



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Maat for Peace, Development and Human Rights Association, a non- governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2019]

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\* Issued as received, in the language(s) of submission only.



## Enforced disappearance in Malaysia

### Preamble

Systematic enforced disappearance is a crime against humanity under international law and under the Rome Statute and under the concept of impunity, the disappeared person is subjected to all kinds of abuses of deprivation of liberty, deprivation of medical care, and torture amounting to murder. The use of enforced disappearance has become a strategic method of spreading terror within the community. While this phenomenon was at the time the result of primarily military dictatorships, enforced disappearances can now occur in complex circumstances of an internal conflict, or be used in particular as a political pressure on adversaries.

In recent years, there is a rise in the cases of enforced disappearances, some of which have not been disclosed so far, some of them against persons from religious minorities who have been accused of proselytizing to Muslims, a constitutionally restricted provision according to Article 11, paragraph 4, of the Malaysian Constitution.<sup>1</sup> State authorities shall have the right to stop the dissemination of any religious teachings and beliefs among persons converting to Islam. The cases of enforced disappearances were not limited to Malaysian citizens, but also included foreigners. In a clear violation of the International Convention on Enforced Disappearance; the Malaysian intelligence kidnapped a number of Turkish citizens and hide them in order to hand them over to the Turkish authorities on the back of the indictment in cases opposing Erdogan's government.

Maat Association for Peace, Development and Human Rights therefore denounces the enforced disappearances of a number of Malaysian citizens belonging to religious minorities as well as Turks residing in Malaysian territory. It calls on the international community to intervene to stop enforced disappearances in Malaysia. It also calls on the Malaysian government to seriously investigate the cases of enforced disappearances since 2016 and hold those responsible to account.

### Malaysian national legislation does not criminalize enforced disappearance

Malaysia is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, which is used as an excuse for impunity. Article 2 of the Convention defines enforced disappearance as "arrest, detention, abduction or any form of deprivation of liberty. At the hands of state officials, individuals or groups of individuals acting with the permission or support of the state or with its consent, followed by a refusal to recognize the deprivation of liberty or to conceal the fate or whereabouts of the disappeared person, thereby depriving him of the protection of the law".<sup>2</sup>

In Malaysian national legislation, there is no criminalization of enforced disappearance carried out or explicitly supported by State agents, but kidnapping and concealment of persons for the purpose of ransom are criminalized. According to article 362 of the Malaysian Criminal Code No. 574, abduction was defined as forced or coercive means of forcing anyone to go somewhere. Kidnapping and concealment are punishable by up to seven years' imprisonment and a fine based on article 365.<sup>3</sup> Article 3 of the 1961 Kidnapping Act punishes anyone who unlawfully abducts or restricts another person for the

<sup>1</sup> الدستور الماليزي، "المادة 11، الفقرة 4، بموجب قانون الولايات وفيما يتعلق بخصوصية الأقاليم الاتحادية لولايتي أوالامبور ولوبوان. يجوز للقانون الاتحادي ضبط وتقييد عملية نشر أي من التعاليم والمعتقدات الدينية بين الأشخاص المعتنقين لدين الإسلام".

<sup>2</sup> الاتفاقية الدولية لحماية جميع الأشخاص من الاختفاء القسري 1992.

<sup>3</sup> Malaysian Penal Code 1997.

purpose of detention, ransom, or death. Life imprisonment, if not sentenced to death, is liable to flogging.<sup>4</sup>

## Enforced disappearances on the basis of identity

A number of enforced disappearances in recent years have been linked to a severe crackdown on religious minorities in Malaysia, where police arrest and detain large numbers of Shia for days. In August 2018, ten Shia women and men were arrested in a Shia community and during the Ashura celebration. In October 2017, more than 200 Shias were arrested for participating in Ashura celebrations, where they were hidden for a period of time before being charged.

From November 2016 to February 2017, a number of people disappeared on charges of proselytizing non-Christian religions. On February 13, 2017, Priest Raymond Koh, known for his charity work was threatened by the authorities, and abducted after his church hosted a charity event attended by Malay Muslims, after which there were allegations that he preached Christianity. In April 2017, Peter Chung, a social activist, disappeared for a week after praying for the disappearance of Priest Raymond.

On 24 November 2016, the car of Shia social activist Omri Chi Matt was found smashed after he was kidnapped near his home. He was kidnapped after being accused of spreading Shi'a beliefs in Perlis, where he established a charity to provide social services. On November 30, 2016, Priest Joshua Helmi and his wife disappeared after converting to Christianity<sup>5</sup>. Despite the police claiming that they were not responsible for any of these cases, the reality proves the opposite. A report in the Human Rights Commission, SUHAKAM, which was submitted to the Malaysian Parliament in April 2019, states that one of the vehicles carrying out the abduction of Priest Raymond is owned by a former officer and is called Sayful Bahari.<sup>6</sup> The investigation has recently confirmed the involvement of special police officers in the abduction of Priest Raymond and Omri Che Matt.<sup>7</sup> The current Malaysian government has not taken action against those involved in the disappearance of Priest Raymond and social activist Omri, and the crime has not been treated as enforced disappearance by state officials.

In other incidents, the Malaysian authorities cooperated with Turkey's authorities to hand over opponents to the Turkish government. On October 14, 2016, Malaysian authorities abducted three Turkish citizens opposition to the government of Turkish President Recep Tayyip Erdogan, including members of the Gulen movement, including Alain Doman and Tamer Tepic. They were returned to Turkey without passports and without the knowledge of their families, where they were abducted during daylight in black cars and subsequently transferred to places of detention where they were tortured and transferred to Turkey.<sup>8</sup>

## Recommendations

- The Malaysian authorities should accede to the International Convention for the Protection of All Persons from Enforced Disappearance.
- The Malaysian authorities should establish a fact-finding committee on enforced disappearances and hold those responsible to account. The report of the Commission on Human Rights, which was submitted to the Malaysian Parliament, should be taken into account.

<sup>4</sup> Kidnapping Act 1961.

<sup>5</sup> Solidarity with the families of pastor Raymond Koh, Amri Che mat and pastor Joshua and Ruth Hilmy. Suaram. Published date: 8 April 2017. Accessed date: 12 August 2019. <https://bit.ly/2OTyEHT>

<sup>6</sup> Malaysian police behind pastor and activist disappearance: Human rights commission. Published date: 3 April 2019. Accessed date: 12 August 2019. <https://bit.ly/2TtPnH9>

<sup>7</sup> Malaysia disappearances raise fears of 'religious vigilantism'. The Standard. Published date: 4 April 2019. Accessed date: 12 August 2019. <https://bit.ly/2TsAoNO>

<sup>8</sup> تقرير سويدي يكشف أسرار التعاون بين تركيا وماليزيا في ممارسة تعذيب مواطنين أتراك، جريدة زمان التركية، تاريخ النشر: 5 مايو 2017، تاريخ الدخول: 12 أغسطس 2019، <https://bit.ly/2N0DHue>

- We call on the international community to investigate the abduction and forcible return of Turkish citizens to Turkey in violation of international law.
  - Malaysia should abide by Article 18 of the International Covenant on Civil and Political Rights (ICCPR) regarding freedom of belief.
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