

# POLICY BRIEF



## Malaysia

### Challenges to freedom of religion in a multi-ethnic nation

**Malaysia has a diverse ethnic, cultural and religious population. A significant number of the populace is Sunni Muslim following the Shafii school of jurisprudence, while minority religions comprise Buddhists, Hindus, Christians and followers of indigenous religious practices.<sup>1</sup> Malaysia is ethnically diverse, the majority group is the Bumiputeras (a term which includes Malays and indigenous groups<sup>2</sup>) followed by ethnic Chinese, ethnic Indians and a small number of “others”<sup>3</sup>. The Federal Constitution of Malaysia (“Constitution”) provides the legal framework for religious freedom in the country. Article 3(1) of the Constitution establishes Islam as the state religion of Malaysia and allows for peaceful practice of other religions across the country<sup>4</sup>. The Constitution allows the federal and state governments to restrict proselytization to Muslims.<sup>5</sup> There is a strong correlation between ethnicity and religion in Malaysia. According to Article 160 of the Constitution, a Malay is defined as a Muslim.**

Ethnicity and religion have historically influenced the political administration in Malaysia reflecting continued support for policies which have protected and promoted Malay-Muslim identity such as benefit from the government’s “affirmative action policy” which gives ethnic Malay advantages in decisions concerning quotas, grants, loans and tax benefits.<sup>6</sup> Both federal and state authorities have frequently implemented measures that infringe upon the religious freedom of minorities. A recent example is the digitization of a book named “Exposing the Christian Agenda” depicting Christians as “enemies of Islam who always have malicious intentions and are the bearers of lies” by the Selangor state Islamic Religious Council, a state government agency.<sup>7</sup> Public school curriculum for Muslim students at the Form 5 level (ages 16–17) contains federally approved material claiming Sunni Islam as the “superior” and only acceptable form of Islam, labelling Shi’a Islam as “deviant.”<sup>8</sup> At the federal level, Section 3 of the Sedition

<sup>1</sup> Population Distribution and Basic Demographic Characteristic Report 2010 (Updated: 05/08/2011). Available at [dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=117&bu\\_id=MDMxdHJjWTk1SjFzTzNkRXZzcVZjdzO9&menu\\_id=L0pheU43NWJwRWVSZkiWdzQ4TlhUUU09](http://dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=117&bu_id=MDMxdHJjWTk1SjFzTzNkRXZzcVZjdzO9&menu_id=L0pheU43NWJwRWVSZkiWdzQ4TlhUUU09).

<sup>2</sup> As defined by Article 153 of the Federal Constitution of Malaysia. Available at [jac.gov.my/spk/images/stories/10\\_akta/perlembagaan\\_persekutuan/federal\\_constitution.pdf](http://jac.gov.my/spk/images/stories/10_akta/perlembagaan_persekutuan/federal_constitution.pdf).

<sup>3</sup> “Population Distribution”, *Ibid*.

<sup>4</sup> Federal Constitution: Malaysia. Available at [atrefworld.org/docid/3ae6b5e40.html](http://atrefworld.org/docid/3ae6b5e40.html).

<sup>5</sup> Article 11(4) of the Malaysian Constitution.

<sup>6</sup> “Malaysia: Country Dossier”, World Watch Research, February 2022, pp. 15. Available at [opendoorsanalytical.org](http://opendoorsanalytical.org) (password: freedom).

<sup>7</sup> Available at [ucanews.com/news/enemies-of-islam-malaysian-book-accuses-christians-of-conspiracy/92331](http://ucanews.com/news/enemies-of-islam-malaysian-book-accuses-christians-of-conspiracy/92331).

<sup>8</sup> Available at [uscirf.gov/sites/default/files/2022-05/2022%20Malaysia.pdf](http://uscirf.gov/sites/default/files/2022-05/2022%20Malaysia.pdf).

Act 1948, criminalizing acts that “promote feelings of ill will and hostility between different races or classes of the population of Malaysia”, has also been used to suppress religious freedom or punish actions deemed to offend religious sensitivities.<sup>9</sup> This is in contrast with freedom of expression as protected by the Constitution in Article 10 and freedom of religion in Article 11.

### Restrictions on Freedom to adopt, change or leave a religion or belief

Article 11(1) of the Constitution provides for freedom of religion for every person except propagating one’s religion to Muslims. This provision prohibits a Malay, a person defined by the Constitution as someone who professes the religion of Islam, from accessing information about other faiths and makes it almost impossible to adopt a new faith. It enables the state to restrict citizens from converting out of Islam or to one of the disfavored Muslim minority sects.<sup>10</sup> Malays, therefore, do not enjoy their inherent right and liberty to change their religion. However, in contrast, the Orang Asli community,<sup>11</sup> indigenous people of Malaysia, experience forced conversion to Islam by government representatives.<sup>12</sup> Additionally, the exception in Article 11 also restricts followers of other faiths, including non-Sunni Muslims, from manifesting their faith which involves propagation.

The Constitution, through Article 121(1A), provides for a dual court structure in Malaysia, the Civil and Syariah courts. Syariah courts have jurisdiction over Islamic law and personal law of persons professing the religion of Islam. Muslims who wish to convert out of Islam must be granted a certificate of apostasy from the Syariah court. However, such an order is practically impossible

to obtain since apostasy is considered a criminal offence by the Syariah courts in some states.<sup>13</sup> Muslims who renounce Islam are imprisoned and/or detained for rehabilitation in “*Pusat Pemulihan Akidah*” (Faith Purification Centers) for up to three years.<sup>14</sup> They are also ostracized by their communities.<sup>15</sup> Formal state identity cards mislabel religious identity of religious minorities. While Muslims are clearly identified, in several instances it was reported that a number of people belonging to minority religions were wrongly registered as Muslims, subjecting them to the Syariah courts for religious matters.<sup>16</sup> Articles 295-298A of the Malaysian Penal Code provide penalties for those who commit offenses against religion. Prosecutions for blasphemy usually target those who offend Islam.<sup>17</sup>

**“The Malaysian police’s strong history of abuse, including excessive use of force, torture, ill-treatment etc. has been facilitated by absence of accountability.”**

### Unilateral conversion of children

Article 74(2) of the Constitution confers power on State Legislative Assemblies, through the ‘State List’, to make laws pertaining to a wide range of religious and family matters including Islamic personal law. Minor children, with both parents being non-Muslim and married under the civil law, have been forcefully converted to Islam without the consent of the other parent, when one of the parents converted to Islam. There is a jurisdictional conflict on this matter between the civil and Syariah court due to Malaysia’s dual legal system. Article 12(4) of the Constitution provides that the religion of a child under eighteen years of age should be decided by both parents. It was decided by the Federal Court in the *Indira Gandhi*<sup>18</sup> case that any child born to parents who were married under the civil law would remain members of the religion of their parents at the time of their marriage. Therefore, children of such marriages could not be converted unilaterally.<sup>19</sup> The landmark ruling in *Indira Gandhi* case is however yet to bring major changes on ground since the Syariah courts still assume jurisdiction in deciding such matters. The deprivation of rights of one parent is evident in the large-scale practice of unilateral conversion of children prevalent all across the country.



Young children praying in rural east Malaysia.

<sup>9</sup> Challenges to Freedom of Religion or Belief in Malaysia: A Briefing Paper, March 2019, International Commission of Jurists, pp. 13-14.

<sup>10</sup> Malaysia: Religious Freedom Landscape Report, Religious Freedom Institute, 2020, pp. 17.

<sup>11</sup> Available at [iwgia.org/en/malaysia.html](http://iwgia.org/en/malaysia.html).

<sup>12</sup> Available at [ucanews.com/news/malaysia-indigenous-people-protest-forced-conversions/85604](http://ucanews.com/news/malaysia-indigenous-people-protest-forced-conversions/85604).

<sup>13</sup> States such as Perak, Malacca, Sabah, Terengganu, Pahang criminalize and apostasy.

<sup>14</sup> Available at [believersportal.com/notable-stories-of-persecution-of-muslims-who-converted-to-christianity-in-malaysia](http://believersportal.com/notable-stories-of-persecution-of-muslims-who-converted-to-christianity-in-malaysia).

<sup>15</sup> Available at [radical.net/article/life-for-malaysian-christians](http://radical.net/article/life-for-malaysian-christians).

<sup>16</sup> Available at [theedgemarkets.com/article/hindu-groups-claim-7000-people-wrongly-documented-muslims](http://theedgemarkets.com/article/hindu-groups-claim-7000-people-wrongly-documented-muslims).

<sup>17</sup> Available at [end-blasphe-my-laws.org/countries/asia-central-southern-and-south-eastern/malaysia](http://end-blasphe-my-laws.org/countries/asia-central-southern-and-south-eastern/malaysia).

<sup>18</sup> (2018) 3 CLJ 145

<sup>19</sup> Challenges to Freedom of Religion or Belief in Malaysia: A Briefing Paper, March 2019, International Commission of Jurists, pp. 20.

This is in violation of Article 14 of the United Nations Convention of the Rights of the Child (UNCRC) which gives children the right to choose a religion of their own with their parents' guidance. The UNCRC is one of the few international treaties ratified by Malaysia. Most cases of unilateral conversions go unreported, or government authorities show reluctance in intervening due to fear of being labelled as un-Islamic.<sup>20</sup> These cases only come to light if a legal challenge is raised by a parent.



Pastor Raymond Koh's missing case has been categorized as enforced disappearance by the Malaysian human rights commission.

### Enforced disappearance of faith leaders

In recent years, several prominent religious minority leaders of Malaysia have disappeared under mysterious circumstances. One of the most famous and widely known cases is that of Christian Pastor Raymond Koh, who was abducted in broad daylight on 13 February, 2017. His whereabouts are still unknown. Likewise, Amri Che Mat, a Sunni Muslim by birth who took interest in Shi'a Islam later in his life, also disappeared under similar circumstances. Malaysia's independent human rights commission (SUHAKAM) held a public enquiry in both these cases and determined that they could be categorized as enforced disappearance,<sup>21</sup> implicating Malaysian law enforcement officials.<sup>22</sup> The Malaysian police's strong history of abuse, including excessive use of force, torture, ill-treatment etc. has been facilitated by absence of accountability.<sup>23</sup> The special task force formed to investigate Pastor Koh's matter subsequent

to SUHAKAM's conclusions is yet to make their findings available to the public. Meanwhile, the whereabouts of other faith leaders such as Joshua Hilmy and his wife Ruth who went missing in 2016 is still unknown.<sup>24</sup> The common features between all the above-mentioned cases are those of accusations of proselytization and religious conversion. These incidences are representative of wider disregard for human rights, namely the right to life and liberty, the right to safety and security, the right to freedom of religion and belief, the right not to be subjected to torture and inhuman degrading treatment and the right to due process and judicial protection.

### Commercial discrimination based on race

Article 153 of the Constitution provides for special protection of the Bumiputeras, consisting of Malays, the Orang Asli and the indigenous people of Sabah and Sarawak, by the constitutional monarch, Yang di-Pertuan Agong (King of Malaysia). The monarch, on the advice of the Cabinet, ensures reservations for Malays and natives of Sabah and Sarawak in positions in the public service, educational scholarships, exhibitions or educational trainings, and permit or license for the operation of any trade or business. The New Economic Policy of 1970 which aimed to close the economic gap between the Bumiputeras and the non-Bumiputeras has resulted in further providing special status to the Bumiputeras, primarily the Malays.<sup>25</sup> Companies of Bumiputeras are given preference by the government through Article 153 in awarding out contracts. Specially subdivided loans are exclusively available for the Malays. Some of the companies listed in the Kuala Lumpur Stock Exchange give 30 percent of ownership to Malays.<sup>26</sup> The special privileges under Article 153 and the ensuing preferential treatment have led to complete exclusion of some minority ethnic groups and minority religious communities. For example, the Indian community continues to be disadvantaged economically, and faces significant poverty and low levels of education in comparison to both the Chinese and the Malays.<sup>27</sup> Furthermore, the 30 percent equity allocation for Bumiputeras has only benefitted a small number of elites while majority of indigenous people, most of them ethnic Malays, have fallen behind in socio-economic development.<sup>28</sup>

<sup>20</sup> Available at [rfi.fr/en/international-news/20220726-abuse-survivor-s-ordeal-sheds-light-on-malaysia-unilateral-conversions](http://rfi.fr/en/international-news/20220726-abuse-survivor-s-ordeal-sheds-light-on-malaysia-unilateral-conversions).

<sup>21</sup> Definition of Enforced Disappearance, The Work on the Committee on Enforced Disappearances, Geneva Academy, August 2021, pp. 8-9. Available at: [geneva-academy.ch/joomlatools-files/docman-files/The%20Work%20of%20the%20CED.pdf](http://geneva-academy.ch/joomlatools-files/docman-files/The%20Work%20of%20the%20CED.pdf).

<sup>22</sup> US Commission on International Religious Freedom, Factsheet Enforced Disappearances in Malaysia, October 2019. Available at [uscirf.gov/sites/default/files/2019%20Malaysia%20Factsheet.pdf](http://uscirf.gov/sites/default/files/2019%20Malaysia%20Factsheet.pdf).

<sup>23</sup> Available at [article19.org/resources/malaysia-ipcc-bill-step-backwards-for-police-accountability](http://article19.org/resources/malaysia-ipcc-bill-step-backwards-for-police-accountability).

<sup>24</sup> Available at [malaymail.com/news/malaysia/2022/04/15/suhakam-inquiry-finds-enforced-disappearance-of-pastor-wife-involuntary-but/2053701](http://malaymail.com/news/malaysia/2022/04/15/suhakam-inquiry-finds-enforced-disappearance-of-pastor-wife-involuntary-but/2053701).

<sup>25</sup> The Bumiputera policy and nation building, Kheng, *Kajian Malaysia: Journal of Malaysian Studies*, 21 (2003), pp. 399-408.

<sup>26</sup> Malaysia's New Economic Policy and the 30% Bumiputera Equity Target: Time for a Revisit and a Reset, March 2021. Available at [iseas.edu.sg/wp-content/uploads/2021/03/SEAS\\_Perspective\\_2021\\_36.pdf](http://iseas.edu.sg/wp-content/uploads/2021/03/SEAS_Perspective_2021_36.pdf).

<sup>27</sup> Washing the Tigers, Addressing Discrimination and Inequality in Malaysia, Equal Rights Trust Country Report, November 2012. Available at [equalrightstrust.org/ertdocumentbank/Malaysia%20CR%201.pdf](http://equalrightstrust.org/ertdocumentbank/Malaysia%20CR%201.pdf).

<sup>28</sup> Available at [asiacentinel.com/p/malaysia-crony-enrichment-plan](http://asiacentinel.com/p/malaysia-crony-enrichment-plan).

# Recommendations:

To ensure the respect of fundamental rights of Malaysian Christians and other minority faith adherents, Open Doors recommends:

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**1** To strengthen its international commitments to the rights of equality and non-discrimination, the Malaysian Government should sign and become a party to the following international treaties as a matter of urgency:

- The International Covenant on Civil and Political Rights (1966) and Optional Protocol to the International Covenant on Civil and Political Rights (1976);
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- International Convention for the Protection of All Persons from Enforced Disappearance (2010)

**2** The Malaysian Government should cease designating blasphemy as a criminal offense by repealing Articles 295 to 298A of the Malaysian Penal Code and ensure that freedom of religion or belief, including the freedom to change one's religion, is fully respected;

**3** In keeping with the right to freedom of religion or belief guaranteed in international human rights instruments, the Malaysian Government should amend the provision of Article 11 of the Constitution by removing the limitations on proselytism and enhancing protections for religious minorities;

**4** The Malaysian Government should adopt appropriate constitutional and legislative measures for the implementation of the right to equality and non-discrimination. The Malaysian Government should:

- Amend Article 8(2) of the Constitution and remove the exception mentioned therein of constitutional protection for Bumiputeras, ensuring that both citizens and non-citizens benefit from protections of the rights to equality and non-discrimination;
- Enact a comprehensive national legislation on equality and non-discrimination;
- Review the jurisdiction of the Syariah and civil court at the national level and state level to address specifically legal disputes between non-Muslim mothers and fathers who have converted to Islam;
- Establish a police oversight body, independent from the State, with appropriate powers to effectively investigate and take action against police misconduct

**5** To achieve tolerance, promote mutual understanding and peaceful coexistence among various ethnic and religious groups, the Malaysian Government should encourage and allocate resources for efforts garnered towards interfaith dialogues at all levels in the society, from community-based initiatives to national level platforms.