

United Nations Human Rights Council Universal Periodic Review of Member – Malaysia

Jubilee Campaign submits this analysis of religious freedom and human rights in Malaysia as a contribution to the Universal Periodic Review of UNHRC member-state Malaysia.

Background and International Norms

1. Malaysia was formed in 1963 out of the former British territories on the Malaysian Peninsula as well as Sabah and Sarawak on the northern coast of Borneo.ⁱ Singapore withdrew from Malaysia shortly after formation in 1965.ⁱⁱ Malaysia is home to nearly 31 million people, of which 61% are Muslim, 20% are Buddhist, 9% are Christian, 6% are Hindu, which approximately 1% of the population practicing Confucianism, Taoism, or other traditional Chinese beliefs.ⁱⁱⁱ Sikhs, Baha'is, animists and followers of no religion are also present in Malaysia in smaller numbers.^{iv}
2. The Federal Constitution of Malaysia Article 3(1) states that “Islam is the religion of the Federation; but other religions may be practiced in peace and harmony.”^v However, the Constitution in Article 11(4) also expressly allows the government to prohibit the “propagation of any religious doctrine or belief among persons professing the religion of Islam.”^{vi} While Malaysia does not have a formal blasphemy law, its sedition laws are used to punish criticism of Islam, but not other religions.^{vii}
3. It should be noted that government statistics should not be relied upon, as the government is widely accused of a bias in favor of registering persons as Muslims regardless of their actual religion.^{viii} Additionally, the government reserves the right to determine orthodox versions of Islam and religious authorities can issue fatwas banning groups deemed deviant by the Sunni Muslim majority, which have the force of law.^{ix} Banned groups include Shi'a Muslim, Ahmadiyya, Baha'i, and Al-Arqam.^x Sisters in Islam, an NGO dedicated to women's rights in the Muslim world, was banned in 2014 because a Sharia court in Malaysia deemed them a “religiously deviant organization for subscribing to liberalism and pluralism.”^{xi} Sisters in Islam has attempted to litigate the validity of the fatwa in the civil courts as opposed to Sharia courts, and the case is ongoing.^{xii} However, it should be noted that in the four years since the initial fatwa, the case has not progressed beyond the preliminary issue of whether the civil courts even have jurisdiction.
4. Malaysia has not currently signed or ratified the International Covenant on Civil and Political Rights.^{xiii} In fact, of the 18 International Human Rights Treaties, Malaysia has only the Conventions on the Elimination of all forms of Discrimination Against Women; the Convention on the Rights of the Child and its optional protocols, and the Convention on the Rights of Persons with Disabilities. Further, its ratification of each of these treaties are subject to significant reservations. Its ratification of CEDAW is subject to Sharia law and the Federal Constitution of Malaysia, presumably as interpreted by its Sharia and Civil courts. This indicates a strong preference for Sharia law on behalf of the Malaysian Government, which is so different from the international norms expressed in CEDAW that it is difficult to understand what Malaysia's ratification of CEDAW actually means in terms of implementation.

5. Malaysia's ratification of the Convention on the Rights of the Child is also subject to reservations on Articles 2, 7, 14 and 28 of that Convention.^{xiv} As those are the articles which guarantee non-discrimination between children on the basis of religion, and the rights of parents to educate their children in the religion of their choice, this reservation essentially guts the Convention on the Rights of the Child, with respect to religious minorities.

Registration of Religious Entities and Houses of Worship

6. Religious minorities in Malaysia face challenges in registering their with the government. There is no formal requirement for a religious group to register with the government in order to exercise the right of assembly.^{xv} However, groups who fail to register face practical challenges as without a corporate identity they cannot own real property or open bank accounts.^{xvi} While work arounds exist, such as relying on the identity of a organizational parent entity, or organizing as a trust, Malaysian law favors churches registering as a society under the Societies Act of 1966.^{xvii}
7. However, registering under the Societies Act imposes significant restrictions on the rights of religious groups, as they must disclose the qualifications for membership in their society along with details regarding their funding to the Federal government.^{xviii} The Registrar also has the power to compel more information from the society including essentially all details related to the membership and financial position of the religious group within its possession.^{xix} Registration is a highly technical process, which has a significant degree of risk for the church, as if the request for registration is denied the society will be considered unlawful.^{xx}
8. The Societies Act, which was originally intended to combat the organized crime entities, such as the triads, grants broad and potentially arbitrary powers on the Register, to investigate, reform, and cancel a society's registration.^{xxi} Religious groups report that the registration of societies can be cancelled for nearly any reason, even simple complaints from disgruntled former members.^{xxii} Once cancelled, a society becomes unlawful and those leading it can face prosecution.^{xxiii}
9. A related issue is that of land allocation or zoning, because the government controls all allocation of land for all places of worship and cemeteries.^{xxiv} Non-Muslim religious groups regularly report difficulties in getting land allocations and permits for religious use.^{xxv} While some churches have been allowed to meet in buildings zoned for commercial or industrial use this appears to be the result of informal exercises of prosecutorial discretion, which could be withdrawn at any time, leaving religious minorities vulnerable.^{xxvi}
10. This practice is made all the more ominous by instances of violence by the Muslim majority against religious minorities, including the destruction of houses of worship such as the burning of an Assemblies of God church in 2010.^{xxvii} The church was able to find a new location to meet in a "conference center" that the community openly acknowledged as a church, but the shift from an acknowledged house of worship, to a conference center, whose regular use as a house of worship may be in technical violation of its permit, is a

negative shift and weakens the ability of religious minorities to exercise their rights in line with the Universal Declaration of Human Rights.^{xxviii}

Non-Muslim Use of “Allah”

11. There continues to be discrimination against religious minorities in Malaysia regarding the use of the word Allah. The use of the word Allah, has been regulated by the government since it was initially banned in 1986.^{xxix} The formal basis for the ban is that the use of the word by persons other than the Sunni majority is a threat to public order.^{xxx} However, public statements from Muslim leaders indicate that the ban is actually due to concerns that allowing Non-muslims to use Allah could potentially lead to Muslims converting away from Islam.^{xxxi} The ban prohibits anyone except the government approved Sunni Muslims from using the word Allah. The ban appears to only formally prohibit Non-muslims and is largely targeted at Christians who use Allah. However, because of the Malaysian government’s stance on Muslim minority groups, which again the government refers to as “deviant”, those groups would likely be considered Non-muslim, and therefore covered under the ban.
12. Apparently at some point between 1986 and 2007, the government began issuing special permits allowing specific institutions such as the Herald, a Catholic newspaper, to use the Allah. The word has been the subject of ongoing legal disputes since 2007, when the government threatened to revoke the Herald’s permit for the use Allah, as well a potentially the publishing license of a newspaper.^{xxxii} In the same year, the government also seized Christian educational materials owned by a church in Sabah, which were written in the Malay language and used Allah, claiming that they violated the ban.^{xxxiii}
13. Muslim extremists took a strong stance on the case, and any court decisions, even temporary or reversible ones that seemed to favor the religious minority were met with mass violence, including the burning of churches.^{xxxiv} In 2009, after a court ruling favoring the Christian minority was issued, 10 churches were vandalized, including the burning.^{xxxv} Malaysia’s apex court eventually ruled against the newspaper in 2014, but the government issued a statement that indicated that they would not enforce the ban as widely as the court had issued it.^{xxxvi} The lack of clarity again put religious minorities in a vulnerable position as it was unclear whether they would be prosecuted for using the Malay word for God in internal publications, Bibles, internal documents or even in sermons.
14. There continues to be ongoing litigation, as to whether Malay-language Christian education materials, which uses Allah, and CD’s containing recordings of teaching in the Malay language, which again uses Allah; are covered under the ban.^{xxxvii} Recently, the government refused to disclose any alleged documents for its initial 1986 ban on the grounds that any documents that exist were protected under Malaysia’s official secrets act.^{xxxviii} It is unclear if there are actually any documents to disclose and in any event the refusal to disclose any grounds at all is essentially arbitrary.
15. Additionally, given the reported statements of Muslim leaders claiming that the ban is necessary in order to prevent confusion or conversion by Muslims to another religion it

seems likely that the ban is actually based on this concern or based purely on a desire to satisfy religious extremists. While the rights articulated in the Universal Declaration of Human Rights, have some limitations, including public order and general welfare, those limitations must be clearly supported by objective reasoning. Further, the acknowledged public reasoning by the Muslim majority for the ban, is simply an exercise of the freedom to change ones belief, and cannot support a public order exception to the rights articulated in Article 18. Indeed, the government of Malaysia has a duty under international law to affirmatively protect the rights of persons who exercise this right, not to use it as a justification to restrict religious freedom.

16. Additionally, the courts and the religious majority appear to be involving themselves in dictating which specific words that Malay speaking Christians are allowed to use in referring to their deity.^{xxxix} In one of the court decisions, the judges evaluated whether using Allah was an “integral part of the Christian faith and practice” and found that it was not. This is a clear violation of Article 18 of the UDHR, which grants protection to the religious belief of persons. Malaysia’s approach of investigating the religion of Christianity and determining for the mass of Christians whether the use of a particular word is “integral” to their faith and practice violates this principle.

Compelled Religious Instruction

17. The religious status of Malaysians is tracked by the government, and is a legal status which confers certain rights and duties under Malaysian law.^{xi} This is a clear violation of the right to be free from discrimination on the basis of religion. One of the most troubling consequences of this violation is that children who the government deems Muslim are compelled to undergo Muslim religious instruction in schools, and are prohibited from being educated, even by their parents, in any other religious tradition. In one case, when a mother objected to her son’s registration as a Muslim, the government officials simply took the boy’s birth certificate, leaving her without any record of his birth, or any way to apply for school.^{xii} While government officials have promised to intervene and allow the boy to go to school, it is unclear if this represents an actual resolution of the underlying misregistration of the child as a Muslim, or if this is simply an extra-legal solution.^{xiii}
18. While the government prohibits any attempts to convert Muslims to another faith, religious minorities report serious concerns that government schools pressure Non-muslims to convert to Islam from a very early age, even as young as preschool.^{xliii} This indicates that the reservations on Malaysia’s ratification of the Convention on the Rights of the Child remove key, even essential provisions in the structure of that Convention regarding the rights of children to be treated equally no matter what their religion, and the rights of parents to be involved in their children’s religious instruction.
19. These cases illustrate the interrelated nature of human rights. The Malaysian government’s discrimination on the basis of religion and refusal to allow individuals to freely choose their religion has ripple effects across various human rights issues, including women’s rights, and children’s rights. The Malaysian governments tendency to handle discrete issues outside of the legal, through explicit or implied promises not to

enforce the laws as written further marginalizes these groups and is not in line with the rule of law and international human rights norms.

Therefore we:

Urge the Malaysian government to Ratify the International Covenant on Civil and Political Rights, without reservations, and to remove any reservations of existing human rights conventions or treaties that subject international norms to Sharia law or the arbitrary power of governmental policy.

Urge the Malaysian government to conduct a public awareness campaign and create compliance procedures or mechanisms with all religious groups based on the 1966 International Covenant on Civil and Political Rights, *Article 18* and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Urge the Malaysian government to make provisions under the constitution and sharia enactments to state clearly that sharia' courts are subordinate courts and shall have jurisdiction only with respect to personal law matters solely with Muslims and not when either party are non-Muslims

Urge the Malaysian government to take measures to ensure that all persons, including Muslims, can freely exercise their right to freedom of religion and belief, without interference by the state including the right to change one's religion.

Urge the Malaysian government to amend the National Registration Act to remove all mention of religion from the ID card.

Urge the Malaysian government to amend the current sharia' enactments or make policy provisions to allow for an administrative procedure to leave Islam freely, and to affirmatively protect the right to anonymity.

Urge the Malaysian government to remove any bias or discrimination in the provision of government services based on religion status, and to as much as possible, make any tracking or registry of religion inaccessible to officials providing services not related to religion.

Urge the Malaysian government to allow religious societies to form, own property, and get bank accounts with as little government regulation as possible.

Urge the Malaysian government not to discriminate against houses of worship of religious minorities, and to permit houses of worship under neutral broadly applicable guidelines.

Urge the Malaysian government to make clear provisions and policies that non-Muslim communities have the right to manage their own religious affairs, profess and practice any tenets or belief in the faith without due influence, interference, discrimination and unreasonable restrictions or prohibitions

Urge the Malaysian government to renounce and nullify all actions and steps taken against "thought policing", religious ideas, ban on publications, printings and materials that is against state sanction or official interpretation of religious dogmas

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