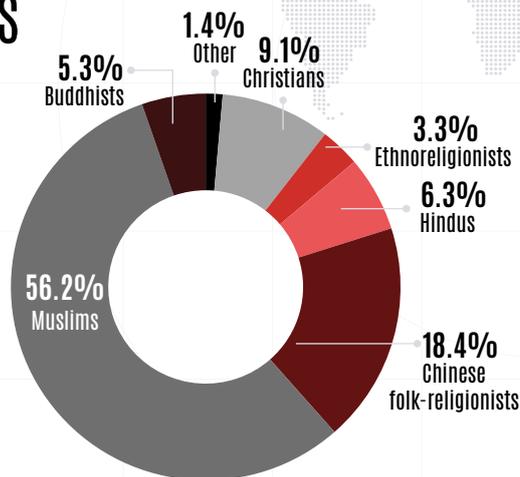




MALAYSIA

RELIGIONS



LEGAL FRAMEWORK ON FREEDOM OF RELIGION AND ACTUAL APPLICATION

Malaysia's Constitution protects religious freedom. However, the rights and interests of both majority and minority communities are constrained by the constitutional and legal privileges granted to Sunni Islam as interpreted by the government. Under Article 3 (1) of the Constitution, "Islam is the religion of the Federation [of Malaysia] but other religions can be practised in peace and harmony throughout the Federation."¹ Article 11 stipulates that "everyone has the right to profess and practise his religion", but, at the same time, paragraph 4 of the same article declares that the laws of the states and the federal government "may control or restrict the propagation of any religious doctrine or belief among people professing the religion of Islam."² The provisions of the constitution have been interpreted to allow states to prevent Muslims from converting to other religions and restrict any Muslim minority sect considered deviant by Malaysia's religious authorities.

Article 160 of the constitution defines a "Malay" as, among other criteria, "a person who professes the religion of Islam." Ethnic Malays, who represent about 60 percent of

the population,² are formally and constitutionally defined as ethnically and religiously distinct from other ethnic groups, who are mainly of Chinese and Indian origin. These ethnic minorities adhere to Buddhism, Hinduism, Christianity, other religions, or no religion.³

Non-Malays are free to convert to any religion of their choice, including Islam. By contrast, conversion out of Islam by Malay Muslims is deemed apostasy and is formally forbidden.⁴ However, reports suggest that a procedure is technically in place whereby Muslims can convert out of Islam - a lengthy process that requires the formal consent of a Shari'a court in accordance with state Islamic law. This consent, in turn, requires that those wishing to convert spend months in religious "rehabilitation centres" in which they are pressured to remain Muslim.

In a series of judgements, civil courts have ruled that apostasy cases must be directed to Shari'a courts, which again must formally consent to any conversion.⁵ However, in recent years, civil courts have also been able to intervene in certain cases where there was a strong presumption that the individuals in question were never Muslims in the first place.

In a landmark case in May 2016, a Hindu woman, Indira Gandhi (no relation to the Indian leader), successful-

ly argued before the country's highest judicial body, the Federal Court, that the attempt by her husband - a former Hindu who converted to Islam - to convert their three children was invalid and they were therefore never Muslims, with the consequence that Shari'a courts lacked any jurisdiction over their religious identity and religious choices. In addition, in 2016, "the High Court of Sarawak permitted Rooney Rebit, a professing Christian, to convert out of Islam. In this particular situation, the court considered the case a constitutional rather than a jurisdictional issue. While acknowledging that the Shari'a courts had jurisdiction over issues of conversion, the court argued that it was apparent that Rooney was never a Muslim in the first place (one does not need to practice Islamic law to know that a person does not practice Islam)."⁶

All Muslims in Malaysia are governed by Islamic law through state Islamic enactments, which place all matters of personal law (i.e. marriage, divorce and inheritance) under the jurisdiction of Islamic or Shari'a courts. A constitutional provision stipulates that civil courts do not exercise any jurisdiction over matters that fall within the jurisdiction of Shari'a courts.

Each Malaysian state has its own Islamic authority that governs Muslim affairs in that state. The state Islamic authorities have, to a large extent, side-lined minority forms of Islam through regulations of religious activity. For example, the National Fatwa Council declared Shi'a Islam deviant in 1996 and banned it outright, this despite the fact that Malaysia is home to hundreds of thousands of underground Shi'as.⁷ The federal religious authority, the Department of Islamic Development (JAKIM), along with state fatwa committees, closely monitor and systematically control all forms and interpretations of Islam in Malaysia. State religious authorities play a supervisory role over mosques, influence the content of sermons, and ensure that the teachings they convey are in line with Sunni orthodoxy as interpreted by the state.

Many Shi'a Muslim publications remain banned under the Communications and Multimedia Act of 1998, which "criminalizes online and network communications that are considered obscene, indecent, false, menacing, or offensive in nature with intent to annoy, abuse, threaten or harass another person."⁸

The Printing Presses and Publications Act of 1984 poses problems for non-Muslim groups with respect to the word God. According to the law, the word "Allah" (the Arabic term for God) is exclusive to Islam. Malay Bibles distrib-

uted in Malaysia that use the word "Allah" for God have therefore been banned.⁹

On 23rd June 2014, the Federal Court of Malaysia refused to hear an appeal brought by the Catholic Church challenging the prohibition against the use of the word "Allah" by non-Muslims. For Herald Malaysia, a Malaysian Catholic weekly, banning the use of "Allah" by non-Islamic publications was unconstitutional and a violation of religious freedom.¹⁰ The Appeal Court's ruling was interpreted by the government to apply only to the Catholic publication, even though it set a legal precedent for a comprehensive ban on the usage of the term "Allah" among Christians. The court declared that the use of the word "Allah" is not essential or integral to the Christian faith and went on to rule that any non-Muslim religious speech and practice must now be tested against their potential to offend Muslims.¹¹ Malaysia has seized more than 20,000 Bibles in recent years for referring to God as "Allah."¹²

In Sarawak, the majority of the population is Christian. However, there is entrenched discrimination against certain Christian religious institutions in that state. Larger, more well-known Churches are recognised under a Missionary Societies Ordinance (MSO), but smaller Churches in particular face significant difficulty in registering and securing government recognition and support. Additionally, smaller Churches have difficulties in applying for grants from UNIFOR (Unit for Other Religions), a state government agency in Sarawak established in 2017.¹³ In September 2020, Sarawak Deputy Chief Minister Datuk Amar Douglas Uggah reaffirmed the government's policy that only religious groups registered with the Registrar of Societies (RoS) or the state Missionary Societies Ordinance (MSO) are eligible to receive financial support from UNIFOR.¹⁴

INCIDENTS AND DEVELOPMENTS

In November 2018, four Finnish nationals were arrested by police for allegedly distributing Christian pamphlets. The Finns were accused of breaking laws that ban disturbing religious harmony; some 47 pens and 336 Christian booklets were confiscated.¹⁵ Section 298 of the Penal Code of Malaysia states that "whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished

with imprisonment for a term which may extend to one year or with fine or with both.”¹⁶ The prosecution initially planned to file a charge sheet under the penal code, but eventually decided to expel the four Finnish nationals.¹⁷

In September 2019, the Selangor Islamic Religious Department (JAIS) arrested 23 people in Gombak district and investigated them for opposing a fatwa against Shi’ism.¹⁸ Shi’as were again deemed “deviant”. Islamic authorities have often and aggressively raided private events organised by Shi’as.¹⁹

In that same month, the State of Johor’s Islamic Affairs Department conducted raids on private Shi’a functions, arresting foreign nationals alongside locals. Eight people were reportedly taken into custody, including one Yemeni and two Singaporeans. At a private Ashura function at a Bandar Sunway condominium, authorities arrested several individuals, including Pakistani nationals.²⁰ These incidents occurred despite a 2010 fatwa by the Selangor Islamic Department (JAIS) exempting foreign nationals from the ban against Shi’ism.²¹

In September 2019, Church leaders in Malaysia reported rising tensions because certain conservative Muslim politicians continue to depict Christianity as a threat to the Muslim majority nation. The Council of Churches of Malaysia denounced unfounded assertions by the Pan-Malaysian Islamic Party and the United Malays National Organization that elements in the government were pursuing a “Christianization agenda.” Other assertions painted Evangelical Christianity in a negative light.²²

In the State of Sabah, experts reported that Christians are vulnerable to government officials arbitrarily changing their religious identity to Islam, and Christians have “minimal recourse” if this occurs. Lawyers specialising in religious freedom and human rights report instances in which Christians are labelled as Muslims on their ID cards. Experts in Sabah also noted that other restrictions have been added during the period under review, including curbs on Christian proselytising, restrictions on the ability of Churches to welcome seekers and inquirers from all backgrounds, and limits on the ability of Christian students to pray openly in some schools.²³

In May 2020 Malaysian authorities turned away Rohingya and Ahmadi Muslim refugees under the pretence of preventing new COVID-19 outbreaks. This is in stark contrast to Malaysia’s previous record of providing a relative safe haven for Rohingya Muslims fleeing persecution in Myan-

mar.²⁴ A shift in public attitudes during the period in review has meant that many Malaysians are now averse to having more Rohingya migrants, as evidenced by an online hate campaign and violent threats against Rohingya refugees in the country. Reportedly, some politicians have also joined the online campaign in order to capitalise on those fears. The online posts consisted of “discriminatory and dehumanising language and images, with some users threatening prominent Rohingya activists as well as their supporters with murder and sexual violence.”²⁵

Several refugees have been imprisoned as a result of raids by the Malaysian government and reportedly were subject to poor treatment and harsh conditions while in detention. The UNHCR confirmed that foreign lawyers who helped detainees access legal support had been indiscriminately rounded up by police, though they were later released. Malaysian authorities have also threatened foreigners with revoking their immigration passes if they “make statements damaging to Malaysia.”²⁶

The spread of COVID-19 adds to the already difficult conditions experienced by migrants and refugees in Malaysia’s detention centres. The government also announced a ban on foreign nationals entering mosques when they reopen following the lifting of COVID-related interdictions.²⁷

PROSPECTS FOR RELIGIOUS FREEDOM

Many senior Malaysian leaders, Muslim and non-Muslim alike, are deeply dissatisfied with the country’s oppressive religious and political climate. In December 2014, a group of 25 eminent Malay Muslims, including former senior civil servants, signed an open letter stating that the country was “slowly sliding towards religious extremism and violence.”²⁸ They expressed deep concern with the rise of Islamic radicalism, which, in their view, has been tolerated and even encouraged by Malaysian political leaders.

In May 2018 the election of the pro-reform Pakatan Harapan government provided a brief political opening and fostered a climate of greater religious and ethnic tolerance and understanding; however, this proved short-lived. With the government’s collapse in February 2020 came a return to hard-line governance under Prime Minister Muhyiddin Yassin and his conservative Perikatan Nasional (PN) coalition. This has diminished the prospects for any serious improvement in the country’s religious freedom for the foreseeable future.

SOURCES / ENDNOTES

- 1 Malaysia 1957 (rev. 2007), Constitute Project, https://www.constituteproject.org/constitution/Malaysia_2007?lang=en (accessed 20th December 2020).
- 2 “Malaysia profile - Overview,” BBC News, 27th January 2016, <https://www.bbc.com/news/world-asia-pacific-15367879> (accessed 20th December 2020).
- 3 “Malaysia country profile,” BBC News, 2nd March 2020, <https://www.bbc.com/news/world-asia-pacific-15356257> (accessed 20th December 2020).
- 4 Office of International Religious Freedom, U.S. Department of State, 2019 Report on International Religious Freedom: Malaysia, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/malaysia/> (accessed 20th October 2020).
- 5 Ibid.
- 6 Timothy S. Shah et al, Malaysia Religious Freedom Landscape Report 2020. Washington, D.C.: Religious Freedom Institute, 2020, pp. 22-24, <https://static1.squarespace.com/static/57052f155559869b68a4f0e6/t/5f523883c4bb17744fe77632/1599223951527/Malaysia+ONLINE.pdf> (accessed 29th October 2020).
- 7 Ibid, p. 25.
- 8 Malaysia Human Rights Report 2016, Suara Rakyat Malaysia (SUARAM), <https://www.suaram.net/suaramreports/> (accessed 29th October 2020).
- 9 “The Bible Ban In Malaysia,” Persecution, 19th September 2020, <https://www.persecution.org/2020/08/19/bible-ban-malaysia/> (accessed 19th October 2020).
- 10 “Freedom of religion after the Catholic Herald,” Kairos Research Center, September 2014, <http://www.krisispraxis.com/wp-content/uploads/2014/09/Freedom-of-Religion-after-the-Catholic-Herald.pdf> (accessed 19th October 2020).
- 11 Ibid.
- 12 “The Bible Ban in Malaysia,” op cit.
- 13 “Unit Hal Ehwal Agama-Agama Lain,” Jabatan Ketua Menteri Sarawak, <https://jkm.sarawak.gov.my/UNIFOR> (accessed 29th October 2020).
- 14 Sulok Tawie, “Unifor funds only for registered houses of worship, says Sarawak DCM,” Malay Mail, 2nd September 2020, <https://www.malaymail.com/news/malaysia/2020/09/02/unifor-funds-only-for-registered-houses-of-worship-says-sarawak-dcm/1899502> (accessed 29th October 2020).
- 15 “Malaysia arrests four finnish nationals for distributing Christian literature,” World Watch Monitor, 23rd November 2018, <https://www.worldwatchmonitor.org/coe/malaysia-arrests-four-finnish-nationals-for-distributing-christian-literature/> (accessed 29th October 2020).
- 16 “Laws of Malaysia Act 574 Penal Code,” Burgie Law, Attorney General’s Chambers of Malaysia, https://www.burgielaw.com/resources/act?act_title=Penal+Code§ion=298A (accessed 9th October 2020).
- 17 “Malaysia Arrests Four Finnish Nationals for Distributing Christian Literature,” World Watch Monitor, 23rd November 2018, <https://www.worldwatchmonitor.org/coe/malaysia-arrests-four-finnish-nationals-for-distributing-christian-literature/> (accessed 29th October 2020).
- 18 “Jai Raids Shia Muslim Event In Gombak, Arrests 23,” Free Malaysia Today, 7th September 2019, <https://www.freemalaysiatoday.com/category/nation/2019/09/07/jais-raids-shia-muslim-event-at-gombak-arrests-23/> (accessed 9th October 2020).
- 19 Ibid.
- 20 “More Arrested In Raids On Private Syiah Functions,” Malaysiakini, 10th September 2019, <https://www.malaysiakini.com/news/491323> (accessed 19th October 2020).
- 21 Aedi Asri, “Jais arrests 50 Pakistani Shia Muslims,” FMT News, 12th October 2016, <https://www.freemalaysiatoday.com/category/nation/2016/10/12/jais-arrests-50-pakistani-shia-muslims/> (accessed 29th October 2020).
- 22 “Malaysia’s Church leaders warn of rising religious tensions,” UCANews, 19th September 2019, <https://www.ucanews.com/news/malaysias-church-leaders-warn-of-rising-religious-tensions/86136#> (accessed 20th October 2020).
- 23 “SMART Survey on the Freedom of Religion or Belief (FoRB),” Religious Freedom Institute. Findings based on the input of more than 40 religious leaders and religious freedom experts across Malaysia, 2020. Data on file with the Religious Freedom Institute.
- 24 Gayle Manchin and James W. Carr, “Malaysia’s unwelcoming shore for refugees fleeing religious persecution,” The Diplomat, 28th July 2020, <https://thediplomat.com/2020/07/malaysias-unwelcoming-shore-for-refugees-fleeing-religious-persecution/> (accessed 29th October 2020).
- 25 “Malaysia Urged To End Violent Threats Against Rohingya Refugees,” Al Jazeera, 11th May 2020, <https://www.aljazeera.com/news/2020/5/11/malaysia-urged-to-end-violent-threats-against-rohingya-refugees> (accessed 29th October 2020).
- 26 “Foreigners who make statements damaging to Malaysia risk having passes revoked, Immigration D-G Says amid Al Jazeera documentary uproar,” Malay Mail, 6th July 2020, https://www.malaymail.com/amp/news/malaysia/2020/07/06/foreigners-who-make-statements-damaging-to-malaysia-risk-having-passes-revo/1882071?__twitter_impression=true (accessed 9th October 2020).
- 27 Kaamil Ahmed and Rebecca Ratcliffe, “Rohingya face cruel caning sentence in Malaysia as hostility to refugees grows,” The Guardian, 21st July 2020, <https://www.theguardian.com/global-development/2020/jul/21/rohingya-face-cruel-caning-sentence-in-malaysia-as-hostility-to-refugees-grows> (accessed 9th October 2020).
- 28 Mong Palatino, “Malaysia’s Moderate Voices Urge Islamic Law Reform,” The Diplomat, 25th December 2014, <http://thediplomat.com/2014/12/malaysias-moderate-voices-urge-reform-in-islamic-laws/> (accessed 15th March 2020).