

COUNTRY REPORT | MALAYSIA

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INTRODUCTION | MAP OF MALAYSIA



INTRODUCTION | BACKGROUND (1)

- # Federation comprising Peninsular Malaysia (West Malaysia); Sabah and Sarawak (East Malaysia)
 - 13 states and 3 federal territories
- # Peninsular Malaysia borders Thailand (north) and Singapore (south)
- # Sabah and Sarawak are on Borneo island, and shares borders with Indonesia (Kalimantan) and Brunei
- # Total land mass: almost 330,000 km²
- # Capital: Kuala Lumpur (KL)

INTRODUCTION | BACKGROUND (2)

- # Colonial rulers of then-Malaya include Portuguese (from 1511); Dutch (from 1641); British (1786-1941)
 - # Japanese occupation (1941-1945)
 - # Return to British rule (1945-1957)
 - # Independence (1957)
 - # Independence for Sabah, Sarawak and Singapore, joining Malaya to form Malaysia in 1963
 - Separation/independence for Singapore in 1965
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INTRODUCTION | BACKGROUND (3)

- ▣ **Population:** approx. 28 million: Malay (54.5%); Chinese (25%); indigenous peoples (11.8%); Indian (7.5%); others (1.2%)
 - ethnic and cultural diversity
 - preservation of national unity is of prime importance
 - ▣ **Major religions:** Islam, Buddhism, Hinduism, Christianity, Taoism, Sikhism
 - ▣ **Major languages:** Malay (official), English, Chinese dialects, Tamil, Telugu, Malayalam
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INTRODUCTION | BACKGROUND (4)

- # Currently, sixth PM, Mohd Najib bin Tun Haji Abdul Razak (since 2009): son of second PM
 - # Ruling Barisan Nasional (National Front) coalition government comprises mainly the three largest race-based political parties:
 - ✓ United Malays National Organisation (“UMNO”)
 - ✓ Malaysian Chinese Association (“MCA”)
 - ✓ Malaysian Indian Congress (“MIC”)
 - Lost two-thirds parliamentary majority, and control of five state assemblies in 2008 elections
 - Failed to regain two-thirds parliamentary majority, and Opposition still controls three state assemblies after 2013 elections
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LEGAL STRUCTURE (1)

- # Federal Constitution: supreme law of Malaysia
 - Establishment of Malaysia as a Federation, with division of powers: Federal and States
 - Constitutional monarchy – rotates amongst 9 royal households
 - “Islam is the religion of the Federation”
 - Westminster-type parliamentary government that provides for separation of powers:
 - ✓ Legislature
 - ✓ Executive
 - ✓ Judiciary
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LEGAL STRUCTURE (2)

- # Article 76(1)(a) of the Federal Constitution provides for the power of Parliament to make laws for the purpose of implementing any treaty, agreement or convention including human rights treaties
 - # Malaysia practises a “dualist” legal system to give effect to its international human rights obligations, i.e. international treaties do not automatically or immediately become law in Malaysia
 - # International obligations only become law once there is domestic implementing legislation
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LEGAL STRUCTURE (3)

- # Convention on the Rights of the Child – acceded on 17 February 1995 with reservations
 - implementing legislation: Child Act 2001
 - # Convention on the Elimination of All Forms of Discrimination Against Women – acceded on 5 July 1995 with reservations
 - constitutional amendment in force since 28 September 2001
 - no implementing legislation
 - # Convention on the Rights of Persons with Disabilities – signed on 8 April 2008 with reservations, ratified 19 July 2010
 - implementing legislation: Persons With Disability Act 2008
 - # Implementing legislation takes into account reservations
 - # Not all aspects of the treaties have been incorporated into domestic law
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CURRENT ISSUES | LIBERTY OF PERSON (1)

- # Guaranteed in Article 5 of Federal Constitution
 - # Two preventive detention laws ceased to be in force in 2012:
 - Internal Security Act 1960 abolished in 2012
 - ✓ Replaced by Security Offences (Special Measures) Act 2012: wide definition of “security offence”
 - ✓ Permits detention of 24 hours => 28 days, and denial of access to legal counsel for up to 48 hours
 - Emergency (Public Order and Prevention of Crime) Ordinance 1969
 - ✓ Ceased to be in force in June 2012
 - ✓ Citing rise in violent crime, Prevention of Crime (Amendment and Extension) Act passed in October 2013 allowing for reintroduction of detention without trial
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CURRENT ISSUES | LIBERTY OF PERSON (2)

Death penalty

- Use is mandatory in some cases (no judicial discretion permitted)
 - No official change to current position but some positive public statements have been made
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CURRENT ISSUES | FREEDOM OF ASSEMBLY

- # Guaranteed in Article 10 of Federal Constitution
- # Previously, section 27 of Police Act 1967 required permit for public assemblies of more than 3 persons
 - positive step: repealed in April 2012
- # But, Peaceful Assembly Act 2012 has limitations and prohibitions
 - Assemblies in motion, which are defined as “street demonstrations”, are prohibited
 - No permitted places of peaceful assembly have been designated
 - Prosecutions for breaches of the Act have commenced: selective prosecution?

CURRENT ISSUES | FREEDOM OF ASSEMBLY



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CURRENT ISSUES | FREEDOM OF EXPRESSION (1)

- # Guaranteed in Article 10 of Federal Constitution
 - But there are several measures available to silence dissent, including on matters relating to Islam

 - # Sedition Act
 - Announcement in July 2012 re abolition, and replacement with National Harmony Act, but no details nor update

 - # Also: Printing Presses and Publications Act 1984, Official Secrets Act 1972, Penal Code
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CURRENT ISSUES | FREEDOM OF EXPRESSION (2)

- # Amendments to Penal Code and Criminal Procedure Code
 - Offence to share/forward info of any event that undermines parliamentary democracy or which counsels disobedience of the law

 - # Amendments to Evidence Act
 - Allow presumption that a message sent from any electronic device through an Internet account will be deemed to have been sent by the owner of that device or registered user of that Internet account unless proven otherwise
 - Even owners of internet cafes could be liable?
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CURRENT ISSUES | FREEDOM OF BELIEF (1)

- # Guaranteed in Article 11 of Federal Constitution
- But there are many challenging and controversial issues, as faith is an area of contestation
- # Use of word “Allah” by non-Muslims, especially Christians who speak Bahasa Malaysia
- High Court said government ban is unconstitutional, but issue still unresolved after more than 3 years (now in Court of Appeal)
 - ✓ The Herald denied annual publication permit
 - ✓ Legal action against Malaysian Government re Christian material withheld from distribution because term “Allah” used
 - ✓ Two shipments of Bahasa Malaysia bibles “desecrated”

CURRENT ISSUES | FREEDOM OF BELIEF (2)

- # Conflict between jurisdiction of civil courts and Syariah courts in recent years
 - Real-life dilemmas: Disputes have arisen where rights are contested in situations with conversion-related issues
 - Civil court abdicating responsibility to adjudicate in matters where religion of Islam is implicated?
 - # Freedom of faith / renunciation of Islam
 - Lina Joy (converted to Christianity) and Revathi (raised as Hindu)
 - # Conversions of spouses to Islam
 - Subashini, Shamala, and Indira Gandhi: husbands converted to Islam and converted their children without spouse's consent
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CURRENT ISSUES | FREEDOM OF BELIEF (3)

Some relevant factors

✚Malaysia: multi-ethnic, multi-religious

- Malay/Muslims (60%), Chinese religions (22%), Christianity (10%), Hinduism (6%), Sikhism (1%), “others“ (1%)

✚Muslim-nonMuslim marriages prohibited

- Lina Joy, Revathi, Shamala, Subashini, Indira Gandhi

✚Different laws for Muslims in some areas

- Personal laws: governing marriage, divorce, maintenance, custody
- Offences against Islam: e.g. gambling, alcohol, not fasting, *khalwat*, etc.

✚Debate: Secular or Islamic country?

CURRENT ISSUES | FREEDOM OF BELIEF (4)

Lina Joy

- # Born Malay-Muslim, now a practising Christian
 - Applied for “Islam” to be deleted from identity card
 - # High Ct, Ct of Appeal, Federal Ct (7 years): application rejected
 - No absolute right to freedom of religion
 - # **Result:** She has renounced Islam but the State does not recognise this
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CURRENT ISSUES | FREEDOM OF BELIEF (5)

Lina Joy (cont'd)

- #Art 16(1) Of CEDAW re marriage & family life
 - Her ability to choose when and whom to marry should not be restricted by the government's administrative determinations regarding her religion
 - #Art 15(4) of CEDAW re freedom to choose residence
 - No remedy in law, therefore must leave M'sia in order to practise religion of choice, marry and have ("legitimate") children
 - #Denial of right to equality & non-discrimination
 - Compared to non-Muslim women
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CURRENT ISSUES | FREEDOM OF BELIEF (6)

Revathi

- # Ethnic Indian; parents converted to Islam
 - # She was raised by grandmother as Hindu
 - # Tried to get Syariah Ct approval for renunciation of Islam
 - Detained in rehabilitation centre for 6 months
 - Separated from husband and child
 - Child turned over to Revathi's Muslim mother
 - After release, ordered to live with her parents
 - # Violation of her rights?
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CURRENT ISSUES | FREEDOM OF BELIEF (7)

Subashini

- # Civil law marriage in July 2001; 2 sons
 - # Husband converted in May 2006
 - He converted elder son without her consent
 - He applied to Syariah Ct for divorce, custody of son
 - # She applied to civil ct to prohibit him from converting the children and from using Syariah Ct re their marriage & children
 - # Fed Ct decision: jurisdiction is with civil court but consent of one parent alone is sufficient to convert a child
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CURRENT ISSUES | FREEDOM OF BELIEF (8)

Subashini (cont'd)

- Art 16(1) of CEDAW re marriage & family life
 - Wife & husband should have same rights & responsibilities as parents, and interests of children should be paramount
 - Art 5(b) of CEDAW re family education
 - Common responsibility of men and women in the upbringing and development of their children, and interest of children is the primordial consideration
 - FC of M'sia: consent of “parent “ interpreted in the singular
 - Guardianship Act: does not apply to Muslims
 - Continuing concern for younger son
 - Denial of right to freedom of belief
 - Another example: Indira Gandhi's case
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CURRENT ISSUES | FREEDOM OF BELIEF (9)

Civil society efforts: 2 examples

#Efforts to raise awareness, open up debate and protect the rights of non-converting spouse (wife), and the children

#Article 11 coalition of NGOs

- Championing protection of Constitutional rights, including freedom of belief
- Critical of Islamisation process, and judiciary's interpretations

#JAG: Joint Action Group for Gender Equality

- Advocacy: watching brief counsel in Lina Joy's, Shamala's, Subashini's cases
 - Advocacy for law reform to protect rights of non-converting wife, and children
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CURRENT ISSUES | FREEDOM OF BELIEF (10)

Conclusion

- # Uphold fundamental right of freedom of belief equally for all
 - Regardless of what faith one chooses to professes, or not to profess
 - # Contestations do not revolve around issue of religion *per se*: Islam is not a "bad" religion
 - Rather, politicisation of the religion (Islam)
 - Misinterpretation of religion/misuse of religious principles by patriarchal institutions, e.g. judiciary, legislature, executive
 - Religion, politics, state, personal: have become very interlocked
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Current Issues | Women's Rights

■ Equality / women's rights

- lack of equality (e.g. right to convey citizenship)
 - lack of anti-discrimination legislation
 - exceptions to equality principle
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CURRENT ISSUES

Other current issues include:

- # Law enforcement-related issues
 - integrity of police, environment of impunity/lack of accountability, deaths in custody, police shootings, police brutality
 - # Election-related issues
 - integrity of Election Commission, electoral roll, constituency delineation, election petitions
 - # Issues affecting indigenous peoples
 - # Issues affecting migrants and refugees
 - # Slavery and forced labour:, eg trafficking in persons
 - # Freedom of association
 - # etc.
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