

# Freedom in the World 2019

## POLITICAL RIGHTS: 21 / 40 (+3)

### 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. Though formally appointed by the monarch, the prime minister and cabinet must have the support of a majority in the lower house of Parliament. Najib Razak of UMNO, who had served as prime minister since the resignation of his predecessor in 2009, was replaced by Mahathir Mohamad of the Malaysian United Indigenous Party (PPBM)—part of the PH coalition—as a result of the May 2018 parliamentary elections.

The monarch, known as the Yang di-Pertuan Agong, is elected for five-year terms by and from among the hereditary rulers of 9 of Malaysia's 13 states. Sultan Muhammad V of Kelantan took office as the country's head of state in 2016. The role of the monarch is largely ceremonial.

#### **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 monarch on the advice of the prime minister and 26 members elected by the 13 state legislatures, serving three-year terms. The Senate has limited power to amend or block legislation passed by the lower house. The House of Representatives, or Dewan Rakyat, has 222 seats filled through direct elections in single-member constituencies.

In the May 2018 elections, the PH won 113 seats in the House of Representatives, followed by the BN with 79, the Malaysian Islamic Party (PAS) with 18, the Sabah Heritage Party (Warisan) with 8, the Homeland Solidarity Party with 1, and independents with 3. The PH victory came despite lopsided electoral conditions that gave the BN significant advantages, such as gerrymandered and seriously malapportioned voting districts, weak regulation of campaign spending, and legal constraints on media independence and expressions of dissent.

#### **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), which administers elections and is responsible for voter rolls and the delineation of electoral boundaries, was considered subservient to the government under the BN. A new EC chairman was appointed in September 2018, and he pledged to reexamine the voter registry and electoral maps put in place

by the previous commission, which were suspected of facilitating fraud and disenfranchisement.

## **B. POLITICAL PLURALISM AND PARTICIPATION: 9 / 16 (+2)**

### **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**

The party system in Malaysia is diverse and competitive, but groups that challenged BN rule often faced obstacles such as unequal access to the media, restrictions on campaigning and freedom of assembly, and politicized prosecutions. The Registrar of Societies (ROS) oversees the registration of political parties and has been known to issue politicized decisions. In April 2018, shortly before the general elections, the ROS temporarily suspended the PPBM for allegedly failing to submit requested documents.

### **B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 3 / 4 (+1)**

Although opposition parties had long governed in a number of Malaysia's states, the 2018 elections produced the country's first democratic transfer of power between rival political groups at the federal level since independence in 1957.

Shortly after the elections, Anwar Ibrahim, leader of the People's Justice Party (PKR)—part of the PH coalition—received a royal pardon. Anwar, a key opposition figure under BN rule, had been imprisoned since 2015 based on a politically motivated sodomy conviction. He won a seat in Parliament in an October 2018 by-election made possible by the resignation of another PKR member. Mahathir pledged to eventually step down and allow Anwar to succeed him as prime minister, though suspicions that he would not fulfill this promise were reportedly causing tensions within the PH at year's end, as Mahathir's PPBM courted defectors from UMNO to strengthen its political position.

The PH's election manifesto called for the leader of the opposition in Parliament to be given the status of a federal minister, but the new government backed away from that commitment.

*Score Change: The score improved from 2 to 3 due to the Pakatan Harapan coalition's electoral victory in May, which demonstrated the ability of the opposition to win power at both the state and federal levels.*

### **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 in domestic political affairs, though the BN's increasingly close ties with China were a prominent issue in the 2018 election campaign.

During its decades in power, the BN built strong connections with Malaysia's business elites and used these relationships to influence electoral outcomes, including through favorable coverage by mainstream private media and greater access to financial resources. The BN administration was also suspected of using government-linked companies and investment vehicles for political purposes, and the PH government had yet to undertake a comprehensive reform of these entities at year's end.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 2 / 4 (+1)**

Suffrage in Malaysia is universal for adult citizens. However, social and legal restrictions limit political participation among some minority groups—including LGBT (lesbian, gay, bisexual, and transgender) people. Women's interests remain generally underrepresented in politics. In a positive change, the new government formed in 2018 included more women and minority representatives in more powerful positions, and it began consideration of increased autonomy for the East Malaysian states of Sabah and Sarawak, which are located on the island of Borneo and are home to distinct ethnic groups. A special cabinet committee focused on the autonomy issue held its first meeting in December.

UMNO and the PAS remained influential in opposition as defenders of long-standing policies that favor the ethnic Malay and Muslim majority. In November, the PH government backtracked on an earlier pledge to ratify the ICERD, and opponents of the convention held a large demonstration in December.

*Score Change: The score improved from 1 to 2 because the new federal government represented a more diverse coalition of ethnic and religious interests than its predecessor.*

**C. FUNCTIONING OF GOVERNMENT: 6 / 12 (+1)**

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

While elected officials determine and implement government policy, the unfair electoral framework has historically weakened their legitimacy. Decision-making power has typically been concentrated in the hands of the prime minister and his close advisers, though the PH government showed some signs of broader consultation in 2018, and the budget for the prime minister's office was slashed by more than half.

**C2. Are safeguards against official corruption strong and effective? 2 / 4 (+1)**

High-level corruption was a critical weakness of the BN government, and Najib's efforts to avoid accountability for the 1MDB scandal had crippled the country's anticorruption mechanisms more generally. The Malaysian Anti-Corruption Commission (MACC) and other law enforcement institutions grew more active after

the change in government, unleashing a raft of investigations against the former leadership. Najib himself was arrested in July, eventually facing dozens of counts of money laundering and other charges, most of them linked to 1MDB. His wife, Rosmah Mansor, was arrested in October and charged with money laundering and bribery, and his successor as UMNO leader, former deputy prime minister Ahmad Zahid Hamidi, was arrested the same month. Other former officials were also charged during the year.

*Score Change: The score improved from 1 to 2 because anticorruption authorities under the new government were allowed to pursue charges against former officials, including the former prime minister, who had previously avoided accountability for alleged abuses.*

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

The BN government had a poor record on transparency, and a lack of independent oversight regarding state-affiliated companies and investment funds has long created conditions conducive to corruption. The PH government pledged to operate with greater openness, but its initial performance was uneven. At the end of 2018 it had yet to make public the findings of the Institutional Reforms Committee, which was formed after the elections and produced more than 200 recommendations meant to improve government integrity and prevent corruption. The government was also still reviewing a possible freedom of information act and amendments to existing laws, such as the Official Secrets Act, that deter whistle-blowers and journalists from exposing information in the public interest.

## **CIVIL LIBERTIES: 31 / 60 (+4)**

### **D. FREEDOM OF EXPRESSION AND BELIEF: 9 / 16 (+2)**

#### **D1. Are there free and independent media? 3 / 4 (+1)**

Freedom of expression is constitutionally guaranteed but was limited in practice under the BN government. Prior to the 2018 elections, most private news publications and television stations were controlled by political parties or businesses allied with the BN, and state news outlets similarly reflected government views. The market began to change after the PH took power, with some BN-linked outlets suffering financially and others producing more neutral coverage, even as independent outlets benefited from a reduction in political pressure and harassment.

The PH government pledged to reform restrictive media laws, but its progress during the year was limited. The House of Representatives voted in August to repeal the Anti-Fake News Act, which the BN had hastily adopted in April, but the Senate—still controlled by the BN—blocked the repeal in September. The original law, which remained in place at year's end, prescribes large fines and up to six years in prison for the publication of wholly or partly false news. The PH also failed to act on its promise to repeal the Sedition Act, though it did oversee a change in enforcement, with authorities dropping cases against prominent critics of the former government,

including a well-known political cartoonist.

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. While there were no major reforms to the legal framework for online media in 2018, the MCMC did end its blocking of a number of websites in May, including *Sarawak Report* and the blogging platform Medium.

*Score Change: The score improved from 2 to 3 because mainstream media outlets generally became more politically neutral in their coverage following the change in government, authorities dropped sedition charges against some critics, and certain news sites were unblocked by regulators.*

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

While Malaysia is religiously diverse, legal 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. Some 50 people were arrested in Kelantan in August 2018 for allegedly practicing Shia Islam. Muslim children and civil servants are required to receive religious education using government-approved curriculums and instructors. The powerful Malaysian Islamic Development Department (JAKIM) played a central role in shaping and enforcing the practice of Islam in Malaysia under the BN government; the PH government began exploring reforms of the department during 2018.

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. In November 2018, a dispute over the relocation of a Hindu temple triggered rioting, with assailants allegedly linked to a property developer storming the temple and beating worshippers.

## **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. Under the BN government, instructors and students who espoused antigovernment views or engaged in political activity were subject to disciplinary action under the Universities and University Colleges Act (UUCA) of 1971. Under the new government, in December 2018, Parliament amended the UUCA to allow students to engage in political activity on campus. In August, the government abolished two youth-oriented BN projects, the National Service Training Programme and the National Civics Bureau, that had been criticized for indoctrinating participants and wasting public funds. The government continues to control appointments of top officials at public universities; in 2018 the PH education minister replaced several university chairmen who had been installed by the BN.

**D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 3 / 4 (+1)**

The Sedition Act and other restrictive laws have been used to deter and punish individual expression on sensitive political and religious topics, including on social media. Under the PH in 2018, the authorities dropped sedition cases against prominent public figures who had criticized the BN government, and the Sedition Act was temporarily suspended in October as lawmakers prepared to amend or repeal it. The suspension was lifted in late November in response to the violence surrounding the Hindu temple dispute, and some new cases were opened during the year over alleged hate speech as well as defamation of senior officials. An UMNO-affiliated blogger was arrested in November for a Facebook post in which he attacked ethnic Indians. Nevertheless, the government's statements and initiatives during the year generally created a more open environment for public discussion of issues that had previously been considered off limits.

*Score Change: The score improved from 2 to 3 because the new government's pledges to abolish the Sedition Act and other restrictions on expression, though still largely unfulfilled, encouraged more open discussion of previously sensitive political issues, including abuses of power under the previous government.*

**E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 6 / 12**

**E1. Is there freedom of assembly? 2 / 4**

Freedom of assembly can be limited on the grounds of maintaining security and public order. 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. Those who proceed with a banned protest are subject to penalties including high fines. Despite the legal restrictions, demonstrations are often held in practice. Police continued to enforce existing laws under the PH government, arresting and charging unauthorized protesters on multiple occasions during 2018, though authorities approved the large opposition-led protest against ratification of ICERD in December.

**E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights— and governance-related work? 2 / 4**

During the BN era, many nongovernmental organizations (NGOs) worked with opposition parties to campaign for electoral, anticorruption, and other reforms, and a wide array of civil society groups continue to operate in Malaysia. However, NGOs must be approved and registered by the government, which has refused or revoked registrations for political reasons in the past. Some international human rights organizations have been forbidden from forming local branches. Individual activists remained subject to police harassment and criminal charges after the 2018 change in government, and certain NGOs were affected by the authorities' efforts to freeze assets that could be linked to the 1MDB scandal.

### **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 rights are limited, particularly in designated high-priority industries, as is the right to strike.

## **F. RULE OF LAW: 7 / 16 (+2)**

### **F1. Is there an independent judiciary? 2 / 4 (+1)**

Under the BN government, judicial independence was compromised by extensive executive influence. Arbitrary or politically motivated verdicts were common, as seen in the convictions of Anwar Ibrahim in 1999, 2000, and 2014 on charges of corruption and sodomy. In June 2018, Chief Justice Raus Sharif and Court of Appeal president Zulkefli Ahmad Makinudin resigned. Both had been controversially appointed in 2017 despite being over the mandatory retirement age and were seen as loyal to the BN administration. A new chief justice, Richard Malanjum, took office in July; he was considered more independent and was the first person from East Malaysia to serve in the post. Among other, similar personnel changes, Zaharah Ibrahim became the second woman to serve as chief judge of Malaya, the country's third-highest judicial office.

*Score Change: The score improved from 1 to 2 due to the replacement of senior judicial officials who were seen as politically biased and dependent on the former government.*

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

A number of existing laws undermine due process guarantees, and they remained in place throughout 2018 despite PH plans to review them. 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 2017. Also that year, lawmakers amended the Prevention of Crime Act—a law ostensibly aimed at combating organized crime—to revoke detainees’ right to address the government-appointed Prevention of Crime Board, which is empowered to order the detention of individuals listed by the Home Ministry for renewable two-year terms without trial or legal representation. The 2015 Prevention of Terrorism Act together with the National Security Council (NSC) Act from the same year gives the NSC—led by the prime minister—wide powers of arrest, search, and seizure without a warrant in areas deemed as security risks and in the context of countering terrorism.

Malaysia’s secular legal system is based on English common law. However, Muslims are subject to Sharia (Islamic law), the interpretation of which varies by state, 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? 2 / 4 (+1)**

Torture and abuse in police custody remain problems, and prisons are often overcrowded and unsafe. A number of criminal offenses can be punished with caning, including immigration violations.

In October 2018, the PH government announced plans to abolish the death penalty, instituting an immediate moratorium on executions for the roughly 1,300 prisoners on death row. Most were convicted under the country’s harsh laws on drug trafficking. The proposed legal changes were still pending at year’s end.

*Score Change: The score improved from 1 to 2 because the new government placed a moratorium on executions for the roughly 1,300 prisoners on death row, most of whom were convicted of drug offenses.*

**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.

Women are placed at a disadvantage by a number of laws, particularly Sharia-related provisions. They are legally barred from certain occupations and work schedules, and they suffer from de facto discrimination in employment.

LGBT Malaysians face widespread discrimination and harassment. Same-sex sexual relations are punishable by up to 20 years in prison under the penal code, though this is generally not enforced. Some states apply their own penalties to Muslims under Sharia statutes. In September 2018, a Sharia court in Terengganu subjected two women to caning as punishment for attempting to have same-sex relations. Transgender people can also be punished under state-level Sharia laws.

**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 opportunities and access to higher education are affected by regulations and practices that favor bumiputera and those with connections to political elites. Although the practice is illegal, employers of migrant workers commonly hold their passports, preventing them from leaving abusive situations.

**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 sector. Bribery, however, is common in the business world, and the close nexus between political and economic elites distorts normal business activity and fair competition. Some laws pertaining to property and business differentiate between bumiputera and non-bumiputera, and Sharia-based inheritance rules for Muslims often favor men over women.

**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**

While some personal social freedoms are protected, Muslims face legal restrictions on marriage partners and other social choices. Social pressures may also regulate dress and appearance, especially among Malay women. Sharia courts often favor men in matters of divorce and child custody. The minimum age for marriage is generally 16 for girls and 18 for boys, but Sharia courts in some states allow younger people to marry. In October 2018, Mahathir called on all state governments to raise the minimum age to 18 for Muslims and non-Muslims of both genders.

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

Rural residents and foreign workers, especially those working illegally, are vulnerable to exploitative or abusive working conditions, including forced labor or debt bondage. Foreign workers make up over a fifth of the country's workforce; about two million are documented, and estimates of the undocumented range from one million to more than two million. The authorities' periodic crackdowns on illegal foreign workers can result in punishment rather than protection for victims of human trafficking.

There have been no convictions of Malaysians for involvement in a network of human trafficking camps along the Thai-Malaysian border since the sites were discovered in 2015. The camps included mass graves holding the bodies of dozens of victims, and corrupt Malaysian officials were thought to have been complicit in the operation.