



# **MALAYSIA: 8-POINT HUMAN RIGHTS AGENDA FOR ELECTION CANDIDATES**

**AMNESTY  
INTERNATIONAL**



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**Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.**

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**On 6 April 2018, the Prime Minister of Malaysia announced the dissolution of parliament. Ahead of general elections on 9 May 2018, Amnesty International calls for all parties and parliamentary seat candidates to respect, protect, fulfil and promote human rights for all, and publicly commit to meet and expand Malaysia’s international human rights obligations.**

**Human rights continue to be violated in Malaysia. The recently published Amnesty International Report 2017/18 stated that civic space has shrunk further as a crackdown on civil and political rights continues. There has been a rise in the use of open-ended and arbitrary travel bans to restrict and threaten the freedom of movement of government critics, activists and human rights defenders. Economic, social and cultural rights have also been violated. Indigenous rights activists and journalists have been arrested and investigated for campaigning against and reporting human rights abuses.**

**Amnesty International is urging all parliamentary seat candidates to commit to the restoration of respect and the protection of human rights in Malaysia, including those in the following eight-point agenda. This document reflects the rules and principles of international human rights law and standards provided in The Federal Constitution of Malaysia.**

## **1. RESPECT AND PROTECT FREEDOM OF EXPRESSION**

The right to freedom of expression is under attack in Malaysia. The use of restrictive laws such as the Sedition Act of 1948, the Communication and Multimedia Act 1998 (CMA), the Printing Press and Publications Act 1984 (PPPA), and the Film Censorship Act 2002 has led many people to exercise self-censorship, and had a chilling effect on freedom of expression in the country.

Following the last general elections in 2013, the authorities began a crackdown on dissent, using the Sedition Act to investigate, charge and imprison individuals including human rights defenders, political opposition, journalists, academics and students.

Despite commitments to repeal the Sedition Act, amendments to the Act in 2015 resulted instead in a further erosion of freedom of expression. Its scope was broadened to encompass electronic media, and provide harsher penalties such as mandatory and increased prison sentences. Government critics targeted under the Act include political cartoonist Zunar who faces a record nine counts of sedition, for tweets criticising a Federal Court decision that upheld the conviction and five year prison sentence of Anwar Ibrahim.

In April 2018, Parliament passed the highly restrictive Anti-Fake News Act. The Act’s definition of ‘fake news’, as “any news; information, data or reports which are wholly or partly false”; is vague and broad, and could easily include honest or marginal mistakes, as well as statements that may be a matter of opinion. Acts falling under this definition would be punished severely, with a fine of RM 500,000 or by up to 6 years imprisonment, or both.

Amnesty International's recommendations:

- Repeal the 1948 Sedition Act and the Anti-Fake News Act and repeal or amend other laws which arbitrarily restrict the right to freedom of expression, including the Communication and Multimedia Act and the Printing Press and Publications Act, to ensure that they are in line with international human rights law and standards;
- Ratify and implement in law, policy and practice the International Covenant on Civil and Political Rights and other human rights treaties at the earliest opportunity.

## 2. ENSURE FREEDOM OF PEACEFUL ASSEMBLY

Peaceful protesters have encountered abuse by the Royal Malaysia Police, including mass arrests during demonstrations. The Peaceful Assembly Act, Sections 120, 141, 124b, 124c, and 143 of the Penal Code, and even national security laws have been used alone or concurrently to charge those involved in peaceful assemblies, and fall short of international law and standards.

These laws impose stringent and excessive requirements on rally organizers to give the police ten days' advance notification of a planned event. They also provide the Officer in Charge of the Police District with almost absolute discretion in setting conditions for the rally – such as the date, time, manner, and conduct of the assembly, and make it a crime to fail to abide by the conditions set by the police, all of which may deter individuals from organising or participating in peaceful assemblies.

In November 2016, ahead of a major rally, the police raided the offices of *Bersih*, the coalition for free and fair elections, arresting then-Chairperson Maria Chin Abdullah, its Secretary Mandeep Singh and other activists. Maria Chin Abdullah was arrested for 'attempts to commit activities detrimental to parliamentary democracy', under Section 124C of the Penal Code. She was then held in solitary confinement under the Prevention of Terrorism Act and the Security Offences (Special Measures) Act (SOSMA) and only released after 11 days in detention.<sup>1</sup> SOSMA specifically states that no individual will be arrested for 'political activity' or 'belief' and its use is strictly restricted to matters pertaining to public order and national security. However, this legislation's broad and vaguely worded provisions make it open to abuse.

Amnesty International's recommendations:

- Review or amend the Peaceful Assembly Act, Penal Code, and other excessively restrictive laws to allow for peaceful protests without arbitrary restrictions;
- Facilitate the exercise of the right to peaceful assembly to all people in Malaysia, without discrimination.

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<sup>1</sup> Amnesty International, Malaysia: Defender released but still at risk, 1 December 2016, <https://www.amnesty.org/en/documents/asa28/5240/2016/en/>

### **3. RESPECT FREEDOM OF MOVEMENT**

The use of arbitrary travel bans against human rights defenders and government critics has intensified. Arbitrary travel bans violate the rights to freedom of movement and association and represent a heavy handed attempt to stifle the right to freedom of expression. Article 13(2) of the Universal Declaration of Human Rights states: “Everyone has the right to leave any country, including his own, and to return to his country.” In July 2017 the Court of Appeal ruled that the government has absolute discretion to bar any citizen from travelling abroad without needing to provide a reason.

This ruling facilitates violations of the right to freedom of movement and the work of human rights defenders. This includes cartoonist Zunar, whose challenge to the ban preventing him from leaving the country was rejected by the High Court in November 2017.

Numerous individuals, including political candidates and human rights defenders, have been banned from moving freely within the country. On 20 September 2017, the Federal Court announced that state authorities of Sabah and Sarawak have sole discretion over immigration and entry, including travellers from within Malaysia. The court has also dismissed an application from human rights defender and former Malaysian Bar president Ambiga Sreenevasan to challenge her ban from travelling into Sabah.

Human rights defenders have been prevented from entering Malaysia, including Singaporean activist, Han Hui Hui and Bangladeshi human rights lawyer and Secretary of Odhikar, Adilur Rahman Khan, who were planning to attend conferences.

Amnesty International’s recommendation:

- End the use of arbitrary travel bans on human rights defenders and other peaceful dissenters.

### **4. ABOLISH THE DEATH PENALTY**

Amnesty International opposes the death penalty unconditionally and for all crimes, and calls for its total abolition. The organisation considers the death penalty a violation of the right to life and the ultimate cruel, inhuman or degrading punishment.

The death penalty continues to be retained as the mandatory punishment for offences including murder, drug trafficking and discharging firearms with intent to kill or harm in certain circumstances. Drug-related offences do not meet the threshold of “most serious crimes” under international law and therefore must not be punished by death.

In November 2017, the government amended the Dangerous Drugs Act 1952 to introduce some sentencing discretion for judges in limited circumstances of drug trafficking. The amendments essentially retain the mandatory death penalty for all but extremely narrow circumstances of those convicted of merely transporting, sending or delivering a prohibited

substance who are also found to have assisted law enforcement in disrupting drug trafficking activities. When discretion is available, life imprisonment and no less than 15 strokes of the cane - a cruel punishment that is prohibited under international law as cruel, inhuman and degrading punishment, which may amount to torture - is the only alternative.

The non-retrospective revised law applies only to those who are yet to be convicted after the amendments came into force, while those that have faced the death penalty for drug trafficking prior to the revision – and who must also benefit from the reform, in line with international law and standards – will continue to face the death sentence.

Amnesty International's recommendations:

- Immediately establish a moratorium on all executions, with a view to abolishing the death penalty for all crimes;
- Pending abolition, abolish the mandatory death penalty and for any crimes that do not meet the threshold of the “most serious crimes” under international law and standards;
- Improve transparency through making information on executions publicly available and ensuring an established procedure for notification on scheduled executions.

## **5. PREVENT DEATHS IN CUSTODY, TORTURE AND OTHER ILL-TREATMENT BY STATE SECURITY FORCES**

Police have persisted in violating the right to life and to freedom from torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). In March 2017, in response to a Parliamentary question, the Home Minister stated that over 1,600 cases of death in custody were recorded in Malaysia between 2010 and February 2017.

Amnesty International believes that the reasons why torture and other ill-treatment continues to occur includes the failure of the government to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; failure to put in place robust safeguards to protect detainees; and a culture of impunity within the police with a lack of accountability for numerous cases of deaths in custody, unlawful killings, and torture and other ill-treatment over the last decade.

Though the Enforcement Agency Integrity Commission, established in 2011, has the mandate to investigate cases of death in custody, torture and other ill-treatment by authorities and make disciplinary recommendations, it does not have the authority to impose penalties. Any prosecutorial power falls within the ambit of the Attorney General's Chambers and disciplinary agencies. Moreover, criminal prosecution for cases of this nature rarely lead to conviction.

Amnesty International's recommendations:

- Ensure prompt and effective investigations by independent and impartial bodies into all complaints and reports of torture and other ill-treatment by police and any other officials; and ensure that those against whom credible, admissible evidence

is found are prosecuted in proceedings which meet international standards of fairness;

- Establish an independent external police oversight body to oversee complaints on police misconduct and a code of practice relating to the arrest and detention of persons;
- Ratify the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **6. PROTECT REFUGEES AND ASYLUM-SEEKERS**

Malaysia has continued to violate the international prohibition against refoulement by forcibly returning refugees and asylum-seekers to countries where they face serious human rights violations. Refugees and asylum-seekers have been subjected to arbitrary arrest, detention in appalling conditions, caning, extortion, and deportation back to the persecution that they fled.

In May 2015, the government faced international criticism as thousands of refugees and migrants from Myanmar and Bangladesh attempted to land in Langkawi, Kedah. Malaysia and Indonesia eventually agreed to provide humanitarian assistance and temporary shelter for up to 7,000 refugees and migrants for up to one year. Almost 400 of those were identified as Rohingya refugees – people fleeing persecution in Myanmar. The majority of the boat people were repatriated, following detention in poor conditions, but the process to determine who was a refugee and who was not, remained unclear.

In May 2017, three Turkish nationals were arrested and detained under the Security Offences (Special Measures) Act (SOSMA) and subsequently extradited to Turkey. There is credible evidence of arbitrary detention and torture of detainees in Turkey suspected of belonging to the Gülen movement, whom Turkish authorities accuse of masterminding a coup attempt against them.

On 3 April 2018, a boat carrying 56 Rohingyas, many of them women and children, was intercepted off the waters of Langkawi by Malaysian naval and maritime officials. They were sent to immigration authorities where they are reported to have been detained at Belantik Immigration Detention Centre, a facility Amnesty International has criticised for its appalling conditions.

Amnesty International's recommendations:

- End the arbitrary detention of undocumented migrants, trafficked persons, asylum seekers and refugees;
- Respect the international legal principle of non-refoulement;
- Ratify the UN Convention Related to the Status of Refugees and the UN International Convention on the Protection on the Rights of All Migrant Workers and Members of Their Families.



## 7. PROTECT THE RIGHTS OF LGBTI INDIVIDUALS

Discrimination against LGBTI (Lesbian, gay, bisexual, transgender and intersex) people in Malaysia continues in both law and in practice. Consensual same-sex relations are criminalised.

The transgender community faces steep challenges in the form of discriminatory laws and policies, targeted raids on private gatherings, arrests, and ill-treatment by the authorities. In June 2014, officials from the Negeri Sembilan State Islamic Department carried out a raid on a wedding party held in a private home. Those arrested were subsequently charged in a Shari'a Court for violating the state's Shari'a Law on 'cross dressing'. In April 2016, the Federal Territories Islamic Department (JAWI) carried out a raid on a transgender beauty pageant, and charged human rights lawyer Siti Kasim, who was present at the event, with 'obstructing a public servant' when she protested.

In June 2017, the Ministry of Health received local and international criticism for its decision to launch a video competition for teenagers on how to "prevent gender confusion," an initiative which promoted harmful gender stereotypes and stigma against LGBTI people. After criticism from activists and members of civil society, the ministry removed the references to LGBTI people and omitted the term "gender confusion". However the demonisation of LGBTI people persists through the cancellation of LGBTI events by the government and via state-sponsored media.

Despite the aforementioned cases, a Malaysian representative stated to the Committee on the Elimination of Discrimination against Women that LGBTI in Malaysia are treated "equally"<sup>2</sup> - a statement that Amnesty International strongly refutes.

Amnesty International's recommendations:

- Abolish laws criminalizing consensual same-sex sexual conduct and laws criminalizing specific gender identities and expressions, including laws against cross-dressing;
- Ensure the authorities do not violate the rights of LGBTI people through arbitrary arrests, detention, violence, ill-treatment, violations of privacy, and discrimination;
- Cease distributing information to the public that denigrates or discriminates against LGBTI people or perpetuates harmful gender stereotypes.

## 8. RECOGNIZE INDIGENOUS PEOPLES' RIGHTS

In 2015, after a three year inquiry by the National Human Rights Commission of Malaysia, SUHAKAM, the government recognised the need to reform its policies on Indigenous Peoples by adopting 17 out of 18 recommendations made by a Taskforce, including the

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<sup>2</sup> Malaymail Online, "At UN women's rights review, Putrajaya claims LGBT treated 'equally' in Malaysia", 21 February 2018 <http://m.themalaymailonline.com/malaysia/article/at-un-womens-rights-review-putrajaya-claims-lgbt-treated-equally-in-malaysi>.

recognition of Indigenous Peoples' land and issuing of titles, right to remedy, and right to decide on land development.

However, since their acceptance, there is no evidence that the recommendations have been implemented, leading to SUHAKAM concluding in April 2017 that the government had failed in its duty towards the Orang Asli, as Indigenous Peoples are known in Malaysia.

Confrontations between the government and Indigenous communities have increased. In January 2017, following peaceful protests against logging licences granted by local authorities, 21 Indigenous human rights defenders from Gua Musang, Kelantan were detained. Two journalists were also arrested. All of them were released within 48 hours, but their rights to their customary land remains under threat because logging activities on their lands continues without their free, prior and informed consent. In February 2018, the communities rebuilt several blockades, and the issue remains unresolved.<sup>3</sup>

Amnesty International's recommendations:

- Recognise, respect, protect and fulfil the human rights of indigenous peoples, including the right to territory, as well as their economic, social and cultural rights including the right to a healthy environment and their right to peaceful protest without being arbitrarily detained.
- Ensure full implementation of the 18 recommendations adopted by the Taskforce on Indigenous Peoples following the National Inquiry on Indigenous Land Rights, including the recognition of Indigenous Peoples' customary rights to land, and the right to free, prior, and informed consent, in line with international human rights law and standards.

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<sup>3</sup> Amnesty International, End harassment of indigenous rights defenders, 25 January 2017, <https://www.amnesty.org/en/documents/asa28/5549/2017/en/>

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# **MALAYSIA: 8 POINT HUMAN RIGHTS**

## **AGENDA FOR ELECTION CANDIDATES**

Since the last general elections in 2013, human rights in Malaysia have come under attack. In particular, the government has failed to respect and protect the rights to freedom of expression and peaceful assembly. Torture, cruel, inhuman and degrading treatment by police has continued. Refugees and asylum-seekers, LGBTI communities and Indigenous peoples' have also experienced violations of their rights. One of the top items of the new governments' agenda should be to address the regression of human rights in Malaysia and act on pressing concerns, including those in this agenda.

Ahead of general elections in Malaysia in 2018, Amnesty International calls on all election candidates to respect, protect, fulfil and promote human rights for all, and to publically commit to meeting Malaysia's international human rights obligations.