Malaysia – Researched and compiled by the Refugee Documentation Centre of Ireland on 29 August 2014

Freedom of religion and freedom of expression

The *US Department of State* International Religious Freedom Report states in its Executive Summary:

> "The constitution protects religious freedom with some exceptions. Portions of the constitution, as well as other laws and policies, place restrictions on religious freedom and, in practice, the government generally enforced those restrictions." (United States Department of State (28 July 2014) *2013 Report on International Religious Freedom - Malaysia*)

This report states under the heading 'Religious demography':

> "Census figures indicate that 61.3 percent of the population practices Islam, 19.8 percent Buddhism, 9.2 percent Christianity, 6.3 percent Hinduism, and 1.3 percent Confucianism, Taoism, or other traditional Chinese philosophies and religions. Other minority religious groups include animists, Sikhs, and Bahais. Ethnic Malay Muslims account for approximately 55 percent of the population. Several of the most prominent political parties are organized along ethnic and/or religious lines." (Ibid)

This report states under the heading 'Legal/policy framework':

> "Article 3 states that 'Islam is the religion of the Federation' and 'Parliament may by law make provisions for regulating Islamic religious affairs.' Article 160 defines ethnic Malays as Muslim from birth. The constitution identifies the traditional rulers, also known as sultans, as the 'Heads of Islam' within their respective states…Sultans oversee the sharia courts and appoint judges based on the recommendation of the respective state Islamic religious departments and councils who manage the operations of the courts…The constitution establishes the power of the federal judiciary by creating two high courts of equal and independent authority, one in Peninsular Malaysia and one in East Malaysia. A constitutional amendment provides, however, that these courts have no jurisdiction in respect to any matter within the jurisdiction of the sharia courts. This ambiguity regarding sharia versus secular law remains unresolved. Civil courts generally rule in favor of the government in matters concerning Islam." (Ibid)

This report also states under the same heading:

> "The law strictly forbids proselytizing of Muslims by non-Muslims, but allows and supports Muslims proselytizing others. Neither the right to leave Islam nor the legal process of conversion is clearly defined in law." (Ibid)

This report states in relation to Buddhism:

> "In August the Sultan of Johor, the highest Islamic authority in the state, called for a Muslim prayer hall at a privately-owned resort to be demolished after a group of

> Buddhists used the hall for religious meditation. The relevant municipal council carried out the destruction August 28. The owner of the prayer hall was detained and subsequently charged with 'injuring or defiling a place of worship with intent to insult the religion of any class.'" (Ibid)

This report also states:

> "According to the Malaysian Consultative Council of Buddhists, Christians, Hindus, Sikhs, and Taoists (MCCBCHST), the government continued its practice of restricting visas for foreign Muslim and non-Muslim clergy under the age of 40 as a means of preventing 'militant clergy' from entering the country. While representatives of non-Muslim groups did not sit on the immigration committee that approved visa requests, the committee sought MCCBCHST recommendations in most non-Muslim cases." (Ibid)

This report also states:

> "Islamic religious instruction is compulsory for Muslim children in public schools; non-Muslim students are required to take nonreligious morals and ethics courses. Local churches and temple groups unsuccessfully urged the government to include the option for non-Muslim religion classes to be held during the school day." (Ibid)

This report also states:

> "In a long running controversy stemming from the government's ban on the use of the word 'Allah' by non-Muslims in Malay-language Bibles and other Christian publications, on October 14, the court of appeal overturned a 2009 decision by the High Court of Kuala Lumpur and upheld the government's decision that the Catholic Herald cannot use the word 'Allah' to refer to God in its Malay language edition. The court ruled that the freedom to practice a religion other than Islam is limited by Islam's status as the religion of the federation and the constitution's guarantee that 'other religions may be practiced in peace and harmony' was intended to protect the sanctity of Islam. The court of appeal held that: the use of 'Allah' by non-Muslims would create confusion among Muslims; the word 'Allah' is not 'an integral part' of the Christian faith; and the use of the word 'Allah' in the Malay version of the Herald would potentially harm public order and safety. Following the ruling, the attorney general emphasized that the court of appeal's decision was confined to the publication of the Malay-language text of the Herald. Deputy Home Minister Junaidi Jaafar reportedly stated the ruling was meant for the weekly publication of the Herald only and would not affect other Christian publications or the Malay-language version of the Bible, the Al-Kitab, used widely in Sabah and Sarawak. The Catholic Church planned to file an appeal against the verdict in the Federal Court." (Ibid)

A report by the *United States Commission* on International Religious Freedom states:

> "Religion, ethnicity, and politics are all profoundly intertwined in Malaysia and complicate religious freedom protections for religious minorities and non-Sunni Muslims." (United States Commission on International Religious Freedom (30 April 2014) *USCIRF Annual Report 2014 - Tier 2: Malaysia*)

This report also states:

> “Over the past decade in particular, Malaysian politics have been characterized by a balancing act between largely ethnically-based political parties, many of which seek to either increase or decrease Islam's socio-political influence. Despite Prime Minister Najib Razak's efforts to deemphasize ethno-religious differences, friction continues between non-Muslim ethnic populations, the Islamic-influenced moderate Malay government, and those advocating publicly for more conservative interpretations of Islam. Concerns have also been raised that the country's economic affirmative action programs for ethnic Malay Muslims may contribute to this friction; these programs grant preferences to the majority population in business contracts, government, and educational positions, to the detriment of Hindus, Chinese, and other groups.
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> The legal conflation of ethnic and religious identities negatively affects religious freedom. The official state religion is Islam, and while the constitution protects religious freedom, it defines all ethnic Malays as Sunni Muslims. Civil courts routinely cede jurisdiction to Shari'ah courts over familial or conversion cases involving Muslims, particularly ethnic Malays.” (Ibid)

This report also states:

> “Local officials in conservative Muslim-majority states such as Kelantan, Terengganu, and Selganor consider apostasy a capital offense. While prosecutions for apostasy are rare, detentions and fines have occurred, including in the past year. Officials in these states also enforce public modesty codes, including regarding alcohol and pork consumption, gambling, and khalwat (prohibited close proximity of unmarried non-relatives of the opposite sex) for both Muslims and non-Muslims. In these states all federal employees, regardless of their religion, are required to attend religious education classes and wear modest dress during work hours.” (Ibid)

The Executive Summary of the *US Department of State Country Report* states:

> “The most significant human rights problems included obstacles preventing opposition parties from competing on equal terms with the ruling coalition; restrictions on freedoms of speech, assembly, association, and religion; and restrictions on freedom of the press, including media bias, book banning, censorship, and the denial of printing permits.” (United States Department of State (27 February 2014) *2013 Country Reports on Human Rights Practices - Malaysia*)

This report states under the heading ‘Freedom of Speech’:

> “The constitution provides that laws may impose restrictions on freedom of speech "in the interest of the security of the Federation ... [or] public order." The election law makes it an offense for a candidate to "promote feelings of ill will, discontent, or hostility." Violators may be disqualified from running for office. The Sedition Act prohibits public comment on issues defined as sensitive, such as racial and religious matters or criticism of the king or ruling sultans. The Sedition Act, Official Secrets Act, Universities and University Colleges Act, Printing Presses and Publications Act, criminal defamation laws, and other laws restricted or intimidated political speech. Nevertheless, individuals and opposition political parties frequently criticized the government publicly or privately and in online media.
>
> On some occasions the government retaliated against those who criticized it. On March 14, prosecutors charged opposition politician Tian Chua under the Sedition

Act for remarks he was accused of making that implied the intrusion into eastern Sabah by Filipino militants (the Lahad Datu confrontation) was a government conspiracy to scare people for political gains. In response Chua stated that he was misquoted and had only accused the government of creating a media blackout during the crisis. Chua was charged a second time in May under the same act along with four other activists for calling on the public to take to the street to protest alleged fraud that took place during the May 5 general elections. Their trial dates had not been set by year's end.

NGOs asserted government application of restrictions on expression was selective. They noted that when Ibrahim Ali, a politician with ties to the ruling coalition, called on Muslims to burn Malay-language copies of the Bible in January, no action was taken to charge him with sedition." (Ibid)

This report states under the heading 'Press Freedoms':

"Parties in the ruling coalition owned or controlled a majority of shares in two of the three major English-language and most Malay daily newspapers. Businesspersons well connected to the government and ruling parties owned the third major English-language newspaper and all four major Chinese-language newspapers. Most radio and television networks were also owned by ruling coalition political parties or businesses linked to them.

The government exerted control over news content, both in print and broadcast media, punished publishers of 'malicious news' and banned, restricted, and limited circulation of publications believed to threaten public order, morality, or national security. In December the Home Ministry temporarily suspended the printing permit of The Heat, a recently established weekly news magazine. The suspension came after The Heat published an article that depicted Prime Minister Najib and his wife, as well as the Prime Minister's Department as extravagantly spending public funds." (Ibid)

This report states under the heading 'Violence and Harassment':

"Journalists were subject to harassment and intimidation due to their reporting.

In July the Sarawak State immigration department detained and subsequently deported Clare Rewcastle Brown, a British citizen who ran a website and radio station critical of the state government of Sarawak." (Ibid)

This report states under the heading 'Censorship or Content Restrictions':

"The government censored the media, primarily the print and broadcast media. This was done directly and indirectly by controlling news content; making publication of 'malicious news' a punishable offense and empowering the home affairs minister to ban or restrict publications believed to threaten public order, morality, or national security; prosecuting bloggers and journalists for their writings; taking little or no action against those who abused journalists; and limiting circulation of some organizations' publications to their members. A permit is required to own a printing press. Printers often were reluctant to print publications critical of the government for fear of reprisal. Such policies, together with antidefamation laws, inhibited independent or investigative journalism and resulted in extensive self-censorship.

> According to the government, censorship provisions ensured that the media did not disseminate 'distorted news' and were necessary to preserve harmony and promote peaceful coexistence in a multiracial country. Despite these restrictions, publications of opposition parties, social action groups, unions, internet news sites, and other private groups actively covered opposition parties and frequently printed views critical of government policies. The English, Malay, and Chinese press sometimes provided alternative views on sensitive issues, as did online media and bloggers." (Ibid)

This report states under the heading 'Internet Freedom':

> "As of the second quarter of the year, approximately 17 million persons (67 percent) of the population used the internet. The government for the most part maintained a policy of open and free access to the internet, but authorities monitored the internet for e-mail messages and blog postings deemed threatening to public security or order. The Malaysian Communications and Multimedia Commission (MCMC), formed in November 2001, is empowered to monitor the internet for content deemed offensive.
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> The government warned internet users to avoid offensive or indecent content and sensitive matters such as religion and race. In July the MCMC called two bloggers in for questioning after the couple posted a photograph deemed offensive to Muslims.
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> Criminal defamation laws led to some self-censorship by local internet content sources such as bloggers, news providers, and NGO activists.
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> The Communications and Multimedia Act requires certain internet and other network service providers to obtain a license. Previously the government stated it did not intend to impose controls on internet use but would punish the 'misuse' of information technology. The act permits punishment of the owner of a website or blog for allowing content of a racial, religious, or political nature that a court deems offensive." (Ibid)

This report states under the heading 'Academic Freedom and Cultural Events':

> "The government placed some restrictions on academic freedom, particularly the expression of unapproved political views, and enforced restrictions on teachers and students who expressed dissenting views. The government required that all civil servants, university faculty, and students sign a pledge of loyalty to the king and government. Opposition leaders and human rights activists claimed the government used the loyalty pledge to restrain political activity among civil servants, academics, and students.
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> Although faculty members sometimes were publicly critical of the government, public university academics whose career advancement and funding depended on the government, practiced self-censorship. Self-censorship took place among academics at private institutions as well, spurred by fears the government might revoke the licenses of their institutions. The law also imposed limitations on student associations and on student and faculty political activity." (Ibid)

A *Freedom House* report states under the heading 'Freedom of Expression and Belief: 8 / 16 (-1)':

> "Freedom of expression is constitutionally guaranteed but restricted in practice. Parliament amended the 1984 Printing Presses and Publications Act (PPPA) in April

> 2012, retaining the home minister's authority to suspend or revoke publishing licenses but allowing judicial review of such decisions. The amendments also eliminated the requirement that publications and printers obtain annual operating permits. A 2012 amendment to the 1950 Evidence Act holds owners and editors of websites, providers of web-hosting services, and owners of computers or mobile devices used to publish content online accountable for information published on their sites or through their services. Malaysian press freedom advocates, bloggers, and opposition politicians staged a 24-hour internet blackout to protest the legislation. Critics of the amendment also charged that it would effectively shift the burden of proof to the accused.
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> Most private print outlets are controlled by parties or business groups allied with the BN. Privately owned television stations also have close ties to the BN and generally censor programming according to government guidelines. State outlets reflect government views. Books and films are directly censored or banned for profanity, violence, and political and religious material. Publications often face harassment from the government." (Freedom House (26 June 2014) *Freedom in the World 2014 - Malaysia*)

This report states under the same heading:

> "A court ruling in late 2009 overturned a government ban prohibiting non-Muslims from using the word Allah to refer to God, touching off a wave of January 2010 arson attacks and vandalism that struck Christian churches as well as some Muslim and Sikh places of worship. After much delay, an appeals court ruled in October 2013 that non-Muslims cannot use the word Allah to refer to God. The decision was seen as a devastating blow to both freedom of religion and freedom of private discussion, as Malay-speaking Christians had long used the word in their scriptures (in Malay language Christian bibles) and daily life but would now face potential criminal sanctions. As of the end of 2013 a final appeal was still pending." (Ibid)

A report by *Amnesty International* states:

> "Malaysia's ban on Christians using the word "Allah" to refer to God is an abuse against free speech and must be scrapped, Amnesty International said after the country's highest court upheld the controversial government ban.
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> "This ban violates the right to freedom of expression. The idea that non-Muslims could face prosecution for using a particular word is deeply disturbing," said Amnesty International's Malaysia researcher, Hazel Galang-Folli.
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> 'The ban is not just repressive, it is also dangerous. It risks further inflaming religious tensions in Malaysia by denying its people the right to freedom of religion.
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> […]
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> The long-running dispute over the ban on saying 'Allah' has stirred up religious friction in Malaysia. Three churches in Kuala Lumpur were firebombed after a court ruled in the Catholic Church's favour in 2009, while the divisive ban has also sparked attacks on mosques.
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> Earlier this year, Malaysian authorities seized hundreds of Malay-language Bibles containing the word Allah from a Christian group." (Amnesty International (23 June 2014) *Malaysia must end ban on Christians saying 'Allah'*)

References

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

Sources consulted

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