



ADF INTERNATIONAL

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**MALAYSIA**

Submission by:

ADF International  
Chemin du Petit-Saconnex 28  
1209 Geneva, Switzerland

Web: [www.adfinternational.org](http://www.adfinternational.org)  
Email: [gmazzoli@adfinternational.org](mailto:gmazzoli@adfinternational.org)

## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Malaysia must protect and promote the right to freedom of religion or belief.

### (a) Right to Freedom of Religion

3. The Constitution of Malaysia guarantees freedom of religion, but it also provides that Islam is the state religion and allows for some restrictions on the practise of an individual's religion. Article 3(1) declares that ‘Islam is the religion of the Federation [i.e., Malaysia]; but other religions may be practised in peace and harmony in any part of the Federation.’
4. Malaysia has a population of approximately 32 million. As of 2010, more than 61.4% were Muslim, with that number expected to grow over the subsequent decades.<sup>1</sup> Most of these Muslims are Sunni Muslims, with Shia Islam being outlawed by decree in Malaysia.<sup>2</sup> Other religions practised in Malaysia include Buddhism (19.8%), Christianity (9.2%), and Hinduism (6.3%).<sup>3</sup>
5. As Article 160 of the Constitution of Malaysia declares, ethnic Malays are by definition those who profess Islam as their religion (and who possess certain other linguistic and cultural characteristics). Among the non-Malay indigenous and immigrant peoples, Islam, Buddhism, Christianity, and other religions are followed.<sup>4</sup> The oath of the Yang di-pertuan Agong, the Malaysian monarch and head of state, set forth in the Fourth Schedule to the Constitution, provides that, among other obligations, the head of state ‘shall at all time protect the Religion of Islam.’ The identification of Islam—specifically, Sunni Islam—as the religion of the Malaysian state and the Malay people is

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<sup>1</sup> Pew Research Center, The Future of the Global Muslim Population, January 15, 2011, <http://www.pewforum.org/interactives/muslim-population-graphic/#/Malaysia>.

<sup>2</sup> 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-potenti/>.

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

<sup>3</sup> Encyclopaedia Britannica, Malaysia, ‘Religion,’ <https://www.britannica.com/place/Malaysia/Religion>.

<sup>4</sup> Encyclopaedia Britannica, Malaysia, ‘Religion,’ <https://www.britannica.com/place/Malaysia/Religion>.

emphasized throughout the Constitution and is reinforced by the authority of the state governments in Malaysia.<sup>5</sup>

6. 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.'<sup>6</sup> Article 11(1) of the Constitution states that 'every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.' 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.'
7. Article 10(1) ensures 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).
8. Religious discrimination is also 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.'
9. Notwithstanding the constitutional protections allowing the freedom of religious practice, the freedom from compelled worship, the freedom of speech and expression, and the freedom from religion-based discrimination, Malaysia was number 23 on the 2018 World Watch List, which ranks the top 50 countries where Christians are most persecuted.<sup>7</sup>
10. Among other legal and social factors, Article 11(4)'s contemplation of and permissiveness towards state-based restrictions on propagating one's faith (the 'anti-propagation clause') contributes to this state of religious persecution. In addition to the anti-propagation clause, Article 121(1A), which states that the federal courts 'shall have no jurisdiction in respect of any matter within the jurisdiction of the Shari'a courts,' limits the effectiveness of the Constitution's religious and expressive protections.
11. Most Malaysian states have in fact outlawed conversion from Islam to Christianity.<sup>8</sup> Such state and local influence over religious matters is contemplated by the Constitution, yet it infringes on both religious rights and expressive rights. Article 121(1A)'s clause regarding the jurisdiction of sharia courts has, observers note, expanded beyond its original interpretation to include conflicts over adjudication of an individual's religious status, child conversion, and custody, and 'is now used to argue

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<sup>5</sup> See, e.g., Article 3(2), which provides that in Malaysian states which have a Ruler, 'the position of the Ruler as the head of the religion of Islam in his State...[is] unaffected and unimpaired.'

<sup>6</sup> However, this freedom from compelled religious instruction or worship is only available to adults. See Article 12(4): '(4) 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.'

<sup>7</sup> World Watch List 2018, Open Doors USA, <https://www.opendoorsusa.org/wp-content/uploads/2018/01/WWL2018-BookletNew.pdf>.

<sup>8</sup> World Watch Monitor, Malaysia, <https://www.worldwatchmonitor.org/countries/malaysia/>.

that the civil court cannot intervene in any subject matter related to Islam [within a wide range of state issues], even if the case involves non-Muslim litigants.<sup>9</sup>

12. For example, on 27 February 2018, Malaysia's highest court rejected the right of four Malaysian Christians to be recognized as adherents of Christianity, requiring such matters—which the president of the court described as apostasy—to be settled by Islamic sharia courts.<sup>10</sup> These four individuals were also ordered to undergo counseling with regard to their renunciation of Islam.<sup>11</sup>
13. Three of these four Malaysians were Christians prior to marrying Muslim spouses, and yet were not allowed to officially return to their former faith; the fourth person affected was an ethnic Malay who converted to Christianity and had been baptised in 2009.<sup>12</sup> While Article 11(4) contemplates the possibility of some restriction on propagating other faiths among Muslims, this proscription against individuals to convert and acknowledge their own religious identity is a severe rejection of the Constitution's guarantees of freedom of religion.
14. In addition to the rejection of the right of individual's religious and expressive rights, acts of violence against religious minorities, particularly Christians, occurs in Malaysia. Such acts include attacks on churches and the apparently religiously-motivated kidnapping of pastors and other individuals.<sup>13</sup>

#### **(b) International Law**

15. As a Member 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, as a UN Member, obligated to protect the human rights and fundamental freedoms of the people within its borders, freedom of religion included.
16. Although Malaysia is not a party to the ICCPR, the right to freedom of religion is widely considered a fundamental right that all States—and certainly Members of the United Nations—must guarantee. Article 18 of the International Covenant on Civil and Political Rights 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

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<sup>9</sup> See Helen Ting Mu Hung, 'The Politics of Hudud Law Implementation in Malaysia,' 4, ISEAS Working Paper, No. 4, 2016, <https://iseas.edu.sg/images/pdf/ISEASWorkingPaper4.pdf>.

<sup>10</sup> World Watch Monitor, Malaysian Federal Court refuses four people their right to affirm Christian identity, 27 Feb. 2017, <https://www.worldwatchmonitor.org/2018/02/malaysian-federal-court-refuses-four-people-right-affirm-christian-identity/>.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> See, e.g., <https://www.worldwatchmonitor.org/2018/01/malaysia-church-attacks-highlight-growth-of-islamic-extremism/> and <https://www.worldwatchmonitor.org/2018/01/malaysian-pastor-raymond-kohs-kidnap-inquiry-halted/>.

the right to retain one's religion or belief.' 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 HRC 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.'

17. Article 18 of the ICCPR does not permit any limitations on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in Article 19(1). In accordance with Articles 18(2) and 19, no one can be compelled to reveal his thoughts or adherence to a religion or belief.<sup>14</sup>
18. The Constitution of Malaysia's anti-propagation clause, which allows limits on communicating personal religious belief with Muslims in the Malaysia, restricts people from professing and practicing their faith freely, as guaranteed under international law. Laws enacted at the state and federal level under this constitutional invitation restrict religious practice (i) 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 (ii) tacitly, by stifling the growth of minority religions through restricting the free expression of their adherents, committing such religions to formal marginalized status. This clause violates Articles 2 and 26 of the ICCPR, namely, the guarantee of equal rights and freedom from discrimination on the basis of religion, and Article 27, guaranteeing the rights of religious minorities to profess and practice their faith.

### **(c) Recommendations**

19. 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. Recognize that a *de jure* freedom from compelled worship does not fulfil the right to freedom of religion or belief when conversion from a state-supported religion is forbidden;
  - c. Recognize that a limited right of freedom 'to profess and practise' one's religion, paired with legal strictures against expressing, speaking freely about, or sharing

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<sup>14</sup> Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

one's religious belief with the majority of a nation's populace, does not satisfy a nation's commitments to allow freedom of religion;

- d. Recognize that the freedom to fully manifest one's religion is a human right under international law; and
- e. Ensure that state governments and sharia courts are not allowed to undermine the federal guarantees of freedom of religion and expression that are granted by the Constitution.



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