



MALAYSIA

CAPITAL: Kuala Lumpur

POPULATION: 28.3 million

GNI PER CAPITA (PPP): \$13,740

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	3.00	3.15
CIVIL LIBERTIES:	3.00	2.88
RULE OF LAW:	4.12	3.84
ANTICORRUPTION AND TRANSPARENCY:	3.00	2.94

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

WILLIAM CASE

INTRODUCTION

Malaysia's ethnically diverse population of 25 million consists of ethnic Malays (60 percent), Chinese (25 percent), Indians (8 percent), and a great variety of smaller groupings, most of them based in Sabah and Sarawak states on the island of Borneo. Much of this diversity evolved during British colonial rule, when laborers were recruited from China and India to work in mining and plantation agriculture. In preparing the territory for independence in 1957, the British fashioned a formally democratic polity and a largely capitalist economy. But the Malays, regarded as the indigenous community, gained sway over the party system and state bureaucracy through the United Malays National Organization (UMNO). Meanwhile, foreign investors and local Chinese dominated the economy.

As urbanization accelerated during the 1960s, Malays gravitated to the cities, where they witnessed the comparative prosperity of the non-Malay groups. At the same time, many non-Malays were alienated by the restrictions they faced in obtaining public sector benefits. Voters in both communities swung to opposition parties in the May 1969 general elections, leaving the UMNO-led coalition—which included the Malaysian Chinese Association (MCA) and the Malaysian Indian Congress (MIC)—gravely weakened. Shortly afterward,

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Malays and Chinese clashed in the streets of the capital, Kuala Lumpur, sparking ethnic rioting known locally as the May 13th incident. Two years of emergency rule followed, during which elections were suspended and Parliament was closed.

Parliament was reopened in 1971, but UMNO imposed new curbs on civil liberties. Most notably, in seeking to reenergize its ethnic constituency, the party passed a sedition law that banned any questioning of Malays' "special rights." UMNO also limited electoral competitiveness, absorbing most opposition parties into its coalition, renamed the National Front (Barisan Nasional, or BN), and greatly elevating its own standing within this formation. Once it had tightened its grip on state power by establishing what is sometimes described as an "electoral authoritarian" regime,¹ UMNO was free to introduce its New Economic Policy (NEP), a comprehensive affirmative action program whose quotas on public and private sector hiring, state contracts and licensing, and even business ownership were geared toward "uplifting" the Malays.

UMNO's dominance of politics and deep economic intervention led to a range of political abuses, corrupt practices, and social inequities. Prime Minister Mahathir Mohamad (1981–2003) oversaw rapid economic growth, which gradually eased citizens' grievances. By the mid-1990s, Mahathir was able to relax his government's pro-Malay posture, declaring a Vision 2020 program based on national unity and full development. However, the financial crisis of 1998, followed by the arrest and imprisonment of Mahathir's popular deputy, Anwar Ibrahim, triggered a sharp upsurge in public discontent. Civil society began to display new vigor, and two key opposition parties, the Islamic Party of Malaysia (PAS) and the largely ethnic Chinese Democratic Action Party (DAP), found new grounds for cooperation. The BN clung to power in the 1999 general elections, thanks in part to the government's electoral manipulations, but it was dealt a serious blow as large numbers of Malays supported PAS and the non-Malays reaffirmed their earlier swing to the DAP.

Malaysia's economy had recovered significantly by the end of 2003, and Mahathir was succeeded by his deputy, Abdullah Ahmad Badawi. Exercising a less authoritarian leadership style, Abdullah tried to introduce reforms. The judiciary seemed to signal more independence by releasing Anwar from prison, though it did not fully exonerate him of corruption charges. Media self-censorship and coercion were still present, but controls over communication and assembly were less rigidly enforced. And efforts were made early on to strengthen the rule of law, but these were generally stymied. Probably the most outstanding feature of Abdullah's tenure was an increase in electoral competition that culminated in the March 2008 general elections, in which the UMNO-led coalition lost its two-thirds majority in the lower house of Parliament for the first time since 1969.

Suspensions between PAS and the DAP persisted, with the latter fearing that the PAS had a hidden Islamist agenda, but the mediation of Anwar's People's Justice Party (PKR) allowed the three parties to forge electoral agreements. The

opposition coalition was able to appeal to devout Muslims in rural areas; progressive Malays in the cities; and non-Malays alienated by UMNO “arrogance,” threats to religious freedom, and a weakening economy. These constituencies had also been disillusioned by the fact that Abdullah’s efforts to curb corruption had been thwarted by politicians within UMNO. After the elections, collaboration between the PAS, the DAP, and the PKR was formalized as the People’s Pact (Pakatan Rakyat).

UMNO blamed Abdullah for its electoral losses, and as the economy began to slow, he was pressed to resign as UMNO leader and prime minister. He ultimately stepped down in April 2009 and was succeeded by his deputy, Najib Razak. At the same time, authoritarian controls were gradually reimposed, with a number of opposition and civil society leaders arrested, the licenses of several newspapers suspended, and destabilizing pressures aimed at the state governments captured by opposition parties in the recent elections. As of mid-2009, it appeared that the UMNO-led government was trying vigorously to return Malaysia to its former system of electoral authoritarianism.

ACCOUNTABILITY AND PUBLIC VOICE

3.15

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	3.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.25
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	2.43

General elections are held regularly in Malaysia, as specified in the constitution. The elected prime minister wields state power, the voting is inclusive, there is contestation by multiple parties, and vote counting and reporting are carried out promptly. However, there are a number of distortions that favor incumbents. The campaign period is kept brief, usually less than two weeks. Public rallies during electoral campaigns were banned in 1978. The Election Commission announced in 2003 that it would lift the ban, but still requires organizers to obtain police permits. Opposition candidates receive little access to mainstream media outlets. And while limits on campaign contributions and spending are formally codified, the government mostly ignores them with impunity.² Furthermore, electoral rolls are frequently manipulated, and until recently the ballots contained numbered counterfoils, potentially undermining voting secrecy. Counting centers in sparsely populated areas are small, allowing local political preferences to be discerned. Opposition parties are not permitted to oversee the counting of postal ballots cast by members of the military and police, nor do they have equal access to polling station data. The Election Commission itself is appointed by the government and cannot be regarded as impartial. Municipal- and district-level elections have been suspended since the mid-1960s.

Parliament consists of the 70-seat Senate, with 44 members appointed by the monarch and 2 each chosen by the 13 state assemblies for up to two

three-year terms, and the more powerful House of Representatives, with 222 popularly elected members serving five-year terms. The lower house's first-past-the-post electoral system based on single-member districts magnifies the thin margins that the government sometimes obtains. The redrawing of constituency boundaries, last organized by the Election Commission in 2003,³ is also manipulated to strengthen the ruling coalition. However, in the most recent elections, this strategy lost effectiveness in the ethnically "mixed" constituencies where the government has usually fared best. Typically, while opposition parties can gain significant numbers of parliamentary seats and capture some state-level assemblies outright, they have little prospect of winning enough seats to replace the federal government. They are especially hampered in the large and sparsely populated states of Sabah and Sarawak, where the BN has relied on local strongmen and patronage politics turning principally on timber concessions.

The opposition overcame such hurdles to make unprecedented gains in the March 2008 elections. In the 2004 vote, the BN had won 198 of 219 seats in the lower house of Parliament (90.4 percent), while the opposition parties together won a mere 21 (9.6 percent). In 2008, the government took just 140 of 222 seats (63 percent), losing its long-standing two-thirds majority, which had allowed it to unilaterally amend the constitution. The opposition parties won a total of 82 seats (37 percent), and in the state elections they captured four state assemblies while retaining a fifth. This impressive showing was characterized by DAP leader Lim Kit Siang as a "political tsunami."⁴ Anwar's ban on holding public office, which stemmed from his corruption conviction, expired a few months after the balloting, and his wife stepped down from her Parliament seat so that he could replace her in a by-election. Anwar returned to Parliament in August, and because the PKR had won the most seats among the opposition parties, he was promptly made opposition leader.

While Parliament has since grown more active and the BN can no longer alter the charter on its own, the body remains subservient to the executive. Almost all legislation is initiated by the government. Only a few ministers typically attend parliamentary sessions during question time. Lacking support and information, opposition legislators are unable to impose much accountability on the government or seriously investigate the bureaucracy, which remains tightly fused with UMNO. Though the government claims to hire and promote civil servants based on merit, this is severely compromised by ethnic quotas that heavily favor Malays. The government also dominates the judiciary, ensuring favorable rulings in most politically important cases.

Prior to the 2008 general elections, probably the most significant by-election during Abdullah's tenure was conducted in May 2007 in the Selangor state assembly constituency of Ijok. The government's candidate, a local politician, was challenged by a prominent corporate executive nominated by the PKR. However, the government showered the constituency with road-paving, mosque-building, drain-clearing, and land-titling projects, helping its candidate to victory. As the minister of works at the time observed, "Ijok got 10

years of projects in 10 days.”⁵ After the general elections, parties in the opposition People’s Pact won a string of parliamentary and state assembly by-elections throughout 2008. However, in several of the states it controlled, most notably Perak and Selangor, its members came under extraordinary pressure from the courts and anticorruption agencies (see below).

The constitution guarantees freedom of association. While nongovernmental organizations (NGOs) must register with the state under the Societies Act, the requirements are not usually onerous, and a reasonably vigorous civil society has emerged in urban areas. Still, restrictions are imposed in the interest of “security and public order.” Amendments to the Police Act of 1967 require that a permit be obtained 14 days before any political meeting of more than three persons. In these circumstances, freedom of assembly is unevenly protected. The government often works with NGOs that it regards as helpful in solving problems involving government and consumer issues, but it ignores or undermines groups that are committed to stronger advocacy and systemic reforms. In 2007, leaders of the Hindu Rights Action Force (HINDRAF), a social movement seeking to overcome the marginalization of Malaysia’s ethnic Indian community, were arrested under the Internal Security Act (ISA) (see below). In Abdullah’s final parliamentary session as prime minister in 2008, the University and University Colleges Act (UUCA) was amended, with Section 15(1) permitting students to participate in “general organizations, so long as they have approval from the higher education minister and university administrators.” Students remain barred from joining political parties.

Article 10 of the constitution guarantees the right of free expression. Article 149, however, enables Parliament to restrict expression when it believes the national interest to be threatened. The most important piece of such legislation is the Printing Press and Publications Act, requiring all print media to obtain annual licenses from the Internal Security Ministry. If the ministry finds that an outlet has maliciously published what is deemed to be false news, it may revoke or refuse to renew its license. The publisher can also face charges that carry fines and prison terms.

Other laws also restrict press freedom, including the Sedition Act, the Official Secrets Act (OSA), the Control of Imported Publications Act (which enables the government to ban foreign publications when they are viewed as prejudicial to national security or public morality), and the Broadcast Act (which empowers the minister of information to monitor radio and television broadcasts and to revoke licenses). These laws encourage widespread self-censorship within the mainstream media, skewing political reporting. Partly because of this relatively tame media environment, there have been no recent reports of physical attacks by the government on print journalists. Several bloggers, however, have been arrested under the ISA (see below).

A government-controlled news agency, Bernama, has exclusive rights to distribute economic data, news photographs, and other material through the print media. Moreover, nearly all major newspapers—whether Malay, Chinese,

or English language—and all broadcast outlets are owned either by the government or by companies linked to BN parties. During the premiership of Mahathir, the government and allied businesspeople resorted to libel suits in response to critical analysis, especially by the international press. No such cases have occurred in recent years, however, owing to both self-censorship and the political liberalization that characterized Abdullah's tenure.

Abdullah acquiesced to at least light media coverage of “sensitive issues” like race and religion and was seen to have tolerated greater public dialogue on human rights.⁶ Even so, he kept restrictive legislation in place. When the police forcefully dispersed a fuel-price protest mounted at Kuala Lumpur's landmark Petronas Twin Towers in May 2006, the event went unreported by mainstream media. In July 2007, after then deputy prime minister Najib stirred ethnic suspicions by underscoring Mahathir's earlier declaration that Malaysia was an “Islamic state,” the Internal Security Ministry banned any reporting of his remarks.

As opposition parties continued to win by-elections in 2008, UMNO politicians, engaging in uncharacteristic introspection, began to canvass reforms. These included easing the requirements for the annual licensing of print media, the restrictions on student participation in politics, and the conditions under which dissidents were detained under the ISA. Liberalizing measures followed, at least for a brief period. In April 2008, the government reversed an earlier decision and renewed the publishing permit of the Tamil-language newspaper *Makkal Osai*, which during the general election campaign had helped to mobilize the Indian community. The government also granted a permit to *Suara Keadilan*, a paper associated with the PKR. In early 2009, however, the licenses of two newspapers, *Harakah* and *Suara Rakyat*, associated with the PAS and PKR, respectively, were suspended for three months. No official reason was given, but the suspension came just as UMNO was preparing to hold its internal elections, which were set to be followed by more by-elections. During the same period, mainstream newspapers aligned with UMNO sharpened their communalist rhetoric.⁷

Historically, Chinese-language newspapers have been freer in Malaysia, with aggressive reporting on ethnic and cultural issues, though restrictions on them have ebbed and flowed based on political conditions. In April 2008, the relative diversity of Chinese-language content seemed to come under threat when timber and media mogul Tiong Hiew King merged a number of his holding companies, bringing together Malaysia's four largest Chinese newspapers. A spokesman for the new company, Media Chinese International Limited, pledged that the papers would remain editorially independent, while Tiong said the merger was aimed at achieving “greater corporate synergy.”⁸

In recent years, internet communication has grown rapidly in Malaysia. It has also been far freer than traditional media, supporting a vast array of websites and blogs operated by opposition parties, NGOs, and dissidents. Though the government has occasionally raided the offices and seized the computers of

alternative news sites like *Malaysiakini* or arrested critical bloggers, it has mainly honored its pledge to refrain from web censorship. Relatively unrestricted internet communication is thought to have contributed greatly to the opposition's electoral gains in 2008.

Even so, in 2007, PKR information chief Tian Chua was placed under investigation for a blog post that was said to have violated the Communications and Multimedia Act. He had posted a photo montage depicting Najib dining with his political adviser Abdul Razak Baginda and a Mongolian woman who was slain in Malaysia in a much-publicized case (see Rule of Law). Later in the year, PKR webmaster Nathan Tan was held by the Cyber Crime Unit under the Official Secrets Act for using his blog to republish allegations against the deputy internal security minister, Johari Baharum.⁹ The arrest reportedly reverberated through the blogging community,¹⁰ and several days later, Johari instructed the Police Commercial Crime Investigation Department to trace bloggers who spread lies that risked “tarnishing the image of the country.”¹¹ In September 2008, an opposition lawmaker, a journalist, and a prominent blogger were arrested under the ISA. Though all three were released, the blogger—Raja Petra Kamarudin, founder of the highly popular *Malaysia Today*—was re-arrested and charged under the Sedition Act. And in August 2009, the government finally began to canvass the introduction of internet filters in the country, apparently modeled on China's Green Dam technology.

CIVIL LIBERTIES

2.88

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.50
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	1.75
FREEDOM OF CONSCIENCE AND BELIEF	3.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.50

Malaysian law prohibits arbitrary arrest. However, the ISA and the Emergency (Public Order and Prevention of Crime) Ordinance of 1969 empower the minister of internal security and the police to detain people indefinitely without trial if reasonable suspicion is deemed to exist. The Dangerous Drugs (Special Preventive Measures) Act of 1985 has been amended in ways that also permit preventive detention by the police, though only for 39 days. The ISA, in place since 1960, is used primarily against opposition politicians, dissidents, alleged terrorists, and criminals whose activities are deemed to affect national security. Detainees are held in undisclosed places, remain uninformed about the reasons for their arrest, and are denied access to legal counsel and family visits. After an initial 60-day period of interrogation, the minister of internal security may issue a two-year detention order, under which detainees are generally transferred to a central facility in Kamunting, Perak state. In late 2008, the minister stated

in Parliament that there were currently 46 ISA detainees, but the local advocacy group Abolish ISA Movement claimed there were 66, most of them suspected associates of the regional terrorist organization Jemaah Islamiah. The latest documented case of abuse in ISA custody involved an automotive repair shop owner, Sanjeev Kumar Krishnan, who was detained under the ISA in March 2008 for “spying.” According to a sworn affidavit, he was so mistreated during interrogation that he was left partially paralyzed. There are no documented instances of the government killing political opponents.

Police have invoked the Emergency Ordinance (EO) in criminal cases, enabling them to detain local gangsters and drug lords for an initial 60-day investigation period without a remand order. The minister of internal security can then order two-year periods of detention in a centralized facility at Simpang Renggam in Johor state. Alternatively, he can impose limits on their movement under the Restricted Residence Act. Statistics vary, but in mid-2007 over 1,000 people appeared to be held under the EO. An additional 1,500 people were estimated to be held under the Dangerous Drugs Act. According to some estimates, 60 percent of the detainees at Simpang Renggam were ethnic Indian, while 20 percent were aged 21 or below.¹² Ill-treatment of ordinary criminals detained under the EO and Dangerous Drug Act has increased the already high numbers of deaths in police custody in Malaysia. According to the Internal Security Ministry, there were 1,535 such deaths between 2003 and 2007, the last period for which data are available.¹³ Early in Abdullah’s premiership, there appeared to be some improvement, but conditions later worsened, with brutality against the Indian community seeming to increase after the formation of HINDRAF. One much-publicized case involved the death in custody of Kugan Ananthan in early 2009. The police hampered subsequent investigations, raiding medical offices and seizing autopsy records.¹⁴

Since the social dislocation brought about by the Asian financial crisis of the late 1990s, crime levels have been rising steadily in Malaysia. By regional standards, Malaysia’s police appear to be reasonably organized, and they have been successful in containing terrorist activities. But their effectiveness is limited by low salaries and endemic corruption. The police are frequently alleged to be providing protection for drug trafficking, prostitution, and loan sharking. Malaysia is a comparatively minor source for human trafficking, but it has become a significant destination for forced laborers and sex workers from throughout Southeast Asia, particularly Burma, as well as from China. Government officials have periodically been accused of involvement in trafficking, though prosecutions have been rare. In 2005, officials in the National Registration Department were arrested for providing traffickers with permanent-resident identity cards.

In 2007, Malaysia was classified as a Tier 3 country in the U.S. State Department’s Trafficking in Persons Report for failing to meet minimum standards of enforcement. In 2008, noting reductions in human trafficking, Malaysia was reclassified as a Tier 2 country, though it was downgraded to Tier 3 again

in 2009. However, recent government mobilizations of civilian paramilitary groups, particularly the Malaysian People's Volunteer Association (RELA), to supplement law enforcement have drawn much criticism from human rights organizations. RELA, a poorly trained force of some 400,000 members, has frequently been associated with serious abuses against illegal migrants.

Victims of abuse seeking redress may file a complaint with Suhakam, a human rights commission set up by the government in 1999, which has on occasion investigated restrictions placed on civil society organizations, arbitrary detention, and deaths in custody. However, because Suhakam is housed in the Prime Minister's Department, it lacks independence in its reporting and transparency in its recruitment procedures. Even such recommendations as it has offered have generally been ignored by government agencies.

Women's issues have received some attention in recent years. After taking office as prime minister in April 2009, Najib appointed 10 women as ministers or deputy ministers. Women also held top positions elsewhere in the state apparatus. Zeti Akhtar Aziz is governor of the central bank, while Siti Norma Yaakob served as chief judge of Malaya, one of the country's four top judicial positions, during 2005–07. Still, while women are nominated as electoral candidates by UMNO and its main coalition partner, the MCA, their share of candidacies in these parties remains quite small, especially at the state level. Even the Islamic opposition party PAS has proportionately more female members of Parliament. In UMNO's internal elections in March 2009, 50 candidates contested posts in the party's powerful Supreme Council, six of whom were women. Women typically hold less than 10 percent of the seats in Parliament.

Although the constitution's recently amended Article 8(2) appears to protect women's interests in economic life, the government's overall responsiveness to women's concerns—often forcefully articulated by a few small but prominent women's organizations—has been inconsistent. By UN standards, the Sharia (Islamic law) courts have discriminated grossly against women, especially in family law cases. After passage of a new Islamic Family Law in 2005 that strengthened the prerogatives of men with respect to polygamy and divorce, Marina Mahathir, a social activist and daughter of the former prime minister, argued that Malaysia was alone among Muslim countries in taking away rather than increasing women's rights.¹⁵ Malaysia has ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also features a reasonably high-profile Ministry of Women's Affairs. However, traditional attitudes often prevail in private life, irrespective of ethnicity, with married women expected to serve primarily as mothers and homemakers. When encouraged to work, they are frequently made to surrender their earnings to their spouses.

Malaysian politics have long been dominated by leaders of the Malay community. The constitution grants Malays "special rights," made manifest in the NEP's ethnic quotas in public sector employment, state contracts, credit,

business licensing, corporate employment, equity ownership, and university placement. A National Culture Policy has also privileged Malay ethnicity through symbols of state and national identity. Non-Malays harbor resentments over their “second-class” citizenship, and historically many have reacted by emigrating.

Over the past 15 years, the NEP has been replaced by less-stringent programs. However, Abdullah’s early pledges to be “a prime minister for all Malaysians” soon gave way to perceptions that he was yielding to communalist sentiments, and both political leaders and media outlets grew noticeably more strident. At the UMNO general assembly meeting in late 2007, the party youth leader and minister of education, Hishammudin Hussein, heralded a “Malay agenda” by raising a *keris*, a ceremonial dagger and potent symbol of Malay dominance. This action was condoned by Abdullah, who said “the keris is a weapon, but it is a weapon to protect yourself and your friends.”¹⁶ The non-Malay community reacted by voting in large numbers against the BN in 2008. Consequently, after succeeding Abdullah as prime minister in March 2009, Najib took tentative steps to scale back some of the quotas associated with the NEP. Most notably, the administrative services recruited a large number of ethnic Indians.

Among the signifiers of Malay identity is an adherence to Islam, giving the faith a dominant role among the country’s religions. While followers of Christianity, Hinduism, Buddhism, and Sikhism are permitted to practice their faiths, they are barred from proselytizing among Muslims, and their attempts to build places of worship encounter bureaucratic obstruction. During Abdullah’s tenure, Chinese and Indians complained of “creeping Islamization,” with the government heavily favoring the religion through state institutions. This trend, which began during the 1970s, has advanced most in the judiciary. Within the country’s dual court structure, civil courts have steadily ceded jurisdiction to Sharia courts, especially over family and personal affairs. In a high-profile case, the Federal Court refused an application made in May 2007 by Lina Joy to remove her Muslim status from her national identity card in acknowledgment of her conversion to Christianity. The court ruled that jurisdiction remained with the Sharia courts, which have denounced apostasy as a crime punishable by imprisonment, a fine, and forced rehabilitation. In a few other recent cases, they have determined that deceased persons had converted secretly to Islam and then seized the bodies for burial according to Muslim rites.

A coalition of non-Malay groups formed in 2006 under the name Article 11, the constitutional provision that guarantees religious freedoms. When the group attempted to hold a meeting in Penang to discuss the formation of an interfaith commission, it was confronted by some 500 protesters who had organized as the Anti-Inter-Faith Commission Body. The meeting was then banned by police, and Abdullah warned the group to cease its mobilizing activities. Mohamed Nazri Abdul Aziz, a minister in the Prime Minister’s Department, threatened to charge those who “insulted” Islam under the Sedition Act. At the

UMNO general assembly in late 2006, Hishamuddin Hussein explicitly ruled out proposals to form an interfaith commission.

In July 2007, the police readily granted permits to NGOs seeking to demonstrate against a visit by U.S. Secretary of State Condoleezza Rice. In November, however, the police refused an application from BERSIH (Coalition for Clean and Fair Elections), a coalition of 67 NGOs and opposition parties, citing the risk of disorder. The police warned of “harsh action” and closed major arteries leading to downtown Kuala Lumpur. In a press conference, Abdullah denounced the BERSIH rally, arguing that the constitutional right to assembly must be superseded by the people’s “right to peace.”¹⁷ The group was also denounced as “crooks” (*penyangak*) by Nazri.¹⁸ However, the movement’s leaders pressed ahead, leading some 40,000 demonstrators in presenting their petition on clean elections to the king.¹⁹ They dispersed immediately afterward, though, as the police presence mounted.

Not long after the BERSIH rally, HINDRAF an unregistered coalition of 30 organizations, led a rally of some 30,000 ethnic Indians in Kuala Lumpur. Spurred initially by the government’s demolition of several Hindu temples to make way for development projects, HINDRAF raised broader Indian grievances over ethnic and religious discrimination. The protest was violently suppressed by the police, and five of its leaders were detained under the ISA in December 2007.²⁰ Abdullah had warned beforehand that he would use the ISA to preserve “the prevailing peace and harmony.”²¹ In October 2008, HINDRAF was banned as a national security threat. However, Najib ordered the release of the HINDRAF leaders after becoming prime minister, and the ban on the organization was lifted. One HINDRAF leader, P. Uthayakumar, then announced the formation of a new, ostensibly multiethnic political vehicle, the Human Rights Party.

Trade unions are permitted to form, with the Malaysian Trades Union Congress (MTUC) serving as an umbrella organization representing some 500,000 workers. However, only in-house unions can normally be organized in the country’s vital free-trade zones. Strike actions are tightly regulated and street protests are prohibited. In 2007, in response to large pay raises for civil servants in May, the MTUC widened a campaign it had been pursuing for some eight years in favor of a minimum wage of approximately RM 900 (US\$260) per month. Human Resources Minister Fong Chan Onn rejected this, arguing that it would accelerate undocumented immigration.

An estimated two million registered and five million undocumented migrant workers together make up 30 to 50 percent of Malaysia’s labor force.²² Many are recruited as domestic helpers, who are frequently reported to suffer abuse by their employers. Malaysia has not ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, or the UN Convention against Torture. Migrants, trafficked persons, and asylum seekers are thus afforded little official protection. As

noted previously, RELA's growing role in enforcing immigration laws has worsened abuses. The Immigration Act permits arrested migrants to be held for 14 days before being presented to magistrate. Migrants may be held indefinitely in Lenggeng Immigration Detention Center, where authorities have punished them with whipping and forcible repatriation.

RULE OF LAW

3.84

INDEPENDENT JUDICIARY	3.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.50
PROTECTION OF PROPERTY RIGHTS	4.67

Malaysia possesses a large judicial apparatus that appears sophisticated in its formal structure and functioning. Malaysia's superior courts consist of the Federal Court, which is the final court of appeal and the highest judicial authority in the land, the Court of Appeal, the High Court of Malaya, and the High Court of Sabah and Sarawak. The Federal Court's membership includes the chief justice, the president of the Court of Appeal, and the two chief judges of the High Courts, along with four additional Federal Court judges. The superior courts supervise all subordinate courts. In ordinary criminal cases, citizens receive a reasonably fair and public hearing by an independent and impartial tribunal established by law. Prosecutors in these cases are apparently independent of political control,²³ and an assumption of innocence prevails. Indigent suspects can qualify for free legal aid through the Legal Aid Center, operated by the Malaysian Bar Council, or through the initiatives of individual lawyers. The government, through the Legal Aid Bureau, also provides assistance for civil cases. However, before suspects appear in court, they are often interrogated harshly by police, leading to forced confessions and some deaths in custody (see Civil Liberties). The Attorney General's Chambers, which is not obliged to state publicly its reasons for commencing or terminating cases, seems to be dominated by the executive. There is no judicial review of legislation.

In 2006, the Bar Council tested the judiciary's independence under Abdullah, calling for a review of the 1988 crisis in which the lord president and two justices of what was then known as the Supreme Court were ousted under Mahathir. The proposal was rejected by the cabinet. In a notorious case in July 2007, Abdul Razak Baginda, a security adviser to Najib in the latter's role as defense minister, was accused of complicity in the murder of his former mistress, Altantuya Shaariibuu of Mongolia. Observers were struck by the arbitrary character of procedures in the case. Immigration records of Altantuya's entry into Malaysia were erased. The presiding judge, the head of the prosecution team, and defense lawyers were all changed without explanation. Large amounts

of evidence were ruled inadmissible. After a lengthy trial, Abdul Razak was acquitted, and two members of the elite Special Action Squad—which provides security to top officials, including Najib—were convicted of carrying out the murder. The outcome added to suspicions that the case had been manipulated to protect powerful individuals and their dealings involving defense contracts.

In September 2007, Anwar released clips from an extraordinary video recording of a 2002 telephone conversation between a senior lawyer, V. K. Lingam, and the chief justice of the Federal Court, Ahmad Fairuz. The two apparently brokered high-level judicial promotions and court rulings, a revelation that precipitated a protest march by hundreds of lawyers on the Palace of Justice in Putrajaya and demands for an investigation. A Royal Commission and Panel of Inquiry was duly formed, but it failed to produce substantial results. Fairuz then slipped from view, and his contract was not renewed.

While Anwar prepared for his by-election in 2008, he was formally charged for the second time with sexual misconduct, which carried a penalty of up to 20 years in prison. This was the clearest indicator to date that the partial independence secured by the judiciary under Abdullah had given way once again to partisan aims. In April 2009, Anwar remained free on bail pending trial. In the few cases where the courts have ruled against the government, for example by accepting habeas corpus arguments by ISA detainees, the police have swiftly re-arrested the defendants. Adverse rulings have also been followed by legislative changes designed to narrow the courts' jurisdiction or discretion.

A more recent case of politicization of the rule of law involved a battle for control of the state government of Perak, where the People's Pact had won the 2008 elections. In late January 2009, then deputy prime minister Najib took over as Perak chairman of the BN and the UMNO liaison committee. In early February, three assemblymen from the People's Pact were induced to defect, causing the PAS-led government to lose its majority. The defectors were reported to have been threatened with corruption investigations. The sultan of Perak then dismissed the sitting government so that UMNO could form a new one under Zambray Abdul Kadir. The hereditary ruler also refused to dissolve the assembly and allow a new election. This precipitated a constitutional crisis, an occupation of the state assembly, mass demonstrations, and numerous arrests. In a flash of independence, the Kuala Lumpur High Court ruled in May that the UMNO takeover was illegal, restoring the People's Pact government to power. But days later, the Court of Appeal granted a stay of that ruling, leaving Zambray in office.

The partisanship appears to be accelerating under the current chief justice, Zaki Tun Azmi. A former legal adviser to UMNO and chairman of the party's disciplinary committee, he has risen with unprecedented speed, becoming a Federal Court judge in September 2007, president of the Court of Appeal three months later, and then chief justice in October 2008. An audio recording released in February 2009 by a DAP member of Parliament purports to feature

Zaki admitting that he had frequently bribed court officials while practicing as a lawyer.²⁴

Judicial appointments have been skewed by constitutional requirements that they be made by the king on the advice of the prime minister, drawing criticism from Suhakam and the Malaysian Bar Council for a lack of fairness and transparency. In late 2008, Abdullah introduced a bill creating a Judicial Appointments Commission (JAC) as part of his “integrity agenda,” but the panel was empowered only to make recommendations on appointments to the prime minister, who would not be obliged to accept them. The bill was passed over the objections of the opposition.

The security forces of Malaysia, unlike many of their counterparts in the region, remain subordinate to civilian authorities. However, in September 2008 the head of the armed forces publicly called on the government to suppress those who stoked ethnic and religious rivalries.²⁵ The police force has also grown more assertive. The government has long used the police for political purposes, deploying the Special Branch, the Federal Reserve Unit, and the Police Field Force to gather information on dissidents and suppress opposition activities.²⁶ This has given the police the power to turn back proposed reforms, and they are widely seen as corrupt and inefficient. Shortly after coming to power in 2003, Abdullah had agreed to set up a Royal Police Commission, tasked with developing a complaints mechanism for civilians. The body recommended the formation of an Independent Police Complaints and Misconduct Commission (IPCMC), whose proposed powers of investigation and prosecution were unexpectedly strong. It would be able to investigate, prosecute, and ultimately demote or discharge individual officers. However, the police threatened in an internal web posting to shift their political loyalties to PAS, leading Abdullah’s government in 2007 to propose a much weaker body, provisionally titled the Special Complaints Commission (SCC). The plan came under swift attack from opposition lawmakers, former royal commissioners, and human rights groups, and the government withdrew it. In June 2009, legislation creating a slightly stronger body, the Enforcement Agencies Integrity Commission (EAIC) was passed in Parliament, though it was still derided by observers for falling short of the original IPCMC proposal. Notably, the EAIC was empowered only to investigate and make recommendations to the Attorney General’s Chambers rather than prosecute independently. Moreover, its broad scope, encompassing 21 agencies, shifted scrutiny away from the police. Anwar stated plainly that the EAIC was designed to “protect Malay police officers.”²⁷

Private property is reasonably well protected for most citizens. Ordinary commercial contracts and bankruptcy laws are enforced, while bank loans and state contracts are usually only rescinded as an outcome of high-level political conflicts. Malaysia is ranked well above the Philippines and Indonesia (though below Singapore and alongside Thailand) on a key property rights index.²⁸ However, under the NEP, 30 percent quotas in employment and equity ownership have systematically favored the Malays. In addition, though comprehensive

statutes protecting intellectual property rights are in place, they are unevenly enforced, and pirated products are readily available throughout Malaysia. Similarly, legislation protecting the traditional landowning rights of indigenous people is frequently ignored by state governments and allied oil companies, logging firms, and plantation developers, especially in East Malaysia. As of 2009, some 100 land rights cases were pending in court. In May, however, the Federal Court ruled for the first time that indigenous people whose ancestral lands have been seized are entitled to compensation.

ANTICORRUPTION AND TRANSPARENCY 2.94

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.25
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.25
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	2.25
GOVERNMENTAL TRANSPARENCY	3.00

Much of the opacity and corruption in Malaysia can be attributed to UMNO's tireless quest for patronage and the bureaucracy's commitments to business promotion and reverse discrimination. As resources are often allocated politically rather than by markets, a tight nexus has developed between government and business.²⁹ After coming to power in 2003, Abdullah confronted resentments among those excluded from this system, calling for "people power" to curb corruption, especially in reputedly graft-ridden agencies dealing with immigration, customs, transport, and defense. Still, investigations for bribery have rarely extended to the upper reaches of the bureaucracy and security apparatus.

Abdullah introduced a Malaysian Institute of Public Ethics, backed by a National Integrity Plan. Government lawmakers were required to declare their assets, and greater independence for the Anti-Corruption Agency (ACA) was proposed. A number of top officials were charged under anticorruption laws, while Abdullah announced that an additional 18 "high-profile" cases would be prosecuted. And in September 2008, Malaysia ratified the UN Convention against Corruption. However, actual gains during Abdullah's tenure were modest. Malaysia's score on Transparency International's Corruption Perceptions Index remained between 5.0 and 5.2 on a scale of 1 to 10, with 10 being least corrupt, between 2004 and 2008.³⁰ Progress began to slow immediately after the government was comfortably reelected in October 2004. UMNO's powerful Youth Wing took two years to agree to start writing an action plan for implementing the National Integrity Plan, and lawmakers were given deferments in reporting their assets. The most prominent person tried for corruption, the former director of the state-owned steel company, was acquitted in June 2007, with the presiding judge criticizing the prosecution for a shoddy performance in which it failed even to call material witnesses.³¹

Malaysia has an Auditor General's Office and a Public Complaints Bureau, but these agencies are regarded as neither effective nor nonpartisan.³² By contrast, the parliamentary Public Accounts Committee, under the chairmanship of an independent-minded government lawmaker and a deputy chair recruited from the opposition, succeeded during Abdullah's tenure in scrutinizing government expenditures more closely.

The ACA arrests many lower-level officials but has long been regarded as partisan. Indeed, the body has itself been a font of corrupt practices. In 2007, the advocacy group *Gerak* disclosed reports by a retired ACA officer in Sabah on the agency's national director, Zulkipli Mat Noor. In the reports, Zulkipli was shown to have acquired property far beyond that listed in his asset declarations. That July, however, he was cleared by the attorney general. Allegations that Deputy Internal Security Minister Mohd Johari Baharaum and the inspector general of police, Musa Hassan, had been bribed to arrange the early release of criminal kingpins were similarly dismissed by the Attorney General's Chambers and the ACA, respectively.³³

In April 2007, Abdullah responded to parliamentary questioning over the failure of the "high-profile" investigations to produce indictments, attributing the problem to witnesses who had either "disappeared or [were] unable to be located." He also claimed that the "success rate" of indictments in lesser cases heard in the High Court and Sessions Court were 74.1 percent and 86.1 percent, respectively.³⁴ Meanwhile, Abdullah's own family members were accused of pursuing state largesse. *Scomi Group*, an oil and gas company in which Abdullah's son, Kamaluddin Abdullah Badawi, is the largest shareholder, has received highly lucrative government contracts. Kamaluddin's personal net worth has been estimated to be US\$90 million.³⁵ Abdullah's son-in-law, Khairy Jamaluddin, was involved with several investment companies linked to the government while serving as deputy leader of UMNO's Youth Wing. These links are indicative of a pattern in which state contracts are awarded as patronage rather than by open tender.³⁶

In December 2008, Abdullah introduced a bill that replaced the ACA with the Malaysian Anti-Corruption Commission (MACC). The new agency was ostensibly modeled on Hong Kong's Independent Commission Against Corruption (ICAC) and was to be accountable to five administrative panels, but it could only recommend cases to the Attorney General's Chambers, which would still report in turn to the prime minister rather than to Parliament.³⁷ During the first months of 2009, the commission recommended the prosecution of a number of government and opposition politicians. The most notable investigation involved tourism minister Azalina Othman Said, under investigation for "money politics." However, fears of partisan prosecution seemed to be confirmed in February, when the MACC targeted the new People's Pact chief minister of Selangor state for alleged improprieties in servicing his personal car and distributing cattle to his constituents for the celebration of Hari Raya.

Ultimately, virtually all of the executive council members of the People's Pact government in Selangor came under investigation. In July 2009, Teoh Beng Hock, an aide to one of the DAP state executive councilors, was summoned for late night interrogation. He was found dead the next afternoon, his body sprawled on a rooftop nine floors beneath the MACC headquarters. The public outcry that followed led Prime Minister Najib to agree to an inquiry into the MACC's procedures.

The work of anticorruption bodies is rarely taken up by mainstream print and electronic media outlets, all of which are either owned by or aligned with the government (see Accountability and Public Voice). Whistleblowers, anticorruption activists, and investigators who seek to present government documents as evidence of corruption risk severe penalties under the OSA. Attempts by opposition politicians to meet with top officers in the anticorruption agency are usually rebuffed.

Most of the government's many websites offer little substantive information, and there is no freedom of information law on the books. Transparency is further weakened by the annual budget process, in which the government submits a document whose great length and complexity is beyond the capacity of the under resourced opposition to scrutinize properly. In addition, significant amounts of government revenue and expenditure remain off budget. For example, Petronas, the national oil company, is housed within the Prime Minister's Department, leaving it almost entirely unaccountable to Parliament.

RECOMMENDATIONS

- The government should begin the process of ensuring that members of the Election Commission are independent from the executive branch and ruling party.
- The Printing Presses and Publication Act, the Official Secrets Act, and the Sedition Act should be abolished in order to encourage greater media scrutiny of the government and business dealings. The government should ease licensing requirements for independent print and broadcast media outlets.
- The Internal Security Act should be repealed, and amendments to the Police Act and the University and University Colleges Act that circumscribe freedom of expression and assembly should be changed, allowing greater scope for peaceful advocacy and dissent.
- The proposed Enforcement Agency Integrity Commission should address the police force specifically and should be given powers to investigate independently, including the circumstances surrounding the large number of reported deaths in custody.
- The Sharia court system should be encouraged to make rulings that avoid gender discrimination, with their jurisdiction circumscribed if basic rights cannot be protected.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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