister Bersatu on grounds that the name of its youth wing was illegal.

Separately, in August 2017, the High Court upheld an 18-month jail sentence for opposition politician Rafizi Ramli for making public an audit report on the ongoing 1MDB scandal, leaving the Appellate Court as his final course of appeal.

B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 2 / 4

The extensive manipulations of the electoral process make it exceedingly difficult for the opposition to secure a parliamentary majority without defections from the dominant UMNO-led coalition. State resources are also used to secure support among key voting blocs. There is, however, an opposition presence in the federal parliament and at the state level.

The political opposition has entered new territory with the return of former prime minister Mahathir Mohamed as the founder and chairman of the Bersatu party, and the chairman of the opposition coalition Pakatan Harapan; previously he was with the UMNO, but had broken with the party. Pakatan Harapan may be able to attract additional votes to the opposition in the next general election, which is due by August 2018.

B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 2 / 4

The military is not active in politics and foreign powers do not directly meddle with voting (though China is an increasingly active player in the country). The traditional media and print media especially favor the government, leaving voters with limited information about opposition parties. The ruling party has close links with much of the country's elite business community, giving the ruling party a financial advantage over the opposition.

B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 1 / 4

Suffrage in Malaysia is universal for adult citizens. However, social and legal restrictions limit political activism among some minority groups—including LGBT (lesbian, gay, bisexual, and transgender) communities. Women's interests remain generally underrepresented in politics.

C. FUNCTIONING OF GOVERNMENT: 5 / 12

C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 2 / 4

Most major policy decisions are reached by the prime minister and the cabinet, sometimes with limited input from the remainder of the elected legislature. The biased electoral framework reduces the legitimacy of the elected officials.

C2. Are safeguards against official corruption strong and effective? 1 / 4

High-level corruption remains a major issue in Malaysia. Institutional safeguards are weak and there is insufficient political will to substantially mitigate the problem. Misuse of resources and favoritism are facilitated by the close nexus between political and economic elites, which blurs the distinction between public and private enterprises and creates opportunities for collusion and graft.

Prime Minister Najib's mismanagement of and possible embezzlement from the state development fund 1MDB has continued to be highly controversial domestically and internationally. The U.S. Department of Justice has moved to seize U.S. assets amounting to more than \$1 billion in connection with the scandal.

C3. Does the government operate with openness and transparency? 2 / 4

Many key policy decisions are reached by the inner circle of the ruling coalition without extensive consultation in the legislature or with the broader public. The government regularly clamps down on scrutiny of its operations. In attempting to contain fallout from 1MDB, for example, Prime Minister Najib in 2015 replaced the attorney general and fired several cabinet members that had been critical of the scandal.

CIVIL LIBERTIES: 45 / 60 (+1)**D. FREEDOM OF EXPRESSION AND BELIEF: 7 / 16****D1. Are there free and independent media? 2 / 4**

Freedom of expression is constitutionally guaranteed but restricted in practice. A 2012 amendment to the Printing Presses and Publications Act retains the home minister's authority to suspend or revoke publishing licenses but allows judicial review of such decisions. Most private publications are controlled by political parties or businesses allied with the BN, as are most private television stations, which generally censor programming according to government guidelines. State outlets reflect government views. Books and films are directly censored or banned for profanity, violence, and political and religious content.

The internet is an outlet for the exposure of political corruption, but the Malaysian Communication and Multimedia Commission (MCMC) monitors websites and can order the removal of material considered provocative or subversive. A 2012 amendment to the 1950 Evidence Act holds owners and editors of websites, providers of web-hosting services, and owners of computers or mobile devices accountable for information published through their services or property.

The government engages in legal harassment of critical voices, charging them under defamation laws, the Official Secrets Act, and the Sedition Act—all of which include imprisonment as a possible penalty. In 2016, an independent Malaysian news site, the *Malaysian Insider*, shut down. Though officially for administrative reason, the closure came just after the MCMC ordered the site blocked in response to a report it published claiming that the local antigraft agency had sufficient evidence to bring criminal charges

against Prime Minister Najib. Other independent online news services, like *Malaysiakini* and *Free Malaysia Today*, remain active.

D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 1 / 4

While Malaysia is religiously diverse, some key provisions restrict religious freedom. Ethnic Malays are constitutionally defined as Muslim and are not entitled to renounce their faith. Practicing a version of Islam other than Sunni Islam is prohibited, and Shiites and other sects face discrimination. Muslim children and civil servants are required to receive religious education using government-approved curriculums and instructors. Non-Muslims are not able to build houses of worship as easily as Muslims, and the state retains the right to demolish unregistered religious statues and houses of worship. Despite this, many religious minority communities remain active.

D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 2 / 4

There is some degree of academic freedom in Malaysia, though instructors and students espousing antigovernment views or engaging in political activity are subject to disciplinary action under the Universities and University Colleges Act (UUCA) of 1971.

D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 2 / 4

Surveillance of private activities is largely limited to public personas, though areas deemed to be a threat to Islam are increasingly scrutinized. The Sedition Act has been used to target individuals that publically express ideas deemed sensitive by the state.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 6 / 12 (+1)

E1. Is there freedom of assembly? 2 / 4

Freedom of assembly is limited on the grounds of maintaining security and public order. Street protests are generally prohibited, with high fines for noncompliance. The law delineates 21 public places where assemblies cannot be held—including within 50 meters of houses of worship, schools, and hospitals—and prohibits persons under the age of 15 from attending any public assembly.

However, demonstrations often occur despite these restrictions. In September 2017, the Purple March against Toxic Politics saw over 1,000 women gather in Kuala Lumpur to denounce corruption, electoral fraud, sexism, racism, and other forms of discrimination.

E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work? 2 / 4 (+1)

Nongovernmental organizations (NGOs) must be approved and registered by the government, which has refused or revoked registrations for political reasons. Some international human rights organizations are forbidden from forming local branches.

Nevertheless, a wide array of civil society groups operate in Malaysia. The Bersih (Clean) coalition of civil society organizations and opposition parties has visibly campaigned for electoral, anticorruption, and other reforms in recent years. The government cracked down on Bersih in 2015 and 2016, raiding the offices of various organizers and arresting its senior officials. However, in 2017, Bersih was able to operate somewhat more freely, with representatives able to make public statements and engage in other activities without incurring such serious reprisals.

Many smaller groups operate as well. Civil society organizations played a critical role in the 2017 Purple March against Toxic Politics.

Score Change: The score improved from 1 to 2 due to evidence that Malaysia has a vibrant civil society in spite of government restrictions, and because repression of the Bersih movement eased in 2017 compared to previous years.

E3. Is there freedom for trade unions and similar professional or labor organizations? 2 / 4

Most Malaysian workers can join trade unions, but the law contravenes international guidelines by restricting unions to representing workers in a single or similar trade. The director general of trade unions can refuse or withdraw registration arbitrarily. Collective bargaining is limited, as is the right to strike.

F. RULE OF LAW: 5 / 16

F1. Is there an independent judiciary? 1 / 4

Judicial independence is compromised by extensive executive influence. Arbitrary or politically motivated verdicts occur, as seen in the convictions of Anwar Ibrahim in 1999, 2000, and 2014 on charges of corruption and sodomy.

F2. Does due process prevail in civil and criminal matters? 2 / 4

The 2012 Security Offences (Special Measures) Act allows police to detain anyone for up to 28 days without judicial review for broadly defined “security offenses,” and suspects may be held for 48 hours before being granted access to a lawyer. It was renewed for another five years in April 2017. Later, in August, lawmakers amended the Prevention of Crime Act to revoke detainees’ right to address the government-appointed Prevention of Crime Board (POCB), which makes rulings on their detention.

Malaysia’s secular legal system is based on English common law. However, Muslims are subject to Sharia (Islamic law), the interpretation of which varies regionally, and the constitution’s Article 121 stipulates that all matters related to Islam should be heard in Sharia courts. This results in vastly different treatment of Muslims and non-Muslims in “moral” and family law cases.

F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 1 / 4

Allegations of torture and abuse, including deaths, in police custody continue, and a number of criminal offenses can be punished with caning. Prisons are overcrowded and dangerous. In April 2017, Malaysia's national human rights panel said more than 600 people had died in Malaysian prisons and detention centers over the last two years.

F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 1 / 4

Although the constitution provides for equal treatment of all citizens, it grants a “special position” to ethnic Malays and other indigenous people, known collectively as *bumiputera*. The government maintains programs intended to boost the economic status of bumiputera, who receive preferential treatment in areas including property ownership, higher education, civil service jobs, business affairs, and government contracts.

LGBT Malaysians face widespread discrimination and harassment. Same-sex sexual relations are punishable by up to 20 years in prison under the penal code, and some states apply their own penalties to Muslims under Sharia statutes. The Ministries of Health and Education conduct campaigns to “prevent, overcome, and correct” homosexuality in children, while the Ministry of Information has banned television and radio shows depicting gay characters. The Malaysian Islamic Development Department operates camps to “rehabilitate” transgender Muslims.

G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 9 / 16

G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 3 / 4

Citizens are generally free to travel within and outside of Malaysia, as well as to change residence and employment. However, professional and business opportunities and access to higher education are affected by regulations and practices favoring ethnic Malays (and other bumiputera) and those with connections to political elites.

G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 3 / 4

Malaysia has a vibrant private business sector. Bribery, however, is common in the private sector, and the close nexus between political and private sector elites results in some interference in business from state officials. Some laws pertaining to property and business differentiate between bumiputera and non-bumiputera.

G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 2 / 4

Ethnic Malays and other Muslims face restrictions on marriage partners and other social choices. Social pressures may also regulate appearance, especially among Malay women. Sharia courts often favor men in matters of inheritance and divorce.

G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 1 / 4

The legal differentiation between bumiputera and non-bumiputera citizens effectively places restrictions on the latter. Gender norms likewise restrict some opportunities.

Rural residents continue to find themselves at disadvantages in terms of professional opportunities. Foreign workers, especially those working illegally, are often vulnerable to economic exploitation and abuse.

The trafficking of men, women, and children for the purpose of forced labor or sex work remains a problem, but authorities have recently made some efforts to address the issue, as reflected by an increase in trafficking prosecutions and convictions.

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