

FOLLOW UP TO THE PREVIOUS REVIEW

1. Malaysia fully or partially supported 148 recommendations. It noted 120 others, out of a total of 268 received, including those which remain relevant and if implemented would contribute to improving the human rights situation.
2. Although the government fully supported several recommendations to review legislation which stifles freedom of expression and peaceful assembly to bring it into line with international human rights law,¹ it only partially accepted or noted others.² Despite government pledges to review repressive laws including the Sedition Act³, no reforms have taken place.
3. The government supported recommendations to take steps to abolish the death penalty and maintain a moratorium on executions.⁴ In April 2023, there was significant progress when the government abolished the mandatory death penalty and removed the death penalty as punishment for seven offences.⁵
4. The government also supported recommendations to respect and protect the rights of migrant workers, ensure necessary measures to improve social cohesion, and prevent and punish all forms of hate and violence against them.⁶ Regrettably, recent years have seen an increasing crackdown by the authorities on migrants and refugees.⁷
5. Once again, the government only partially accepted or noted numerous recommendations to ratify core human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture.⁸ It also rejected recommendations to remove all reservations to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.⁹

THE NATIONAL HUMAN RIGHTS FRAMEWORK

6. Recent efforts to ratify further human rights treaties failed. In 2018, the government reversed plans to sign onto the International Convention on the Elimination of All Forms of Racial Discrimination following backlash from certain groups.¹⁰ In 2019, the government withdrew from the Rome Statute of the International Criminal Court a month after signing it, following dissent from Malaysia's royal families.¹¹
7. In 2022, the Human Rights Commission of Malaysia (SUHAKAM) suffered a setback when new Commissioners were appointed by the government in an untransparent selection process.¹² In March 2023, the government appointed a Children's Commissioner.¹³

THE HUMAN RIGHTS SITUATION ON THE GROUND

Freedom of expression and assembly

8. Authorities continued to use repressive laws to silence those exercising their right to freedom of expression. Police conducted 692 investigations between January 2020 and June 2022 under the Communications and Multimedia Act (CMA) and related laws, resulting in 87 prosecutions including of artists, performers and political activists.¹⁴ There were reports of additional investigations and arrests under the CMA after June 2022. The Sedition Act,¹⁵ the Printing Presses and Publications Act¹⁶ and the Film Censorship Act also

continue to be used to restrict freedom of expression.

9. In February 2021, online news outlet Malaysiakini was fined RM 500,000 (USD 107,500) for contempt over comments of readers allegedly critical of the country's judiciary.¹⁷ In February 2022, police detained activist Fahmi Reza for two days over an artwork on his Twitter account satirising a government minister.¹⁸ In March 2023, artists and filmmakers behind the film *Mentega Terbang*, about a young woman exploring the concept of the afterlife in various religions, faced police questioning, death threats and property vandalism.¹⁹
10. Authorities persisted in blocking peaceful demonstrations, investigating and charging organizers and participants with criminal offences, particularly under the Peaceful Assembly Act (PAA) and the Penal Code. In June 2022, police prevented several hundred lawyers from the Bar Council from marching to parliament to protest government interference in the judiciary - three leaders were subsequently investigated under the PAA.

Migrants and refugees

11. Malaysia continued to violate the international prohibition against *refoulement* by forcibly returning people to countries where they are at risk of serious human rights violations.
12. In February 2021, the government deported 1,086 individuals to Myanmar, despite the military coup earlier that month and in contravention of a stay on the deportation granted by a court.²⁰ In January 2023, the government deported 114 more, including children, after the stay.²¹ In December 2022, a court dismissed a judicial review filed by Amnesty International Malaysia and Asylum Access Malaysia highlighting concerns about unaccompanied minors and the lack of informed consent of deportees. The deportations constitute constructive refoulement, as the individuals could only choose to remain in indefinite detention or be returned to Myanmar, both of which violate their rights. They are among the many understood to have been carried out by the government since the 2021 military coup, despite the escalation of violence and increasing human rights violations in Myanmar.
13. Authorities continued to push back or prosecute Rohingya people stranded on boats fleeing persecution in Myanmar and the hardships of refugee camps in Bangladesh. In April 2020, the government allowed 202 Rohingya people to disembark from a boat adrift off the coast of Langkawi²²; a second boat carrying 269 Rohingya people was allowed to disembark in June 2020.²³ Several were reported by media to have died during the journey. Survivors were detained in a temporary immigration detention centre in Sungai Bakap, Penang. The authorities subsequently convicted 31 Rohingya men of offences under the Immigration Act 1959/63 and sentenced them to seven months in prison; at least 20 were sentenced to caning which was withdrawn after protests.²⁴ On 20 April 2022, four adults and two children died during an alleged breakout from Sungai Bakap detention centre; a 14-year-old child died days later from injuries. Most of the detainees were re-arrested. Despite calls to investigate the incident, it remains unclear who was responsible for the deaths.²⁵ In 2023, the government closed the Sungai Bakap detention centre.²⁶

Death penalty

14. On 16 June 2023, Malaysia published in the Official Gazette the Abolition of Mandatory Death Penalty Act 2023 and the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of The Federal Court) Act 2023, which repealed the mandatory death penalty and established a resentencing process for those under the sentence of death and imprisonment for natural life.²⁷ Concerns remain, however, including keeping whipping among the limited number of alternative punishments. The death penalty is also retained as discretionary punishment for drug-related and other offences that do not meet the threshold of the "most serious crimes" to which the use of this punishment must be restricted under

international law and standards.²⁸ An official moratorium on executions has remained in place since 2018.

15. The laws will come into force at a date to be announced by the Minister of Law, followed by a 90-day period allowing those facing the death sentence or imprisonment for natural life, and already confirmed by the Federal Court, to apply for resentencing, which will affect 840 people. Those undergoing trial and appeal can apply for commutation as part of the ordinary court process.²⁹ However, the process is not adequately explained in the law. In reviewing sentences, the Federal Court would “call for and examine the record of proceedings, grounds of judgment and other relevant documents” (Article 2.3).³⁰
16. Present and recent governments made some effort to make more information on those held on death row publicly available, mainly in response to Parliamentary questions. However, the enduring lack of transparency, including on death sentences imposed and commuted through the pardon procedure, continues to make it difficult to independently and adequately monitor the death penalty’s implementation and impact.
17. In 2019, research by Amnesty International indicated that the death penalty in Malaysia had largely fallen on those convicted of drug offences, which disproportionately included women and foreign nationals.³¹ The limited information available showed a significant number of those on death row were from disadvantaged socio-economic backgrounds, while certain ethnic minorities were overrepresented, pointing to multiple layers of arbitrariness and discrimination in the use of the punishment.
18. Numerous violations of the right to a fair trial left defendants at risk of the death penalty. Despite legal aid schemes available, those arrested for offences punishable by death who could not hire a lawyer independently often did not receive legal assistance upon arrest or while under police remand. Criminal cases cannot be reopened following a final judgment even on the grounds of new facts – a critical safeguard especially in cases involving the death penalty. Other violations include the lack of legal representatives assigned to cases until the trial is due to start, insufficient access to interpreters and varying support for foreign nationals.
19. The opaque and secretive pardons process exposed people to arbitrary decisions that could lead to execution. Contrary to international standards, Malaysian law does not guarantee the right to legal counsel for pardon application. The problem appears particularly acute for foreign nationals, who made up over half of those who have not filed a pardon application.

Deaths in custody

20. Consistent reports of unlawful use of force against people in detention and deaths in custody continued. Research by Amnesty International and other human rights organisations has repeatedly shown that abuses have persisted, and those responsible have not been held to account.³²
21. In April 2018, the Ministry of Home Affairs said it had introduced new procedures requiring detainees to complete a form detailing their health condition. CCTVs were installed in lockups that did not have them. These changes have not significantly improved matters. In February 2023, the government announced it may bring in new measures after revealing 24 deaths in custody recorded in 2022.³³
22. In 2018, the government announced plans to establish an independent police commission to investigate police misconduct and serve as an oversight body.³⁴ In July 2022, parliament passed the widely criticised Independent Police Conduct Commission (IPCC) Act of 2020. It lacked the independence and investigative powers needed to effectively investigate police misconduct including in relation to custodial deaths.³⁵ Concerns include provisions allowing the appointment of police officers to the commission and

requirements of prior notification to visit to police stations and other facilities.³⁶ The act was expected to come into force in June 2023.³⁷

Indigenous peoples' rights

23. Across Malaysia, extensive land development has adversely impacted Indigenous peoples, posing threats to a wide spectrum of human rights.
24. In 2018, Amnesty International found that Indigenous leaders, activists, lawyers and journalists faced the threat of assault, arrest and investigation by the police because of their peaceful activities to defend Indigenous land. In instances of attacks and threats, witnesses said police routinely failed to investigate or respond to allegations by Indigenous and other human rights defenders.³⁸
25. A failure to obtain free, prior and informed consent for development projects has continued to be reported, and communities learned of such projects only when these have started, often through signage put up barring them from entering these areas. The consequences of speaking out to defend Indigenous lands have also created a climate of fear amongst communities and activists.
26. In 2021, the Selangor state government degazetted or withdrew the protected status of 537 hectares of the Kuala Langat North Forest Reserve (KLNFR). Public outcry and political pressure pushed the government to announce it would gazette the reserve again, but this has yet to take place as of June 2023.³⁹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Malaysia to:

National human rights framework

27. As previously recommended, ratify core human rights treaties, including the International Covenants, the International Convention on the Elimination of all Forms of Racial Discrimination and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
28. As previously recommended, ratify the UN Convention Relating to the Status of Refugees and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
29. Strengthen and ensure the independence of SUHAKAM so that it can effectively perform its functions and maintain its A grade status in line with the Paris Principles.

Freedom of expression and assembly

30. Repeal the 1948 Seditious Act and repeal or amend other laws which arbitrarily restrict the right to freedom of expression, including the Communications and Multimedia Act and the Printing Presses and Publications Act, to ensure that they are in line with international human rights standards.
31. Immediately and unconditionally release those imprisoned solely for the peaceful exercise of their right to freedom of expression; drop charges under these laws against individuals for peacefully exercising this right and, pending the repeal or amendment of these laws, ensure that no one else is arrested, investigated, charged or imprisoned under them for the peaceful exercise of their human rights.

32. Review or amend the Peaceful Assembly Act, Penal Code, and other laws to allow for peaceful protests without arbitrary restrictions, drop charges and investigations against individuals solely for the exercise of their right to freedom of peaceful assembly and, pending the review or amendment of these laws, ensure no one else is arrested, investigated, charged or imprisoned under these laws for exercising their right to peaceful assembly.

Migrants and refugees

33. End automatic and/or indefinite detention for all irregular migrants and ensure that special populations such as survivors of trafficking and refugees are accorded requisite protections in international law.
34. Ensure that children are never detained, and that families are not separated through detaining adult caregivers.
35. Respect the international legal principle of non-refoulement, halt all deportations of migrants and refugees to countries where they may be at risk, and ensure legal pathways for entry and regularization, including asylum for all people whose safety is at risk and family reunification.
36. Facilitate the safe disembarkation of Myanmar refugees on boats, dispatch search and rescue boats to those at sea and put in place pathways for them to safely remain in the country, including by seeking asylum, without resorting to detention.
37. Allow the UN High Commissioner for Refugees to carry out its mandate, including by granting it access to anyone in detention, and ensuring its evaluation and recommendations are individually adhered to around individual assessments of people in detention.

Death penalty

38. As previously recommended, abolish the death penalty for all crimes; pending this, extend the official moratorium on executions indefinitely until the death penalty is fully abolished and all existing death sentences are reviewed and commuted; and abolish the death penalty for crimes not meeting the threshold of the "most serious crimes" under international law and standards, as first steps.
39. Ensure that all persons facing the death penalty – including those from disadvantaged backgrounds – have access to competent legal assistance, from the moment of arrest or when they first face criminal charges, to appeals and other recourse procedures, and ensure that the Bar Council Legal Aid Centre in Malaysia is provided sufficient resources to appoint competent pro bono lawyers in all regions.
40. Establish transparent procedures for the exercise of the power to grant pardon applications, in order to fulfil its purpose of being a meaningful safeguard of due process.
41. Individually review, with the intention to commute, the sentences of over 1,300 individuals on death row; ensure that any resentencing process is in line with international fair trial standards, including by ensuring that those applying for review have adequate time, resources and access to legal representation, and by guaranteeing their right to appeal; and ensure that alternative sentences do not contravene the prohibition against torture or other cruel, inhuman or degrading treatment or punishment.
42. Regularly publish full and detailed information, disaggregated at least by gender, nationality and ethnic background, about the use of the death penalty which can contribute to public debate on the issue. The data should include the number of persons sentenced to death and for what offences, the number of prisoners

appealing the sentences and at what level and location of detention, among others.

Deaths in custody

43. Ensure thorough, transparent and effective investigations by independent bodies into all complaints and reports of torture and other ill-treatment by police and any other state officials and ensure that those suspected to be responsible are prosecuted in proceedings that meet international standards of fairness.
44. Introduce a robust and transparent police oversight commission that is impartial and independent, and with the necessary investigative and disciplinary powers to hold the police accountable.

Indigenous peoples' rights

45. Ensure Indigenous peoples are free from harassment and the threat of criminalization through the use of repressive laws and can exercise their rights and conduct their human rights work in a safe environment.
46. Initiate thorough and impartial investigations into attacks, threats and assaults against Indigenous land defenders, and where there is sufficient evidence of criminal responsibility, bring those responsible to justice in fair trials.
47. Protect and uphold the human rights of Indigenous peoples, including their rights to land; the protection of their cultural heritage; free, prior and informed consent; and a healthy environment.
48. Address the long term, systemic changes necessary to protect Indigenous peoples' rights by establishing an Independent National Commission on Indigenous Land Rights.

¹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Malaysia, 7 January 2019, UN Doc. A/HRC/40/11 and its Addendum, 18 February 2019, UN Doc. A/HRC/40/11/Add.1, recommendation 151.143 [Georgia], 151.147 [Czechia]

² A/HRC/40/11/Add.1, recommendations 151.137 [USA], 151.140 [Brazil], 151.142 [Czechia], 151.144 [Ireland]

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⁵ Amnesty International Malaysia, "Historic change unfolding as Dewan Rakyat votes to repeal mandatory death penalty", 2 April 2023, <https://www.amnesty.my/2023/04/03/malaysia-historic-change-unfolding-as-lawmakers-vote-to-repeal-mandatory-death-penalty/>

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⁷ Amnesty International Malaysia, "Amnesty International Malaysia condemns deportation of more Myanmar nationals, including children", 23 February 2023, <https://www.amnesty.my/2023/02/23/amnesty-international-malaysia-condemns-deportation-of-more-myanmar-nationals-including-children/>

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151.18 [Paraguay], 151.20 [Albania], 151.21 [Australia], 151.22 [Cote d'Ivoire], 151.23 [Greece], 151.25 [Myanmar], 151.27 [Denmark] [Montenegro], 151.28 [Fiji], 151.30 [Greece], 151.32 [Sri Lanka], 151.37 [Montenegro],

⁹ A/HRC/40/11/Add.1, recommendations 151.39 [Norway], 151.38 [Turkey]

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¹¹ See for example: Al Jazeera, *Malaysia backtracks on decision to join the ICC*, 5 April 2019, <https://www.aljazeera.com/news/2019/4/5/malaysia-backtracks-on-decision-to-join-icc>

¹² See for example: Free Malaysia Today, 'Controversial' appointments compromise Suhakam's neutrality, says Suaram, 3 July 2022, <https://www.freemalaysiatoday.com/category/nation/2022/07/03/controversial-appointments-compromise-suhakams-neutrality-says-suaram/>

¹³ The Star, *Dr Farah Nini appointed as Children's Commissioner*, 10 March 2023, <https://www.thestar.com.my/news/nation/2023/03/10/dr-farah-nini-appointed-childrens-commissioner>

¹⁴ Parliament Malaysia, 14th Parliament, 2nd Meeting, 5th Term - Question 60, 20 July 2022, <https://www.parlimen.gov.my/files/jindex/pdf/JDR20072022.pdf>

¹⁵ Free Malaysia Today, *No plans to abolish Sedition Act just yet, says Ramkarpal*, 21 March 2023, <https://www.freemalaysiatoday.com/category/nation/2023/03/21/no-plans-to-abolish-sedition-act-just-yet-says-ramkarpal/>

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