

Status of Human Rights in Malaysia for the 45th Session of the Universal Periodic Review

Introduction

1. The European Center for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to discuss the status of human rights in Malaysia for the 45th session of the Universal Periodic Review (UPR).

Background

2. Malaysia is a country in Southeast Asia and has an estimated population of 34.2 million people.¹ Malaysia is predominately Muslim with 61.3% of the population identifying as Muslim, 19.8% as Buddhist, 9.2% as Christian, 6.3% as Hindu, 1.3% as Confucian, Tao, other traditional Chinese religions, 0.4% as other, 0.8% as none, and 1% as unspecified.² In its 2023 World Watch List, a human rights organization listed Malaysia as the 43rd worst place for Christians to live.³ In Malaysia, an overwhelming majority of states have criminalized apostasy and proselytization.⁴

3. Malaysia's previous UPR was held on November 8, 2018.⁵ As a result of the review, Malaysia received 268 recommendations, 148 of which it accepted.⁶ Regarding the freedom of religion, one recommendation made by Kenya, and supported by Malaysia, is that the government “[u]ndertake administrative, policy and legislative measures to guarantee freedom of religion and belief for all in Malaysia, consistent with the Constitution.”⁷ Additionally, it was recommended by Latvia, and supported by Malaysia, that the government “[c]ontinue exploring possibilities to extend its international commitments, in particular consider ratification of the International Covenant on Civil and Political Rights”⁸ It was also recommended by Hungary, and supported by Malaysia, that the government “[e]stablish a formal procedure throughout the country to promptly identify victims of trafficking and refer them to appropriate services for protection.”⁹

Legal Framework

Religious Persecution

4. Under Article 3 of the Constitution of Malaysia, “Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.”¹⁰ Moreover, Article 11 states that “[e]very person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.”¹¹

5. Under various state laws in Malaysia, however, leaving Islam (apostasy) and proselytizing Muslims are illegal activities.¹² Currently, out of the thirteen states in Malaysia, apostasy is forbidden in twelve and proselytization is illegal in ten.¹³

6. Further, Malaysia has also criminalized blasphemy under its Penal Code. Under Article 298 of the Penal Code of Malaysia:

Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.¹⁴

7. Additionally, under Article 298A. (1):

(1) Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organizing, promoting or arranging, or assisting in organizing, promoting or arranging, any activity, or otherwise in any other manner—

(a) causes, or attempts to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill will; or

(b) prejudices, or attempts to prejudice, or is likely to prejudice, the maintenance of harmony or unity, on grounds of religion, between persons or groups of persons professing the same or different religions, shall be punished with imprisonment for a term of not less than two years and not more than five years.¹⁵

8. Moreover, Section 233 of the Communications and Multimedia Act 1998 has also been used to crack down on blasphemy. Article 233 states that:

(1) A person who —

(a) by means of any network facilities or network service or applications service knowingly —

(i) makes, creates or solicits; and

(ii) initiates the transmission of,

any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or

(b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,

commits an offence.¹⁶

9. Although Malaysia is a member of the United Nations, it is not a party to the most basic human rights treaty, the International Covenant on Civil and Political Rights (ICCPR). However, Malaysia does have an obligation under the Universal Declaration of Human

Rights (UDHR) to uphold fundamental human rights. Under Article 18 of the UDHR:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹⁷

Human Trafficking

10. Under Article 6 of the Constitution of Malaysia, “[n]o person shall be held in slavery. All forms of forced labour are prohibited”¹⁸

11. Additionally, under Article 370 of the Penal Code of Malaysia, “[w]hoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.”¹⁹

12. Malaysia is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.²⁰ Under Article 9 sec. 1 of this Protocol:

States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.²¹

Religious Persecution

13. As stated above, apostasy and proselytization are prohibited in an overwhelming majority of states in Malaysia and blasphemy is criminalized at the national level.²² Further, there have been reports of Christian churches being monitored by authorities and some Christian groups are even targeted because they are more active in evangelizing.²³ Most recently, the Malaysian state of Kelantan amended its criminal code to ban numerous activities including converting from Islam to another religion, non-Muslims proselytizing Muslims, and distorting Islamic teachings.²⁴ Those caught violating these new offenses can face imprisonment for up to three years and a fine of up to RM 5,000 (\$1,202), or be beaten with a cane six times.²⁵ These new amendments went into effect on November 1, 2021.²⁶

14. That same year, a fatwa was issued in the state of Selangor which banned Muslims from entering Christian and other non-Muslim places of worship.²⁷ These types of actions prevent Malaysia from becoming a tolerant and a pluralistic society where people of all faiths can live together peacefully. This very sentiment was expressed by Muslim politician Syed Saddiq: “How do we want our children to live in a harmonious society when they cannot understand the religion and culture of their own peers?”²⁸

15. Criminal codes like the one in Kelantan have been enacted in states all across Malaysia. These laws are a gross violation of principles enshrined within the UDHR. Laws banning acts of proselytization, apostasy, and blasphemy severely infringe on the ability of

people to choose their own religion, openly practice their faith, or share their beliefs with others.

16. In November 2018, four Finnish nationals were deported back to Finland after they were arrested and detained for simply distributing pamphlets about Christianity.²⁹ Police arrested the four individuals after they received complaints from locals.³⁰ The police also raided their hotel rooms where they found dozens of pens and hundreds of notebooks that contained Bible verses.³¹ In addition to being deported back to Finland, the individuals were also prohibited from ever returning to the country.³²

17. We are also concerned about the disappearance of Malaysian pastor, Raymond Koh, who was abducted five years ago and his whereabouts remain unknown.³³ In 2019, the Human Rights Commission of Malaysia (Suhakam) found that Pastor Koh was a victim of an enforced disappearance and that the “circumstantial evidence in Koh’s case also prove[d] that he was abducted by the Special Branch.”³⁴ The Special Branch is a covert unit and a division within the Royal Malaysian Police Force.³⁵ Pastor Koh was abducted in February 2017 when he was surrounded by black SUVs in broad daylight.³⁶ Men dressed in all black emerged from the vehicles, threw him into one of the vehicles, and drove off.³⁷ The pastor’s wife believes that he was abducted due to a confrontation he had with officers from the Selangor Islamic Department when he hosted a dinner that was raided on the suspicion that he was evangelizing to Muslims.³⁸ Following the raid, the family received numerous death threats.³⁹

18. The Constitution of Malaysia guarantees that “[e]very person has the right to profess and practise his religion.”⁴⁰ Clearly, the national prohibition on blasphemy and the laws in states across Malaysia that criminalize apostasy and proselytization violate Malaysia’s own Constitution. Even though Malaysia is not a party to the ICCPR, it is a member of the U.N. and thus is obligated to uphold the provision of the UDHR that states that “[e]veryone has the right to . . . manifest his religion or belief in teaching, practice, worship, and observance.”⁴¹

Human Trafficking

19. Malaysia primarily serves as both a destination and source country for both forced labor and sexual exploitation.⁴² Many of these victims are trafficked from nearby countries such as Bangladesh, Myanmar, Cambodia, India, Indonesia, Laos, Nepal, the Philippines, Thailand, and Vietnam.⁴³ For sex trafficking, Malaysia mostly serves as a source country where Malaysian women and children are trafficked to Singapore, Japan, Canada, and the United States of America to work in brothels.⁴⁴ Children are also trafficked within Malaysia, mostly to be exploited for sex.⁴⁵

20. Hindering Malaysia’s ability to effectively combat human trafficking is poor interagency coordination as well as a lack of protection services for victims.⁴⁶ This lack of protection for victims leads to many victims opting to leave Malaysia and return home.⁴⁷ This hinders effective investigation because the victims are not able to participate in criminal proceedings.⁴⁸ Additionally, the government has halted funding for non-governmental organizations (NGOs) to provide shelter and aid for victims of human trafficking.⁴⁹ Below, we have highlighted a few cases involving victims being trafficked to Malaysia to be exploited.

21. In June 2023, Indonesian police arrested eight suspected human traffickers for attempting to traffic 123 individuals from Indonesia to Malaysia.⁵⁰ The victims were lured by the traffickers through promises of jobs in Malaysia.⁵¹

22. In October 2022, police uncovered a human trafficking ring in Malaysia that was trafficking women from nearby countries into Malaysia to be forced into prostitution.⁵² One of the girls rescued was a thirteen-year-old Thai girl who had applied for a job online.⁵³ However, she was instead trafficked to Malaysia to work as a prostitute.⁵⁴ In addition to rescuing the thirteen-year-old girl, police also rescued two other victims who were trafficked from Indonesia.⁵⁵

23. In August 2022, police in Malaysia busted a prostitution ring in Taman Fadason.⁵⁶ One woman who was found working in the brothel was a thirty-nine-year-old Indonesian woman who was forced to work as a prostitute without pay.⁵⁷

Recommendations

24. The government of Malaysia must enact national protections for religious freedom consistent with its Constitution to ensure that state laws do not infringe on the basic human rights of its citizens. The right to adopt a religion of one's choice and to share one's beliefs with others are the most fundamental rights. As other countries have recommended, we also ask that Malaysia sign the ICCPR and immediately begin protecting the rights enshrined in it.

25. We also ask that Malaysia step up its efforts to combat human trafficking and provide aid to the victims. To effectively do this, Malaysia must allocate training and resources to investigators and prosecutors so that they are capable of identifying victims of human trafficking and have the resources needed to bring the perpetrators to justice. We also urge Malaysia to allocate resources and aid to the victims so that foreign victims feel safe working with investigators so that the perpetrators are prosecuted to the fullest extent of the law.

¹ *Malaysia*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/malaysia/> (July 3, 2023).

² *Id.*

³ *Malaysia*, OPEN DOORS, <https://www.opendoors.org/en-US/persecution/countries/malaysia/> (last visited July 6, 2023).

⁴ *Malaysia*, THE APPG FOR INTERNATIONAL FREEDOM OF RELIGION OR BELIEF, <https://appgfreedomofreligionorbelief.org/malaysia/> (last visited July 3, 2023).

⁵ *Universal Periodic Review – Malaysia*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/my-index> (last visited July 6, 2023).

⁶ *Malaysia Infographic 31st*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MY/MALAYSIA_Infographic_31st.pdf (last visited July 6, 2023).

⁷ OHCHR, UPR of Malaysia (3rd Cycle – 31st Session): Thematic List of Recommendations, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MY/UPR31_Malaysia_Thematic_list_of_Recommendations_E.docx (last visited July 6, 2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ Perlembagaan Persekutuan Malaysia [PP] [CONSTITUTION] Aug. 27, 1957, art. 3, https://www.constituteproject.org/constitution/Malaysia_2007.pdf?lang=en [hereinafter Malaysia's Constitution].

¹¹ *Id.* art. 11.

¹² *Malaysia*, *supra* note 4.

¹³ *Id.*

¹⁴ Laws of Malaysia [Penal Code] art. 298, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS61339%202015.pdf>.

¹⁵ *Id.* art. 298A. (1).

¹⁶ Communications and Multimedia Act, 1998 (Act No. 588/1998) (My.), § 233,

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

¹⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 18 (Dec. 10, 1948).

¹⁸ Malaysia's Constitution art. 6, *supra* note 10.

¹⁹ Laws of Malaysia art. 370, *supra* note 14.

²⁰ *Chapter XVIII Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION,

https://treaties.un.org/Pages/ViewDetails.aspx?src=ind&mtdsg_no=XVIII-12-a&chapter=18&clang=_en (July 6, 2023, 9:15:29).

²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Trafficking Organized Crime art. 9 § 1, *adopted* on Nov. 15, 2000, 2237 U.N.T.S. 319,

https://treaties.un.org/doc/treaties/2000/11/20001115%2011-38%20am/ch_xviii_12_ap.pdf.

²² *Malaysia*, *supra* note 4.

²³ *Id.*

²⁴ Anugrah Kumar, *Malaysian State Criminalizes Proselytizing, Christian Conversions; Violators Face Jail and Canings*, CHRISTIAN POST (Nov. 8, 2021), <https://www.christianpost.com/news/malaysian-state-criminalizes-proselytizing-christian-conversions.html>.

²⁵ *Id.*

²⁶ Tan Sin Chow, *Kelantan's New Syariah Laws Criminalises Tattooing and Plastic Surgery*, THE STAR (Nov. 2, 2021), <https://www.thestar.com.my/news/nation/2021/11/02/new-syariah-laws-in-kelantan-include-forbidding-sexual-intercourse-with-corpse#>.

²⁷ Christian Today, *Malaysian State Issues Fatwa Banning Muslims from Entering Churches, Attending Christian Weddings*, CHRISTIAN POST (Apr. 11, 2023), <https://www.christianpost.com/news/malaysian-state-issues-fatwa-banning-muslims-from-entering-church.html>.

²⁸ *Id.*

²⁹ *Malaysia to Deport Christian Finns for Proselytizing*, DW (Nov. 27, 2018),

<https://www.dw.com/en/malaysia-to-deport-christian-finns-for-proselytizing/a-46464573>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ “*Release Raymond Koh*” – *Malaysian Pastor Abducted Five Years Ago*, ANGLICAN INK (Feb. 14, 2022), <https://anglican.ink/2022/02/14/release-raymond-koh-malaysian-pastor-abducted-five-years-ago/>.

³⁴ Esther Landau, *Suhakam Inquiry Concludes Police Behind Disappearance of Amri, Pastor Koh*, NEW STRAITS TIMES (Apr. 3, 2019), <https://www.nst.com.my/news/nation/2019/04/475685/suhakam-inquiry-concludes-police-behind-disappearance-amri-pastor-koh>.

³⁵ *Malaysia's Special Branch and the Deep State*, ASIA SENTINEL (July 11, 2019),

<https://www.asiasentinel.com/p/malaysia-special-branch-deep-state>.

³⁶ “*Release Raymond Koh*” – *Malaysian Pastor Abducted Five Years Ago*, *supra* note 33.

³⁷ *Malaysian Pastor Raymond Koh Abducted for His Faith*, VOICE OF THE MARTYRS (Oct. 8, 2022),

<https://www.persecution.com/stories/malaysian-pastor-raymond-koh-abducted-for-his-faith/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Malaysia's Constitution art. 11, *supra* note 10.

⁴¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 18, *supra* note 17.

⁴² *Malaysia*, GLOBAL ORGANIZED CRIME INDEX, <https://ocindex.net/country/malaysia> (last visited July 6, 2023).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Malaysia Remains at Lowest Tier of US Human Trafficking Report*, MALAYSIA NOW (July 19, 2022, 9:52 PM), <https://www.malaysianow.com/news/2022/07/20/malaysia-remains-at-lowest-tier-of-us-human-trafficking-report>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Trafficking Still a Problem in Malaysia*, THE ASEAN POST (Apr. 5, 2020),

<https://theaseanpost.com/article/trafficking-still-problem-malaysia>.

⁵⁰ Pizaro Gozali Idrus, *Indonesian Police Arrest Human Trafficking Suspects, Rescue 123 Workers Headed to Malaysia*, BENAR NEWS (June 9, 2023), <https://www.benarnews.org/english/news/indonesian/indonesia-arrests-human-trafficking-suspects-malaysia-06092023102852.html>.

⁵¹ *Id.*

⁵² Neill Fronde, *13 Year Old Girl Rescued From Prostitution Ring in Malaysia*, THE THAIGER (Oct. 30, 2022), <https://thethaiger.com/news/world/asia/13-year-old-girl-rescued-from-prostitution-ring-in-malaysia>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Justin Zach, *Prostitution Ring Busted, 19 Women Arrested*, THE STAR (Aug. 14, 2022, 7:07 PM), <https://www.thestar.com.my/news/nation/2022/08/14/prostitution-ring-busted-19-women-arrested>.

⁵⁷ *Id.*