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Key Findings

In 2014, the government, ruling party, and religious leaders put forth laws, policies, statements, and *fatwas* (religious edicts) broadening the application of Islam and potentially limiting religious freedom. Religious groups deemed "deviant," such as Shi'a, Ahmadiyya, and Baha'i, are banned. Both civil and Shari'ah courts have the power to police religious belief and expression; in 2014 the government sought to expand this power through the establishment of a religious police force and by amending the Sedition Act to restrict speech to prevent perceived insults to Islam. Moreover, the dual system of civil and Shari'ah courts creates legal ambiguity, and Shari'ah court jurisdiction over family and conversion cases places non-Muslims at a disadvantage. A ban on the use of the word "Allah" by a non-Muslim newspaper was upheld in 2014, and non-Muslim religious materials containing that word were confiscated. Collectively, these trends have resulted in diminished legal protections for religious minorities, non-Muslims and non-Sunni Muslims alike. Based on these concerns, in 2015 USCIRF again places Malaysia on Tier 2, where it has been since 2014. USCIRF will continue to monitor closely these troubling trends for religious freedom. Developments will influence how USCIRF will report on Malaysia in next year's annual report and may negatively impact its status.

Background

The intersection of the political sphere with religious- and ethnic-based interests has defined Malaysian politics over the last decade. The opposition Pakatan Rakyat has incrementally chipped away at the grip on power of the ruling Barisan Nasional (BN) coalition, causing both political groups to realign their messages to attract voters. Both coalitions sought to make strategic gains among key voting blocs, including voters who are young and technologically savvy, ethnic Chinese, and/or part of the increasing socially-conscious middle class. The BN government and its component political parties have put forth policies and statements asserting a more exacting interpretation of Islam that increasingly discriminates against religious and ethnic minorities. National and state-level efforts to address the perceived liberalization of Islam, particularly by non-Muslims and non-Sunni Muslims, have resulted in increased *fatwas* and even stronger appeals among Islamic political parties, both ruling and opposition, to their more conservative base.

In May 2014, Prime Minister Najib Razak warned of the threats posed by "human rightism," including humanism, secularism, liberalism, and human rights. According to Najib, this "new

religion" is to be considered "deviant" for straying from the sanctity of Islam; Najib specifically noted that Sunni Islam is the only Islam in Malaysia, a comment directly targeting banned "deviant" sects and religious groups, such as Shi'a, Ahmadiyya, and Baha'i. Such groups continue to face crackdowns; for example, more than 100 Shi'a Muslims, including women and children, were arbitrarily arrested in Perak in March 2014 for attending a religious ceremony. By year's end, 25 prominent figures, including many former public officials, released an open letter calling on leaders to debate the relationship between Islamic law and the constitution.

The commingling of politics, religion, and ethnicity has a negative effect on religious freedom in Malaysia. The Malaysian constitution protects the right to freedom of religion, but also establishes Islam as the religion of the Federation and defines all ethnic Malays as Muslims. The majority of the population, approximately 61 percent, are Muslim. Twenty percent practice Buddhism, nine percent Christianity, six percent Hinduism, and the remainder follow minority religious faiths, such as Confucianism, Taoism, Shi'ism, and the Ahmadi and Baha'i faiths. Civil courts routinely cede jurisdiction to Shari'ah courts over family or conversion cases involving Muslims. 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. Those considered to have strayed from Sunni Islam, including individuals from "deviant" sects or those who seek to convert from Islam, can be forced into "rehabilitation" centers by the government or state-level Shari'ah courts, and/or face fines or prison sentences.

The role of the federal Department of Islamic Development Malaysia (JAKIM) in advancing Islamic affairs includes the authority to establish policies, monitor religious groups, and set guidelines for and maintain the official list of banned sects. In order to operate legally and be eligible for government funding, religious organizations and groups must register with the Home Ministry.

Religious Freedom Conditions 2014-2015

Policing Belief and Expression

In addition to the aforementioned restrictions on apostasy and proselytization, both civil and Shari'ah courts in Malaysia have the power to punish blasphemy and religious insult. In 2014, the prime minister's office progressed with its controversial proposal to establish a formal religious police force at both JAKIM and state-level religious departments. The new personnel will have authority to enforce Islamic laws against Muslims only. The move is the latest in a series of steps in recent years to expand JAKIM's powers.

Malaysia's vaguely-worded Sedition Act is frequently used as a means to suppress political and religious dissent. In November 2014, Prime Minister Najib announced that the government would strengthen the law to cover any insults to Islam; the amendments are expected in the spring of 2015. Approximately 40 people were investigated or charged under the Act in 2014, including civil society activists, religious leaders, politicians, journalists, and academics. Among them was human rights lawyer Erik Paulsen, who in February 2015 was charged with sedition for criticizing JAKIM for promoting extremism. Critics of the Act have noted that its use is one-sided. For example, in October 2014, the government refused to bring sedition charges against Ibrahim Ali, a former member of parliament and the founder and head of Perkasa, a Muslim rights group closely tied to BN. In 2013, Ibrahim had called for Bibles to be burned and has also said that the use of the word "Allah" in the Bible is a religious provocation against Muslims.

Ban on the Use of the Word "Allah"

The legal battle over the use of the word "Allah" by non-Muslims continued in 2014, with supporters of the ban asserting that Allah is exclusive to Islam. In June 2014, the Federal Court

sided with the 2013 Court of Appeals decision that upheld a ban on the use of the word Allah by the Malay-language edition of *The Herald*, a weekly newspaper published by the Catholic Church in Malaysia. Soon thereafter, the central government issued a statement confirming that the court's decision only applied to *The Herald* newspaper. Nevertheless, concerns remain that the ban could still be applied to Bibles and other materials, and lawyers have noted that clarifying statements from the government have no legal effect. Pursuant to an appeals request from the Catholic Church, the Federal Court in January 2015 determined that an additional review of its June 2014 decision was not merited.

Confiscation of Bibles

The years-long debate over the use of the word Allah has coincided with the confiscation of tens of thousands of Bibles across the country. For example, in January 2014, the Selangor Islamic Department (JAIS) confiscated more than 300 Malay-language Bibles containing the word Allah from the Selangor office of the Bible Society of Malaysia. Within days of the Federal Court's June 2014 decision confirming the ban, the Attorney General determined that the seizure was not appropriate and the Bibles should be returned. However, the Selangor Islamic Religious Council (MAIS) refused to do so until November 2014 and only after surreptitiously stamping each Bible with a warning that they were prohibited from use by Muslims anywhere in the country and prohibited from use by anyone, including Christians, in the state of Selangor. In December 2014, police in Johor confiscated 31 hymnals containing the word Allah from a Catholic priest, and later questioned the priest for allegedly causing disharmony or ill-will on religious grounds.

Impact of Dual Court System

The rise of Islamic law and the Shari'ah court system in Malaysia has created legal ambiguity for Muslims and non-Muslims alike. The dual court system of Shari'ah courts and civil courts has resulted in a complicated, overlapping web of jurisdictions. These dueling jurisdictions undermine the ability of civil courts to effectively and consistently implement rulings. For example, those seeking to convert from Islam to another faith must apply through the Shari'ah court system and await the court's approval of their application. Both civil courts and Shari'ah courts can take jurisdiction in child custody battles in which one parent is Muslim and the other non-Muslim, with the possibility of conflicting judgments. Non-Muslims have no standing in Shari'ah courts, creating an inherent disadvantage. In two separate high-profile cases, two husbands who converted to Islam after marriage abducted and converted their respective children. Although higher courts in the civil system granted custody to the non-Muslim mothers, both husbands have failed to return the children to their mothers, and police and other authorities thus far have refused to act on the court orders.

U.S. Policy

The United States and Malaysia have benefitted from a deepening relationship in recent years, with an eye toward longer-term bilateral and regional goals. In April 2014, President Barack Obama and Prime Minister Najib Razak entered into a Comprehensive Partnership, which was formally announced during President Obama's state visit to Malaysia, the first such visit by a U.S. president in nearly 50 years. The Partnership is aimed at strengthening bilateral cooperation on key issues, including trade and investment, education, and security and defense.

The two countries are also part of the 12-nation negotiations of the Trans-Pacific Partnership (TPP), a regional free trade agreement. While the TPP talks are ongoing, the Obama Administration and some in Congress are concurrently pursuing the renewal of Trade Promotion Authority (TPA), which could grant the president greater flexibility when negotiating and approving trade agreements such as the TPP. Others in Congress have raised concerns over some TPP components, including agriculture, automotive markets, worker rights, environmental

protections, and human rights, among others, which are likely to be heavily debated during consideration of TPA. Congressional deliberation of both TPP and TPA provide crucial opportunities for robust dialogue about human rights concerns in a number of countries, Malaysia among them.

Malaysia is known for its efforts to prevent radicalism and violent extremism from taking root within its borders, particularly with respect to ISIL (the Islamic State of Iraq and the Levant), and is often praised for its moderation and pluralism. However, human rights advocates note that a moderate, pluralist approach is not applied when it comes to the tolerance of religious and ethnic minorities among its own people. Critics also point out that by expanding the Sedition Act and by allowing the conviction against Malaysian opposition leader Anwar Ibrahim to stand, Prime Minister Najib has eroded his country's reputation as moderate and tolerant. The BN-led government has a long history of politically targeting Anwar. Having already spent several years in prison following a conviction on charges of corruption and sodomy, Anwar is currently serving a five-year prison term following the court's February 2015 decision to uphold an earlier sentence; he will be banned from elected office for an additional five years thereafter. Indeed, in February 2015, a spokesperson for the National Security Council expressed the United States' disappointment with Anwar's conviction, noting specific concerns with rule of law and judicial fairness.

Beginning January 1, 2015, Malaysia began its one-year term as chair of the Association of Southeast Asian Nations (ASEAN), as well as its two-year term as a non-permanent member of the UN Security Council. President Obama is expected to visit Malaysia in November 2015 for ASEAN and East Asia Summit meetings, and other high-level U.S. government delegations will visit throughout the year. The United States should take advantage of these bilateral and multilateral opportunities to initiate serious conversations with Malaysian leaders about the disturbing trends in religious freedom conditions in that country.

Recommendations

Restrictions of freedom of religion affecting non-Muslim and non-Sunni Muslim religious minorities are central to Malaysia's mounting human rights challenges. As such, any visit by Prime Minister Najib to Washington, DC, in 2015 should prominently feature discussions about improving religious freedom and related human rights in Malaysia. In addition, USCIRF recommends that the U.S. government should:

- Raise concerns regarding the conflation of religion and politics and the increasing limitation on rights for religious and ethnic minorities in the lead-up to and during the visits of President Obama and Secretary Kerry to Malaysia related to ASEAN and other high-level gatherings;
- 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 relating to military, trade, or economic and security assistance, such as Malaysia's participation in the Trans-Pacific Partnership, as well as in programs that address freedom of speech and expression and civil society development, among others;
- Press the Malaysian government to bring all laws and policies into conformity with international commitments, especially with respect to freedom of religion or belief and freedom of religious expression, including the rights to use the word "Allah," and to possess religious materials;

- Urge the Malaysian government to cease the arrest, detention, or forced "rehabilitation" of individuals involved in peaceful religious activity, such as Shi'a, Ahmadi, and Al-Arqam groups, among others; and
- Encourage Malaysian elected leaders 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.

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