

Country Summary: Malaysia

Introduction

The government of Malaysia responded to the COVID-19 pandemic with a range of measures, utilizing new emergency regulations and existing offenses under the Penal Code and other laws. As authorities focused on curbing the spread of the virus and misinformation about the pandemic, they imposed several restrictions on assemblies and the flow of information around the pandemic. There were also privacy rights concerns stemming from the use of a contact tracing app. This brief outlines key pandemic responses that impacted civic freedoms.

FREEDOM OF ASSEMBLY

Malaysian authorities used a mix of emergency and existing laws to limit public gatherings during the pandemic. These included the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations and provisions under the Peaceful Assembly Act. Authorities also prohibited protests or responded to demonstrations with violence without citing explicit legal grounds for doing so.

Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations

Malaysia issued regulations under the Prevention and Control of Infectious Diseases Act during the pandemic. Regulation 9 prohibited all processions and involvement in processions, while Regulation 10 prohibited all public gatherings, including those for religious, wedding, sporting, recreational, social, or cultural purposes (Federal Government Gazette, [2021](#)). The blanket ban on public gatherings was likely a disproportionate limitation on assemblies under international law because it prohibited assemblies without considering factors such as whether participants planned to social distance or wear masks.

Law enforcement used these regulations to disperse assemblies during the pandemic: for example, in June 2020, police arrested five hospital worker union members who did not obey repeated warnings to disperse from a protest, charging them with violations under the regulations. In August 2021, law enforcement intervened in a candlelight vigil for COVID-19 victims, also citing the regulations as justification for the disruption (New Straits Times, [2021](#)). Law enforcement also investigated several protesters, including contract doctors who went on strike in 2021 (The Star, [2021](#)) and participants of the “black flag” protests calling for the re-opening of Parliament, end of state of emergency, and resignation of the Prime Minister (Article 19, [2021](#)).

Peaceful Assembly Act

Section 9(5) of the Peaceful Assembly Act requires assembly organizers to notify relevant authorities about a planned assembly. International law recognizes that authorities may desire notification of planned assemblies so that they can provide appropriate support to and protection of protestors. However, international legal standards also clearly protect spontaneous assemblies and do not recommend criminal sanctions for failure of demonstrators to notify authorities in advance of an assembly.

During the pandemic, Malaysian authorities used the notification requirement to investigate protest participants. For example, in May 2021, police charged approximately 90 participants of a socially distanced sit-in protest in front of Parliament for violating this provision. The participants demanded the end of the state of Emergency and reconvening of Parliament (Malaymail, [2021](#)). In April 2022, police investigated the NGO Lawyers for Liberty (LFL) under Section 9(5) of the Peaceful Assembly Act for a protest that LFL organized outside the High Commission of Singapore (The Vibes, [2022](#)).

Other actions to restrict assembly

Law enforcement also prevented assemblies from proceeding, or investigated protest organizers during the pandemic without providing legal grounds for these actions. For example, in 2021, riot police prevented opposition members of Malaysia's Parliament from marching to the Parliament building to protest the cancellation of a special parliamentary session due to confirmed COVID cases. Opposition politicians had criticized the Prime Minister and the country's pandemic response earlier during the special session (Al Jazeera, [2021](#)). Likewise, in 2022, police prevented a demonstration against interference with the independent judiciary, blocking the demonstrators from marching toward the Parliament. Afterwards, the police called the demonstration organizers to provide statements about the planned march (Lawyers for Lawyers, [2022](#)).

Malaysia also engaged in mass arrests and arbitrary enforcement of its movement control order, arresting over 15,000 individuals within the first two months of enactment (HRW, [2020](#)). Authorities also arrested undocumented migrants in massive raid operations (VOA, [2020](#)).

FREEDOM OF EXPRESSION

Malaysian authorities also restricted the flow of information about the pandemic, using a range of existing and emergency laws. These included prohibitions against fake news, communications that cause public mischief, sedition, defamation, and offensive speech under various laws. The Malaysian parliament also restricted media access to its press briefings and parliamentary proceedings, privileging government-owned media and excluding non-state outlets (Article 19, [2020](#)).

"Fake news" laws

Authorities issued the Malaysian Emergency (Essential Powers) (No. 2) Ordinance in March 2021 without parliamentary approval. Section 4 of the Ordinance prohibited the publication or dissemination of “fake news” related to the pandemic or state of emergency in Malaysia with the intent to cause fear or alarm to the public (LokeKingGoh, [2021](#)). The law did not define “fake news,” thus granting authorities broad discretion to act as the ‘arbiter of truth’ and determine that an individual violated the provision. Parliament annulled the emergency ordinance in October 2021, but authorities opened 30 investigations while the ordinance was active, leading to 12 court cases (US Department of State, [2021](#)). Even before issuing the ordinance, authorities investigated 264 incidences of “false news” about COVID-19 from March to May 2020 (HRW, [2020](#)).

Sections 504 & 505 of the Penal Code

Section 504 of the Penal Code prohibits intentionally insulting a person with the intent to provoke a breach of the peace. Section 505 prohibits publishing or circulating a statement, rumor, or report with the intent to cause or which has a likelihood to cause “public mischief.” “Public mischief” includes causing certain officers to disregard their official duties, causing fear or alarm to the public, or inciting persons to commit an offence against another class or community or persons.

Authorities cited these provisions under the Penal Code to investigate individuals who posted about the pandemic. For example, police investigated a correspondent for the South China Morning Post for a violation of Section 504 after she wrote an article about mass raids targeting migrants and refugees during the pandemic (ABC [2020](#)). Likewise, in 2021, after the chief executive of the Galen Centre for Health and Social Policy posted a tweet raising concerns about data privacy arising from the Malaysian contract-tracking app, law enforcement questioned him under Section 505 of the Penal Code as well as Section 233 of the Communications and Multimedia Act, discussed below (MK, [2021](#)).

Sedition Act

Authorities also used the Sedition Act to investigate individuals who posted about sensitive topics online. For example, in 2021, police arrested activist Sarah Erdina Mohamad Ariff for sedition after she posted about a planned protest for the #Lawan movement which criticized the government’s pandemic response, along with broader mismanagement and abuse of power (Global Voices, [2021](#)).

Criminal defamation

Section 500 of the Penal Code prohibits defamation. International law recommends decriminalizing defamation and instead relying upon civil suits to address harms arising from defamation. Malaysian law enforcement investigated Al Jazeera for criminal defamation (along with violations under other acts) after the platform broadcast a documentary about Malaysia’s treatment of migrant workers during the pandemic. Law

enforcement also interrogated Al Jazeera employees and raided Al Jazeera's Kuala Lumpur offices on grounds of defamation and other potential violations (Al Jazeera, [2020](#)).

Communications and Multimedia Act

Section 233 of the Communications and Multimedia Act makes it an offense to transmit communications deemed offensive or that could annoy another person. These kinds of vague offenses grant authorities broad discretion to determine that someone has violated the Act. Indeed, from the start of the pandemic, authorities used the Act to open at least 270 cases of alleged COVID-19 misinformation by October 2020 under Section 233 (Article 19, [2020](#)).

RIGHT TO PRIVACY

The MySejahtera contact-tracking app collected users' contact information, identity card number (the identity card is compulsory and serves as proof of a person's Malaysian citizenship), age, gender, ethnicity, and home address. The app raised privacy concerns because there was conflicting information about the owner of the app and which institutions have access to the data the application collected. Moreover, Malaysia's data protection law granted broad exceptions from its general protections, making it more likely that public authorities might access or use data collected by the app (Asia Centre, [2023](#)).

OTHER ISSUES THAT MAY HAVE IMPACTED CIVIC FREEDOMS

Early in the pandemic, Malaysian authorities cracked down on undocumented migrants as part of its efforts to curb the spread of COVID-19. Authorities detained hundreds of migrants and refugees in Kuala Lumpur, reportedly detaining over 700 individuals during a downtown raid in May 2020 (ABC, [2020](#)). The detention of these groups impacted their ability to meaningfully organize, join demonstrations, or access and share information, or in other words, to exercise their civic freedoms.

Conclusion

The government's pandemic response measures greatly restricted civic freedoms in Malaysia. Individuals and organizations experienced limitations on gathering in public places, sharing and accessing information and opinions about the pandemic, and more broadly criticizing the government. There were also significant privacy concerns arising from the use of a contact-tracing app to curb the spread of the pandemic. It is important to ensure that these pandemic-era restrictions do not extend into post-pandemic regulations of civic space.