



MALAYSIA

Capital:

Kuala Lumpur

Population:

23,092,940

GDP:

\$198.4 billion

GNI per capita:

\$3,540

Scores:

Civil Liberties: *3.64*

Rule of Law: *3.52*

Anticorruption and Transparency: *2.31*

Accountability and Public Voice: *3.11*

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

by William Case

EXECUTIVE SUMMARY

Malaysia's patterns of politics and governance, combining authoritarian controls with democratic procedures, have cumulated in what can broadly be understood as a semi-democratic regime. With respect to civil liberties in Malaysia, citizens do not enjoy adequate protection from arbitrary arrest, detention without trial, or torture. In 2003, such arrests continued under the country's Internal Security Act, legislation that, while historically deployed against alleged Communists and sectarian dissidents, is today used more frequently to target ostensible terrorists. Other acts of parliament allow detention without trial for alleged criminal activities.

The government's performance on gender equity has been better, with little evidence of discrimination against women in political and civil service appointments. The record on minority rights has been less equitable, with ethnic Chinese and Indians discriminated against in various areas of public policy. In addition, civil society organizations, while usually able to

gain formal registration, remain restricted in their functioning by numerous requirements.

Malaysia's judiciary, though sophisticated in its organization, has lost much of its independence over the past decade and a half. Far from ruling independently on political cases, the judiciary serves mainly as an instrument by which to legitimate executive actions. Judicial rulings on libel cases have also discouraged independent media analysis. And the police have been used for political aims, restricting the activities of opposition parties and dissidents. On the other hand, Malaysia's military forces have retained a professional standing.

Public accountability is a serious problem in Malaysia, with longstanding patterns of collusion prevailing between government politicians and business people. Thus, while the prime minister and his deputy publicly denounced corruption throughout 2003, the government's Anti-Corruption Agency failed to undertake any serious investigation of high-level conflicts of interest. Investigative and auditing procedures, transparency in awarding government contracts, and public disclosure remain rudimentary. Only the budgetary process, drawing upon the technocratic expertise of capable agencies, is well developed and reasonably transparent.

Malaysia's electoral laws systematically hamper the opposition, though not so deeply that the opposition cannot win a significant number of parliamentary seats. However, during 2003, in preparation for elections due in 2004, a redistricting exercise was carried out by which the opposition has been further disadvantaged. There were no improvements during the year in the regulations and ownership patterns that limit media independence and freedom of expression. On the contrary, during 2003 the police took action for the first time against a major Internet outlet, *Malaysiakini*.

During 2003, Malaysian citizens awaited the retirement of the prime minister, Mahathir Mohamad, scheduled for the end of October. But given the personal dominance that Mahathir continued to exert until the end of his tenure, one could not detect any significant changes in patterns of civil liberties, political rights, or public sector and corporate governance during the period covered in this report. Rather, Mahathir's deputy and successor, Abdullah Badawi, highlighted the importance of continuities in government decision making and policy aims.

Editor's Note

At the end of October, Mahathir stepped down after 22 years as prime minister. His successor, Abdullah Badawi, soon gave a number of addresses in which he roundly criticized government corruption. In refining his message, Abdullah called specifically for greater transparency in

awarding public contracts, and canceled or delayed some large infrastructure projects. Moreover, he responded to public sentiment by ordering a review of the police force. The commission he formed to undertake this review seemed unexpectedly capable, with a former lord president of the Supreme Court who had been deposed by Mahathir, the president of the Malaysia chapter of Transparency International, and two representatives from women's organizations included in its 16 member line-up. However, while taking these steps toward reform, Abdullah has hesitated to give the Anti-Corruption Agency any greater autonomy, nor has he yet introduced any new guidelines for regulating public tendering. The judiciary has also remained unchanged, with the Court of Appeals refusing in January to award former deputy prime minister Anwar Ibrahim bail while his appeals process continued or to review its decision to uphold his conviction for sexual misconduct. Press freedoms remained limited as well, with Abdullah replacing top officials in newspapers linked to his party in order to consolidate his grip. Also, the police have continued to deny permits to opposition parties that seek to hold meetings. Thus, the extent to which Malaysia's new prime minister will pursue reforms in governance and civil and political liberties remains unclear. Much depends on the strength of his position after the next general election, tipped for early to mid-2004.

CIVIL LIBERTIES – 3.64

Malaysian law prohibits arbitrary arrest. However, two pieces of legislation, the Internal Security Act (ISA) and the Emergency Ordinance (EO), empower the home ministry and the police to detain persons indefinitely without trial where reasonable suspicion is said to exist. Further, the Dangerous Drug Act 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 leveled primarily against opposition politicians, dissidents, and, more recently, against alleged terrorists. In mid-2003, the government stated that 95 persons were held under the ISA, 91 of them for being members of militant religious organizations.¹ Independent observers speculate that the total may be somewhat higher, but this is difficult to confirm.

A 2003 report issued by investigators from Fordham Law School contends that, while interrogating ISA detainees during an initial 60-day period, police "have no expectation of eliciting information relating to security threats, but rather, seek to learn about the structure of political opposition."² In addition, detainees are held in undisclosed places, they remain uninformed about the reasons for their detention, and they are

denied access to legal counsel and family visits. Given this absence of judicial oversight, evidence suggests that detainees are regularly subjected to harsh treatment, amounting to psychological and sometimes physical torture. Similarly, public protests and demonstrations are sometimes met with excessive force from the police. This occurred most visibly in the many beatings that were administered at the peak of the country's *reformasi* (reform) movement during the late 1990s.

After the initial period of interrogation under the ISA, the home minister may issue a two-year detention order, with detainees generally transferred to a central facility. Conditions are then improved, with detainees able to gain legal counsel and have limited family visits. However, detainees have no protection against consecutive detention orders, posing the prospect of indefinite detention without trial. On the other hand, there are no documented instances of the government having gone so far as to kill its political opponents.

During 2003, several ISA detainees sought their release by mounting habeas corpus applications. Malaysia's judiciary, however, is regarded as "unduly deferential and compliant" to the government in ISA cases.³ In addition, the lawyers who agreed to represent these detainees were threatened by government agents. Family members who had helped to arrange counsel for their kin were also harassed. For good measure, the government has said that it will amend the ISA in ways that will "curb judicial scrutiny of the reasons for detention."⁴

Nonetheless, during 2003, although a few members of the opposition Parti Islam SeMalaysia (Pan-Malaysian Islamic Party, PAS) were arrested under the ISA, a half dozen detainees associated with its ally, Parti Keadilan Nasional (National Justice Party), were released under various provisions. As they had been warned in 2002 by the deputy prime minister and home minister, Abdullah Badawi, that they would not be freed, their releases surprised observers. The change of heart was attributed by the Malaysian human rights group Suara Rakyat Malaysia (Suaram) to "mounting public pressure from human rights and civil society groups."⁵ At the same time, however, Abdullah renewed the detention orders of several detainees from PAS, the most powerful political opposition party.

In criminal cases, police have invoked the Emergency Ordinance (EO), sometimes supplemented by the Dangerous Drug Act, enabling them to detain local "gangsters" or druglords for extended periods. The EO and the Dangerous Drug Act allow for detention orders of two years and 39 days respectively, although these can be rolled over, cumulating in indefinite periods of detention without trial. In addition, although political detainees may be spared extra-judicial execution, ordinary criminals enjoy less protection, with at least one detainee under the EO dying while in

police custody during 2002. In addition, seven prisoners died while in police lock-ups during the first seven months of 2003, although it is difficult to determine if any had been held under the EO or Dangerous Drug Act (see below). In any event, in mid-2003, Suhakam, Malaysia's Human Rights Commission, announced that it would track more closely those detained under the EO, noting that relative to those held under the ISA—who often had high public profiles—they remained at even greater risk of abuse.

Citizens in Malaysia are sometimes abused by non-state actors as well, the most systematic cases of which involve clashes between indigenous groups and logging interests over land use, especially in East Malaysia. Independent observers speculate that these abuses may even have increased in recent years, due to pressures arising from the Asian economic crisis of 1997–98 and the weakening of the country's foreign investment and export manufactures.

In comparison to many developing countries, the Malaysian government's record on gender equality can be evaluated as moderately progressive. During 2003, Prime Minister Mahathir Mohamad regularly asserted women's interests against traditional attitudes and Islamist practices. At the federal level, then, there is no formal discrimination against women's political or economic participation, a policy enshrined in the recently amended Article 8(2) of the constitution.

Women enjoy much less equality in the two states controlled by the opposition PAS, with restrictions imposed on their dress, occupations, working hours, and personal relations. Hudud codes of punishment have also been introduced (although as of September 30, 2003, they had not been enforced), imposing a heavy burden of proof upon female rape victims seeking redress. Nonetheless, in August 2003, as the opposition readied itself for general elections and bid for non-Muslim support, the PAS announced that it would not seek to extend Sharia law beyond the states that it governed. It claimed too that it had always sought to put up women candidates for public office but had encountered difficulties in finding qualified ones.

Trafficking in women and children is, of course, illegal in Malaysia. Highly publicized, if sporadic, crackdowns are mounted against prostitution. Nonetheless, prostitution flourishes in Malaysia, as it does throughout the region, attracting large numbers of sex workers from overseas. It is unclear whether the intermittent nature of enforcement is due to the limited resources of police or fluctuations in police relations with the underworld.

Politics have long been dominated by members of the indigenous Malay/Muslim community. The constitution specifies Malay special rights, while legislated quotas, amounting to an affirmative action program

known as the New Economic Policy (NEP), have strongly favored the Malays in state hiring, contracts, credit, university enrollment, business licensing, corporate employment, and equity ownership. A National Culture Policy has also privileged Malay cultural and religious imagery as the symbols of state and national identity. However, due to the economic importance of the country's Chinese minority, the Chinese have gained at least limited political, economic, and cultural guarantees. The pressures of globalization have encouraged further liberalization, with ethnic quotas on university enrollment and business activities recently relaxed.

The constitution asserts Islam as the country's official religion but permits the practice of other religions. Today, the government monitors Islamic activities closely, banning Muslim groups that it labels as deviant. Moreover, in recognizing that mosques have become important venues for opposition activities, the government now oversees the appointments of imams. During 2002–03, it also began to video or audiotape sermons in some states. In October, the government announced that it would halt its funding of some 500 privately run *sekolah agama rakyat* (people's religious schools) because they ignored the official syllabus and were spreading anti-government sentiments. On the other hand, apostasy and open declarations of non-belief by Muslims, while rare, risk periods of internment.

Followers of the country's main minority religions, Christianity, Hinduism, Buddhism, and Sikhism, are strictly barred from proselytizing among Muslims. They can, however, establish their own places of worship—even if encountering much bureaucratic intransigence over zoning and building approvals. Otherwise, there appears to be little government interference in faith-related activities associated with minority religions.

The Malaysian constitution guarantees freedom of assembly, though with restrictions “in the interest of security and public order.” Thus, amendments to the Police Act (1967) require that a permit be obtained 14 days before any assembly is held. *Ceramah* (small political meetings) organized by opposition parties have recently been banned entirely.

Nonetheless, a reasonably well-developed civil society has emerged in Malaysia. The government has responded with a number of stratagems, consulting with nongovernmental organizations (NGOs) geared to problem solving while stiffening the registration requirements for more activist groups. Trade unions are permitted to form, with the Malaysian Trades Union Congress (MTUC) serving as an umbrella organization. But only in-house unions can normally be organized in the country's free trade zones, where foreign-invested manufacturing facilities geared to vital exports predominate.

Public rallies during electoral campaigning were banned in 1978. In September 2003, the Election Commission (EC) announced that it would lift

the ban. The reform was made nearly meaningless, however, because the EC retained the requirement that police permits be obtained beforehand.

University students have long been barred under the University and University Colleges Act (UUCA) from engaging in any activities that the attorney-general deems political. This law was invoked several times in 2003. For example, seven students who had demonstrated outside Kuala Lumpur's national mosque were suspended from their universities, then prosecuted. In August, as preparations were made for university student council elections, the council offices and rooms of undergraduates at Malaysia Putra University (UPM) were raided by university officials. The UPM council, like those of most universities in the country, was controlled by so-called anti-establishment forces—students generally associated with the Muslim Undergraduates Association (PMI), linked in turn to the PAS. When elections were concluded, establishment forces associated with the government were announced as the winners, triggering allegations of vote-buying and fraud.

During 2003, restrictions on NGO activities also became evident at the state level. In two cases, immigration officials in the East Malaysian state of Sarawak, which is controlled by a party linked to the national ruling coalition, refused entry to activists from Peninsula Malaysia who were associated with anti-logging issues. On the other hand, the government lent encouragement to extensive protests over the U.S.-led invasion of Iraq, cumulating in a large anti-war movement that established rare consensus, however tenuous, between the government and sundry NGOs.

In June 2003, the government tabled the National Service Training Bill in parliament, which involves a compulsory national service scheme that includes patriotic training, military exercises, and personal development through community service. It appears principally to be aimed at instilling greater loyalty to the government among the Malays, while reducing so-called social ills. The scheme is scheduled to go into effect in February 2004. Fines and jail terms are to be imposed against those who refuse to serve. Suaram regarded the bill as “clearly target[ing] legitimate dissent and criticism.”⁶

Recommendations

While Malaysia's government possesses quite legitimate security concerns, it appears in some measure to have exploited these concerns, resorting to legislation and police practices that must be regarded as excessive. Accordingly, the Internal Security Act and the Emergency Ordinance should be repealed and replaced by better police work and open trial proceedings. The University and University Colleges Act should also be repealed and the Police Act loosened. In this way, various elements of

civil society could keep the government more closely accountable. Finally, in view of the gains made by the Malay community over the past several decades, the New Economic Policy should be further scaled back in order to alleviate minority grievances.

RULE OF LAW – 3.52

Malaysia possesses a large judicial apparatus that is sophisticated in its formal appearance and functioning. Since the late 1980s, however, the courts have come under pressure from the executive, skewing their judgments in political and commercial cases in which the government is involved. The Attorney-General's Chambers, which is not obliged to state publicly its reasons for commencing or terminating cases, appears equally to be dominated by the executive. There is no judicial review of legislation. Appeals to the Privy Council in London—once permitted because of Malaysia's developing country status and membership in the Commonwealth—have been halted. High-level government officials are seldom prosecuted—even as accounts circulate widely of doubtful dealings between top politicians and business tycoons. Thus, questions about whether executive and legislative authorities comply with judicial decisions do not normally arise.

The several trials of Malaysia's former deputy prime minister, Anwar Ibrahim, beginning in 1998, evoke the highly politicized nature of Malaysia's judiciary today. Anwar, after challenging Mahathir at a party meeting in that year, was purged from the government, then charged with corruption and sexual misconduct. Amid highly controversial proceedings, he was convicted by the courts and sentenced to 16 years in prison, casting much doubt over his political future.⁷ In 2001, however, in apparent recognition of the fact that so debased a judiciary had lost much of its capacity to legitimate, the government appointed Tan Sri Mohamed Dzaiddin Abdullah—who was credited with a reformist outlook—as chief justice of the Federal Court. In 2002, Abdullah unveiled a series of reforms through which to speed up the judicial process.

In March 2003, however, Dzaiddin was replaced by the Court of Appeal president, Ahmad Fairuz Sheikh Abdul Halim, a figure known best for having upheld the conviction of one of Anwar's counsels on a dubious contempt-of-court charge. Fairuz's promotion meant that a more senior, more reformist judge on the Federal Court was passed over, as was Siti Norma Yaakob, "the first female High Court, Court of Appeal and Federal Court judge."⁸ In addition, four High Court judges who had been involved in convicting Anwar were promoted over more senior judges to posts in the Federal Court and Court of Appeal. The Malaysian Bar

Council lamented that the en bloc promotions were carried out “with indifference to transparency and objectivity, and in the absence of consultation with the Bar.”⁹

In April 2003, the Court of Appeal dismissed an application made by Anwar Ibrahim over his conviction on sexual misconduct charges. Additional applications made by Anwar for bail and stay of execution pending his next appeal to the Federal Court were rebuffed by the Court of Appeal on technical grounds.¹⁰ As of September 2003, cases relating to Anwar still to be concluded involved a review by the Federal Court of his earlier conviction on corruption charges, an appeal to the Federal Court over the conviction for sexual misconduct, and a further application to the Court of Appeal for bail during the interim. With the Federal Court having already rejected Anwar’s appeal in 2002 against his 1999 conviction for corruption, it seems unlikely that any of his current applications will succeed, notwithstanding Mahathir’s replacement as prime minister.

The court case of Irene Fernandez, director of the women’s rights NGO Tenaganita, also continued during 2003. Fernandez, having produced a report in the mid-1990s on the treatment of undocumented workers in Malaysian detention camps, was tried under the Printing Presses and Publications Act for “publishing false news.” [*Editor’s note:* Fernandez was convicted in October and sentenced to one year’s imprisonment, ending the longest single trial proceeding ever conducted in Malaysia.]

On the other hand, in mid-2003, Partai Keadilan’s youth chief, Ezam Mohamed Nor, was granted a stay of execution for a two-year jail sentence for breach of the Official Secrets Act (OSA), despite his pledging to “go on with the struggle for *reformasi*.”¹¹

Apart from political cases, Malaysia’s judiciary has generally been evaluated as competent. In ordinary criminal cases, citizens are given a reasonably fair and public hearing by an independent and impartial tribunal established by law, and prosecutors are independent of political control. 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. Assistance is also provided by the government through the Legal Aid Bureau for civil cases.

Before appearing in court, however, suspects are often interrogated harshly by police, with forced confessions and even deaths occurring while they are in police custody. During the first seven months of 2003, seven prisoners died while in police lock-ups and 188 died in prisons, an average of nearly 27 deaths per month, a substantial increase over the previous year’s average of 19.75.¹² Attempts by one human rights lawyer

to act on behalf of the family of a suspect who died while in police custody led to his own arrest in January 2003, followed by the prosecution's efforts during court proceedings in April "to intimidate and harass him in his work as a lawyer."¹³

With respect to civil cases, the economic crisis of 1997–98 unleashed a wave of commercial disputes over insolvency and bankruptcy that soon revealed shallowness in the bench's corporate law training. In these circumstances, the government resorted to setting up a special agency, the Corporate Debt Restructuring Committee, through which informal agreements could be mediated.¹⁴

The security forces of Malaysia, in contrast to many of its counterparts across Southeast Asia, have been fully subject to civilian control. However, the executive has regularly deployed police agencies for political purposes, with the Special Branch, Federal Reserve Unit, and Police Field Force gathering information on dissidents and suppressing opposition activities.¹⁵ As one recent example, in July 2003 the wives of persons detained under the ISA reported that they were systematically harassed by Special Branch officers and detention camp officials after seeking legal counsel for their husbands.¹⁶ Accordingly, it must be acknowledged that the police in Malaysia interfere in the political process.

In an effort to blunt the profound challenges posed by the PAS, the government declared in September 2001 that its many Islamist policy innovations—principally involving education and financial institutions—amounted to the formation in Malaysia of an Islamic state. In this situation, the country's minority Chinese and Indian communities, confronted first by the government's ethnic quotas and later by an Islamization campaign, lament their second-class citizenship. However, these discriminatory policies do not appear to carry over into ordinary judicial proceedings. To be sure, the judiciary is made up mainly of ethnic Malays, while lawyers are mostly Chinese and Indian. But decisions in most criminal and civil cases are handed down without regard for ethnic or religious affiliation. Instead, in cases in which the government is involved, judgments are sooner distorted by political loyalties. In the country's Sharia court system, Western convention would hold that decisions are often skewed by gender.

Finally, as noted above, Malaysia has long been distinguished by an affirmative action program of NEP quotas. Thus, while Malaysia's economy is in important ways market-based, statist interventions geared toward redistributive aims, especially in connection with equity ownership, raise questions about equal treatment and respect for property rights.

Recommendations

The independence of Malaysia's judiciary should be restored through impartial recruitment and promotion of judges. To this end, the government should consult more closely with the Malaysian Bar Council. In addition, judges need more training in order to rule effectively in complex commercial cases. The Attorney-General's Chambers should display more accountability to the public by disclosing its criteria for initiating and dropping proceedings. The partisanship of the police force should be reduced by making the home ministry more accountable to parliament. The ineffectiveness with which the police confront street crime might be stemmed by recruiting more officers, hiring across ethnic lines, and increasing pay scales.

ANTICORRUPTION AND TRANSPARENCY – 2.31

In 2003, Abdullah Badawi called for "people power" as a means by which to oppose corrupt practices.¹⁷ At another conference during 2003, he demanded "zero tolerance for corruption." However, sundry forms of collusion persist. By the reckoning of Transparency International in its 2003 Corruption Perceptions Index, Malaysia was given a score of 5.2 on a scale in which 10 represents least corrupt, an improvement over the previous year's score of 4.9.¹⁸

However, in accounting for the substantial corruption that still takes place in Malaysia, one notes the large role of the bureaucracy in pursuing affirmative action and economic growth. In enforcing NEP quotas, non-indigenous firms have been required by law to allocate 30 percent of their equity to Malays, usually at discounted rates, lest their operating licenses be withdrawn. To be sure, it can reasonably be argued that the NEP has had positive social welfare benefits, advancing the Malay community in ways that have gradually encouraged ethnic tolerance. But by allocating resources in political rather than in market-driven ways, a nexus has emerged between government and business that has systematically bred conflicts of interest. In late 2003, however, the government announced that the 30 percent quota on Malay-owned equity would be removed after a firm's initial public offering. In addition, a range of capital controls that had been adopted in response to the economic crisis of 1997–98 were left to lapse.

At the same time, the government has done little to enforce separation between the public and personal interests of public officeholders. Ministers are required to declare their assets to the prime minister, but these holdings are not publicly disclosed. Furthermore, while Mahathir advised in mid-2003 that all of his party's candidates should declare their assets

before the next general election, the opposition held out little hope that appropriate legislation would soon be introduced.¹⁹ By contrast, there is no evidence that university officials accept bribes in exchange for granting university admission or grades to students.

The main body through which the government seeks to contain corruption is the Anti-Corruption Agency (ACA). The ACA operates a website whereby informants can anonymously report instances of corruption. It appears also to possess appreciable investigative capacity. However, the prosecution of corruption in Malaysia is conducted in partisan ways: No high-level politician or business person has ever been charged with corrupt practices except Anwar Ibrahim. In 1997, opposition politicians presented strong evidence to the ACA that implicated the transport minister, Ling Liong Sik, in corporate dealings that greatly advantaged his son. In March 2003, a deputy prime minister gave assurances to parliament that the investigations were continuing. However, through follow-up visits to the ACA conducted in July, opposition leaders learned that the investigations had quietly been ended the previous year.²⁰

Malaysia features an auditor-general's office and public complaints bureau, but like the ACA, these agencies cannot be regarded as effective or nonpartisan. A public accounts committee also exists, but inasmuch as it is headed by a government member of parliament, its effectiveness has similarly remained slight. The integrity management committee, though set up in 1998 after the economic crisis and given much prominence, is widely dismissed as weak. Internal audits of specific projects are carried out, but the firms that conduct them appear closely aligned to the government. There is no system of parliamentary select committees. Nearly all mainstream newspapers and television stations are either government-owned or government-controlled, leaving them little independent voice. Whistle-blowers, anticorruption activists, and investigators who seek to present government documents as evidence of corruption risk severe penalties under the OSA. The government makes no provision for the legal administration and distribution of foreign assistance.

Nonetheless, leaks from bureaucratic insiders and court cases mounted by disgruntled business partners provide glimpses of underlying patterns. These may even be publicized by emboldened reporters, usually Internet-based. Two cases came to light that attracted much attention during 2003. The first involved the current information minister, who, while previously heading the state government in Pahang, granted timber concessions to his own party in order to raise funds.²¹ In the second case, the municipal council of Petaling Jaya, administering a major satellite community on the edge of Kuala Lumpur, demanded that contributions be made to its Sports and Culture Club by those applying for licenses

to mount billboard advertisements.²² However, despite the publicity that these cases received, and activists' demands for investigations, the ACA took up neither case.

On the other hand, the ACA has regularly investigated low- and middle-ranking officials.²³ This record appears to conform to Mahathir's priorities, with the prime minister advising during 2003 that it is modest everyday corruption that is most pernicious: "When corruption is tolerated among the minnows, the big fish are encouraged and society accepts the practice, and it becomes a culture."²⁴

The government has in recent years stressed the need for good public-sector governance. It cannot be said, however, that its decision making has yet grown transparent. Malaysia has no freedom of information act. Attempts by opposition politicians to meet with top officers in such agencies as the ACA are usually rebuffed. Most of the government's many Web sites offer little substantive information.

Nonetheless, given its commitments to effective macroeconomic management, the government takes the budget-making process seriously. The central bank, the National Economic Action Council, the Economic Planning Unit, and the ministry of finance impart much expertise. The proposed budget for fiscal year 2004 was widely assessed as prudent. Still, the budget's great length and complexity is beyond the capacity of an under-resourced opposition to oversee properly. Furthermore, significant amounts of government revenue raising and expenditure remain off-budget. On this count, one notes that Petronas, the national petroleum company, is housed within the prime minister's department, leaving it almost entirely unaccountable to parliament. The government thus remains quite silent on many of its expenditures, while disclosing many others in impenetrable aggregate form.

In July 2003, the opposition detailed allegations of abuses in government procurement contracts involving weapons systems, school construction and computerization, and project auditing.²⁵ Although the government offered no response, these allegations were consistent with the government's longstanding practice of granting large contracts without competitive bidding. Indeed, Mahathir regularly defended his government's personalist distribution of contracts as the most efficient means by which to ensure that they were awarded to capable individuals and firms.

Recommendations

Malaysia's Anti-Corruption Agency should be free to investigate cases of corruption in nonpartisan ways, and the Integrity Management Committee should be given enforcement powers. Whistle-blowers should not be threatened with prosecution under the OSA. Officials and politi-

cians should be required to declare their assets publicly, and government contracts should be awarded through open bidding. The expenditures of Petronas should be specified in the federal budget.

ACCOUNTABILITY AND PUBLIC VOICE – 3.11

In Malaysia, civil liberties are tightly constrained, but elections remain reasonably competitive. Thus, while opposition parties are limited in their mobilizing activities, they can gain significant numbers of parliamentary seats and have won some state assemblies outright. The limits on civil liberties mean, however, that despite the competitiveness of elections themselves, opposition parties can never win so many votes in parliament that they can hope to form a new government at the federal level.

Elections have been held regularly in accordance with the constitution. They have been meaningful in the sense that an elected prime minister wields state power, the franchise has been inclusive, enough opposition parties have gained registration that a competitive multiparty system exists, balloting has been secret, and vote counting and reporting have been promptly carried out. However, closer inspection reveals some distortions. The campaign period is kept brief, usually less than two weeks. Opposition candidates are given little access to mainstream media outlets. Outdoor rallies have been banned since 1978. While limits on campaign contributions and spending are formally codified, the government mostly ignores them in its own campaigning. But given its overwhelming capacity to raise funding, it appears not to have closely scrutinized opposition finances either.

Furthermore, although the voting franchise is inclusive, electoral rolls have frequently been manipulated, resulting in unannounced transfers of voters across constituencies, as well as reverse flows of voters from outside. Ballots contain numbered counterfoils, posing a subtle form of intimidation in that individual preferences might conceivably be discovered. Local preferences can be determined by tabulating votes at counting centers that over the years have grown ever smaller. Opposition parties are not permitted to oversee the counting of postal ballots cast by members of the military and police.

A plurality-based single-member district system boosts the government's sometimes scant popular majorities into extraordinary advantages in parliament. Municipal and district-level elections have been suspended since the mid-1960s. Meanwhile, the country's Election Commission has presided over electoral procedures in ways that can only be characterized as partisan.

However, in the last general election, held in 1999, grievances over government corruption and the treatment of Anwar Ibrahim enabled

the PAS to cut deeply into the government's popular majority. Thus, in preparing for the next general election, due by November 2004, the government has truncated electoral procedures more sharply. Late in 2002, the government passed amendments to the Elections Act (1958) and the Elections Offenses Act (1954) that greatly increase election deposits and campaign expenditure thresholds, bar court challenges to the electoral rolls, and prohibit campaigning in ways that "promote feelings of ill-will, discontent or hostility"—activities that will be nearly impossible to avoid.²⁶ Additional amendments have been proposed that would require all candidates to sign a pledge of "good behavior," with the EC forwarding to the courts any cases that it regards as breaches, preliminary to disqualification. During 2003, the parliament also approved a constituency redistricting exercise carried out by the EC that greatly favored the government.²⁷

Finally, in September 2003, the PAS claimed in parliament that it had obtained documents revealing that the EC had agreed to hire members of a young women's organization attached to the United Malays National Organization (UMNO), casting still more doubt upon the commission's neutrality. The EC duly promised to stop the practice but also began investigations to identify those officials who had leaked the documents, an apparent offense under the OSA. In addition, the extremely technical justification the registrar of societies gave for its recent refusal to sanction a merger between two opposition political parties deepened doubts about its neutrality as well.

As prime minister, Mahathir perpetuated his government's tenure by holding reasonably competitive elections, even if limiting civil liberties. Thus, in participating in elections, people's political choices have been free from the totalitarian parties, royal absolutism, military coercion, urban machines, provincial godfathers, and landed oligarchs that often prevail in neighboring countries. Indeed, it is ethnic and religious affiliations, mildly cross-cut by class resentments, that most shape voter sentiments in Malaysia today. Although politicians sometimes exploit these sentiments, it is wrong to conclude that they exert any ironclad dominance that stifles popular will and political choices.

Under the NEP, civil service recruitment has been steeply tilted toward the Malays. In addition, during Mahathir's tenure civil service careers have lost much of their prestige relative to corporate and entrepreneurial pursuits. As a result, despite the retention of merit-based examinations and promotion criteria, bureaucratic performance has been hindered.

By the standards of most developing countries, the openness of Malaysia's government to women's interests can be assessed as meaningful. In

2003, three women held full ministerial posts in the government, including the minister of international trade and industry. The leading parties in the ruling coalition, the UMNO and the Malaysian Chinese Association, also nominate numbers of women candidates, although a glass ceiling exists on holding top posts in these parties. In March the government sanctioned the appointment of women as judges in the country's Sharia court system. Women have historically been well represented throughout Malaysia's civil service, and a number of prominent, if small, women's organizations have energized civil society.

Although the government has historically been less obliging toward minorities, industrializing requirements and changing electoral dynamics have encouraged new responsiveness, hence ceding to the Chinese community greater freedoms in tertiary education and cultural pursuits.

The government is inconsistent in providing information about pending legislation and regulations. In some cases, new policy aims are announced early. One example involves the government's proposal in mid-2002 to construct a large Japanese-designed incinerator facility in Petaling Jaya, triggering such criticism from property owners and environmentalist groups that the project was shifted in 2003. In other instances, however, the government has embarked upon policies in stealthier ways, either muting its formal announcement or wording enabling legislation in deliberately ambiguous ways.

With respect to civil society, the government is receptive to NGOs that it judges to be problem solving in their demeanor, especially those geared to good governance and consumer issues. However, NGOs committed to stronger advocacy have generally been ignored. And fearful of being tarred by the government as being in the pay of foreigners, these groups have usually forgone contributions from overseas, leaving them to subsist on membership dues and subscriptions. They are also denied access to mainstream media outlets and frequently to commercial printing firms, confining them to an Internet presence. While Suhakam sometimes takes up investigations into restrictions placed on civic groups, the government pays little attention to the findings.²⁸

Article 10 of Malaysia's constitution guarantees rights of free expression. Article 149, however, enables parliament to pass laws that restrict expression when it believes national interest to be threatened. The most important piece of such legislation is the Printing Press and Publications Act of 1984, which requires all print media to obtain annual licenses from the home ministry. Where the ministry finds that a publisher has maliciously published what it deems to be false news, it may revoke licenses or refuse to renew them. It can also bring charges that, if upheld in court, incur fines and prison terms.

A government-controlled news agency, Bernama, set up in the late 1960s but vastly strengthened in 1990, has exclusive rights to distribute economic data, news photographs, and other material through the print media. Several laws place restrictions on press freedoms, including the Control of Imported Publications Act, which enables the government to ban the circulation of foreign publications in Malaysia when they are viewed as prejudicial to national security or public morality, and the Broadcast Act of 1987, which empowers the minister of information to monitor radio and television broadcasts and to revoke licenses.²⁹

Media ownership patterns extend government control more deeply. All major newspapers—whether Malay, Chinese, or English language—and all broadcast outlets are owned either directly by the government or by companies linked to political parties in the ruling coalition. The opposition is rarely covered in the media, except in unfavorable ways. The government and top business people aligned to it have also resorted to libel suits, especially against the international press when their dealings have been critically analyzed.

In 2003, the government proposed setting up a new media council, the purpose of which, it claimed, was to upgrade the quality of journalism in Malaysia. It also pledged that the council would be independent, made up mostly of journalists themselves. The National Union of Journalists (NUJ) remained skeptical, however, fearing that, if the council were set up as a statutory body, it would invite even deeper interference. Indeed, a government spokesman seemed to foreshadow precisely such a role, describing the proposed council as “able to self-regulate and self-censor.”³⁰

In these conditions, the major outlet for independent news reporting in Malaysia has been the Internet. However, while the government has pledged to avoid any Internet censorship, in February 2003 the police raided the offices of Malaysiakini, an important source of Internet-based reporting. The raid was prompted by a complaint over a letter that Malaysiakini had published that questioned Malay special rights. Police subsequently returned in stages most of the equipment it had seized, enabling Malaysiakini to resume reporting. But it awaits the outcome of an investigation and a decision from the attorney general over whether charges will be filed.

Journalists have occasionally been victimized by various non-state actors. One example in mid-2003 involved a journalist with a Chinese-language newspaper, *Sin Chew Daily*, who was savagely attacked in the southern town of Segamat, evidently for having written about the organized crime activities of local triads.

Recommendations

Malaysia's Election Commission should be made independent, a first step toward which might involve removing it from the prime minister's department. Campaign financing and expenditures should also be subjected to clearer regulation. The government should introduce pending legislation in a timelier fashion, allowing more consistent public scrutiny. With respect to the civil service, recruitment should gradually be widened, providing a larger pool of candidates by which to restore bureaucratic quality. The Printing Presses and Publication Act should be abolished in order to encourage greater media scrutiny.

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Notes

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