

CIFORB Country Profile – *Malaysia*

Demographics

Malaysia is an ethnically and religiously diverse country with an estimated population of 31.7 million.¹ The 2010 census of Malaysia found that among Malaysian citizens, 67.4% are ethnic Bumiputera, followed by Chinese (24.6 %), Indians (7.3 %) and Others (0.7 %).

61.3 percent of the population in Malaysia identify as Muslim. Other religions professed were Buddhism (19.8%), Christianity (9.2%) and Hinduism (6.3%).

Special position of Malay:

- Article 153 of Constitution gives Malays and natives of Sabah and Srawak (collectively 'bumiputras') a 'special position', and the Yang di-Pertuan Agong (YDPA) – the monarch and head of state of Malaysia – is required to (1) generally safeguard this 'special position', and in order to do this may (2) specifically establish quotas for 'bumiputras' in: federal public service positions, federal scholarships, and federal trade or business licenses. However, article 153 also continues to state that in the exercise of this, the YDPA should not deprive any other person of any right, privilege or permit accrued or enjoyed by him or held by him.
- There has been racial tension in Malaysia ever since Barisan Nasional introduced policies in the 1970s to favour ethnic Malays. While initially put in the Constitution in order to address the poverty of Malays compared to other races, the special position has since been reduced in certain areas. For example, quotas for university admission were abolished in 2004.
- Religious identity (Islam) is tied up with Malay identity. Article 160 of Constitution defines a 'Malay' as, among other things, a person who professes the religion of Islam. Malay citizens who convert out of Islam are no longer considered Malay under the law, and therefore the Bumiputra privileges under the Constitution and the New Economic Policy are forfeited.
- Islam is the 'official religion' of Malaysia according to article 3 of the Constitution, but other religions may be practised.

Geography and Political Structure

- Malaysia is made up of two similarly sized regions, Peninsular Malaysia and East Malaysia (Malaysian Borneo), which are separated by the South China Sea.
- There are 13 states: Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Pulau Pinang, Sabah, Sarawak, Selangor, Terengganu; and one federal territory with three components – Kuala Lumpur, Labuan, and Putrajaya.
- Malaysia is a constitutional monarchy headed by a paramount ruler (usually referred to as the King) and a bicameral Parliament consisting of a nonelected upper house and an elected lower house
- Parliament consists of a Senate or Dewan Negara (70 seats; 44 members appointed by the King, 26 elected by thirteen state legislatures to serve three-year terms with a two term limit), and a House of Representatives or Dewan Rakyat (222 seats; members elected in

¹https://www.statistics.gov.my/index.php?r=column/ctwoByCat&parent_id=115&menu_id=L0pheU43NWJwRWVSZkIWdzQ4TlhUUT09

222 constituencies in a first-pass-the-post system to serve up to five-year terms)

- Prime ministers are designated from among the members of the House of Representatives; following legislative elections, the leader who commands the support of the majority of members in the House becomes prime minister (since independence this has been the leader of the United Malays National Organisation (UMNO) party)
- The Cabinet is appointed by the prime minister from among members of Parliament, with the consent of the King.
- All Peninsular Malaysian states have hereditary rulers (commonly referred to as sultans) except Melaka (Malacca) and Pulau Pinang (Penang). Sultans are elected by and from the hereditary rulers of nine of the states for five-year terms; selection is based on the principle of rotation among rulers of states.
- Malacca, Penang, along with Sabah and Sarawak in East Malaysia, have governors appointed by the government. Powers of state governments are limited by the federal constitution.
- Under the terms of the federation, Sabah and Sarawak retain certain constitutional prerogatives (e.g., right to maintain their own immigration controls).

Legal system

- Malaysia's legal system is a mix of English common law, Islamic law, and customary law.
- Highest court: Federal Court (consists of the chief justice and four judges), but Malaysia has a dual judicial hierarchy of civil and religious (Shariah/Syariah) courts.
- Article 4FC: The Federal Constitution shall be the supreme law of the federation.
- Parliament makes laws for the whole of federation with respect to any matters enumerated in the State list or Concurrent list.
- The legislature of a state may make laws for whole/any part of the state.
- Islamic law may apply with respect to a state matter, but not in the federal territories.
- Article 3 of the Constitution makes Islam the official religion, the YDPA as the head of the religion of Islam in Federal territories, and states of Malacca, Penang, Sabah and Sarawak. In the other states, every Malay ruler is the head of the Islamic religion of their respective states. The effect of this provision allows the ruler concerned to act independently in religious matters with the advice from the Majlis Agama Islam of the states, and to establish courts to adjudicate disputes involving Muslims in specific areas.

Shariah law applies to Muslims in the following areas:

1. Family laws in respect of marriage, divorce, custody and maintenance of children, and alimony.
 2. Succession and trust deeds.
 3. Criminal law, but confined to polygamous marriage, indecent dressing and behaviour, violation of the 'pillars' of Islam, and apostasy.
- While Shariah only applies to Muslims and civil law (concerning the same matters), it also applies to non-Muslims in some cases. E.g. in interreligious families, and conversion cases.

State identity

- There is a debate over whether Malaysia is a secular or 'Islamic' state. While the

Constitution does not specify that it is a secular state, it does not explicitly state that it is an Islamic state either. It was only in 2001 (44 years after independence) that Prime Minister Mahathir Mohamad made a declaration that Malaysia was an Islamic state.² However, this has not been followed by any amendment to the Federal Constitution, despite the Islamisation policy that has taken place for three decades.³

'Islamisation' policy

- UMNO party has pursued an 'Islamisation' agenda, first triggered by the resurgence of Islamic consciousness in the 1960s. This resurgence of Islamic Identity coincided with the shift in national discourse and policy to the advantage of the Malay-Muslim community in the political, economic, and cultural spheres.
- The Islamisation agenda for Malaysia was pursued in tandem with the party's increasing influence over society through the government's control of various institutions of the state. The government used state religion as a way to exert influence over the citizenry, and this control was to some extent facilitated through Islamisation.
- The prominence that Islamisation has gained can be seen in a number of controversial high profile issues, including apostasy cases. Meanwhile, the Home Ministry banned the Catholic publication 'The Herald' from using the word 'Allah'. The case reached the Federal Court in June 2014, which upheld the Home Ministry's ban on the grounds that non-Muslims use of the term would create 'confusion' for Muslims. In May 2015, the government proposed new guidelines barring Christian publications containing the word 'Allah' from peninsular Malaysia while allowing its use in the states of Sabah and Sarawak, home to many Malay-speaking Christians. However, Christian groups rejected these proposed restrictions, which also included the planned oversight of Christian publications by the Publication and Quranic Texts Control Division of the Home Affairs Ministry.

Religious Affairs

Muslim penal law:

- Two states have symbolically enacted Muslim penal laws for Muslims, but the federal government has not allowed the code to be implemented.
- A proposal to introduce a strict Islamic penal code was recently submitted by one of opposition parties, the Pan-Malaysian Islamic Party. However, the proposal has not been adopted to date, mainly due to concerns that it would create unjust dual legal punishments for identical crimes.

Legal Framework

- While the Federal Constitution states that 'every person has the right to profess and practice his religion', it gives state and federal governments the power to 'control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.' It also states 'Islam is the religion of the Federation', and, 'Parliament may by law make provisions for regulating Islamic religious affairs'.

² <http://www.themalaymailonline.com/what-you-think/article/islamic-state-dr-mahathir-mohamed>

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<https://books.google.co.uk/books?id=I4XZBAAAQBAJ&pg=PA54&dq=islamisation+malaysia&hl=en&sa=X&ved=0ahUKEwj9quaphMvOAhVkdMAKHapIB-YQ6AEINTAF#v=onepage&q=islamisation%20malaysia&f=false>

Dominance of Sunni Islam

- A 1996 law-enforced fatwa requires the country to follow only Sunni teachings and prohibits publication or distribution of material contrary to those teachings.

Education

- Islamic religious instruction is compulsory for Muslim children in public schools and non-Muslim students are required to take non-religious morals and ethics courses. Private schools may offer a non-Islamic religious curriculum as an option for non-Muslims.

International Affairs (including membership of int. organisations, UPR/treaty committees coming up etc) treaty compliance

Membership in international organisations:

- United Nations
- World Trade Organisation
- World Health Organisation

Regional Organisations:

- Association of Southeast Asian Nations (ASEAN)
- Asia Cooperations Dialogue (ACD)
- Asian Development Bank (ADB)
- Asia-Pacific Economic Cooperation (APEC)
- Asian African Legal Consultative Organization (AALCO)

Organisations with various membership criteria

- Organisation of the Islamic Conference (OIC)
- Commonwealth of Nations
- Non-Aligned Movement (NAM)
- The Group of Fifteen (G-15) (a Summit Level Group of Developing Countries)

Freedom of Religion or Belief (FoRB)

Article 11 of the Malaysian Constitution recognises the freedom of religion:

- (1) Every person has the right to profess and practice his religion and, subject to Clause (4) it.
 - (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.
 - (3) Every religious group has the right-
 - a) To manage its own religious affairs;
 - b) To establish and maintain institutions for religious or charitable purposes; and
 - c) To acquire and own property and hold and administer it in accordance with law.
 - (4) State law and in respect of the Federal Territories of Kuala Lumpur and Lubuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
 - (5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.
- The Shia population in Malaysia face restrictions from the government in terms of practising their religion. In October 2015, the Selangor State Islamic Department (JAIS)

arrested and charged sixteen persons for participating in a Shia religious ceremony, and subsequently published a warning to other Shia followers that they could be fined or jailed for practising Shia 'ideology'.

- Other sects that are also considered deviant sects are forbidden from religious assembly and worship (e.g. Ahmadiyya, and Al-Arqam), and are not permitted to speak freely about their religious beliefs.
- Non-Muslim groups often report regular difficulties in obtaining permission from local authorities to build new places of worship, leading many religious groups to use buildings zoned for residential or commercial use for their services.

ID card difficulties

- The mischaracterisation of religious identity on the formal state identity cards has restricted FoRB of religious minorities. Muslims are clearly identified on ID cards, but non-Muslims are not clearly identified. In one instance, 7,000 Hindus were reported to have been wrongly registered as Muslims, and became subject to Sharia courts for religious matters, and were expected to abide by Islamic rulings. The government is meanwhile very reluctant to change the religion (from Muslim) on ID cards. This has led to problems in cases of apostates, who want to then change their religious identity on the ID cards.
- For example, Lina Joy, who converted from Islam to Christianity in 1998, attempted to remove the religious designation of 'Islam' from her personal identity card. A Sharia court refused her request to be declared an apostate, and she appealed to the Federal Court on constitutional grounds. In May 2007, it ruled that only an Islamic Sharia tribunal could certify her renunciation of Islam, and the legitimacy of her conversion.

Forced conversions

- Children are occasionally converted to Islam at the request of one parent without the permission and consent of the other. This type of forced conversion is achieved in a relatively non-violent way, as the main individual involved in the conversion of the minor is the parent, who holds a trustworthy position. If citizens are converted by their parents before the age of 18, nothing can be done in effect to change their situation.
- Instances of forced conversions often occur in government welfare homes, and 'rehabilitation' centres or faith purification retreats, where children and young adults are made to take oaths to renounce their faith. Those who have left Islam for other religions are made to recite Islamic prayers and carry out rituals in order to force them back into Islam.

Human Rights

Freedom of expression:

The Sedition Act was amended in April 2015. The scope of offences was amended to cover electronic media, including harsher penalties such as mandatory and increased prison sentences. This Act has been used to silence government critics. Moreover, authorities continue to use the Printing Presses and Publications Act to set restrictions on and suspend media outlets and publishing houses, and ban materials critical of the government.

Freedom of assembly and association:

Various laws have been used against organisers and participants of peaceful protests. These laws include the Peaceful Assembly Act, Sedition Act, and the Penal Code. E.g. following the 1 May Workers Day rally in 2015, some protesters were charged under section 124 of the Penal Code for acts 'detrimental to parliamentary democracy.'

Arbitrary arrests and detentions:

The Prevention of Terrorism Act, passed in April 2015, allows for the detention of terrorist suspects without charge or trial for up to two years, renewable without judicial review of the reasons for detention.

The Security Offences (Special Measures) Act continues to be used to arbitrarily arrest and detain people alleged to have committed security offences. It allows for indefinite, 'preventive', detention without charge or trial, and has the potential to undermine fair trial rights.

Police and security forces:

Unnecessary or excessive use of force and allegations of torture and other ill-treatment of detainees by the police continues to be reported. Meanwhile, corporal punishment such as caning continues to be used as a form of punishment. The government has also continued to reject calls to establish an Independent Police Complaints and Misconduct Commission.

Death penalty:

The death penalty continues to be retained as the mandatory punishment for drug trafficking, murder, and discharge of firearms with intent to kill or harm in certain circumstances. Official figures indicated that 33 executions were carried out between 1998 and 2015.

Commonwealth Relationship

Malaysia hosted the tenth biennial conference of the Commonwealth Association for Public Administration and Management and the fifth Forum of Commonwealth Public Ministers in Kuala Lumpur in October 2014. It has offered to host CHOGM 2019.