



**UNIVERSAL PERIODIC REVIEW
SUBMISSION FOR MALAYSIA**

NGO Submission

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ABOUT HRF

The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.

We focus our work on the founding ideals of the human rights movement, those which are most purely enshrined in the 1948 Universal Declaration of Human Rights and the 1976 International Covenant on Civil and Political Rights (ICCPR).

HRF's Center for Law and Democracy (HRF-CLD) is a program of HRF. HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

INTRODUCTION

This submission was prepared by HRF, for the Universal Periodic Review (UPR) of Malaysia. In this submission, HRF evaluates Malaysia's implementation of recommendations made during its previous UPR, as it relates to the current human rights situation in the country, which is still characterized by systematic, widespread, and gross violations of human rights, including of: the freedoms of speech, assembly, and association, torture, and discrimination based on gender and sexual orientation.

FOLLOW-UP ON THE PREVIOUS REVIEW

1. The most recent UPR of Malaysia by the United Nations (UN) Human Rights

Council took place on November 8, 2018.¹ The Human Rights Council adopted the outcome of the country's review during its 40th Session, on March 14, 2019.² Malaysia received a total of 268 recommendations, accepted 147 in full, 37 in part, and noted the remaining 84.³ Although Malaysia accepted many recommendations covering a range of issues, it has not made significant progress in implementing them.

2. One of the most common recommendations by UN Member States was that Malaysia should ratify particular international conventions and remove reservations to core human rights instruments. Despite the number of States that made these recommendations, critically, Malaysia has yet to ratify numerous international instruments.⁴
3. As a UN Member State, Malaysia has committed to protecting, promoting, and respecting the individual rights and fundamental freedoms laid out in the Universal Declaration of Human Rights (UDHR), at least to the extent that it is consistent with the Malaysian constitution.⁵
4. The 1957 Federal Constitution of Malaysia (*hereinafter* Constitution)⁶ formally enshrines the protection of several human rights (*see infra* *Malaysia's National Framework for Protecting Human Rights*), yet lacks key provisions in relation to prohibition of torture and protection of human dignity. Additionally, despite

¹ U.N. Human Rights Council, Working Grp. on the Universal Periodic Review of the Thirty-First Session, *Report of the Working Group on the Universal Periodic Review: Malaysia*, U.N. Doc. A/HRC/40/11, (Jan. 7, 2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/001/96/PDF/G1900196.pdf?OpenElement>.

² U.N. Human Rights Council, *Decision adopted by the Human Rights Council on 14 March 2019*, U.N. Doc. A/HRC/DEC/40/108, (Mar. 20, 2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/072/70/PDF/G1907270.pdf?OpenElement>.

³ *Id.*

⁴ *Ratification Status for Malaysia*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN. Malaysia has yet to ratify Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; International Covenant on Civil and Political Rights; International Convention for the Protection of All Persons from Enforced Disappearance; and International Covenant on Economic, Social and Cultural Rights.

⁵ See, e.g., Human Rights Commission of Malaysia Act (1999) 4(4), "(4) For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution."

⁶ Malaysian Constitution (1963)

https://www.jac.gov.my/spk/images/stories/10_akta/perlembagaan_persekutuan/federal_constitution.pdf.

such constitutional guarantees, Malaysia has laws in place which impinge upon the rights of its people.

MALAYSIA'S NATIONAL FRAMEWORK FOR PROTECTING HUMAN RIGHTS

5. The Constitution contains several key provisions relating to the protection of the fundamental rights and freedoms of its citizens.

6. In relation to freedoms of speech, assembly, and association, Malaysia's Constitution states in *Article 10(1)* that:

*every citizen has the right to freedom of speech and expression;
all citizens have the right to assemble peaceably and without arms;
all citizens have the right to form associations.*

7. In relation to the right to life, freedom from arbitrary detention, and due process rights, Malaysia's Constitution states in *Article 5(1)-(4)*:

*No person shall be deprived of his life or personal liberty save in accordance with law...
Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.
Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.*

8. In relation to equal protection of individuals under the law, Malaysia's Constitution states in *Article 8(1)*:

All persons are equal before the law and entitled to the equal protection of the law.

POLITICAL BACKGROUND

9. Peninsular Malaysia achieved independence from the United Kingdom in 1957,

after which it united with Sabah, Sarawak, and Singapore to form Malaysia.⁷ Singapore left the union and became independent eight years later.⁸

10. Today, Malaysia is a federal constitutional monarchy, with a population of approximately 33.5 million people.⁹ The monarch, or *Yang di-Pertuan Agong*, carries out most of his duties under the advice of the Prime Minister and Cabinet.¹⁰ Since gaining independence, Malaysia has largely been ruled by Barisan Nasional, a coalition of parties in power until 2018,¹¹ comprising three dominant parties: United Malays National Organisation (UMNO), Malaysian Chinese Association, and Malaysian Indian Congress. In 2018, however, an opposition alliance led by former president Mahathir Mohammad won the election, ending Barisan Nasional's 60-year dominance.¹²

11. The newly-formed regime was short-lived. In 2020, Mahathir resigned from his position, and the Perikatan Nasional coalition, led by Muhyiddin Yassin, came into power.¹³ This move was highly controversial, as the coalition included parties from Barisan Nasional,¹⁴ and Perikatan Nasional was unstable, due to the public's dissatisfaction with the management of the COVID-19 crisis and politicization of pandemic-related measures.¹⁵

12. In 2022, then-Prime Minister Ismail Sabri Yaakob dissolved the parliament and held an election to take advantage of the uncoordinated opposition.¹⁶ The

⁷ *Malaysia*, United Nations (last accessed Jul. 4, 2023) <https://www.un.org/en/about-us/member-states/malaysia>.

⁸ *Id.*

⁹ *Malaysia Population*, WorldOMeter (last accessed Jan. 19, 2023), <https://www.worldometers.info/world-population/malaysia-population/>.

¹⁰ Malaysian Parliament, *Introduction* (Jan. 23, 2013)

<https://www.parlimen.gov.my/pengenalan.html?&uweb=p&view=23&lang=en>.

¹¹ Ayman Falak Medina, *Malaysia's General Election on Nov. 19*, Asean Briefing (Nov. 18, 2022)

<https://www.aseanbriefing.com/news/malysias-general-election-on-nov-19-a-quick-guide/>.

¹² *Malaysia's opposition pulls off shocking election win*, Al Jazeera (May 10, 2018)

<https://www.aljazeera.com/news/2018/5/10/malysias-opposition-pulls-off-shocking-election-win>.

¹³ Tricia Yeoh, *Malaysian Politics: What Just Happened and the Political Outlook*, Heinrich Böll Foundation (Oct. 20, 2021)

<https://th.boell.org/en/2021/10/20/malaysian-politics-what-just-happened-and-political-outlook>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Malaysian PM dissolves parliament, calls snap polls*, DW (Oct. 10, 2022) <https://www.dw.com/en/malaysia-pm-dissolves-parliament-triggering-snap-election/a-63389571>.

election resulted in a hung parliament, with Anwar Ibrahim's progressive Pakatan Harapan coalition securing the most seats but falling short of a majority. To form a government, Anwar joined forces with other coalitions, including Barisan Nasional.¹⁷

13. Anwar was once a member of UMNO but left the party after he was arrested on charges of corruption and sodomy.¹⁸ Upon release, he re-emerged as a powerful opposition leader, despite almost two decades of arrests, prosecution, and incarceration, which have been widely criticized as being politically-motivated.¹⁹ While the election of a persecuted opposition figure breathes new hope into Malaysia's democratization, the presence of UMNO politicians within Anwar's cabinet raises doubts about his ability to effectively reform civil and political rights in Malaysia.

FREEDOMS OF ASSEMBLY, ASSOCIATION, AND EXPRESSION

14. Though Malaysia formally enshrines the freedoms of speech, assembly, and association within Article 10 of its Constitution, the regime relies on outdated laws from the colonial era to repress such fundamental freedoms.²⁰ Such laws include the Sedition Act,²¹ Peaceful Assembly Act,²² Communications and Multimedia Act (CMA),²³ and certain provisions of the Penal Code.²⁴ Each contains overbroad and vague provisions, rendering them prone to arbitrary

¹⁷ *Malaysia's Anwar becomes prime minister, ending decades-long wait*, CNN (Nov. 24, 2022)

<https://edition.cnn.com/2022/11/24/asia/anwar-ibrahim-malaysia-new-prime-minister-intl-hnk/index.html>.

¹⁸ *Anwar Ibrahim: The man who fulfilled his goal to lead Malaysia*, BBC News (Nov. 24, 2022)

<https://www.bbc.com/news/world-asia-16440290>.

¹⁹ *Id.*

²⁰ *Malaysia: Free Speech Under Increasing Threat*, Human Rights Watch (May 19, 2021)

<https://www.hrw.org/news/2021/05/19/malaysia-free-speech-under-increasing-threat>.

²¹ Malaysian Sedition Act (1948, amended 2015) <https://cyrilla.org/en/document/4stzo2dth8k?page=3>

²² Peaceful Assembly Act (2012) <https://icj2.wpenginepowered.com/wp-content/uploads/2014/02/Malaysia-Peaceful-Assembly-Act-2012-eng.pdf>.

²³ Communications and Multimedia Act (1998)

https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi_3.pdf.

²⁴ Penal Code (2018) https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Penal%20Code%20ACT%20574%20-%20TP%20LULUS%2021_2_2018.pdf.

interpretations by officials and creating a chilling effect on free speech.²⁵

15. The Sedition Act and CMA are particularly weaponized to stifle online criticism concerning race, religion, and royalty.²⁶ The regime has made little progress on its pledge during the last Review to repeal and review these laws.²⁷ A moratorium on the Sedition Act imposed in 2018 by Pakatan Harapan coalition lasted just one month²⁸ and is still in force and used to target dissidents.²⁹ The Sedition Act has been cited in at least 367 investigations between 2018 and 2023,³⁰ while the CMA has been used against 692 people from 2020 to June 2022.³¹

16. In 2019, Khalid Mohd Ismath, a political activist, was arrested and detained under Article 4(1)(b) of the Sedition Act, for allegedly criticizing the Queen of Malaysia on social media.³² Khalid had previously been detained in 2015 on 14 charges under the same Act, as well as the CMA, for criticizing the royal family.³³ In May 2021, opposition politician Iswardy Morni was likewise charged under the Sedition Act for making statements on a Facebook livestream deemed to insult the King.³⁴ In March 2021, activist and artist Fahmi Reza was taken for questioning under the CMA for posting caricatures of a former health minister on multiple social media platforms. Another CMA and Sedition Act case was opened against him in April over a purportedly inflammatory Spotify playlist he made portraying the Queen on its cover.³⁵

²⁵ Human Rights Watch, *supra* note 20.

²⁶ *Locked Down: Screws Tighten on Free Press in Malaysia*, Int'l Federation of Journalists (May 2021).
https://www.ifj.org/fileadmin/user_upload/Malaysia_PF_Report_2021_-_Locked_down.pdf.

²⁷ *Malaysia: End use of Sedition Act*, Human Rights Watch (Jul. 17, 2019).
<https://www.hrw.org/news/2019/07/18/malaysia-end-use-sedition-act>.

²⁸ *Malaysia: Keep Moratorium on Abusive Laws*, Human Rights Watch (Dec. 5, 2018).
<https://www.hrw.org/news/2018/12/05/malaysia-keep-moratorium-abusive-laws>.

²⁹ Human Rights Watch, *supra* note 27.

³⁰ *Malaysia: Repeal Sedition Act in the Court of Appeals*, Article 19 (May 26, 2023).
<https://www.article19.org/resources/malaysia-repeal-sedition-act-in-the-court-of-appeals/>.

³¹ *8 Point Human Rights Agenda for the new government*, Amnesty Int'l (Nov. 19, 2022).
<https://www.amnesty.my/2022/11/17/8-point-human-rights-agenda-for-the-new-government-2022/>.

³² Yiswaree Palansamy, *PSM activist Khalid Ismath arrested over alleged tweet to Queen*, Malay Mail (Sept. 14, 2019).
<https://www.malaymail.com/news/malaysia/2019/09/14/psm-activist-khalid-ismath-arrested-over-alleged-tweet-to-queen/1790357>.

³³ *Khalid Ismath*, Front Line Defenders <https://www.frontlinedefenders.org/en/case/case-history-khalid-mohd-ismath>.

³⁴ *Malaysia: Drop sedition charges against opposition party member and repeal the draconian Sedition Act*, Article 19 (Jun. 2, 2021) <https://www.article19.org/resources/malaysia-drop-sedition-charges/>.

³⁵ *Malaysia: End investigations into political satire artist*, Article 19 (Apr. 24, 2021).
<https://www.article19.org/resources/malaysia-end-investigations-satire-artist/>.

17. The regime tightened its grip on civic space during COVID-19, as crackdowns on peaceful assembly took place under the guise of pandemic-related public health measures. During the #Lawan protests of 2021, set against the backdrop of then-prime minister Muhyiddin Yassin's botched handling of the pandemic, police threatened protesters with legal action and ultimately arrested dozens of people for calling on the public to partake in the protests.³⁶

FREEDOM OF THE PRESS

18. The regime also displayed increased hostility toward journalists and media workers during the pandemic. In August 2020, police raided the local Al Jazeera office over the publication of a video that reported on the mistreatment of migrant workers and refugees by the regime during the pandemic.³⁷ The video, titled "Locked Up in Malaysia's Lockdown," featured interviews with a range of people left stranded as a consequence of Malaysia's movement control order. Police seized two computers during the raid and interrogated seven journalists involved in the video production, on allegations of sedition, defamation, and violation of the repressive CMA. Two journalists were also denied extension of their work visas,³⁸ and Al Jazeera claimed the journalists faced death threats online.³⁹

19. Also in 2020, the regime brought a case against South China Morning Post correspondent Tashny Sukumaran for co-writing an article on the subject of police raids in COVID-19 "red zones" that led to the arrest of many migrant

³⁶ *Malaysia: Government must stop harassment and intimidation of peaceful protesters*, Article 19 (Jul. 31, 2021) [https://www.article19.org/resources/malaysia-government-must-stop-harassment-intimidation-peaceful-protesters/#LAWAN: A Recap of 31 July, Amnesty Int'l Malaysia \(Aug. 3, 2021\) https://www.amnesty.my/2021/08/03/lawan-a-recap-of-31-july/](https://www.article19.org/resources/malaysia-government-must-stop-harassment-intimidation-peaceful-protesters/#LAWAN: A Recap of 31 July, Amnesty Int'l Malaysia (Aug. 3, 2021) https://www.amnesty.my/2021/08/03/lawan-a-recap-of-31-july/).

³⁷ *Malaysian Police raid Al Jazeera's office, seize computers*, Al Jazeera (Aug. 5, 2020) <https://www.aljazeera.com/news/2020/8/5/malaysian-police-raid-al-jazeeras-office-seize-computers>.

³⁸ *Malaysia refuses to renew 2 Al Jazeera reporters visas amid investigation*, Committee to Protect Journalists (Aug. 10, 2020) <https://cpj.org/2020/08/malaysia-refuses-to-renew-2-al-jazeera-reporters-visas-amid-investigation/>.

³⁹ *Al Jazeera shocked by the response from Malaysian authorities to its documentary "Locked Up in Malaysia's Lockdown" and worried about its staff*, Al Jazeera (Jul. 9, 2020) <https://network.aljazeera.net/en/pressroom/al-jazeera-shocked-response-malaysian-authorities-its-documentary-%E2%80%98locked-malaysia%E2%80%99s>.

workers and refugees.⁴⁰ Tashny was questioned under the CMA and Section 504 of the Penal Code that prohibits the act of “intentionally insult[ing]” with intent to “break the public peace.”⁴¹ Though the case was dropped, Tashny was summoned a second time months later for her contribution to a book that had been banned by the regime for featuring a cover design considered to have insulted the national coat of arms.⁴²

20. In February 2021, independent news website Malaysiakini was fined MYR 500,000 (approx. USD \$128,500) by the Federal Court over five allegedly contemptuous comments left by its subscribers on an article about the judiciary’s decision to reopen courts amid the country’s lockdown.⁴³ The case was initiated based on Section 114A of the 2012 Evidence (Amendment) (No. 2) Act, a provision that has been extensively criticized by local and international journalist associations for exposing website or blog owners, including media sites, to criminal responsibility for any libelous, defamatory, or seditious content made by third-parties on their platforms.⁴⁴ A contempt case was also brought against Malaysiakini’s editor-in-chief Steven Gan but ended with an acquittal.⁴⁵

21. The regime has also not delivered on its pledge⁴⁶ to review the 1984 Printing Presses and Publications Act, a law that vests officials with broad power to outlaw any media deemed “prejudicial to or likely to be prejudicial to public

⁴⁰ *Malaysia: Journalist summoned over critical article*, Int’l Federation of Journalists (May 4, 2020)

<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/malaysia-journalist-summoned-over-critical-article.html>.

⁴¹ *Id.*

⁴² *Malaysia: Police bring a new case against reporter Tashny Sukumaran*, Int’l Federation of Journalists (Jul. 8, 2020),

<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/malaysia-police-bring-a-new-case-against-reporter-tashny-sukumaran>.

⁴³ *Malaysian Federal Court decision against online news portal Malaysiakini a setback to media freedom and freedom of expression*, Article 19 (Feb. 23, 2021) <https://www.article19.org/resources/malaysian-federal-court-decision-against-online-news-portal-malaysiakini-a-setback-to-media-freedom-and-freedom-of-expression/>.

⁴⁴ Evidence Act, (amended in 2012) <https://www.icj.org/wp-content/uploads/2012/12/Malaysia-Evidence-Amendment-Act-no.-2-2012-eng.pdf>.

⁴⁵ *The Aftermath of the Malaysiakini Decision*, Int’l Commission of Jurists (Mar. 18, 2021) <https://www.icj.org/the-aftermath-of-the-malaysiakini-decision/#:~:text=Under%20section%20114A%20of%20the,and%20thus%20potentially%20held%20liable>.

⁴⁶ U.N. Human Rights Council, Working Grp. on the Universal Periodic Review of the Thirty-First Session, *National report submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21: Malaysia*, U.N. Doc. A/HRC/WG.6/31/MYS/1 (Aug. 23, 2018) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/256/22/PDF/G1825622.pdf?OpenElement>.

order, morality, security, or which is likely to alarm public opinion.”⁴⁷

LGBTQ+ RIGHTS

22. At the last review, the regime took note of recommendations related to LGBTQ+ persons, adding that it “does not discriminate against the [] community” and that LGBTQ+ rights are protected under the domestic law.⁴⁸ At the 1st Association of Southeast Asian Nations (ASEAN) Digital Ministers’ Meeting in January 2021, former Prime Minister Muhyiddin Yassin stated that ASEAN Member States must consider enacting stronger frameworks to counter hate speech and incitement to verbal and physical violence on the basis of one’s sexual orientation.⁴⁹ However, his successor Ismail Sabri told media later that year that Malaysia’s Islamic values dictate action to be taken against “any [LGBTQ+] person who violates the law” and that they must be “guided...so that they can return to the right path.”⁵⁰ Incumbent Anwar Ibrahim has stressed that LGBTQ+ individuals “will never be recognized” under his administration.⁵¹

23. Same-sex relations are punishable with 20 years’ imprisonment and mandatory caning under the Penal Code.⁵² The federal Islamic Affairs Department (JAKIM), a government body, organizes conversion or “rehabilitation” programs, known locally as *mukhayyam*.⁵³ Such programs entail enlisting LGBTQ+ persons in a three-day retreat, during which they are given religious counseling to renounce

⁴⁷ Printing Presses and Publications Act (1984) <http://uumpress.uum.edu.my/component/content/article/164-announcement/act/578-printing-presses-and-publications-act-1984?Itemid=437#:~:text=The%20purpose%20of%20this%20act,1%2C000%20copies%20in%20an%20hour.>

⁴⁸ U.N. Human Rights Council, Working Grp. on the Universal Periodic Review of the Thirty-First Session, *supra* note 46.

⁴⁹ Jerry Choong, *Muhyiddin urges Asean to legislate against online hate speech, threats based race, gender and sexual orientation*, Malay Mail (Jan. 21, 2021) <https://www.malaymail.com/news/malaysia/2021/01/21/muhyiddin-urges-asean-to-legislate-against-online-hate-speech-threats-based/1942613>.

⁵⁰ Hannah Beech and Hadi Azmi, *Transgender Woman Flees Malaysia After Wearing Hijab*, New York Times (Oct. 20, 2021) <https://www.nytimes.com/2021/10/20/world/asia/malaysia-transgender.html>

⁵¹ *PM Anwar: LGBT, secularism, communism will never be recognised in unity govt*, Malay Mail (Jan. 7, 2023) <https://www.malaymail.com/news/malaysia/2023/01/07/pm-anwar-lgbt-secularism-communism-will-never-be-recognised-in-unity-govt/48847>; <https://asiatimes.com/2023/01/reformist-anwar-turns-his-back-on-lgbts/>.

⁵² Penal Code, Arts. 377A and 377B (2018)

https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Penal%20Code%20ACT%20574%20-%20TP%20LULUS%2021_2_2018.pdf.

⁵³ *Conversion Therapy Practices in Malaysia*, Asia Pacific Transgender Network (2021) page 13, https://weareaptn.org/wp-content/uploads/2021/03/Conversion-Therapy-2020-Malaysia_29Dec.pdf.

“unnatural sex.”⁵⁴ The regime reported 1,733 people having attended these programs as of June 2021.⁵⁵

24. Moreover, in March 2022, JAKIM launched the app “Hijrah Diri,” which it claims to contain “suggestions, ideas, explanations and interpretations” to help users “overcome the problem of homosexuality.” It was taken down from the Play Store by Google shortly after,⁵⁶ but discriminatory regime policies in other forms persist, including the promotion of anti-LGBTQ+ narratives by regime officials and in school curricula;⁵⁷ censorship of materials containing LGBTQ+ elements, including music, photographs, and websites;⁵⁸ and restrictions on LGBTQ+ social movements or events.⁵⁹

25. In December 2018, the Home Affairs Ministry announced that any films containing LGBTQ+ scenes would be banned from public viewing.⁶⁰ In August 2019, officials censored scenes depicting same-sex relations acts from Elton John’s biopic “Rocketman.”⁶¹ Throughout 2022, the regime doubled down on its censorship, by banning two additional films with similar content from local theaters and vowing to continue to do so.⁶²

⁵⁴ *Malaysia: End harassment of critic of government’s stance on LGBTQ+ issues*, Article 19 (Aug. 6, 2020)

<https://www.article19.org/resources/malaysia-end-harassment-of-critic-of-governments-stance-on-lgbtq-issues/>.

⁵⁵ “I Don’t want to Change Myself”: Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia, Human Rights Watch (Aug. 10, 2022) https://www.hrw.org/report/2022/08/10/i-dont-want-change-myself/anti-lgbt-conversion-practices-discrimination-and#_ftn168.

⁵⁶ *Google removes Jakim’s gay conversion app from the play store*, Asia Pacific Transgender Network (Mar. 24, 2022)

<https://weareaptn.org/2022/03/24/google-removes-jakims-gay-conversion-app-from-the-play-store/>.

⁵⁷ Human Rights Watch, *supra* note 55.

⁵⁸ *Activists decry Malaysian Ban on LGBT Books*, Bangkok Post (Feb. 16, 2023)

<https://www.bangkokpost.com/world/2508259/activists-decry-malaysian-ban-on-lgbt-books>.

⁵⁹ Robin Vochelet, *In Malaysia, Conservative Forces and Police Crackdowns are putting LGBTQ lives at risk*, The Diplomat (Apr. 17, 2023) <https://thediplomat.com/2023/04/in-malaysia-conservative-forces-and-police-crackdowns-are-putting-lgbtq-lives-at-risk>.

⁶⁰ *Censorship board to cut LGBT content from films, deputy home minister says*, Malay Mail (Dec. 10, 2018)

<https://www.malaymail.com/news/malaysia/2018/12/10/censorship-board-to-cut-lgbt-content-from-films-deputy-home-minister-says/1701876>.

⁶¹ Beh Lih Yi, *Malaysia under fire over cuts to gay scenes in Elton John’s ‘Rocketman,’* Reuters (Aug. 1, 2019)

<https://www.reuters.com/article/us-film-rocketman-malaysia/malaysia-under-fire-over-cuts-to-gay-scenes-in-elton-johns-rocketman-idUSKCN1UR3ZF>.

⁶² *Censorship of LGBT elements in films, social media to continue*, Free Malaysia Today (Aug. 10, 2022)

<https://www.freemalaysiatoday.com/category/nation/2022/08/10/censorship-of-lgbt-elements-in-films-social-media-to-continue/>.

26. In May 2023, during raids in 11 shopping malls, officials confiscated 164 watches released by Swiss company Swatch in commemoration of Pride Month, citing a violation of the 1984 Printing Presses and Publications Act.⁶³
27. LGBTQ+ persons are additionally vulnerable to harassment, arbitrary arrests, and detention. A particularly high-profile case took place in 2021 concerning transgender woman entrepreneur and influencer Nur Sajat Kamaruzzaman. Nur Sajat was charged with “insulting Islam,” after wearing feminine attire at a religious event.⁶⁴ The Selangor state religious department deployed 122 religious affairs officers to track her down after she failed to appear in court to answer to the charges. When it was later discovered that she had sought asylum in Thailand, the regime requested Thai immigration police to arrest and detain her, and she was given an illegal entry charge by Thailand, to which she pled guilty.⁶⁵ The Malaysian regime demanded that she be extradited so she could be “educated.”⁶⁶ In October 2021, Nur Sajat resettled in Australia.⁶⁷ This was not the first time she had been targeted for her gender identity.⁶⁸

TORTURE AND ILL-TREATMENT

28. During its last country review, the Malaysian regime noted all recommendations by UN Member States on the elimination of all forms of torture and other cruel, inhuman, or degrading treatment or punishment.⁶⁹ The regime has not, however, signed the CAT, and the Constitution does not prohibit torture and other cruel, inhuman, or degrading treatment.⁷⁰
29. The regime partially accepted one recommendation related to the use of corporal

⁶³ *Malaysia seizes swatch watches over LGBT connotation*, Al Jazeera (May 24, 2023)

<https://www.aljazeera.com/economy/2023/5/24/malaysia-seizes-swatch-watches-over-lgbt-connotations>.

⁶⁴ Human Rights Watch, *supra* note 55.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Zurari Ar, *Justice for Sisters: Real concern is Nur Sajats safety and security not her ‘umrah’ attire*, Malay Mail (Feb. 4, 2020) <https://www.malaymail.com/news/malaysia/2020/02/04/justice-for-sisters-real-concern-is-nur-sajats-safety-and-security-not-her/1834260>; <https://www.malaysiakini.com/letters/410000>.

⁶⁹ U.N. Human Rights Council, *supra* note 46.

⁷⁰ *Malaysia*, OMCT <https://www.omct.org/en/where-we-work/asia-and-the-pacific/malaysia>.

punishment and judicial caning.⁷¹ This form of punishment is still enforced alongside imprisonment for various offenses in Malaysia, including drug trafficking, illegal immigration, so-called unnatural sexual behavior, including same-sex relations, armed robbery, rape, and white-collar crimes. In 2019, four men were caned after being convicted of “an attempt at sexual intercourse against the order of nature.”⁷² In 2020, a lower court sentenced 27 Rohingya refugees to caning for illegal entry, a decision which was then overturned on appeal, following public outcry.⁷³ In 2022, an Indonesian migrant worker was caned, despite his appeal not having been heard yet.⁷⁴ The case drew condemnation from local and international worker associations which claimed the worker’s conviction was based on the erroneous ruling that he was undocumented.⁷⁵

30. Cases of police brutality and custodial deaths remain high, and local activists have repeatedly voiced concerns over the regime’s failure to provide accurate statistics on this matter.⁷⁶ In 2020, the national human rights commission, SUHAKAM, reported 456 deaths in police custody, including prisons and immigration detention centers.⁷⁷ In 2021, local NGO SUARAM documented 19 deaths, while noting that cases throughout the year were “severely underreported.”⁷⁸ Of particular alarm were the cases of 42-year-old security guard S. Sivabalan, who died 70 minutes into his detention and 21-year old S. Surendran, who succumbed to septic shock and multiple organ failure less than a

⁷¹ U.N. Human Rights Council, *supra* note 46.

⁷² *Malaysia: Caning of four men is a terrible warning to LGBTI people, while more await trial*, Amnesty Int’l (Nov. 18, 2019) <https://www.amnesty.org/en/latest/press-release/2019/11/malaysia-caning-of-four-men-is-a-terrible-warning-to-lgbti-people-while-more-await-trial/>.

⁷³ *Malaysian Court Overturns Caning Sentence for 27 Rohingya Refugees*, Radio Free Asia (Jul. 23, 2020) <https://www.rfa.org/english/news/myanmar/caning-07232020095747.html>.

⁷⁴ Rebecca Chong, *Govt must apologise for wrongfully caning migrant worker*, The Vibes (Jul. 23, 2022) <https://www.thevibes.com/articles/news/66650/govt-must-apologise-for-wrongfully-caning-migrant-worker-group>.

⁷⁵ *Id.*

⁷⁶ Sevan Doraisamy, *Increase data transparency for custodial deaths*, The Vibes (Feb. 24, 2023) <https://www.thevibes.com/articles/opinion/86040/increase-data-transparency-for-custodial-deaths-sevan-doraisamy>

⁷⁷ Radzi Razak, *Suhakam: 456 deaths in custody across 2020*, Malay Mail (Oct. 22, 2021) <https://www.malaymail.com/news/malaysia/2021/10/22/suhakam-456-deaths-in-custody-across-2020/2015239>.

⁷⁸ R. Loheswar, *Suaram alleges underreporting of deaths in police custody*, Malay Mail (Dec. 1, 2021) <https://www.malaymail.com/news/malaysia/2021/12/01/suaram-alleges-underreporting-of-deaths-in-police-custody/2025110>.

month after his transfer to a prison in Simpang Renggam.⁷⁹

31. In 2022, it was revealed that 150 foreign nationals, including 25 women and seven children had died in immigration custody; the regime has yet to conduct a meaningful investigation.⁸⁰
32. In June 2023, the Independent Police Conduct Commission (IPCC) Act 2020, which establishes a commission charged with ensuring accountability for police misconduct, came into force.⁸¹ However, it has been extensively criticized by the Malaysian Bar and various civil society organizations, as it merely endows the IPCC with limited investigative powers and independence from the executive branch.⁸²

RECOMMENDATIONS

HRF calls on the Malaysian regime to:

- a. commit to ratifying critical international human rights instruments;
- b. protect, respect, and promote, without reservation, the rights of all individuals to freedoms of expression, assembly, and association, and ensure that activists, journalists, and opposition groups can operate peacefully and safely within Malaysia;
- c. ensure that the basic rights of women and the LGBTQ+ population are recognized in Malaysia's domestic legislation — in accordance with

⁷⁹ Alyssa Pong, *Custodial Deaths and Suppression of the media in Malaysia: Is there an end in sight?*, The Organization for World Peace (Jun. 12, 2021) <https://theowp.org/reports/custodial-deaths-and-suppression-of-the-media-in-malaysia-is-there-an-end-in-sight/>.

⁸⁰ *Malaysia pressed to probe deaths of 150 foreigners in detention*, Al Jazeera (Feb. 23, 2023) <https://www.aljazeera.com/news/2023/2/23/malaysia-pressed-to-probe-deaths-of-150-foreigners-in-detention>.

⁸¹ *IPCC lacks authority to uphold police accountability*, Malaysian Bar Association (Dec. 22, 2022) <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-ipcc-lacks-the-authority-to-uphold-police-accountability>.

⁸² *Malaysia: IPCC bill is a step backwards for police accountability*, Amnesty Int'l Malaysia (Oct. 27, 2021) <https://www.amnesty.my/2021/10/27/malaysia-ipcc-bill-is-a-step-backwards-for-police-accountability/>.

widely-adopted international human rights law standards — and respected by federal and state governments;

- d. end harmful practices, such as FGM and caning of LGBTQ individuals on account of their gender identity and sexual orientation; and
- e. expressly prohibit acts of torture and other cruel, inhuman or degrading treatment or punishment in its national legislation, and create an effective mechanism to prevent such investigation or punishment techniques.