

**MALAYSIA:**

**3<sup>RD</sup> UNIVERSAL PERIODIC REVIEW (2018)  
STAKEHOLDER REPORT ON  
FREEDOM OF RELIGION, THOUGHT, AND CONSCIENCE**

Submission by:

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**EMPOWER** is a non-governmental organisation active in the areas of equality and non-discrimination. It plays an active part in the global movement advocating for a Feminist Internet. Most recently it has been critically engaged with Malaysia's CEDAW review process at the 69<sup>th</sup> CEDAW Session. EMPOWER is an accredited NGO with the regional 10-member Association of Southeast Asian Nations (ASEAN). It is a founder member and the Co-Secretariat of the Coalition of Malaysian NGOs in the UPR Process (COMANGO).

## **A. LEGAL FRAMEWORK**

1. Malaysia is a constitutional monarchy comprising a federation of 13 states and 3 federal territories. Hereditary Sultans head 9 of the 13 states. Once every 5 years, they vote among themselves to elect the King of Malaysia.

2. Legislative powers are vested in the Parliament (bicameral) and State Assemblies (unicameral). Once every 5 years, Malaysians above the age of 21 years vote to elect members of the House of Representatives in Parliament and State Assemblies. Members of the Senate in Parliament are not elected: the States nominate 26 and the King appoints 44 Senators on the advice of the Prime Minister.

3. Article 3(1) of the Federal Constitution provides that Islam is the religion of the federation but other religions may be practised in peace and harmony in Malaysia. The King is the head of Islam in Malaysia, the Federal Territories and in the 4 states headed by Governors, while the Sultans are the heads of Islam in their respective states.

## **B. POPULATION**

4. According to the 2010 Census, Malaysians comprise 61.3% Muslims, 19.8% Buddhists, 9.2% Christians, and 6.3% Hindus. 1.3% of Malaysians practise Confucianism, Taoism, and other tribal, folk and other traditional Chinese religions, and 0.4% other religions. It was unclear what religion 1% of Malaysians practised while 0.7% practised no religion.<sup>1</sup>

## **C. LEGAL SYSTEMS**

5. There are plural legal systems in Malaysia: Civil, Syariah and Natives. Generally, Civil law applies to everyone save and except in the areas of personal laws. In those areas, Syariah laws apply to persons professing the religion of Islam,<sup>2</sup> and natives of Sabah and Sarawak are subject to their Native laws and customs.<sup>3</sup>

6. States have increasingly enacted criminal offences against the precepts of Islam despite the existence of provisions that exist in the Penal Code criminalising such acts,<sup>4</sup> and imposed harsher sentences.<sup>5</sup>

7. Non-Muslims are rightly concerned when it can be seen that the Attorney General's Chambers Syariah Section states, "Should there be any inconsistencies between the provisions of the Federal and Syariah laws, proposals will be submitted to amend the provision so that it is consistent with Syariah laws."<sup>6</sup> This clearly shows that whether directly or indirectly, non-Muslims are affected by Syariah laws – which should only be applicable to persons professing the religion of Islam as stated in the Federal Constitution.

**D. RECOMMENDATIONS RECEIVED BY MALAYSIA ON FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION DURING ITS 2<sup>ND</sup> UPR (2013)**

8. During Malaysia's 2<sup>nd</sup> UPR, it received 6 recommendations on freedom of thought, conscience and religion.<sup>7</sup>

9. Malaysia accepted Sudan's recommendation to continue the efforts to promote inter-religious dialogues and reconcile different schools of Islamic thoughts and other religions.<sup>8</sup>

9.1. There are no reports available to the public on the number and types of inter-religious dialogues organised by the government.

9.2. Interviews with religious organisations and NGOs in Sabah and Sarawak revealed that intermittent dialogues have occurred during the period under review. They report that their relations are far less tense than those they perceive in Peninsular Malaysia.

9.3. Between 2014 to 2016, the National Human Rights Institution of Malaysia (SUHAKAM) in their Annual Reports stated that they received 12 complaints pertaining to the freedom of thought, conscience and religion. While SUHAKAM may investigate and publish its findings. It cannot provide redress to those affected.

***Recommendations:***

(i) The government should hold more frequent inter-faith dialogues where diverse groups are invited and consulted, such as women and the LBGT community.

(ii) Establish a mechanism that will enable parties affected by breaches to their right to freedom of thought, conscience and religion to obtain redress without having to resort to litigation.

10. In principle, Malaysia accepted the recommendations made by Iran and Canada to combat all forms of discrimination particularly religious discrimination and to protect religious minority groups. It also agreed to take concrete steps to promote and protect the rights of all persons to worship in peace and security without discrimination or restriction.

10.1. It is not apparent how the government has taken steps to implement these recommendations.

10.2. The National Fatwa Committee issued and gazetted a fatwa "Syiah di Malaysia" (Shia in Malaysia) in 1996 that Shia Islam was not allowed in Malaysia. During the period under review and in a continuation of harassment and arrests by the religious authorities, in September 2013 16 persons were detained and 120 inspections were carried out during investigations into the dissemination of Shia teachings in Malaysia. On 9 March 2014, 114

individuals were arrested by the Perak Islamic Religious Affairs Department and the Police to be investigated under similar charges.<sup>9</sup>

- 10.3. During the period under review, and in a case that conflates gender discrimination, and the violation of freedom of association, expression and religion, the NGO Sisters In Islam (SIS) came under attack by the religious authorities when a fatwa was issued and gazetted<sup>10</sup> that SIS, *inter alia*, had deviated from the teachings of Islam and directed the Malaysian Communications and Multimedia Commission to block SIS' website. The matter is pending at the Federal Court (Malaysia's apex court).

***Recommendation:***

- (iii) The Minister in the Prime Minister's Department in charge of Islamic Affairs should file an annual report in Parliament for debate regarding the Department's efforts to combat all forms of discrimination, particularly religious discrimination, and to protect religious minority groups in an effort to encouraging religious harmony and reconciling the different schools of thought in Islam.
11. Malaysia did not accept the recommendations from Italy and Austria to revise its legislative framework to ensure freedom of religion, including the right to change their religion.
- 11.1. There is no restraint for non-Muslims to embrace Islam, nor are there restrictions for anyone to convert from one non-Muslim religion to another non-Muslim religion.
- 11.2. During the period under review, the Federal Court in Deepa's<sup>11</sup> case finally decided that where a marriage was registered under civil law but one spouse subsequently converts to Islam, its dissolution and matters ancillary to it must be decide in the civil courts. Amendments were made to the Law Reform (Marriage & Divorce) Act 1976 in 2017 to reflect Deepa's decision, but the amendments have not come into force.
- 11.3. In Indira Gandhi<sup>12</sup> case, the Federal Court has clarified the matter that both parents must agree before a child's religion may be changed. This case is of importance as it further clarified that it is the civil, and not Syariah, courts that have the jurisdiction to review decisions made by the religious authorities in cases of conversion to Islam. However, more litigation is foreseen as the provisions in state enactments that allow for unilateral conversion of children to Islam have not been amended – setting the stage for more epic court battles.

***Recommendations:***

- (iv). Enforce the amendments to the Law Reform (Marriage & Divorce) Act 1976.
- (v). Amend the administration of Islam enactments of the states so that both parents must consent before a child is converted to Islam.

**Annexure 'A'**  
(Paragraph 8 above)

The 6 recommendations received by Malaysia during its 2<sup>nd</sup> UPR were:<sup>13</sup>

"146.97. Continue its efforts to combat all forms of discrimination particularly religious discrimination and protecting of religious minority groups (Iran (Islamic Republic of));

[...]

146.152. Revise Malaysia's legislative framework in order to ensure freedom of religion or belief for all (Italy);

146.153. Take concrete steps to implement its commitment to promote and protect the rights of all people to worship in peace and security without discrimination or restriction (Canada);

146.154. Continue its efforts to promote inter-religious dialogues and reconcile different schools of Islamic thoughts and other religions (Sudan);

146.155. Continue efforts and engage in a structured interfaith dialogue, including religious minorities (Austria);

146.156. Take measures to ensure that all persons, including Muslims, can freely exercise their right to freedom of religion and belief, without interference by the state and including the right to change their religion (Austria);

[...]"

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<sup>1</sup> [https://www.dosm.gov.my/v1/index.php?r=column/cthem&menu\\_id=L0pheU43NWJwRWVSZkIWdzQ4TihUUT09&bul\\_id=MDMxdHZjWTK1SjFzTzNkRXYzcVZjdz09](https://www.dosm.gov.my/v1/index.php?r=column/cthem&menu_id=L0pheU43NWJwRWVSZkIWdzQ4TihUUT09&bul_id=MDMxdHZjWTK1SjFzTzNkRXYzcVZjdz09) Last accessed on 29 March 2018

<sup>2</sup> Article 76, Federal Constitution, and Ninth Schedule, List II, State List, Item 1.

<sup>3</sup> Article 95B, Federal Constitution, and Ninth Schedule, List IIA, State List, Item 13.

<sup>4</sup> For example, S22 Syariah Criminal Offences (Selangor) Enactment 1995 on incest when there is already a provision in S376A Penal Code.

<sup>5</sup> For example, the punishment for theft may be amputation of the right hand under Section 10, Syariah Criminal Code (II) Enactment 1993 (Amendment 2015) whereas under S379 Penal Code the maximum punishment is 7 years imprisonment, fine and/or whipping.

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<sup>6</sup>[http://www.agc.gov.my/agcportal/index.php?r=portal2/left&menu\\_id=MWNqaHNmamN4WVJkMmp0WIRILzjdz09](http://www.agc.gov.my/agcportal/index.php?r=portal2/left&menu_id=MWNqaHNmamN4WVJkMmp0WIRILzjdz09)

<sup>7</sup> See Annexure 'A' below.

<sup>8</sup> There is no mention of Austria's similar recommendation in Paragraph 146.155 in A/HRC/25/10/Add.1/Corr.1: Report of the Working Group on the Universal Periodic Review: Malaysia .

<sup>9</sup> Long, Seh Lih, *Malaysia, Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN* at Pages 248-249.

<sup>10</sup> Issued on 17 July 2014 Ref. No.: MAIS/SU/SUU/01-2/002/2013-3(4), and gazetted on 31.07.2014 under Part III, Administration of the Religion of Islam (State of Selangor) Enactment 2003

<sup>11</sup> Viran Nagapan v Deepa Subramaniam & other appeals [2016] 3 CLJ 505

<sup>12</sup> Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak [2018] 1 MLJ 545

<sup>13</sup> A/HRC/25/10: Report of the Working Group on the Universal Periodic Review: Malaysia