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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report highlights the continuing challenges to freedom of religion and expression in Malaysia. In particular, it addresses the criminalization of blasphemy and proselytism, as well as the effects of religious harmony laws and the mandatory disclosure of religious affiliation in identity cards on the enjoyment of these fundamental freedoms.

(a) Freedom of Religion or Belief and Freedom of Expression

Legal Framework

3. Article 3(1) of the Constitution of Malaysia provides that 'Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.'¹
4. Article 11(1) states that 'Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.'² Clause (4) allows state or federal law to 'control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.'³ This Clause must be read in conjunction with Article 121(1A), which stipulates that federal courts 'shall have no jurisdiction in respect of any matter within the jurisdiction of the Sharia courts.'⁴
5. Article 12(3) states that 'No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.'⁵ However, freedom from compelled religious instruction or worship applies exclusively to adults, as Clause (4) of the same provision stresses that 'For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.'⁶
6. Article 10(1) also provides that 'every citizen has the right to freedom of speech and expression,' although it gives some consideration to concerns of national security and public order in Article 10(2), (3), and (4).⁷
7. Despite these constitutional protections, the full and effective enjoyment of freedom of religion or belief and freedom of expression in the country remains a challenge.

Restrictions on Religious Conversion

¹ 1957 Federal Constitution of Malaysia, Article 3(1) accessed on https://www.constituteproject.org/constitution/Malaysia_2007.

² Ibid, Art 11(1) and 11(4).

³ Ibid.

⁴ Ibid, Article 121(1A).

⁵ Ibid, Article 12(3).

⁶ Ibid, Article 12(4).

⁷ Ibid, Article 10(1).

8. Among various legal and social factors, the implementation of the 'anti-propagation' clause contained in Article 11(4) of the Constitution contributes to the current state of freedom of religion or belief in Malaysia.
9. Malaysia's legal framework includes an extensive system of state and federal religious laws ostensibly aimed at protecting Islam as the official state religion. However, in practice, they impose serious limitations on religious conversions, especially for those wishing to convert away from Islam, as well as non-Muslims. In fact, most Malaysian states have outlawed conversion from Islam. One recent example is Kelantan State, where as of 1 November 2021, a new Sharia Criminal Code is in force which inter alia punishes any attempt to convert away from Islam, as well as distorting Islamic teachings, and disrespecting the month of Ramadan, with imprisonment and a fine or corporal punishment.⁸
10. Because no Muslim is allowed to leave Islam, Christians and other persons belonging to religious or belief minorities who have a Muslim background are at constant risk of being perceived as attempting to proselytize others.
11. In 2021, after the Malaysian High Court declared the 1986 ban on the use of the word 'Allah' in Christian publications unconstitutional, Mr. Datuk Ahmad Marzuk Shaary, the former Deputy Minister in the Prime Minister's Department in charge of Religious Affairs, announced that the respective state governments would take appropriate measures to further restrict the propagation of religions other than Islam to Muslims.⁹ He emphasized that while everyone has the right to worship and practise their faith as they see fit, the 'may not propagate or influence others into practising their religion.'¹⁰
12. In March 2023, a police investigation was opened against Hannah Yeoh, Minister for Youth and Sports, following accusations from political rivals. They alleged that the 'Jom Ziarah Gereja' programme, an initiative involving visiting places of worship of different faiths and headed by Impact Malaysia, a non-profit agency under her ministry, was aimed at converting Muslim youths. Yeoh clarified that the programme did not involve the participation of any Muslim youths in visits to mosques and Sikh temples, yet the investigation continued.¹¹¹²
13. Restrictions on religious conversion have also been associated with cases of disappearances involving Christian leaders. One example among others is the

⁸ Malay Mail, 'Kelantan Shariah Criminal Code (I) Enactment 2019 comes into force today' (1 November 2021) <https://www.malaymail.com/news/malaysia/2021/11/01/kelantan-shariah-criminal-code-i-enactment-2019-comes-into-force-today/2017685>.

⁹ Jerry Choong, 'More steps to be taken to prevent spread of non-Muslim religions to Muslims, says deputy minister' (12 March 2021) Malay Mail, <https://www.malaymail.com/news/malaysia/2021/03/12/more-steps-to-be-taken-to-prevent-spread-of-non-muslim-religions-to-muslims/1957370>.

¹⁰ Ibid.

¹¹ Union of Catholic Asian News, 'Malaysia's Christian minister dismisses proselytization claim' (15 March 2023) UCA News, <https://www.ucanews.com/news/malaysias-christian-minister-dismisses-proselytization-claim/100674>.

¹² Safeek Affendy Razali, 'Police to call up Hannah Yeoh to aid in investigations over 'church visit programme'' (20 March 2023) New Straits Times, <https://www.nst.com.my/news/crime-courts/2023/03/891002/police-call-hannah-yeoh-aid-investigations-over-church-visit>.

abduction of Christian Pastor Raymond Koh in Petaling Jaya in 2017, who remains missing to this date. Local authorities had previously investigated Pastor Koh's organization, focusing on people living with HIV/AIDs, recovering addicts, single mothers and children, claiming that it was involved in converting Muslims to Christianity. The trial regarding Pastor's Koh abduction began this year after the Malaysian Human Rights Commission concluded that the abduction was carried out by individuals working for the Special Branch of the Royal Malaysia Police.¹³

Blasphemy Laws

14. The continued existence of laws criminalizing blasphemy in Malaysia is a subject of notable concern. The often vague and ambiguous language of these provisions, as well as the inherently subjective nature of determining what constitutes offensive expression, are inconsistent with international human rights law and open the door to arbitrary and unjustified punishment for the peaceful expression of religious or other beliefs or opinions.
15. Articles 298 and 298A of the Malaysian Penal Code criminalize acts committed: 'with deliberate intention of wounding the religious feelings of any person'; or which cause, or attempts to cause, or are likely to cause 'disharmony, disunity, or feelings of enmity, hatred or ill will'; or which prejudice, or attempt to prejudice, or are likely to prejudice, the maintenance of harmony or unity, on grounds of religion, between persons or groups of persons professing the same or different religions'.¹⁴
16. Blasphemy and other offenses against Islam are also prohibited at the state level. For example, Part III of the Sharia Criminal Offences Act of 1997 (No. 559) of the Federal Territories, titled "Offences relating to the sanctity of the religion of Islam and its institution" in Section 7 punishes any person who, orally or in writing or by visible representation, insults or brings into contempt the religion of Islam, ridicules its practices or ceremonies, or degrades or brings into contempt any law relating to the religion of Islam.¹⁵ Section 8 also criminalizes any person who derides, insults, ridicules or brings into contempt the verses of Al-Quran or Hadith.¹⁶
17. Malaysian authorities have also investigated individuals under the Communications and Multimedia Act (CMA) of 1998 for allegedly blasphemous speech. Its Section 233 makes it an offense, punished by up to one-year imprisonment and/or a fine, to use network facilities 'to transmit communication deemed to be offensive or could cause annoyance to another person'.¹⁷
18. In an illustrative case from 2021, Sarajun Hoda Abdul Hassan, the former deputy chairman of the Coalition for Clean and Fair Elections (Bersih), was charged under Section 233(1)(a) of the CMA for allegedly insulting Islam via a Facebook post in Taiping. According to the charge sheet, Sarajun Hoda was accused of consciously

¹³ Open Doors, 'Trial for Raymond Koh's abduction: the first days' (8 June 2023)

<https://www.opendoorsuk.org/news/latest-news/raymond-koh-5-years/>.

¹⁴ Penal Code of Malaysia as at 1 February 2018, Article 298 and 298A, accessed on chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS61339%202015.pdf.

¹⁵ Sharia Criminal Offences Act 1997 (No.559) of the Federal Territories, Part III, Section 7.

¹⁶ Ibid, Section 8.

¹⁷ 1998 Communications and Multimedia Act, Section 233.

creating and transmitting offensive communications related to Islam on his Facebook page.¹⁸ When the charge was presented to him, he pleaded not guilty. In October 2022, the Taiping High Court ordered that a new lower court judge hears his case.¹⁹

19. In 2019, 22-year-old Alister Cogia was condemned to six years in prison for posting social media content on Facebook that was considered to be insulting towards Islam.²⁰

20. Likewise, in 2020, Danny Antoni was sentenced under Section 233 of the CMA and Article 298A of the Malaysian Penal Code, with over two years of prison, for posting content to Facebook that was allegedly offensive towards Islam.²¹

Mention of Religious Affiliation in Identity Cards

21. Over 60% of the population in Malaysia is Muslim, with that number expected to grow over the subsequent decades.²² The majority of Muslims in Malaysia adhere to Sunni Islam, while Shia Islam is outlawed by decree.²³ Other religions practised in the country include Buddhism (19.8%), Christianity (9.2%), and Hinduism (6.3%).²⁴ Among the non-Malay indigenous and immigrant communities, Islam, Buddhism, Christianity, and other religions are observed.²⁵

22. Because no Muslim is allowed to leave Islam, Christians from a Muslim background are at constant risk of being perceived as proselytizing. The anti-propagation clause set forth in Article 11(4) of the Constitution, the absence of clear boundary lines for what constitutes acceptable discourse, as well as the fear of consequences for expressing one's deeply held opinions or beliefs, undermines the right of freedom of religion or belief and freedom of expression in Malaysia.

23. In addition to the aforementioned restrictions on the exercise of freedom of religion or belief, persons belonging to religious minorities remain particularly vulnerable to discrimination on grounds of their religious identity.

¹⁸ Malay Mail, 'Man charged with insulting Islam via Facebook post in Taiping' (3 August 2021) <https://www.malaymail.com/news/malaysia/2021/08/03/bersih-activist-charged-with-insulting-islam-via-facebook-post-in-taiping/1994829>.

¹⁹ Hidir Reduan Abdul Rashid, 'High Court orders a new judge to hear Berish activist's case' (17 October 2022) <https://www.malaysiakini.com/news/639971>.

²⁰ Sulok Tawie, 'Court cuts jail time for Sarawakian convicted of insulting Islam, retains RM50,000 fine' (13 September 2019) Malay Mail, <https://www.malaymail.com/news/malaysia/2019/09/13/court-cuts-jail-time-for-sarawakian-convicted-of-insulting-islam-retains-rm/1790176>.

²¹ Bernama, 'Man sentenced to over 2 years' jail for insulting Prophet Muhammad, Islam' (17 July 2020) New Straits Times, <https://www.nst.com.my/news/crime-courts/2020/07/609390/man-sentenced-over-2-years-jail-insulting-prophet-muhammad-islam>.

²² Pew Research Center, The Future of the Global Muslim Population, January 15, 2011, <http://www.pewforum.org/interactives/muslim-population-graphic/#/Malaysia>.

²³ The Star Online, Reason behind ban on Syiah teachings, 16 Dec. 2013. <https://www.thestar.com.my/news/nation/2013/12/16/reason-behind-ban-on-syiah-teachings-controversial-doctrines-have-led-to-many-seeing-it-as-a-potential/>.

Islam Online Archive, Rights Group Says Six Malaysians Detained For Being Shia Muslims, <https://archive.islamonline.net/?p=17694>.

²⁴ Encyclopaedia Britannica, Malaysia, 'Religion,' <https://www.britannica.com/place/Malaysia/Religion>.

²⁵ Ibid.

24. Religious discrimination is generally prohibited by the Malaysian Constitution. Article 8(2) of the Constitution states that ‘except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law.’
25. In this regard, Article 160 of the Constitution of Malaysia links ethnicity with Islam, which continues to infringe on the religious freedom rights of ethnic Malays.
26. National identification cards, commonly known as “MyKad”, visibly indicate the religious affiliation of individuals registered as Muslims by displaying the term “Islam”. In contrast, individuals belonging to other religious communities, or having no religion, have their religious or belief identity recorded electronically without it being visibly printed on their cards. This visible differentiation between Muslims and non-Muslims has been reported to contribute to discrimination in government services. This discrimination is often amplified by the perception that being a Malay equates to being a Muslim. In particular, Christians have faced discrimination in public and private employment because they are seen as non-Malays, while there has historically been a preference for Malays in public sector employment.²⁶
27. Likewise, Malaysians who identify with or convert to non-Muslim religions face barriers when attempting to change their religious identity on their MyKad, as it would bring them under the jurisdiction of Sharia courts. This issue particularly affects Sarawakians, including the Orang Asal indigenous community, who are automatically registered as Muslims because their names have Arab roots and are associated with Islam. When these persons seek to update or replace their MyKad, they often find themselves identified as Muslims, even in the absence of any actual religious conversion. This situation negatively impacts their right to freely practise their religion publicly due to concerns about societal and judicial consequences. In order to officially convert out of Islam, Sarawakians must subject themselves to the provisions of Sharia specific to their respective states, which is a very difficult and lengthy process.
28. These complexities have led many non-Muslim indigenous Malays to opt against registering their children’s birth with the National Registration Department in order to protect them against being automatically registered as Muslims.²⁷ This has resulted in the denial of basic rights such as education, health, security, and nationality due to their inability to possess identity cards that accurately reflect their true religious affiliation.²⁸
29. During the previous Universal Periodic Review cycle, Malaysia received two recommendations urging the removal of all references to religion from national identity cards, as well as the guarantee of everyone’s right to freely change their religion

²⁶ Open Doors International, ‘Malaysia: Full country dossier’ (January 2023) <file:///C:/Users/dconstantinollaven/Downloads/Full-Country-Dossier-Malaysia-2023.pdf>, pg.36.

²⁷ Jubilee Campaign and the Religious Freedom and Liberty Partnership, ‘Freedom of religion and sustainable development for an inclusive society in Malaysia’ <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Submissions/CSOs/47.jubileecampaign-religious-freedom-liberty.docx>

²⁸ Ibid.

without fear of judicial sanction. Regrettably, Malaysia noted both of them.²⁹ In order for Malaysia to fulfill its international obligations in this area, Malaysia should be encouraged to uphold the equal right to freedom of religion or belief for all, and in particular to allow every person to identify and live in accordance with their religious convictions, without fear of reprisals.

Freedom of Religion or Belief and Freedom of Expression in International Law

30. As a Member State of the United Nations, Malaysia is a Party to the Charter of the United Nations, which in Article 55(c) recognizes that the UN shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Malaysia is therefore, under an obligation to protect the human rights and fundamental freedoms of the people within its borders, freedom of religion included.
31. The right to freedom of religion is widely considered a fundamental right that all States—and certainly Members of the United Nations—must guarantee. “This is reflected in the Universal Declaration of Human Rights (UDHR), Article 18 of which recognizes the right to freedom of thought, conscience and religion, including the freedom to change one’s belief and to manifest one’s religion or belief in teaching, practice, worship and observance.”
32. Although Malaysia is not a State Party to the International Covenant on Civil and Political Rights (ICCPR), Article 18 of the ICCPR also protects the right to freedom of thought, conscience, and religion. As confirmed by the Human Rights Committee in its General Comment No. 22, this right includes the ‘freedom to have or to adopt a religion or belief of [one’s] choice, ‘and the right to ‘replace one’s current religion or belief with another or adopt atheistic views, as well as the right to retain one’s religion or belief.’ This right is a well-established customary norm under international law.
33. Article 18(2) of the ICCPR states, ‘No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.’ The Human Rights Committee interprets this to include ‘the use of threat of physical force or penal sanctions’ and policies and practices that ‘restrict access to education, medical care, [and] Employment.’
34. As stated by Professor Heiner Bielefeldt, former Special Rapporteur on freedom of religion or belief:

“Freedom of religion or belief has a strong communicative dimension which includes, inter alia, the freedom to communicate within one’s own religious or belief group, share one’s conviction with others, broaden one’s horizons by communicating with people of different convictions, cherish and develop contacts across State boundaries, receive and disseminate information about religious or belief issues and try to persuade others in a non-coercive manner.”³⁰

²⁹ Human Rights Council, ‘UPR of Malaysia (3rd Cycle – 31st session) Thematic list of recommendations’, pg.38.

³⁰ H. Bielefeldt ‘Interim report of the Special Rapporteur on freedom of religion or belief’ (13 August 2012) A/67/303, 15.

35. The ambiguous wording and subjective interpretation of laws criminalizing the so-called “wounding of religious feelings” or the disrupting of “religious harmony” open the door to arbitrary and unjustified restrictions and penalties, and also creates a chilling effect on the free expression of ideas or beliefs, in contradiction of Article 19 of the UDHR on the right to freedom of opinion and expression.
36. The Constitution of Malaysia’s anti-propagation clause, which allows limits on communicating personal religious belief with Muslims in Malaysia, likewise restricts people from professing and practicing their faith freely, as guaranteed under international law.
37. Laws enacted at the state and federal level pursuant to the anti-propagation clause restrict religious practice explicitly, by forbidding the sharing or communicating of one’s faith (as mandated by certain religious beliefs) with the vast majority of the populace, and tacitly, by stifling the growth of minority religions through restricting the free expression of their adherents, committing such religions to formal marginalized status. Accordingly, this clause violates the guarantee of equal rights and freedom from discrimination on the basis of religion, and specifically undermines the rights of religious minorities to profess and practice their faith.

(b) Recommendations

38. In light of the aforementioned, ADF International suggests the following recommendations be made to Malaysia:
 - a. Ensure that the right to freedom of religion or belief is promoted and protected in Malaysia, including the right to practice one’s religion by speaking to others, including Muslims, about one’s beliefs, the right for Muslims to convert to a religion other than Islam without fear of legal sanction, and the right for a Malay person to identify as other than one who professes Islam as their religion, without compromising such person’s identity as Malay;
 - b. Repeal or amend Clause 4 of Article 11 of the Constitution;
 - c. Ensure that state governments and sharia courts do not undermine the federal guarantees of freedom of religion and expression that are granted by the Constitution.
 - d. Repeal all laws criminalizing blasphemy and other offenses against religion;
 - e. Amend the Communications and Multimedia Act 1998, in order to bring it into conformity with international human rights law regarding the right of freedom of expression;
 - f. Amend the National Registration Act to remove all references to religion on national identity cards;



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