

Challenges to Freedom of Religion or Belief in Malaysia

Executive Summary and Recommendations
March 2019

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The right to freedom of religion or belief is guaranteed in international human rights law, including in a number of core human rights instruments. It encompasses a wide range of rights, including the freedom to have or to adopt a religion or belief of one's choice, and the freedom to manifest one's religion or belief in worship, observance, practice and teaching, either individually or in community with others, in public or in private. The right to freedom of religion or belief also covers the right to freedom of thought and personal convictions, including theistic, non-theistic or atheistic beliefs, and the freedom not to disclose one's religion or belief.

The Federal Constitution of Malaysia enshrines a number of legal protections with respect to freedom of religion or belief in the country. It protects the right to freedom of religion under Article 11, including the right to "profess, practise and propagate" one's religious beliefs, with the possibility that federal law may impose certain limits on the right to propagate the Islamic faith among Muslims. Under Article 3, Islam is accorded a special and effectively privileged position within the country.

To understand the operation in practice of the legal framework governing freedom of religion or belief in Malaysia, it is necessary to appreciate the role that religion and ethnicity have played in Malaysian politics and society. Ethnicity and religion have often been utilized by political parties to advance their agenda. Even after the 60-year governance of the Barisan Nasional (National Front) coalition led by the nationalist United Malays National Organization (UMNO) party came to an end in 2018, the propagation of identity-based politics has persisted.

Religious intolerance is also a pressing concern in Malaysia, a concern raised by the UN Special Rapporteur in the field of cultural rights, following a visit to the country in September 2017. Harassment of persons from religious minorities, as well as the recent disappearances of religiously-affiliated social workers or clergy, illustrate the serious consequences of growing religious intolerance.

In this context, jurisdictional disputes affecting the adjudication of matters relating to religion and belief – between civil courts, which apply federal and state laws, and Syariah courts, which apply Islamic laws – have become a main arena of contestation. Exacerbated by a lack of clarity in existing jurisprudence and law about this dual jurisdictional regime, the scope of matters heard by Syariah courts has expanded, resulting in diminished access to civil remedies. Despite the protections offered by the Constitution, legal safeguards to protect the rights of Muslims in respect of personal and family matters remain inadequate, and there is little protection for persons who wish to change their religion. This situation has had a particularly detrimental impact on already at-risk populations, such as religious minorities and children.

The International Commission of Jurists (ICJ) has identified a number of challenges related to the protection and promotion of the right to freedom of religion or belief in Malaysia. This briefing paper identifies six key issues concerning the implementation in practice of constitutional provisions, federal laws and Islamic laws in the context of freedom of religion or belief:

- (1) discrimination against religious minorities;
- (2) limitations on the rights of children relating to personal matters governed by Islamic law;
- (3) discrimination against persons who wish to change or adopt a new religion;
- (4) criminalization and prosecution of proselytism among Muslims; and

- (5) prohibitions on the use of the word 'Allah' by non-Muslims; and
- (6) relationship with freedom of expression and the crime of sedition.

Recommendations

To help address these concerns and assist the Government of Malaysia to ensure that its legal framework is implemented in accordance with international human rights law and fully protects freedom of religion or belief, the ICJ offers the following recommendations:

- Become a party to the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW); the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and other core UN human rights instruments with a view to upholding the commitments Prime Minister Mahathir Mohamad made to the 73rd United Nations General Assembly;
- Withdraw the reservations entered to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), which are incompatible with the object and purposes of those treaties;
- Implement the provisions of the Constitution, particularly Article 11, in accordance with the right to freedom of religion or belief guaranteed in international human rights instruments, including by removing the limitations on proselytism, and enhancing protections for religious minorities and non-believers;
- End the harassment, arrest, detention, forced "rehabilitation" and selective targeting of religious minorities and allow them to exercise their right to freedom of religion or belief freely without State intrusion, including through ending the use of security laws against religious minorities;
- Unconditionally release persons imprisoned on charges solely related to the peaceful practise of their religion as protected under international human rights law;
- Adopt a process of engagement with Islamic religious authorities, including by establishing a commission or working group aimed at preventing actions that threaten the rights of religious minorities, punish apostasy and place limitations on religious practices;
- Repeal or amend legal provisions that allow children under the age of 18 to be married with the permission of a Syariah judge;
- Amend the Child Act 2001 to include a specific provision criminally sanctioning adults responsible for child marriage;
- Amend or repeal laws that criminalize the changing of one's religion, and remove punitive measures, including detention in rehabilitation centres and mandatory counselling sessions, featured within State laws for persons who wish to change their religion;
- Implement legal measures, including departmental regulations, instructing the National Registration Department that matters involving voluntary conversion must be resolved in a manner consistent with protection of the right of persons to choose their own religion or belief;
- Amend or repeal all laws that criminalize the propagation of religious beliefs or proselytism among people of all faiths;
- Conduct independent, impartial and effective investigations into cases of alleged enforced disappearances until the fate and whereabouts of each person is disclosed, provide regular updates on these investigations to the families of the victims and the public, and take all measures necessary to ensure that those responsible for enforced disappearances be brought to justice;
- Amend or repeal the 1986 government directive prohibiting the use of the word "Allah" in non-Islamic religious publications.
- Repeal or substantially amend the Sedition Act to make it human rights compliant.

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