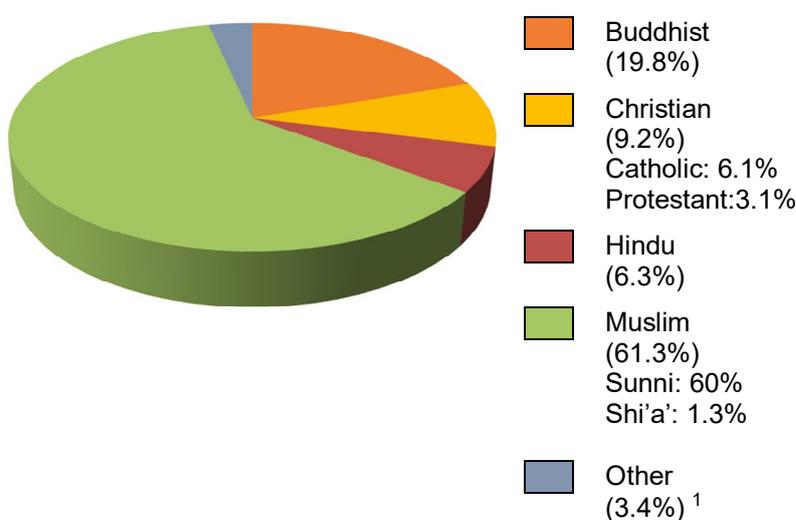
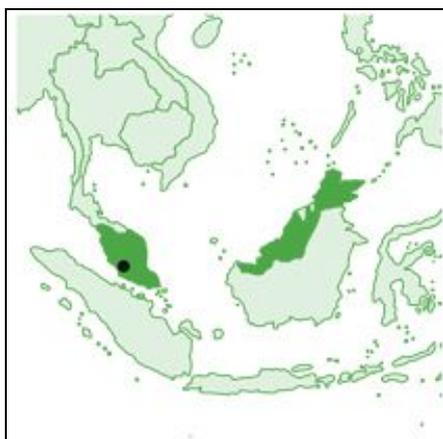


# MALAYSIA



Area:	Population:	Political system:	Major Language(s):
330,000 km <sup>2</sup>	31 million	Democracy	Bahasa Malaysia, English

## Legal framework on Freedom of Religion and actual application

“I wish to reiterate the Government’s stand that we will continue our efforts in ensuring that no Malaysians will be left behind as we progress towards an advanced nation and we remain steadfast in upholding the freedom of religion as enshrined in our constitution.” These are the words of the Malaysian Prime Minister, Najib Razak, in his blog for 24<sup>th</sup> December 2015 – a public holiday for all Malaysians. His was a message wishing a happy Christmas to all the Christians of the country.<sup>2</sup> Through this message, and similar messages which the prime minister has addressed to other religious communities on their major feast days, it would seem that Malaysia is being faithful to its reputation as a liberal and tolerant Muslim country. However, the reality is somewhat more complex.

According to the Constitution, Islam is “the religion of the Federation”.

Religion and politics are never far apart in Malaysia, a country whose constitution, in article 11, states that “every person has the right to profess and practise his religion”, but at the same time (Clause 4) confers on state and federal law the power to “control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam”.<sup>3</sup>

This interpenetration of the religious and political spheres is paralleled by a narrowly ethnic concept of citizenship – the Malaysian texts speak here of “race”. In fact, article 160 of the constitution defines a “Malay” as among other things “a person who professes the religion of Islam...” The Malays – who are said to represent 55 percent of the population – are defined as distinct from other ethnic minorities of Chinese and Indian origin. While the majority of the ethnic minorities originally from China and India are Buddhist, Hindu or Christian, they are free in principle to convert to Islam. Conversion, however, is forbidden to Malays (in the ethnic sense of the term, distinguished from Malaysians, who are the citizens of the Federation of Malaysia), since apostasy from Islam is a crime according to the law.

The decline of the United Malays National Organisation (UMNO), the ruling party since independence in 1957, further complicates the situation. At the last parliamentary elections in 2013, the coalition representing the opposition parties actually succeeded in gaining a majority

(50.87 percent of the votes cast), while the ruling coalition, the Barisan Nasional – which is dominated by the UMNO – only managed to gain 47.38 percent of the vote.<sup>4</sup> Despite its majority, owing to the composition of the electoral boundaries and the first-past-the-post majority system, the opposition coalition, the Pakatan Rakyat, only managed to gain 89 of the 222 seats in the federal parliament. Meanwhile, the Barisan Nasional retained its 133 seats, though without regaining the two-thirds majority that it lost during the elections of 2008.<sup>5</sup>

Despite being weakened in the chamber, the UMNO has nonetheless succeeded in the years since 2013 in overcoming the opposition coalition.<sup>6</sup> That said, the opposition was already undermined by major divisions between the DAP, a party that traditionally represents the Chinese, a rural party of Islamic fundamentalists (the PAS) and the PKR, the party of the charismatic opposition figure Anwar Ibrahim. Mr Ibrahim has been serving a five-year prison sentence since 2015. He was charged with “sodomy” – a crime in Malaysia – on grounds allegedly fabricated as a means of removing a political opponent.<sup>7</sup>

Since the 2013 elections, Prime Minister Najib Razak has continued to lose credibility. He has been assailed on all sides by very serious allegations of corruption. He has notably been unable to explain the crediting of the sum of 610 million Euros to his private bank account.<sup>8</sup> The political situation has deteriorated to such a degree that in December 2014 a group of 25 leading Malay Muslims, including former senior figures such as judges, ambassadors and generals, signed an open letter stating that the country was “sliding slowly towards religious extremism and violence”. They expressed their profound concern at an increase in Islamic radicalism, a situation that had been tolerated, and indeed encouraged, by the government through political calculation.<sup>9</sup> A little over a year later, the situation has not improved and, in a series of critical commentaries, from March 2016 onwards, the UK magazine *The Economist* published three damning articles about Malaysia. One of these states: “Under the prime minister, Najib Razak, the country is regressing at alarming speed. Its politics stinks, its economy is in trouble, and there are worrying signs that the government is not above stirring up ethnic and religious divisions.”<sup>10</sup>

## Incidents

Among government actions which stirred up ethnic and religious division was a plan carried out on 9<sup>th</sup> January 2015 titled: “One soul, one *Qur’an*”, an initiative sponsored by the Islamic Information Service (IIS), a prominent and influential Islamic organisation.<sup>11</sup> This programme involved the free distribution of one million copies of the *Qur’an* to the non-Muslims of Malaysia. The organisation, whose declared goal is to “make Islam known to the world”, presented this as an initiative aimed at dispelling the “misconceptions” about Islam and fighting against “Islamophobia” and the notion that Islam is “a cruel religion”. The plan was to distribute one million copies of the *Qur’an*, printed not in Arabic, but in Tamil, Chinese, English and Malay – all languages used by the various members of the non-Muslim population of Malaysia. “It will be up to the non-Muslims whether to accept [the copies of the *Qur’an*] or not”, states the communiqué released by the foundation. It adds that the identities of the people receiving the copies of the *Qur’an* “will not be revealed”.

In a country where the principal Catholic newspaper has been banned from using the word *Allah* to refer to God both in its Malay language columns and in Bibles,<sup>12</sup> and where customs officials seize consignments of Bibles from neighbouring Indonesia and insist they are labelled with the words “For Christians only”,<sup>13</sup> the deliberate dissemination of the *Qur’an* among the believers of other religions is a highly sensitive subject. The Malaysian Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) published a declaration denouncing this initiative and calling on non-Muslims to refuse to accept any *Qur’ans* offered them.<sup>14</sup>

To the MCCBCHST, a body that in recent years has become the main interlocutor with regard to the authorities on inter-religious matters, the initiative by the IIS was unacceptable because it had been carried out “in bad faith”. The stated objective of the initiative, namely to “combat misconceptions in regard to Islam” does not, they declare, “hold water, since it is not the non-Muslims but the Muslims themselves who hold false perceptions” about Islam. “It is Muslims who

are indulging in killing and condemnation of other religions and religionists. Therefore, the need is for Muslims to be educated on the true teachings of Islam and not the non-Muslims”, the communiqué of the MCCBCHST insists.

The MCCBCHST goes on to point out that Muslim Malaysians forcibly resist being brought into contact with a non-Islamic religion. These Muslims appeal to Article 11, Clause 4 of the Federal Constitution, which authorises the state to “control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam”. The MCCBCHST points out that the very point of this article is to protect the faith of Muslims. The maxim “Do not do to others what you would not like them to do to you” applies here, they say, adding that nothing in the above article of the constitution authorises Muslims to propagate their faith to non-Muslims. The group also describes the presumption that Muslims have the right to distribute the translated copies of the *Qur’an* to non-Muslims as “obnoxious”, since a similar right is not given to non-Muslims.

Various other incidents show the authorities’ desire to allow a radical tendency within Malaysian Islam in order to rally the support of a Muslim electorate otherwise tempted to turn away from a political party wearied by decades of uninterrupted power. The UMNO – now allied with the radical Islamist PAS party (formerly in the opposition)<sup>15</sup> – is now playing openly to the ‘defence’ of a national identity which it portrays as Islamic. On 12<sup>th</sup> December 2015, the Universiti Teknologi Mara (UiTM), numerically the largest university in Malaysia, organised a study seminar – reserved for Muslims – aimed at denouncing a supposed “Christianisation” of the country.<sup>16</sup> The university, with at least 4,000 academic staff and 172,000 students, is distinguished by the fact that its students are recruited exclusively from among the Malays and bumiputeras (“sons of the soil”) as part of a programme of “positive discrimination” aimed at favouring the economic and social advancement of the section of the population of Malaysia considered as ethnic Malay.

This was the second year in succession that the university had organised a colloquium of this kind. Entitled Ancaman Gerakan Pemurtadan Kristianisasi (“the tendency to apostasy and the threat of Christianisation”), the seminar was organised by the faculty of contemporary Islamic studies on the campus in Lendu, south of Kuala Lumpur in the state of Malacca. According to Najah Raihan Sakrani, a university spokesman: “The programme dealt with different historical and contemporary subjects, including the threats represented by the Islamic State, Shi’a Muslims, terrorism and indeed also the Crusades.” According to one individual who attended the seminar and who spoke anonymously to the information website Malaysiakini,<sup>17</sup> a popular topic was the use of the word “*Allah*” in the Malay language Bible – a recurring issue of controversy in recent years – as well as issues surrounding the Pope, the Christians in Indonesia and the Crusades. One of the speakers had even asserted that the Christians were trying to convert the Muslims with the help of the “Three G’s”, namely “Gold, Glory and the Gospel”.

The seminar, which was attended by several hundred people, was reserved for Muslims and held behind closed doors. The university spokesman, Najah Raihan Sakrani, said: “The Christian students were dispensed, because we did not want to arouse controversy or to have people accuse us of trying to convert them to Islam.” Among the speakers was a senior member of the police from the state of Malacca, a member of the Special Branch of the Royal Malaysian Police, a fact later confirmed and justified by the Head of Police in Malacca, who maintained that it was “legitimate for the police to take part in a colloquium whose aim was “to reinforce the faith” (*akidah*) of the Muslims, above all among the student population”.

The previous year, in May 2014, the UiTM had courted controversy when it organised another colloquium on its Shah Alam campus, near Kuala Lumpur, entitled Cabaran dan Ancaman Kristianisasi di Malaysia (“Threats and challenges posed by the Christianisation of Malaysia”). One of the speakers had even posed as a Catholic priest from Indonesia. He “explained” to the students about “the danger of Christianisation” that was threatening the south-east Asian archipelago (Indonesia and Malaysia). On that occasion too there were vehement protests among the Christian communities of Malaysia.<sup>18</sup>

When the UiTM held their seminar on a similar subject 18 months later, there were more lively reactions. On 17<sup>th</sup> December 2015 the Christian Federation of Malaysia, a body that represents almost all of the Christian communities within the country, published a communiqué to denounce this “particularly offensive” action.<sup>19</sup> The statement, signed by the Reverend Eu Hong Seng, the president of the Christian Federation of Malaysia (CFM) read: “It is entirely unacceptable that a public university should use government funds to conduct activities which aim to demonise a religious minority.” Hong Seng, a Protestant pastor, acknowledges that theoretically it would be possible, in the name of “academic freedom”, to debate such a “supposed threat of ‘Christianisation’”. However, in practice this form of debate would require an exchange of soundly-based arguments rooted in balanced and objective research, and would not be based on “unverified assertions and irrelevant anecdotes”. The federation called on the government to “put a stop” to these activities”: “as we approach the Christmas celebrations, we remind the government of Malaysia of its constitutional obligation to protect, promote and defend the freedom of religion and the basic freedoms of ALL Malaysians and not simply those of the Muslim majority of the population.”

The difficulties confronting Malaysians are not, however, limited to such propaganda campaigns aimed at disseminating Islam among non-Muslims or at fostering a sort of siege mentality among Muslims themselves on the pretext that their religion is under threat. They also relate to the issue of distinguishing between the respective roles of the civil and the *Shari’a* courts. The latter are qualified to make decisions only for Muslims, but modern social developments, notably around marriage and divorce between members of different religions, for example, can generate legal situations that are as insoluble as they are painful.

Such was the case with the ruling of the Court of Appeal of Putrajaya on 30<sup>th</sup> December 2015 concerning a couple who had divorced and were disputing custody of their children. “One doesn't know whether to laugh or cry when a civil court advises a non-Muslim to have recourse to an Islamic court in order to defend his civil rights.” This was the comment made on the aforementioned ruling by the Malaysian Indians’ Progressive Association (MIPAS), an organisation which defends the interests of the Indian majority within the Malaysian population.<sup>20</sup>

The case involves two Hindu Malaysians who married in a civil marriage ceremony in 1993. In April 2009 the husband, K. Pathmanathan, who had converted to Islam and taken the name Muhammad Riduan Abdullah, went to the family home and abducted his three children, Prasana Diksa (then aged 11 months), Karan Dinish (aged 11) and Tevi Darsiny (aged 12). He then converted them to Islam. In March 2010 a civil court granted custody to the children’s mother, but the father refused to accept this judgement, arguing that a *Shari’a* court had already granted him custody of the children. In July 2013 his ex-wife, Indira Gandhi, obtained a judgement in her favour from the High Court of Ipoh, the capital of the state of Perak in peninsular Malaysia. The judges declared it unconstitutional to force a minor to convert to another religion without the consent of both parents.

However, on 30<sup>th</sup> December 2015 the Appeal Court in Putrajaya gave its verdict in response to an appeal against the earlier judgement (of July 2013). In a majority verdict of two judges to one, the court stated that in relation to Tevi Darsiny, who was now regarded as an adult, it was up to the young woman herself to decide on her own religious faith. As for the two other children, who were still minors (the youngest, now seven, lives with her father while the other, Karan Dinish, lives with his mother), the court stated that “the determination of the validity of [their] conversion to the Islamic faith is a question of a strictly religious nature and consequently belongs exclusively to the jurisdiction of the *Shari’a* court.”

The appeal in this instance had not been made by the father of the children alone. In fact, five other parties supported him: the Office of Islamic Affairs of the State of Perak (JAIPK), the Register of Muslims, the State of Perak, the Ministry of Education and the Federal Government of Malaysia. The number and prominence of the parties supporting the (Muslim) father clearly shows the importance this affair to the Malaysian public authorities.

For the lawyer representing the plaintiff (the wife) the matter is likewise of “capital” importance; it shows how many non-Muslims find themselves facing an impasse. It is almost unthinkable that a *Shari’a* court would find in favour of a non-Muslim woman trying to prove the invalidity of the conversion to Islam of her underage children. Yet, she, as a non-Muslim cannot expect any further help from the federal court – the highest authority in the civil justice system – when it recognises the right of a father to convert his children to another religion without the consent of his wife, their mother.

Of the three presiding judges, all Muslim Malaysians, the judge who expressed the minority view in favour of the plaintiff has stated that “in order to avoid creating mistrust and in order to favour harmony” between the ethnic and religious communities who make up Malaysia, “all Malaysians should adhere strictly to the *Rukun Negara*”, the “principles of the nation” that had been established after the violent “interracial” riots of May 1969. These principles clearly state that the *Shari’a* courts do not have jurisdiction over non-Muslims.

### Prospects for Freedom of Religion

Assessment of individual cases clearly shows that the defence of religious freedom depends on the need to establish a clear hierarchy of laws.

According to the Coalition for Clean and Fair Elections, which is close to the political opposition, the judgement of the appeal court of 30<sup>th</sup> December 2015 is alarming and the Malaysian people should question its validity. Quite apart from the tragi-comic aspects of the judicial saga set in train more than 10 years earlier by Indira Gandhi, the judges of the Court of Appeal had issued a judgement that was “heavy with implications”, the coalition stated. Following the litigation over the use of the word “*Allah*” by Christians, this case in the civil law has reopened the debate on the place of the Islamic courts within the Malaysian judicial system. Faced with a population less and less inclined to allow itself to be locked into narrowly defined criteria of “racial” and religious adherence, many Malaysian jurists believe it imperative that all the respective roles of the civil and *Shari’a* courts within the country be strictly defined, just as it is clearly necessary to specify the hierarchy between the federal constitution, the federal laws and the various laws promulgated within the different states of the Malaysian Federation.

Faced with these more or less successful attempts to Islamise society, the religious minorities in Malaysia have every reason to be concerned. With the political authority now weakened, social attitudes towards religious minorities are becoming increasingly intolerant. Further, those media outlets that Malaysians still have to inform themselves are now suffering the consequences. On 14<sup>th</sup> March 2016 the online information website, The Malaysian Insider, was closed down by its financial backers “for economic reasons”.<sup>21</sup> Given that the printed media are largely controlled by the ruling authorities, this website had become one of the principal channels of independent information on Malaysia.

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<sup>1</sup> Department of Statistics - Malaysia. Official Portal ([https://www.statistics.gov.my/index.php?r=column/cthemebByCat&cat=117&bul\\_id=MDMxdHZjWTK1SjFzTzNkRXYzcVZjdz09&menu\\_id=L0pheU43NWJwRWVVSZklWdzQ4TlhUUT09](https://www.statistics.gov.my/index.php?r=column/cthemebByCat&cat=117&bul_id=MDMxdHZjWTK1SjFzTzNkRXYzcVZjdz09&menu_id=L0pheU43NWJwRWVVSZklWdzQ4TlhUUT09))

<sup>2</sup> Blog of Prime Minister Najib Razak : « Merry Christmas and a Happy New Year » (<https://www.najibrazak.com/bm/blog/merry-christmas-and-a-happy-new-year/>)

<sup>3</sup> Constitution of the Federation of Malaysia : <http://www.jac.gov.my/images/stories/akta/federalconstitution.pdf>

<sup>4</sup> *The Diplomat*, 20 June 2013 : « Difficult Post-Election Period Beckons for Malaysia » (<http://thediplomat.com/2013/06/difficult-post-election-period-beckons-for-malaysia/>)

<sup>5</sup> *BBC News*, 8 March 2008 : « Election setback for Malaysia PM » (<http://news.bbc.co.uk/2/hi/asia-pacific/7284682.stm>)

<sup>6</sup> *Asia Sentinel*, 16 June 2015 : « Fundamentalists Sink Malaysia Opposition Pact » (<http://www.asiasentinel.com/politics/fundamentalists-sink-malaysia-opposition-pact/>)

<sup>7</sup> *Malaysiakini*, 11 March 2016 : « Anwar’s plight raised before UN Human Rights Council » (<https://www.malaysiakini.com/news/333642>)

<sup>8</sup> *The Wall Street Journal* : « Malaysia Controversy » (<http://www.wsj.com/specialcoverage/malaysia-controversy>)

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- <sup>9</sup> *The Diplomat*, 25 December 2014 : « Malaysia's Moderate Voices Urge Islamic Law Reform » (<http://thediplomat.com/2014/12/malaysias-moderate-voices-urge-reform-in-islamic-laws/> )
- <sup>10</sup> *The Economist*, 5 March 2016 : « The Najib effect » (<http://www.economist.com/news/leaders/21693923-not-only-malaysians-should-be-worried-about-rotten-politics-and-divisive-prime-minister?zid=306&ah=1b164dbd43b0cb27ba0d4c3b12a5e227> )
- <sup>11</sup> *Eglises d'Asie*, 19 March 2015 : « Un million d'exemplaires du Coran distribués gratuitement aux non-musulmans » (<http://eglasie.mepasie.org/asia-du-sud-est/malaisie/2015-03-19-un-million-d2019exemplaires-du-coran-distribues-gratuitement-aux-non-musulmans> )
- <sup>12</sup> *Eglises d'Asie*, 26 January 2015 : « Polémique sur l'usage du mot 'Allah' : les chrétiens s'inquiètent de la défense de la liberté religieuse » (<http://eglasie.mepasie.org/asia-du-sud-est/malaisie/2015-01-26-polemique-sur-l2019usage-du-mot-2018allah2019-les-chretiens-s2019inquietent-de-la-defense-de-la-liberte-religieuse/> )
- <sup>13</sup> *Eglises d'Asie*, 26 June 2014 : Dans l'Etat de Selangor, les autorités religieuses musulmanes s'estiment autorisées à saisir les bibles comportant le mot 'Allah' » (<http://eglasie.mepasie.org/asia-du-sud-est/malaisie/2014-06-26-dans-l2019etat-de-selangor-les-autorites-religieuses-musulmanes-s2019estiment-autorisees-a-saisir-les-bibles-comportant-le-mot-2018allah2019> )
- <sup>14</sup> *malaymailonline*, 9 February 2015 : « Interfaith group cries foul over free Quran, advises non-Muslims against accepting » (<http://www.themalaymailonline.com/malaysia/article/interfaith-group-cries-foul-over-free-quran-advises-non-muslims-against-acc#sthash.JNvG4om2.dpuf> )
- <sup>15</sup> *Malaysiakini*, 20 December 2015 : « Umno-PAS alliance a 'reinvention' to remain relevant » (<https://www.malaysiakini.com/news/323988> )
- <sup>16</sup> *Eglises d'Asie*, 18 December 2015 : « Pour la deuxième année consécutive, un colloque à visée antichrétienne a été organisé dans une université publique » (<http://eglasie.mepasie.org/asia-du-sud-est/malaisie/2015-12-18-pour-la-deuxieme-annee-consecutive-un-colloque-a-visee-antichretienne-a-ete-organise-dans-une-universite-publique/> )
- <sup>17</sup> *Malaysiakini*, 14 December 2015 : « UiTM, police host seminar against Christianisation » (<https://www.malaysiakini.com/news/323279> )
- <sup>18</sup> *Eglises d'Asie*, 19 May 2014 : « Un faux prêtre pour dénoncer le supposé danger de la « christianisation » de la Malaisie » (<http://eglasie.mepasie.org/asia-du-sud-est/malaisie/2014-05-19-un-faux-pretre-denonce-le-suppose-danger-de-la-ab-christianisation-bb-de-la-malaisie/> )
- <sup>19</sup> *Malaysiakini*, 17 December 2015 : « Christian outrage continues over 'highly offensive' UiTM seminar » (<https://m.malaysiakini.com/news/323714> )
- <sup>20</sup> *Eglises d'Asie*, 7 January 2016 : « Une décision de justice relance le débat sur la place des juridictions islamiques dans le système judiciaire malaisien » (<http://eglasie.mepasie.org/asia-du-sud-est/malaisie/2016-01-07-une-decision-de-justice-relance-le-debat-sur-la-place-des-juridictions-islamiques-dans-le-systeme-judiciaire-malaisien> )
- <sup>21</sup> *Channel NewsAsia*, 14 March 2016 : « The Malaysian Insider closes down 'for commercial reasons' » (<http://www.channelnewsasia.com/news/asiapacific/the-malaysian-insider/2599656.html> )