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FREEDOM IN THE WORLD

Malaysia

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OVERVIEW:

In 2012, the ruling Barisan Nasional coalition used a combination of economic rewards, reformist rhetoric, and continued repression of opposition voices in a bid to ensure victory in the next elections, expected to take place by spring 2013. The restrictive new Peaceful Assembly Act was used for the first time in April to impose limits on a large demonstration calling for clean elections. The protest ended in violent clashes with police, who were accused of using excessive force. Meanwhile, despite the repeal of the Internal Security Act and amendments to the Printing Presses and Publications Act, the Evidence Act, and the Sedition Act, the government retained considerable powers to curb civil liberties and control the media.

Malaya gained independence from Britain in 1957 and merged with the British colonies of Sarawak and Sabah to become the Federation of Malaysia in 1963. The ruling Barisan Nasional (National Front, or BN, known as the Alliance before 1969) won at least a two-thirds majority in 10 of the first 11 general elections after independence, the exception being the 1969 elections, which were nullified following largely anti-Chinese race riots. The BN consists of mainly ethnic parties, dominated by the conservative, Malay-based United Malays National Organization (UMNO).

Mahathir Mohamed served as prime minister from 1981 to 2003. His development policies transformed Malaysia into a hub for multinational corporations and high-technology exports. At the same time, he stunted democratic institutions, weakened the rule of law by curtailing the press and political opponents, and drew allegations of cronyism with his state-led industrial development.

In 2003, Mahathir stepped down and handed power to his deputy, Abdullah Ahmad Badawi. The BN won 198 of the 219 seats in the lower house of Parliament in the 2004 elections, though opposition allegations of vote buying and problems with the electoral roll were substantiated. A series of court rulings during 2006 denied certain religious and legal rights to non-Muslims, sparking debate on constitutional guarantees and the role of Islam in Malaysia. The government took action to suppress press coverage, public discussion, and related activism on ethnic issues by non-Malay groups, citing the need to prevent national unrest.

During 2007, public frustration skyrocketed in response to government suppression of peaceful protests, high-level political corruption cases, a related crackdown on online media, and a crisis involving alleged politicization of the judiciary. Demands for electoral reform in advance of the 2008 general elections—coupled with perceptions of rising crime, corruption, and inflation—triggered the largest antigovernment demonstrations in nearly a decade.

In the March 2008 elections, the BN secured just 140 of the 222 lower house seats, losing its two-thirds majority—and its ability to amend the constitution

2013 SCORES

STATUS

Partly Free

FREEDOM RATING

4.0

CIVIL LIBERTIES

4

POLITICAL RIGHTS

4

unilaterally—for the first time since 1969. The opposition People's Justice Party (PKR) captured 31 seats, followed by the Democratic Action Party (DAP) with 28 and the Islamic Party of Malaysia (PAS) with 23. These opposition parties also won control of five of Malaysia's 13 states and formed a coalition called the People's Alliance (PR). However, the PR later suffered from infighting and lost control of the state of Perak in 2009 after a handful of crucial defections in the state assembly. Meanwhile, Abdullah stepped down as UMNO leader and prime minister and was succeeded in April 2009 by his deputy, Najib Razak.

In December 2010, PKR leader Anwar Ibrahim was suspended from Parliament for six months after he compared Najib's 1Malaysia program—designed to promote racial and religious unity—to a similar program in Israel. Three of his PKR colleagues received similar punishment for vocally objecting to the suspension. Anwar was also dogged by claims that he sodomized a young male aide in June 2008, a charge he said was a politically motivated fabrication. He was finally acquitted in January 2012.

A mass demonstration calling for electoral reform was forcibly dispersed by police in July 2011, prompting domestic and international criticism. In September, the government announced plans to repeal the draconian Internal Security Act (ISA), amend the Police Act to expand protections for freedom of assembly, and ease media restrictions in the 1984 Printing Presses and Publications Act (PPPA). However, the Peaceful Assembly Act passed by Parliament in December further tightened the conditions for legal protests, and although the ISA was replaced in June 2012 with a new security law, critics questioned whether the change was a substantial improvement. The PPPA was amended in April 2012 to limit ministerial discretion in licensing decisions, but many media controls remained in place.

Also during 2012, the ruling coalition took a number of steps to win over key voting blocs ahead of national elections that were due by spring 2013. The government authorized raises for civil servants, one-time payments of 500 ringgit (\$165) to poor families, and book vouchers for high school and college students. Another large demonstration to demand electoral reform in April 2012 was marred by police violence, and organizers faced criminal charges despite the new assembly law; the cases remained unresolved at year's end.

POLITICAL RIGHTS AND CIVIL LIBERTIES:

Malaysia is not an electoral democracy. The leader of the coalition that wins a plurality of seats in legislative elections becomes prime minister. Executive power is vested in the prime minister and cabinet. The paramount ruler, the titular head of state, is elected for five-year terms by fellow hereditary rulers in 9 of Malaysia's 13 states. Tuanku Abdul Halim Mu'adzam Shah was elected to the post in December 2011. The upper house of the bicameral Parliament consists of 44 appointed members and 26 members elected by the state legislatures, serving three-year terms. The lower house, with 222 seats, is popularly elected at least every five years.

The ruling BN is a coalition of 13 parties, most with an ethnic or regional base, including the dominant UMNO as well as the Malaysian Chinese Association (MCA) and the Malaysian Indian Congress (MIC). The 2008 electoral gains of the three main opposition parties—the DAP, PAS, and PKR—came despite serious obstacles, such as unequal access to the media and restrictions on campaigning and freedom of assembly, which left them unable to compete on equal terms with the BN. The first-past-the-post voting system also increases the power of the largest grouping, and national electoral outcomes have been affected by the malapportionment of constituencies in favor of East Malaysia. In 2008, the BN won just 51 percent of the vote but secured 140 of 222 lower house seats.

The Election Commission (EC) is frequently accused of manipulating electoral rolls and gerrymandering districts to aid the ruling coalition, and the Registrar of Societies arbitrarily decides which parties can participate in politics. On April 3, 2012, a government committee issued recommendations for electoral reforms, many of which had been called for by the Coalition for Free and Fair Elections (Bersih)—an alliance of civil society organizations working for electoral reforms, transparency in government, and an end to corruption. However, there was

widespread skepticism that the existing EC could be trusted to implement the recommended changes.

Government and law enforcement bodies have suffered a series of corruption scandals. The Malaysian Anti-Corruption Commission (MACC) has itself come under scrutiny for its interrogation practices, as two suspects have died after falling from MACC office buildings since 2009. Inquests ruled one death a suicide and the other an accident. In 2011, Shahrizat Abdul Jalil, the minister for women, family, and community development, became embroiled in a corruption scandal along with her husband, Mohamad Salleh Ismail, the executive chairman of National Feedlot Corporation (NFC). They were accused of using an \$82 million loan to the company to buy personal real estate. In March 2012, Mohamad Salleh was formally charged with misappropriating NFC funds, and the next day Shahrizat announced her resignation as minister, though she kept her party position as head of UMNO's women's wing. The MACC declared that there was no case against her. In October, the chief minister of the state of Sabah, Musa Aman, was cleared of charges that he had accepted 40 million ringgit (\$13 million) as part of a money-laundering scheme involving timber trader Michael Chia. Malaysia was ranked 54 out of 176 countries surveyed in Transparency International's 2012 Corruption Perceptions Index. A Whistleblower Protection Act took effect in December 2010, but it did not significantly improve transparency.

Freedom of expression is constitutionally guaranteed but restricted in practice. Parliament amended the PPPA in April 2012, retaining the home minister's authority to suspend or revoke publishing licenses but allowing judicial review of such decisions. The amendments also eliminated the requirement that publications and printers obtain annual operating permits. Section 114A, 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 used to publish content online accountable for information published on their sites or through their services. Malaysian press freedom advocates, bloggers, and opposition politicians staged a 24-hour internet blackout to protest the legislation. Critics of the legislation also charged that it would effectively shift the burden of proof on the accused. Most private print outlets are controlled by parties or business groups allied with the BN. Privately owned television stations also have close ties to the BN and 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 material. In August 2012, a Malay Muslim manager at a Borders bookstore was charged with distributing a book offensive to Islam, even though she was not responsible for selecting the store's inventory. She is facing a possible 3,000 ringgit (\$990) fine and two years in jail; the case was pending at year's end.

The internet has emerged as a primary outlet for free discussion and for exposing cases of political corruption. The government has responded in recent years by engaging in legal harassment of critical bloggers, charging them under defamation laws, the ISA, the Official Secrets Act, and the Sedition Act, all of which can draw several years in prison. In July 2012, Prime Minister Najib Razak announced plans to repeal the Sedition Act, but it would be replaced with a National Harmony Act that serves the same purpose of limiting free speech; the Sedition Act had not been repealed by year's end. The Malaysian Communication and Multimedia Commission (MCMC), an agency responsible in part for regulating the internet, has been known to monitor online content and order outlets or bloggers to remove material it views as provocative or subversive.

While the BN government continues to articulate the need for a tolerant and inclusive form of Islam, religious freedom is restricted in Malaysia. Ethnic Malays are defined by the constitution as Muslims, and practicing a version of Islam other than Sunni Islam is prohibited. Muslim children and civil servants are required to receive religious education using government-approved curriculums and instructors. Proselytizing among Muslims by other religious groups is prohibited, and a 2007 ruling by the country's highest court effectively made it impossible for Muslims to have their conversions to other faiths recognized by the state; in very rare exceptions, non-Malays have been allowed to revert to their previous faiths after converting to Islam for marriage. 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 2012, mainstream media outlets attacked the Shiite minority, with the newspaper *Utusan Malaysia* labeling Shiite beliefs as “deviant teachings” and “serious threats”.

A court ruling in late 2009 overturned a government ban prohibiting non-Muslims from using the word Allah to refer to God, touching off a wave of January 2010 arson attacks and vandalism that struck Christian churches as well as some Muslim and Sikh places of worship. Appeals in the case seemed to be in stasis by 2011, and the 2009 ruling had yet to be enforced. Public debate over the issue was rekindled in late 2012 amid disagreement between the DAP and PAS.

The government restricts academic freedom; teachers or students espousing antigovernment views or engaging in political activity have long been subject to disciplinary action under the Universities and University Colleges Act (UUCA) of 1971. However, following a 2011 court finding that the constitution protected students’ involvement in political campaigns, Parliament in April 2012 amended the UUCA to allow students to take part in political activities off campus.

Freedoms of assembly and association are limited on the grounds of maintaining security and public order. The Peaceful Assembly Act, passed in late 2011, lifted a rule requiring police permits for nearly all public gatherings. However, other provisions were seen as a bid to restrict rather than safeguard freedom of assembly, including a prohibition on street protests and the levying of excessive fines for noncompliance with this rule. At the end of April 2012, Bersih held a rally of some 100,000 people to call for clean elections, the resignation of the incumbent election commission, and international monitoring of the next elections. While the rally was mostly peaceful, violence erupted after a small number of demonstrators crossed police barricades. Dozens of people were injured, and a Malaysian Bar Council report issued two weeks later found that the police’s use of force was “indiscriminate, disproportionate, and excessive.” Leaders of the demonstration faced criminal charges and a government civil suit seeking 122,000 ringgit (\$40,000) in damages. Bersih officials in turn filed a challenge of the Peaceful Assembly Act’s constitutionality; no ruling had been made as of year’s end. Separately during the year, right-wing groups and individuals harassed and denigrated Bersih cochair Ambiga Sreenevasan, who was also harassed while traveling abroad.

The Societies Act of 1996 defines a society as any association of seven or more people, excluding schools, businesses, and trade unions. Societies must be approved and registered by the government, which has refused or revoked registrations for political reasons. Numerous nongovernmental organizations operate in Malaysia, but some international human rights organizations are forbidden from forming Malaysian branches. Suaram, one of the leading human rights groups in the country, faced government harassment in 2012, including allegations of financial irregularities.

Most Malaysian workers—excluding migrant 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, and the union recognition process can take from 18 to 36 months. Collective bargaining is limited. Unions in essential services must give advance notice of strikes; various other legal conditions effectively render strikes impossible. Amendments in November 2011 to the Employment Act further weakened workers’ rights by removing responsibility from employers and allowing greater use of subcontracting arrangements.

Judicial independence has been compromised by extensive executive influence. Arbitrary or politically motivated verdicts are not uncommon, with the most prominent example being the convictions of opposition leader Anwar Ibrahim in 1999 and 2000 for corruption and sodomy. The 1999 sodomy conviction was overturned in 2004, and Anwar was released from prison, but the corruption charge was upheld, delaying his return to elected office until 2008. A second sodomy case against him began that year, ending with an acquittal in January 2012.

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 dealt with in Sharia courts. This results in vastly different treatment of Muslims and non-Muslims regarding "moral" and family law issues.

Individuals may be arrested without a warrant for some offenses and held for 24 hours without being charged. The ISA, in force since 1960, gave the police sweeping powers to hold any person acting "in a manner prejudicial to the security of Malaysia" for up to 60 days, extendable to two years without trial. The law was used to jail mainstream politicians, alleged Islamist militants, trade unionists, suspected communist activists, ordinary criminal suspects, and members of "deviant" Muslim sects, among others. Detainees have reported cases of torture while in custody, but official documentation of these claims is rare. The ISA was replaced in June 2012 with the Security Offences (Special Measures) Act, which abolished preventive detention but left the definition of "security offences" so broad as to raise serious concerns about the genuine intent of the measure. The new law allows police to detain anyone without judicial review, and suspects may be held for 48 hours before being granted access to a lawyer.

Although the constitution provides for equal treatment of all citizens, the government maintains an affirmative-action program intended to boost the economic status of ethnic Malays and other indigenous people, known collectively as bumiputera. Bumiputera receive preferential treatment in areas including property ownership, higher education, civil service jobs, and business affairs, and bumiputera-owned companies receive the lion's share of large government contracts.

Foreign household workers are often subject to exploitation and abuse by employers. An estimated two million foreigners work in Malaysia illegally. If arrested and found guilty, they can be caned and detained indefinitely pending deportation.

Women are still underrepresented in politics, the professions, and the civil service. Violence against women remains a serious problem. Muslim women are legally disadvantaged because their family grievances are heard in Sharia courts, where men are favored in matters such as inheritance and divorce and women's testimony is not given equal weight. Despite some progress in investigating and punishing sex-trafficking offenses, government efforts to combat trafficking are criticized as inadequate.

Members of the LGBT (lesbian, gay, bisexual, and transgender) community face discrimination and harassment. In 2012, Prime Minister Najib called the LGBT community an example of a "deviant culture" that threatens Malaysia. His remarks were consistent with those found in the country's mainstream media. Homosexual conduct is punishable by up to 20 years in prison under the penal code, and some states apply their own penalties to Muslims under Sharia statutes.

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