

**United Nations Human Rights Council
Universal Periodic Review
Malaysia**

Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.



United Nations Human Rights Council Universal Periodic Review of Member-State Malaysia

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Malaysia as a contribution to the Universal Period Review of UN member-state Malaysia.

1. Background

Since gaining independence from Great Britain in 1957, Malaysia has operated as a constitutional monarchy with a bicameral parliament.¹ Despite some significant barriers to opposition parties, the electoral process continues to evolve in a liberal direction. However, limits on judicial independence, arbitrary verdicts and selective prosecution, and the draconian use of the Internal Security Act have inhibited the development of a just rule of law.² Although the traditional religion of Malaysia is animism, approximately 60 percent of the population now practices Islam. The rest of the population practices Buddhism, Christianity, Hinduism, and traditional Chinese religions.³

2. Legal Framework

2.1 Constitutional Framework

Article 3 of the Federal Constitution declares Islam as the state religion, but also provides that all religions may be practiced in peace and harmony. The declaration of Islam as the state religion thus did not establish a theocracy, but was considered at independence to be a ceremonial nod to history.⁴

Article 11 of the Malaysian Constitution provides the right of every person to profess and practice his religion, including the right to propagate it. However, Clause 4 of Article 11 restricts “propagation of religious doctrine or belief among persons professing the religion of Islam.”⁵ The Malaysian Constitution also has special provisions in Article 153 for safeguarding the rights and privileges of the Bumiputra, as ethnic Malay and other indigenous peoples are collectively known. Article 160 defines an ethnic Malay as a person who “professes the religion of Islam, habitually speaks the Malay language, and conforms to Malay custom.”⁶ In Article 160, the conflation of ethnicity and religion has presented problems for the religious freedom of ethnic Malays.⁷

¹ CIA World Factbook, Malaysia.

² RELIGIOUS FREEDOM IN THE WORLD (Paul A. Marshall ed., 2008).

³ A small percentage of the population practices animism, Sikhism, and the Baha’i Faith. U.S. Department of State International Religious Freedom Report, 2007.

⁴ The supreme court (now called the Federal Court) considered the effect of Islam as the state religion in *Che Omar Che Soh v. Public Prosecutor* (1988) 2 MLJ 55, and concluded that Article 2(1) merely provided for the ceremonial role of Islam under the Constitution. The Court held that it was civil (as opposed to Islamic) law that governed the country.

⁵ Article 11 states: “Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.” Clause (4) of Article 11 states: “(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.”

⁶ According to Article 160, “‘Malay’ means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and - (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or (b) is the issue of such a person.”

⁷ While ethnic discrimination alone is a grave concern, the conflation of ethnicity and religion is particularly problematic in its effects on the freedom of conscience and the ability to change one’s beliefs. Belief in a particular religion is often influenced by the context of birth, family teaching, and communal values, but it is also and ultimately informed by personal and intellectual pursuit of truth. Ethnic discrimination is at core based on the actual or perceived physical characteristics of a person,



The most troublesome legal structure in the constitution is the parallel Sharia and civil court systems. All citizens are subject to civil laws. Non-Muslims are to be governed exclusively by civil law. Muslims are also governed by Sharia in specifically enumerated matters, usually having to do with family law (*e.g.* marriage, divorce) and property rights (*e.g.* inheritance). In those enumerated areas, Sharia courts have limited jurisdiction.⁸

Sharia's jurisdictional reach in Malaysia is supposed to extend exclusively over Muslims. However, the question of who is a Muslim has presented serious barriers to religious exercise among non-Muslims in cases dealing with conversion, burial, and other sensitive topics over which the Sharia courts claim jurisdiction. Sharia enactments, which create the Sharia courts, vary by state and are statutory constructions.⁹

2.2 International Commitments

As a member of the United Nations, Malaysia has agreed to the principles expressed in the Universal Declaration of Human Rights, which protects the fundamental right to freedom of religion or belief, including the rights to choose one's own faith. Malaysia is also a signatory to the Convention for the Elimination of Discrimination Against Women (CEDAW). As a signatory to the Vienna Convention, Malaysia is bound to adhere to the terms of CEDAW, which forms part of the corpus of Malaysian law.¹⁰ CEDAW guarantees that Malaysia must work "to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights."¹¹ This Covenant also guarantees that women and men have "the same right freely to choose a spouse" and generally seeks to eliminate inequality between men and women.¹² Unfortunately, Malaysia has not yet acceded to the International Covenant on Civil and Political Rights.¹³

3. Implementation

Despite constitutional and international guarantees for religious freedom, Malaysia has struggled to ensure religious freedom for all citizens, regardless of their ethnicity, nationality, or religion. The most impressive legal challenge in Malaysia is the relationship between civil and Sharia courts, which continue to struggle over jurisdictional questions. Additionally, religious minorities face significant discrimination and restrictions on education, publication, and propagation of their faiths.

characteristics that simply cannot adapt or change. However, what one believes according to conscience is subject to maturation and change.

⁸ For enumerations of areas where Sharia courts have jurisdiction, see 9th Schedule, List 1 (clause 4(e)).

⁹ Article 121, Clause (1) provides for civil courts. Clause (1)(A) of Article 121 then reads, "The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts." However, Article 121 does not confer jurisdiction on the Sharia Courts. Rather, the Sharia Courts must first be established by the legislature, which must then invest the state Sharia courts with jurisdiction over enumerated matters. This means that it is not for the civil courts to confer jurisdiction on the Sharia courts.

¹⁰ Although Malaysia originally made a reservation to Article 16, which relates to family life, it has withdrawn several parts of that reservation including subsections (1)(b) and (e). The CEDAW Committee further "remains convinced that reservations to article 16... are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn." Report of the Committee on the Elimination of Discrimination Against Women (Eighteenth and nineteenth sessions), at 49, para. 16-17, U.N. Doc. A/53/38/Rev.1 (1998), p. 49, para. 16-17, available at <http://www.un.org/womenwatch/daw/cedaw/reports/18report.pdf>.

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, art. 3, U.N. Doc. A/34/46 (1979), *entered into force* Sept. 3, 1981.

¹² *Id.* art. 16(1)(b)

¹³ Article 18 of the ICCPR guarantees the freedom of religion or belief.

3.1 Hybrid Legal System

Malaysia has seen a proliferation of cases in which civil courts have refused to hear the cases of non-Muslims on the grounds that Sharia courts have jurisdiction, or cases in which non-Muslims are subjected to Islamic law in the Sharia courts.

These cases are about more than jurisdictional questions. In simultaneously enforcing religious law and civil law in a multi-religious society, Malaysia has seen the gradual erosion of fundamental rights in the name of Islam in areas affecting childhood to death.¹⁴ Because non-Muslims have limited standing in a Sharia court, the integrity of due process and impartial rule of law can also be said to have been brought into question.

Below are examples of Sharia cases that have contributed to the debate over the jurisdiction of religious and civil courts:

Right to Change Religion

Lina Joy: In 2007, Lina Joy, née Azlina binti Jailiani, sought to change her legal religious identity because she converted to Catholicism, but the civil courts ruled her case was the purview of Sharia judges. Malaysia's Sharia courts recognized conversion out of Islam in only one previous case – posthumously, for a deceased woman who reconverted out of Islam to the Buddhist faith of her birth. Most potential apostate cases before the Sharia court in Malaysia have resulted in “re-education” sentences at camps that are meant to re-indoctrinate that person in the Muslim faith.¹⁵ The civil judges argued that allowing Ms. Joy, an ethnic Malay born to a Muslim family, to be declared a non-Muslim before the civil courts would “consequently be inviting the censure of the Muslim community.”¹⁶ Ms. Joy is now in hiding.

Burial Rights

Wong Sau Lan:¹⁷ The day after Wong Sau Lan died, her husband, Ngiam Tee Kong, received a letter from Malaysia's Federal Territory Islamic Council, created by the government to govern Muslim affairs, stating that Wong had converted to Islam six days before her death. The Islamic Council made this claim on the say-so of a traditional healer Wong had consulted in her final illness; the traditional header was Muslim. Under directions from the Islamic Council, the hospital where Wong died would not release her body to Mr. Ngiam unless he first agreed that she was a Muslim, which designation would mean that she would receive a Muslim burial. But Mr. Ngiam, himself a Buddhist, was adamant that his wife was baptized as a Christian in November, never converted to Islam, and remained a Christian at her death. Three weeks after Wong's death, the civil court ordered her body released to her husband only after the Islamic Council determined that her conversion was not properly carried out according to Sharia, and withdrew its case. Had the Council proceeded in its conversion claim, the case likely would have passed

¹⁴ In August 2007, Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim proposed the replacement of English common law with Sharia law. (“Minister: Study proposal on switch to Syariah law thoroughly,” *The Star*, 24 August 2007)

¹⁵ There are currently five Malaysian states that penalize apostasy by law: Perak, Pahang, Terengganu, Malacca, and Sabah. (Citation: Moahamed Azam Mohamed Adil, “Law of Apostasy and Freedom of Religion in Malaysia.” *Asian Journal of Comparative Law*, Volume 2, Issue 1, 2007)

¹⁶ JUDGMENT of Abdul Aziz Mohamad JCA, 19 September 2005. *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & 2 Ors* 2005 [CA]

¹⁷ “Hubby gets to claim ‘Muslim’ wife’s remains.” *The Sun*, 18 January 2008. Available at http://www.malaysianbar.org.my/legal/general_news/hubby_gets_to_claim_muslim_wife_s_remains.html



into the jurisdiction of the Sharia courts.

Child Custody

Subashini Rajasingam:¹⁸ Malaysia's highest court threw out a petition by Subashini Rajasingam, a Hindu, to prevent her estranged husband, Muhammad Shafi Saravan Abdullah, né Saravanan Thangathony, from registering the younger of the couple's two sons as Muslim. Mr. Shafi had already registered their other son to Islam without her knowledge and Ms. Subashini fears she will lose custody and visitation rights of both children if Mr. Shafi is permitted to "convert" their second son. Ms. Subashini's fear is well-justified. In rejecting her pleas, one of the high court judges made clear that since the father of her children is now a Muslim, Ms. Subashini must take her case to the Sharia courts, which are not bound to protect her constitutional rights.

Religious Dress

A law against "indecent dressing" by Muslim women in retail shops and restaurants was passed by the Kelantan state government in December 2006. The law requires Muslim women to wear the headscarf and conservative clothing. Even non-Muslim women are required not to dress "sexily or indecently," according to the law. Non-compliance with the dress code is punished with a fine up to \$146.¹⁹

3.2 Religious Education

The Government requires all Muslim civil servants to attend religion classes, which are approved by Government officials. Additionally, all Muslim children are forced to attend religion classes. Non-Muslim children and civil servants are not required to attend religion classes; however, non-Muslim children are required to take a moral/ethics course instead of religion class.

3.3 Religious Publications

According to an April 2005 proclamation by the prime minister, Malay-language Bibles are required to have "Not for Muslims" printed on the cover. Additionally, Malay language Bibles are only allowed in churches and Christian bookstores and are not allowed in ethnic Malay homes. Prime Minister Abdullah claimed he was responding to concerns that the Bible published in Malay would be distributed in an effort to spread Christianity among Muslim-Malays.²⁰ The restrictions could be said to be supported by the constitution's prohibitions against propagation of any religion other than Islam among ethnic Malays. According to Article 11(4) of the Constitution, states have the power to control or restrict the propagation of religion among Muslims.²¹ Nine states have legislation controlling the propagation of non-Islamic religions among Muslims.²²

¹⁸ "Malaysia court rejects Hindu bid." BBC News, 27 December 2007. Available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/7161177.stm>

¹⁹ U.S. Department of State International Religious Freedom Report, 2007.

²⁰ See <http://www.malaysiakini.com/news/35456>.

²¹ Except in the cases of Kuala Lumpur and Labuan, where federal law has control.

²² See Control and Restriction of the Propagation of Non-Islamic Religions (Johore) Enactment 1991 (Enactment 12/1991); Control and Restriction of the Propagation of Non-Islamic Religions (Kedah) Enactment 1988 (Enactment 11/1988); Control and Restriction of the Propagation of Non-Islamic Religions (Kelantan) Enactment 1981 (Enactment 11/1981); Control and Restriction of the Propagation of Non-Islamic Religions to Muslims (Malacca) Enactment 1988 (Enactment 1/1988); Control and Restriction (Propagation of Non-Islamic Religions Among Muslims)(Negeri Sembilan) Enactment 1991 (Enactment 9/1991); Control and Restriction of the Propagation of Non-Islamic Religions (Pahang) Enactment 1989 (Enactment 5/1989); Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (Enactment 10/1988); Non-Islamic Religions (Control



In February 2008, customs officials embargoed dozens of English-language Bibles at the border, causing a furor over state control of religious publications after customs officials told the woman from whom the Bibles were seized that all religious books needed to be cleared.²³

3.4 Religious Discrimination

While Article 153 of the Constitution already grants special privileges to Malay Muslims, in practice, minority religions are significantly disadvantaged and even discriminated against at times. The Government retains the right to deny a religious organization registration, which carries with it government grants and benefits. The state also maintains control over all non-Muslim places of worship and non-Muslim cemeteries and has gone so far as to destroy unregistered religious groups' property.²⁴

Under political pressure, the government has opposed what it considers to be “deviant” strains of Islam, including Shi’a, transcendental meditation, and the Baha’i faith. In June 2005, the Religious Affairs Minister stated that 22 “deviant” religious groups would be subject to arrest under the Internal Security Act, a draconian law that allows for indefinite detention without charge or trial, and potentially “rehabilitation.”²⁵

In December 2007, five Hindu Rights Action Force leaders were arrested under the Internal Security Act for their participation in a November rally for minority rights. Malaysian authorities had denied the Hindu activist group a permit for staging a protest, despite the lawful procedure with which the group proceeded. When the Hindu group decided to hold the rally nonetheless, Malaysian police intervened, using tear gas, batons, and water cannons. Outstanding charges still remain against a number of Hindu activists.²⁶

4. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Malaysia. We respectfully recommend that the UNHRC not only base its evaluation of Malaysia on constitutional assurances of religious freedom, but also on the use of legal doctrines to control religious institutions.

Malaysia should sign the International Covenant on Civil and Political Rights as a symbol of its intention to abide by international human rights standards, including the freedom of religion or belief.

The UNHRC may also wish to request more information on the use of religious law and religious courts, particularly their impact upon religious minorities, women, and children.

of Propagations Among Muslims) (Selangor) Enactment 1988 (Enactment 1/1988); Control and Restriction of the Propagation of Non Islamic Religions Enactment 1980 (Enactment 1/1980). (Citation: Moahamed Azam Mohamed Adil, “Law of Apostasy and Freedom of Religion in Malaysia.” *Asian Journal of Comparative Law*, Volume 2, Issue 1, 2007)

²³ See <http://www.msnbc.msn.com/id/22993135/> The AP has also reported on the controversy over a ban of the word “Allah” by non-Muslims.

²⁴ U.S. Department of State International Religious Freedom Report, 2007.

²⁵ U.S. Department of State International Religious Freedom Report, 2007.

²⁶ Amnesty International Report, “Malaysia: Internal Security Act Used to Punish Human Rights Activists,” 4 September 2008. Available at <http://www.amnesty.org/en/for-media/press-releases/malaysia-internal-security-act-used-punish-human-rights-activists-200809>