



MALAYSIA

Key Findings

In 2015, many in the Malaysian government, political parties, and religious leadership prioritized the Muslim faith and Malay identity in a manner that threatens religious freedom. Whether cracking down on religious activity, expression, or dissent, these individuals and groups sought to expand the scope of Islam through law and practice and punish anyone perceived to criticize their politically-driven agenda. This occurred through arrests under the Sedition Act, which was strengthened in 2015, efforts to expand Islamic punishments under Shari'ah law, legal ambiguity between civil and Shari'ah courts, and the political manipulation of Islam. Moreover, the government continues to ban several so-called "deviant" religious groups, such as the Shi'a Muslim, Ahmadiyya Muslim, Baha'i, and Al-Arqam communities. Collectively, these trends have resulted in diminished legal protections for ethnic and religious minorities, non-Muslims and non-Sunni Muslims alike. Based on these concerns, in 2016 USCIRF again places Malaysia on Tier 2, where it has been since 2014. USCIRF will continue to monitor the situation closely to determine if these troubling developments warrant a change in Malaysia's status during the year ahead.

segments of the population are Sikhs, Baha'is, and animists. Religious groups deemed "deviant," such as the Shi'a Muslim, Ahmadiyya Muslim, Baha'i, and Al-Arqam groups, are banned. The government or state-level Shari'ah courts can force individuals considered to have strayed from Sunni Islam, including those from "deviant" sects or converts from Islam, into detention-like camps known as "rehabilitation" centers and/or criminally prosecute them for apostasy, which is subject to prison terms or fines.

Ethnic and religious identity is central to Malaysian politics, contributing to an entrenched system of government that advantages the ruling party and the Sunni Muslim Malay majority at the expense of ethnic and religious minorities. Although Malaysia is officially secular, the state implements an increasingly exclusive brand of Islam that is based, in part, on the constitutional establishment of Islam as the official religion. To stave off perceived political threats and be seen as protecting Islam, Prime Minister Najib Razak and the ruling Barisan Nasional coalition crack down on individuals who express dissent or criticism, accusing them of attacking Islam.

Over time, political opponents and members of civil society have criticized the government more

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Background

More than 61 percent of the country's 30.5 million population are Muslim, while nearly 20 percent are Buddhist, more than nine percent Christian, and more than six percent Hindu; approximately one percent or less apiece practice Confucianism, Taoism, or other faiths. Smaller

openly, often through social media, calling for less corruption and more transparency. The most well-known expression of this growing discontent is the *Bersih* ("clean") movement, which called for the Prime Minister's resignation after nearly \$700 million from Malaysia's wealth fund, 1Malaysia Development Berhad (1MDB), was found in his personal bank account.

In another example, on March 16, 2015, police arrested Nurul Izzah Anwar after she publicly criticized the Federal Court for upholding an earlier sentence against her father, opposition leader Anwar Ibrahim. His February 2015 conviction resulted in a five-year prison term and a ban from elected office for an additional five years thereafter.

In August 2015, a USCIRF Commissioner-led delegation visited Malaysia, meeting in the capital, Kuala Lumpur, and the administrative center, Putrajaya, with government officials, religious representatives, and civil society organizations.

Religious Freedom Conditions 2015–2016

General Conditions

While Malaysians generally are free to worship, some within and outside government exploit politics and ethnicity to create divisions. Under the constitution, ethnic Malays – the predominant ethnic group – are defined as Muslim, and, in practice, the government only supports Sunni Islam. Through the federal Department of Islamic Development Malaysia (JAKIM), the government funds most Sunni mosques and imams and provides talking points for sermons, which regularly vilify religious minorities, such as Shi’a Muslims. Both the government and the United Malays National Organization (UMNO), the country’s largest Islamic party, send individuals to Saudi Arabia for religious training; the stricter mindsets and more austere interpretation of Sunni Islam with which they return have caused concern that Malaysian Islam is becoming more “Arabized.”

Harassment of or attacks on non-Muslim houses of worship are infrequent, but they do occur, and non-Muslims also report difficulties in obtaining government permission to build houses of worship. For example, in April 2015, intense pressure from approximately 50 Muslim protestors prompted a Christian church in Taman Medan in the state of Selangor to remove its cross. In a positive sign, the central government called for a police investigation, local leaders swiftly organized a meeting with interested stakeholders, and, by the end of May, the church planned to reinstall the cross. The investigation officially closed in December 2015 with no further action against the protestors.

Increasingly, state and federal level religious councils issue *fatwas* (religious edicts) that, in effect, carry

the force of law. In 2014, the Selangor Islamic Religious Council (MAIS) issued a *fatwa* declaring the Malaysian civil society organization Sisters in Islam (SIS) to be “deviant;” the *fatwa* enabled MAIS to block SIS’s website and confiscate its publications. SIS filed a judicial review application to challenge the *fatwa*’s constitutionality, and although the hearing was originally set for November 2015, the High Court is now expected to hear the case in June 2016.

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In response to the growing number of Malaysians known to be working or affiliated with the Islamic State of Iraq and the Levant (ISIL) and to prevent home-grown or ISIL-related attacks, in April 2015 the parliament approved the Prevention of Terrorism Act. The bill notably re-establishes indefinite detention without trial, which had not been permitted since the controversial Internal Security Act was abolished in 2012. On December 22, Malaysia’s Senate approved the National Security Council Act that grants broad powers to the prime minister to authorize searches and arrests without warrants.

Restrictions on Belief and Expression

In 2015, the government continued to suppress free speech and religious expression. Muslims are allowed to proselytize to non-Muslims, but not vice versa. Apostasy, considered a sin by Islamic authorities, has been criminalized in some states as a capital offense. Malaysia’s vaguely-worded Sedition Act, which was amended in 2015 to increase jail times and other penalties, is used as a means to suppress political and religious dissent, and authorities increasingly target individuals for expression online. One provision of the 2015 amendments strengthens the Sedition Act to cover any insults to Islam.

In March 2015, police arrested five journalists associated with online news portal *The Malaysian Insider* to investigate them under the Sedition Act for

a story about the position of Malaysia's nine sultans regarding a proposal to implement *hudood* punishments (commonly spelled *hudud* in Malaysia) in the state of Kelantan (discussed below). Authorities raided their offices and later released the five on bail. In July 2015, police questioned publisher Ho Kay Tat for publishing stories critical of the 1MDB controversy involving Prime Minister Najib. After *The Malaysian Insider* continued to publish critical coverage, the Malaysian Communications and Multimedia Commission, a government regulatory body, blocked the news website in February 2016, prompting the publisher to shut down the site entirely just weeks later.

Mohd Ezra Mohd Zaid, a publisher at ZI Publications, faces prosecution for publishing books about Islam that the Selangor state government and religious authorities deemed "un-Islamic." In September 2015, the Federal Court dismissed his attempt to invalidate

when the Federal Court refused any further review of its 2014 decision upholding a ban on the newspaper's use of the word. In another case, in June 2015, the Court of Appeals ordered the Malaysian government to return to Jill Ireland, a Christian from Sarawak, eight Christian CDs with song titles with the word Allah confiscated in 2008. In July 2014, the Kuala Lumpur High Court first ordered the CDs returned, but the Ministry of Home Affairs refused. Then, the Federal Territories Islamic Council, the local-level body in charge of religious affairs, applied to weigh in on the case, claiming the right to regulate non-Muslims. The Court of Appeals decision dismissed this application, thereby upholding the High Court's order to return the CDs, but did not address Ms. Ireland's question on the constitutionality of using the word Allah. The CDs were returned in September 2015.

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the section of Selangor Shari'ah law on which their objections were based. The ruling means Ezra will be prosecuted in Shari'ah court. In another case, in April 2015, authorities charged a popular Malaysian cartoonist known as Zunar with nine counts of sedition for a series of tweets critical of the government's prosecution of opposition leader Anwar Ibrahim. Zunar, whose trial has been delayed several times, could face up to 43 years in prison. Also, the government continued to target Malaysian human rights lawyer Eric Paulsen, charging him with sedition in February 2015 for criticizing JAKIM and arresting him in March 2015 for tweets critical of *hudood* punishments. He was released on bail, but authorities continued to question and harass him throughout the reporting period.

Ban on the Use of the Word "Allah"

The years-long legal battle over the use of the word "Allah" by the Malay-language edition of a weekly Catholic newspaper came to an end in January 2015

Hudood Punishments

In March 2015, the Kelantan State Assembly passed a bill that would amend the state's penal code to allow *hudood*, a set of Islamic criminal punishments outlined in the Qur'an and the Hadith (the Prophet Muhammed's sayings). Crimes punishable under *hudood* include apostasy, slander, adultery, and alcohol consumption; the punishments include amputation, stoning, and flogging. Kelantan politicians want to expand *hudood* nationwide and have garnered support among some in UMNO. Datuk Othman Mustapha, director general of JAKIM, said the punishments would apply only to Muslims. The Kelantan State government is controlled by the Pan-Malaysian Islamic Party (PAS), whose push for *hudood* contributed to the party's split from the Pakatan Rakyat (PR) opposition coalition in 2015. Critics of the jockeying over *hudood*, including former Prime Minister Mahathir Mohamad, argue that proponents are encouraging stricter interpretations of Islam for political gain.

Forced Conversions and the Dual Court System

Civil courts increasingly cede jurisdiction to Shari'ah courts, particularly with respect to family law. This has negative implications for non-Muslims, who have fewer rights in Shari'ah courts and cannot appear as witnesses. In one case, the Ipoh High Court ruled that unilateral conversions to Islam of children by one parent without the other's consent is unconstitutional. In December 2015, however, the Court of Appeals overturned that ruling and also determined that Shari'ah courts have sole jurisdiction in Islamic matters, thereby establishing a precedent to eliminate the role of civil courts in family cases in which at least one party is non-Muslim. The case revolves around M. Indira Gandhi, a Hindu whose ex-husband converted their three children to Islam without her knowledge. However, in another case, in February 2016, the Federal Court asserted the civil court's role in family law cases when at least one party is non-Muslim, granting each parent full custody of one of the couple's two children. The father in this case converted both children to Islam and abducted the son; the court allowed him to keep custody of the son, while the daughter was permitted to live with her mother.

one year to allow time for resettlement to third countries. As of April 2015, more than 46,000 Rohingya Muslims were registered with UNHCR in Malaysia; UNHCR reportedly has asked the Malaysian government to issue them work permits.

U.S. Policy

In 2015, Malaysia chaired the Association of Southeast Asian Nations (ASEAN). While visiting Malaysia for the November 2015 ASEAN Summit in Kuala Lumpur, President Barack Obama attended a civil society roundtable and visited refugees, including Rohingya Muslims from Burma. In addition, the President met bilaterally with Prime Minister Najib, and the two discussed the importance of combatting violent extremism, the Trans-Pacific Partnership regional free trade agreement, climate change, the South China Sea, and general development issues. In public remarks about their meeting, President Obama said, "Malaysia, like Indonesia, is a majority-Muslim country that represents tolerance and peace." Secretary of State John Kerry visited Malaysia in August 2015 in connection with the ASEAN Foreign Ministers Meeting and related events.

During the year, the State Department issued remarks both praising and criticizing Malaysia, including praise for Malaysia's efforts to assist Rohingya Muslim refugees and criticism of tighter restrictions on freedom of expression, including under the Sedition Act.

In October 2015, reports surfaced from Sabah alleging Christians were converted forcibly to Islam. Prime Minister Najib publicly denied any government involvement in these claims and encouraged individuals forcibly converted to reach out to Sabah's chief minister.

Regional Refugee Crisis

In May 2015, Malaysian authorities discovered more than 100 graves believed to contain Rohingya Muslims. This discovery initially prompted Malaysia to turn away additional Rohingya Muslims fleeing Burma, although later in May both Malaysia and Indonesia agreed to provide temporary shelter to thousands of refugees for up to

Throughout 2015, the United States and Malaysia worked on several components of the bilateral Comprehensive Partnership launched in 2014, including on issues such as counter-terrorism and counter proliferation. During the year, the State Department issued remarks both praising and criticizing Malaysia, including praise for Malaysia's efforts to assist Rohingya Muslim refugees and criticism of tighter restrictions on freedom of expression, including under the Sedition Act. At a January 2015 roundtable with Malaysian media, Assistant Secretary Daniel R. Russel noted the role of religious leaders in countering "false ideology

that distorts religious teaching for bad political goals,” as well as the importance of creating tolerant and inclusive political environments.

According to the State Department, the U.S. Embassy in Kuala Lumpur regularly engages government representatives, religious groups of multiple faiths, and civil society on religious freedom issues, including religious tolerance, interfaith dialogue and roundtables, and inter-religious education. In July 2015, the State Department released its 2015 Trafficking in Persons Report, upgrading Malaysia from Tier 3 – those countries least in compliance with the Trafficking Victims Protection Act – to Tier 2. Critics argued the upgrade was not deserved given the discovery in Malaysia just months earlier of mass graves linked to smugglers and traffickers who had taken advantage of Rohingya Muslims from Burma and other asylum seekers.

Recommendations

Restrictions on freedom of religion or belief affecting non-Muslim and non-Sunni Muslim religious minorities are central to Malaysia’s mounting human rights challenges and belie its own claims to be a moderate Muslim country. The manipulation of both the constitution and Islam for political gain increasingly threatens many rights and freedoms. The United States and the international community must engage the Malaysian government on these issues. In addition, USCIRF recommends that the U.S. government should:

- Encourage the Malaysian government to become party to the International Covenant on Civil and Political Rights without reservations;
 - Urge the Malaysian government to cease the arrest, detention, or forced “rehabilitation” of individuals involved in peaceful religious activity, such as Shi’a Muslim, Ahmadiyya Muslim, Baha’i, and Al-Arqam groups, among others, and to release unconditionally those detained or imprisoned for related charges; and
 - Encourage the Malaysian government to establish independent institutions, such as the judiciary, office of the Attorney General, and law enforcement, and to address the human rights shortcomings of the parallel civil-Shari’ah justice systems, in order to guarantee that all Malaysians, regardless of ethnicity or religion, enjoy freedom of religion or belief.
- Ensure that human rights and religious freedom are pursued consistently and publicly at every level of the U.S.-Malaysia relationship, including in the Comprehensive Partnership and other discussions related to military, trade, or economic and security assistance, and in programs that address freedom of speech and expression and civil society development, among others, and follow up on these priorities after agreements or deals are reached, such as in the Trans-Pacific Partnership;
 - Press the Malaysian government to bring all laws and policies into conformity with international human rights standards, especially with respect to freedom of religion or belief, freedom of assembly, and freedom of religious expression, including the rights to use the word “Allah” and to possess religious materials;