

Country Briefing on Freedom of Religion or Belief in the Universal Periodic Review Process - Malaysia

Key points

An examination of the Universal Periodic Review (UPR) of Malaysia across two cycles of the UPR (2009, 2012) reveals:

- Despite Constitutional guarantees of Freedom of Religion or Belief (FoRB), major concerns were raised over limitations on the scope of FoRB due to Islam being recognized as the official religion and its negative impact on religious freedom of non-Muslims,
- Battles over conversions from Islam regulated by Sharia courts that tended to prohibit such conversion,
- Discrimination against women on religious grounds,
- The negative impact on FoRB of Indigenous peoples due to land appropriations and assimilation policies, and
- A knock-on negative impact on freedom of expression.

Key UPR recommendations on FoRB

The following recommendations were made on FoRB across the two cycles:

- A revision of the Constitution to better ensure FoRB and the removal of any faith-based governmental discrimination,
- Ensure that all persons, including Muslims, can freely exercise their right to FoRB without interference by the State, including the right to change religion,
- Ensure more open discussion on freedom of religion and the rights of Non-Muslims, and
- Promote inter-religious dialogues and to reconcile different schools of Islamic thought.

Follow-up action for parliamentarians

Whereas the Malaysian government has noted that all are free to practice their religions Parliamentarians *must follow-up in order to:*

- Ensure that Malaysia provides constitutional guarantees on FoRB in line with international standards,
- Push the Government to adopt core international human rights instruments, notably ICCPR and ICESCR, and
- Reviews its constitution with a view to removing any faith based discrimination.

The situation of FoRB in Malaysia as revealed in the UPR is outlined hereafter.

What is the UPR?

The UPR of the United Nations Human Rights Council (HRC) is a peer-review process to foster dialogue on human rights and to improve adherence to universal standards and best practices .

It was launched in 2007 through UN General Assembly Resolution 60/251.

Every 4.5 years each Member State's human rights record is examined by peers.

A number of key documents are submitted:
National Reports from Member State concerned,
Information from UN bodies and treaty-based rights mechanisms, and
Information provided by relevant stakeholders, including civil society and think-tanks.

The State under review (SUR) is evaluated on its compliance with the international human rights standards and best practices.

The SUR receives recommendations from other States on how the national human rights practices could be improved.

The SUR may accept, note or reject each recommendation made.

Background

Demographics.

1. Malaysia's population of 31,381,992 (July 2017 est.) is spread over 329,758 km², divided into thirteen states and three federal territories. The racial composition comprises Malay (54.5 %), Chinese (25.0 %), indigenous (11.8%), Indian (7.5 %) and others (1.2 %). The term *Bumiputra* (sons of the soil) signifies Malays and other indigenous people. The non-*Bumiputra* are descendants of later migrant settlers. Chinese and Indians arrived in significant numbers during British colonial rule, resulting in a country ethnically and culturally diverse with the presence of three main races – Malay, Chinese and Indian. In addition, there are some 214 other ethnic and sub-ethnic groups.

Religious mix.

2. Malaysia is also a multi-religious country and home to four major religions of the world, namely, Buddhism, Hinduism, Islam and Christianity. Muslims comprise the majority (61.3%) followed by Buddhists (19.8%), Christian (9.2%), Hindu (6.3%), Confucianism, Taoism, other traditional Chinese religions (1.3%), other (0.4%), none (0.8%) and unspecified 1% (2010 est.).

Legal provisions on FoRB.

3. In domestic law, fundamental liberties are enshrined in Part II of the Federal Constitution.¹ Freedom of Religion is guaranteed along with other freedoms in Articles 5 to 13 the Federal Constitution. Part I, Article 3 (1) stipulates that “Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.” The Head of the religion of Islam in each state is the Ruler of the state (Article 3(2)). The Yang di Pertuan Agong is the head of religion in the Federal territories, Sabah and Sarawak. Under article 11(1) “Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.” Under 11(3), “Every religious group has the right: (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes; and (c) to acquire and own property and hold and administer it in accordance with law. Under 11(4) State law and in respect of the Federal Territories of Kuala Lumpur and Lubuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. Article 11(5), stipulates that “this Article does not authorize any act contrary to any general law relating to public order, public health or morality.”
4. In terms of its international commitments, Malaysia is not party to the International Conventions on Civil and Political Rights (ICCPR) and Economic Social and Cultural Rights (ICESCR).

Malaysian government submissions

¹ The Constitution of Malaysia established a Federation of Malaysia, with a division of powers between the Federal and States. Under Article 74, and the Ninth Schedule of the Federal Constitution, provision is made for a basic division into three legislative lists, that is, the Federal List, State List and the Concurrent List. Under the Federal list Parliament may make laws with respect to any matters enumerated, such as the defence of the Federation, internal security, external affairs, finance, education and health. Under the Concurrent List it make laws with respect to any matters enumerated such as welfare, scholarships, sports and culture, housing, public health, town and rural development, protection of wildlife, civil defence, drainage and irrigation.

5. The Government of Malaysia called attention to its diversity during the first cycle report and to the provisions on freedom of religion in its constitution. Across two UPR cycles the Government promoted the country's respect for different religions. It noted that while Article 3 of the Federal Constitution recognizes Islam as the religion of the Federation, other religions are practiced "in peace and harmony".
6. It emphasized that civil courts have jurisdiction over all persons in the Federation, whilst Syariah Courts have jurisdiction only over persons professing the religion of Islam.
7. The Government underscored its commitment to the promotion and protection of all human rights. It also noted that there was no discrimination based on religion in the Child Act of 2001.

Stakeholder submissions across two UPR cycles

8. The charge was made that the Government interpreted the fact that Islam was the religion of the Federation in Malaysia as a basis to quell and suppress space for dialogue, discussion and debate. Stakeholders noted in 2012, that FoRB for Muslims of other schools was restricted as only the Sunni sect was permitted. Constitutional guarantees of FoRB, as per ERT, was excessively limited in scope and poorly enforced with the result that religious freedom of non-Muslims was not fully granted. The Bar council noted, for example, that Non-Muslims face difficulties from the authorities in the construction of places of worship, that the right of religious organisations to publish and comment on matters in the public sphere was also being threatened by the Government's actions and that notwithstanding 51 years of independence, inter-religious dialogue remains problematic.
9. The question of who is a Muslim has created serious barriers to the exercise of religion according to some organizations like SUHAKAM. This has arisen in cases concerning conversion, burial, child custody and religious dress over which the Sharia Courts claim jurisdiction. The mandatory jurisdiction of Sharia courts over conversion applications from Islam to another religion allowed Sharia courts to effectively prohibit conversion from Islam. Conflicts have arisen in court cases due to the exclusion from the Civil Court of any matter before the Sharia court.
10. Concern was expressed over "state-led" conservative Muslim ideology that threatened the ability of Muslims to practice their religion in a form and content other than as prescribed by religious authorities. For example, the issue of banning of books mainly devoted to the study of inter-religious matters was raised by the Special Rapporteurs on Freedom of Religion and on the right to Freedom of Opinion and Expression. The books were banned in 2006 under the guise that they could have disrupted peace and harmony.
11. Malay-language Bibles, as per a 2005 proclamation, were required to have "Not for Muslims" printed on the cover and Malay language Bibles were only allowed in churches and Christian bookstores and were not allowed in ethnic Malay homes. The concern that the Bible published in Malay would be distributed in an effort to spread Christianity among Muslim-Malays was expressed by the Government. Constitutional

support for the provision allegedly came from the prohibition against propagation of any religion other than Islam among ethnic Malays. According to Article 11(4) of the Constitution, states have the power to control or restrict the propagation of religion among Muslims. It was noted that nine states had legislation controlling the propagation of non-Islamic religions among Muslims.

12. Indigenous peoples suffered due to a lack of recognition of land rights, culture and advancement. Forced relocation and assimilation policies affected their cultures and religions as per joint submission in the second cycle. Stakeholders noted an ‘Islamisation policy’ that targets the conversion of the Orang Asli (Indigenous) community. The Orang Asli comprise around total some 4 million peoples who are among the poorest and most marginalised. SUHAKAM noted that the rights of indigenous people to customary land should be upheld and that existing state legislations should be reviewed. It noted that the Malaysian Court has progressively recognised customary land rights.
13. There were also knock-on effects on freedom of expression, through curbs on cultural and artistic expression deemed to be ‘against the teachings of Islam’. For example, the State Government of Kelantan imposed a ban on *Mak Yong* performances despite UNESCO having certified these as a world cultural heritage. No action was taken by the Federal Government. Muslim entertainers and singers have faced the heavy hand of the authorities and arrest due to ‘immoral activities’ in pubs, bars and other entertainment outlets
14. In relation to Malaysia’s commitment to women’s rights under CEDAW, the Bar Council noted, *inter alia*, that:
 - a) “The wording of Article 8(2) seems to suggest that discrimination based on gender coupled with other grounds is permissible and that the provision provides “there shall be no discrimination against citizens on the ground *only* of religion, race, descent, place of birth or gender...”
 - b) Article 8(5) of the Federal Constitution also provides that the equality clauses of the Constitution do not invalidate or prohibit “any provision regulating personal law”, effectively leaving Muslim personal law unaffected...
 - c) Article 12(4) also needs to be amended to recognise the rights of both parents to decide the religion of a minor.
15. Death threats were made against a lawyer, allegedly aimed at intimidating lawyers who took on cases in defense of FoRB. Concern was expressed in 2012 about alleged arrest and deportation of a journalist.

Observations by States

16. More open discussion on FoRB was encouraged by some delegations in relation to concerns about the rights of Non-Muslims.
17. Concerns were expressed on restrictions of FoRB and calls were made for the removal of faith-based governmental discrimination. (Canada, Chile, Italy, Poland)

Malaysia recalled Federal Constitutional guarantees under Article 11. The Holy See also recalled the same Constitutional guarantees, but noted nevertheless that Islam was the national religion. Austria recommended that Malaysia take measures to ensure that all persons, including Muslims, can freely exercise their right to FoRB without interference by the State and including the right to change religion. Poland noted further the restrictions on publications of various religions.

18. A revision of the Constitution to better ensure FoRB was proposed (Italy). Continued efforts to promote inter-religious dialogues and to reconcile different schools of Islamic thought was recommended (Sudan). Continued strengthening of mutual respect and tolerance among religions in Malaysia was also proposed (China).
19. The destruction of Hindu Temples was noted, though the Government cited illegal construction as a motive and not on the basis of FoRB.

References

General References

CIA *World Factbook*, 2017

Constitution of Malaysia

References on the UPR of Malaysia

Documents on the UPR of Southeast Asian States are available on the websites of UPR Info and of the OHCHR. They consist of National Reports, Stakeholder Submissions and Recommendations by Peers. For The Philippines all documents are available as follows:

UPR Info: <https://www.upr-info.org/en/review>

OHCHR: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

First Cycle 2009

1. Compilation Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15(B) Of The Annex To Human Rights Council Resolution 5/1, UN Doc. A/HRC/WG.6/4/MYS/2 20 November 2008
2. Draft Report Of The Working Group On The Universal Periodic Review, A/HRC/WG.6/4/L.16, 17 February 2009
3. National Report Submitted In Accordance With Paragraph 15 (A) Of The Annex To Human Rights Council Resolution 5/1, Doc. A/HRC/WG.6/4/MYS/1/Rev.1 19 November 2008
4. Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (C) Of The Annex To Human Rights Council Resolution 5/1, Document A/HRC/WG.6/4/MYS/3, 27 October 2008

Second Cycle 2013

5. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Document A/HRC/WG.6/17/MYS/1, 6 August 2013
6. Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Doc. A/HRC/WG.6/17/MYS/2, 9 August 2013
7. Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1

and paragraph 5 of the annex to Council resolution 16/21, Doc.
A/HRC/WG.6/17/MYS/3, 25 July 2013

8. Draft report of the Working Group on the Universal Periodic Review,
A/HRC/WG.6/17/L.8, 28 October 2013