

# Malaysia

## Policy Brief: 2010 – 2011



## I. Background<sup>i</sup>

- Formerly a British colony, Malaysia is a Muslim-majority nation with substantial religious minorities, including Buddhists (19.2%), Christians (9.1%), and Hindus (6.3% - 7%).
- Hinduism was established in Malaysia and Southeast Asia since at least the first century C.E. and flourished in the region until the 10th century C.E. The majority of Hindus currently living in Malaysia, however, are the descendants of Indian indentured laborers brought over by British colonialists in the 1800s.
- Malaysia is a federal constitutional elective monarchy with Islam as the official state religion. Islam plays a significant role in public life and permeates all aspects of Malaysian society.
- Religious minorities experience widespread persecution, such as restrictions on religious freedom, institutional discrimination, and political repression.
- The U.S. has significant foreign policy objectives in Malaysia, such as promoting religious freedom and democracy, trade and investment, and regional security.

## II. Religious Discrimination and the Legal System

### Discriminatory Constitutional Provisions<sup>ii</sup>

- Article 3 (1) recognizes that Islam is the official religion of Malaysia and provides that other religions may be practiced in “peace and harmony” in the Federation.
- Article 10 subjects the freedom of speech and assembly to arbitrary restrictions in the interest of security, public order, and morality.
- Article 11 protects the right of Muslims to freely propagate their religion, but prohibits other religious groups from propagating religion amongst Muslims.
- Article 153 calls for protection of the “special position” of Muslim Malays and provides them with reservations and quotas in public service and government jobs, educational institutions, and in the procurement of business or trade licenses.

### The Judicial System and Islamic Law<sup>iii</sup>

- The Federal Constitution of Malaysia establishes a parallel court system, with secular civil and criminal courts and Islamic Sharia courts.
- The Sharia courts have authority over Muslims in issues such as religion, marriage, divorce, inheritance, apostasy, and religious conversion. Federal courts have no jurisdiction in matters that fall within the purview of the Sharia courts.

## III. Status of Human Rights

### Religious Freedom<sup>iv</sup>

- Minorities, including Hindus, Buddhists, and Christians, face increasing religious discrimination and inequality despite Constitutional protections and international human rights law.
- Although the Islamic Sharia court system’s jurisdiction only extends to matters involving Muslims, non-Muslims have been increasingly subjected to the reach of Shariah Law in recent years. Hindus in particular have suffered explicit discrimination in cases adjudicated by the Sharia courts involving issues such as marriage/divorce, parental rights, conversions, and funeral rites.
- The Malaysian government has failed to grant equal rights to non-Muslim places of worship. For example, approximately 23,000 Hindu temples/shrines in Malaysia have been denied legal status

since independence in 1963, many in existence since the pre-independence era, while Muslim mosques built in the same period have been granted land titles. Furthermore, many temples have been forcibly relocated by the government or appropriated for “public use” under special laws.

- Minority places of worship and religious institutions have often been attacked or destroyed by both Islamic extremists and the government. Since independence, 10,000 Hindu temples/shrines have been demolished or desecrated (includes private shrines located on plantation estates). In addition, following a High Court decision ruling that the “government’s ban on the use of ‘Allah’ in non-Muslim publications infringed constitutional rights, including freedom of expression and freedom to practice one’s religion,” several non-Muslim places of worship were attacked, including at least 10 Christian churches and a Sikh gurudwara.

### Institutional Discrimination<sup>v</sup>

- The official Bumiputra (sons of the soil) policy enshrined in Article 153 of Malaysia’s Federal Constitution sanctions discrimination against minorities, while providing benefits for the majority Muslim Malay population, including quotas in government jobs and educational institutions. The policy further requires that companies listed on the Kuala Lumpur Stock Exchange must have at least 30% Muslim Malay ownership.
- The Hindu and Indian minority faces discrimination in education and government jobs. For instance, only 1% of all government funds spent on education goes toward supporting Malaysian Hindus, and some government universities admit only Muslim Malay students, including University Teknologi Mara, which has 120,000 students. Furthermore, 95% of 1.2 million government employees are Muslim Malays (not including Tamil schools).
- 70% of ethnic Indians/Hindus are categorized as poor, with 90% in the daily or monthly wage-earning category.
- Nearly 200,000 Malaysians of Indian ethnicity have been denied citizenship, despite having roots in Malaysia for several generations. They further lack birth certificates and identity documents, resulting in a denial of basic rights to education, healthcare, jobs, driving licenses, and formal marriages.

### Political Repression

- According to Human Rights Watch (HRW), the right to freedom of speech is severely restricted in Malaysia, with the government clamping down on journalists and banning several news publications critical of the government. Similarly, freedom of assembly remains under threat as the “local police refused to issue permits to activists for public assemblies, marches, and meetings, and used excessive use of force to break up unlicensed events.”<sup>vi</sup>
- Hindus and ethnic Indians remained politically silent until 2007, when they began to challenge the Malaysian government’s discriminatory policies. On November 25, 2007, a peaceful rally of more than 10,000 Hindus (some estimate the numbers closer to 50,000) was brutally suppressed by the government through the use of tear gas and chemically-laced water. Following the event, Malaysian security forces began to crack down on Hindu and Indian activists for asserting their basic democratic rights, and several leaders of the Hindu Rights Action Force (HINDRAF), a human rights organization, were arrested for their involvement in organizing the protests. Five of the arrested leaders were held at a detention center for 514 days. The government further banned HINDRAF and confiscated the passport of one of its leaders, Waytha Murthy, who now lives in exile in the United Kingdom.<sup>vii</sup>

- The Internal Security Act (ISA) of 1960, which allows for indefinite detention without trial of those considered to be a threat to national security, has been used to silence political dissent and has frequently targeted journalists, academics, and political activists. Thousands of Hindu political activists have been arbitrarily detained without trial under the ISA.<sup>viii</sup>
- Two of Malaysia's largest political parties, the United Malays National Organization (UMNO) and the Pan-Malaysian Islamic Party (PAS), both promote Malay nationalistic agendas and pander to Islamic extremists.<sup>ix</sup>

#### **IV. U.S. Foreign Policy Objectives in Malaysia**

##### Trade and Investment<sup>x</sup>

- The U.S. has strong economic interests in Malaysia as a trading partner and a market for direct investment.
- According to the Office of the United States Trade Representative, U.S. foreign direct investment in Malaysia was \$13.5 billion in 2009, and U.S. goods and services trade with Malaysia totaled \$36 billion for the same year.
- Malaysia is currently the United States' 19th largest goods export market and is the 16th largest supplier of goods imports for the U.S.
- The U.S. recently announced the inclusion of Malaysia in negotiations to create a Trans-Pacific Partnership (TPP) Agreement involving the U.S. and seven other Asia-Pacific nations.
- The Bumiputra policy not only economically marginalizes the Hindu and Indian minority, but also places burdensome restrictions on foreign investment in Malaysia.

##### Terrorism and Regional Security<sup>xi</sup>

- There are several Islamic militant groups operating in Malaysia and Southeast Asia, including Kumpulan Mujahidin Malaysia (KMM), Jemaah Islamiyah Malaysia (JIM), and Abu Sayyaf. JIM's parent organization, Jemaah Islamiyah (JI), and Abu Sayyaf have been designated as foreign terrorist organizations by the U.S. State Department, enjoy close relations with al-Qaeda, and pose a threat to U.S. security interests in the region.
- Malaysia's location in Southeast Asia has been used as a strategic transit point for Islamic terrorist organizations in the region. As Islamic extremism increases its influence in Malaysia, it is critical to prevent Malaysia from becoming a safe haven for militant groups to launch attacks on Western targets.

##### Religious Freedom and Democracy

- Strengthening secular and democratic institutions in Malaysia is critical to supporting a moderate Muslim democracy in the world and ensuring stability in Southeast Asia.
- Promoting religious freedom and minority rights in Malaysia is consistent with America's commitment to human rights and prevents the growth of Islamic extremism in the region.

#### **V. Policy Recommendations**

- The U.S. should work with the United Nations and international human rights groups to exert pressure on the Malaysian government to provide religious freedom and equal rights to non-Muslims, and end repression of political dissent.

- Non-Muslim places of worship, particularly Hindu temples, must be protected from further destruction, desecration, and appropriation by the Government. Legal titles should be granted to pre-independence Hindu temples on par with pre-independence Muslim mosques.
- Any future military or economic appropriations to Malaysia must be contingent on the protection of human rights of ethnic and religious minorities, abolishment of the ISA, and reformation of all security agencies. Alternatively, any economic or humanitarian assistance provided should be used for the benefit of the economically marginalized and religiously persecuted Hindu minority.
- Malaysia should be excluded from any future Trans-Pacific Partnership Agreement until the Malaysia government ends its discriminatory Bumiputra policies.
- Malaysia's continued membership on the UN Human Rights Council should be made contingent upon its signing and abiding by all international conventions and treaties on human rights.

<sup>i</sup> The World Factbook, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>; "Malaysian Indian Minority & Human Rights Violations Annual Report 2010," Human Rights Party Malaysia, <http://www.humanrightspartymalaysia.com/books/annualrightsviolations2010.pdf>

<sup>ii</sup> Federal Constitution of Malaysia, Official Website of Judicial Appointments Commission, <http://www.jac.gov.my/jac/images/stories/akta/federalconstitution.pdf>

<sup>iii</sup> *Ibid.*

<sup>iv</sup> "Malaysian Indian Minority & Human Rights Violations Annual Report 2010," Human Rights Party Malaysia, <http://www.humanrightspartymalaysia.com/books/annualrightsviolations2010.pdf>; "Malaysia: Lawyers and judges face intimidation in 'Allah' case," Amnesty International Public Statement, January 15, 2010, <http://www.amnesty.org/en/library/asset/ASA28/001/2010/en/11666cd9-2e83-44f4-8d03-f8177a47af0b/asa280012010en.pdf>; "Malaysia: State orchestrated destruction of Hindu temples," Asian Human Rights Commission Urgent Appeals, June 15, 2006, <http://www.ahrchk.net/ua/mainfile.php/2006/1781>

<sup>v</sup> "Malaysian Indian Minority & Human Rights Violations Annual Report 2010," Human Rights Party Malaysia, <http://www.humanrightspartymalaysia.com/books/annualrightsviolations2010.pdf>; "Malaysia: US should press Najib to scrap policy of racial discrimination," Amnesty International Public Statement, April 12, 2010, <http://www.amnesty.org/en/library/asset/ASA28/008/2010/en/755039d1-0b24-45f7-adee-d29fef1440fc/asa280082010en.pdf>; Federal Constitution of Malaysia, Official Website of Judicial Appointments Commission, <http://www.jac.gov.my/jac/images/stories/akta/federalconstitution.pdf>.

<sup>vi</sup> World Report 2011: Malaysia, Human Rights Watch, <http://www.hrw.org/en/world-report-2011/malaysia>

<sup>vii</sup> "Malaysian Indian Minority & Human Rights Violations Annual Report 2010," Human Rights Party Malaysia, <http://www.humanrightspartymalaysia.com/books/annualrightsviolations2010.pdf>; Bendiech, Mark, "Indian protest rocks Malaysia ahead of polls" November 25, 2007, Reuters, <http://www.reuters.com/article/2007/11/25/us-malaysia-protest-idUSKLR16504820071125>

<sup>viii</sup> "Malaysian Indian Minority & Human Rights Violations Annual Report 2010," Human Rights Party Malaysia, <http://www.humanrightspartymalaysia.com/books/annualrightsviolations2010.pdf>; World Report 2011: Malaysia, Human Rights Watch, <http://www.hrw.org/en/world-report-2011/malaysia>

<sup>ix</sup> Asian Conflicts Reports, March 2010, Council on Asian Transnational Threat Research, <http://www.pict.mq.edu.au/pdf/catr/ACR-March-2010.pdf>

<sup>x</sup> Office of the United States Trade Representative, Malaysia, Executive Office of the President, <http://www.ustr.gov/countries-regions/southeast-asia-pacific/malaysia>

<sup>xi</sup> Asian Conflicts Reports, March 2010, Council on Asian Transnational Threat Research, <http://www.pict.mq.edu.au/pdf/catr/ACR-March-2010.pdf>; Foreign Terrorist Organizations, May 19, 2011, Office of the Coordinator for Counterterrorism, U.S. Department of State, <http://www.state.gov/s/ct/rls/other/des/123085.htm>