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RELIGIOUS FREEDOM IN MALAYSIA

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Introduction

1. Malaysia is a multi-ethnic, multi-religious country. As at July 2015, the total population of Malaysia is estimated at 30.5 million. According to the 2010 Malaysian census, 61.3 percent of the population practices Islam; 19.8 percent, Buddhism; 9.2 percent, Christianity; 6.3 percent, Hinduism; and 1.3 percent, Confucianism, Taoism, or other religions. Some religious groups such as the Shi'a, Ahmadiyya, Baha'i, and Al-Arqam groups are deemed 'deviant' by Islamic authorities and banned.¹

2. Ethnic Malays, who are defined by the Federal Constitution ("Constitution") as Muslims, account for approximately 63.1 percent of the population in Peninsular Malaysia and 55 percent of the total population. Rural areas – especially in the east coast of peninsular Malaysia – are predominantly Muslim, and Islam is the largest religion in all states except Sarawak, where Christianity is the majority religion (a majority of 200,000). There are also large Buddhist minorities in the states of Penang and Selangor, while the second East Malaysian state of Sabah has a large Christian minority.²

3. As of December 2015, the Pew Centre's report on Global Restrictions on Religion gave Malaysia a Government Restriction Index (GRI) score of 8.0 (very high) and a Social Hostilities Index score of 5.4 (high).³

Religious Liberty is in jeopardy in Malaysia since Malaysians seeks to leave Islam are subject to the discretion of Shari'a courts.

4. The right to freedom of religion is guaranteed under Article 11 of the Constitution that provides for freedom of religion for all persons. The expression "every person" confers personal liberties on every citizens of the nation to profess and practice his religion of his choice. This includes Muslims. Judicial precedent has affirmed this interpretation.⁴

5. However, the decision by the Supreme Court (the apex court at the material time) in the Lina Joy case declared that a Muslim's right to profess and practise his religion under Article 11 of the Constitution must also comply with Islamic laws, specifically those on conversion out of Islam.⁵ This means that Muslims who wish to leave the religion of Islam would have to subject themselves to the provisions of Islamic Laws as enacted in the respective states and come under

¹ State Department Malaysia 2015 IRF Report (<https://www.state.gov/documents/organization/256331.pdf>)

US Commission on IRF Malaysia 2017 (<http://www.uscirf.gov/sites/default/files/Malaysia.2017.pdf>)

² Malaysian Demographic Info

https://web.archive.org/web/20150301154300/http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf

³http://www.globalreligiousfutures.org/countries/malaysia#/?affiliations_religion_id=0&affiliations_year=2010®ion_name=Asia-Pacific&restrictions_year=2015

⁴ Minister for Home Affairs Malaysia v Jamaluddin bin Othman [1989] 1 MLJ 369

⁵ Lina Joy v The Federal Territory Islamic Council, Government of Malaysia and the Director General of the National Registration Department [2007] 3 AMR 693

the jurisdiction of the Shari'a courts. This position is reaffirmed in a recent appeal decided by the Federal Court (now the apex court).⁶

6. This legal position is contrary to Article 18 of the Universal Declaration of Human Rights 1948 in that before a person can exercise his liberty in freedom of thought and conscience including the right to change his religion or belief, he has to satisfy the religious requirement and legality by seeking an order of apostasy from the Sharia courts.

Unclear Jurisdiction of the Sharia Courts creates practical problems for any Muslim who wish to leave the religion of Islam.

7. This creates practical problems for any Muslim who wish to leave the religion of Islam or for persons who have changed their Islamic beliefs and convictions to another religion. The following are practical problems encountered:

7.1 Not all state Islamic enactments have clear provisions for the conversion out of Islam nor do they have clear procedure for the conversion out of Islam. For those wishing to leave the religion of Islam or who have changed their religious beliefs and convictions to another religion, such persons must subject themselves to these Islamic legal uncertainties. This is clearly unjust.

7.2 The Islamic enactments have provisions which makes it an offence to [deride verses of the Al-Quran or Hadith](#) or acts that are deem to bring [insult or contempt to the religion of Islam](#). These are widely worded provisions and it is arguable that when a person leaves Islam, they fall into the ambit of such provisions making them liable for the offence of blasphemy.

7.3 Islamic enactments stipulates punishments for persons who wish to leave the religion of Islam or for persons who have changed their Islamic beliefs and convictions to another religion. In certain states and under certain circumstances, the Sharia courts may in lieu of punishments order such person to undergo counselling or rehabilitation in an approved rehabilitation centre for a period not exceeding six months.⁷

8. These practical problems illustrates the stark reality that Sharia courts in Malaysia are really ill equipped and unable to address practical problems associated with persons who wish to leave Islam and have their conversion out of Islam legally recognised. It fact, it may be argued that the present Sharia courts system perpetuate injustice in these circumstances.

⁶ The cases of Mohd Syafiq Abdullah (Tiong Choo Ting), Salina Jau Abdullah (Salina Jau) and Nur Muzdhalifah Abdullah (Jenny Peter) and Syarifah Nooraffyyza Wan Hosen vs Director of Jabatan Agama Islam Sarawak, Majlis Agama Islam, Director-General of National Registration Department and State Government of Sarawak (Federal Court). See the decision as reported in <https://www.ucanews.com/news/top-malaysian-court-refuses-to-allow-conversion-to-christianity/81656>

⁷ The States of Johor, Pahang, Penang, Sabah, Melaka, Sarawak, Selangor, Terengganu and Wilayah Persekutuan (Federal Territory) all provide for rehabilitation centres with terms for detention. See also the case of Revathi Masoosai reported at <https://www.malaysiakini.com/news/69818>

9. Further, the Sharia courts have also not uniformly or consistently dealt with such cases to the extent judicial precedent may be derived from them. It is a matter of discretion under the purview of Sharia court judges and this compounds the problem further as one Sharia court judge may rule differently in one case compared to another judge in another case. There are now four known categories of person who wish to leave Islam.

- 9.1 Non-Muslims who have been wrongly classified as Muslims in their Identity Card and due to whatever the reasons and who wish to change their religious identity and status.
- 9.2 Non-Muslims who have converted to Islam by circumstances of marriage, opportunity for scholarship and education, ignorance, etc who now no longer wish to be Muslims and are now looking to leave the religion of Islam.
- 9.3 Children whose non-Muslims parents have converted to Islam and who have to follow the religion of their parents before the age of majority (18 years) who upon attaining the age of majority now wish to leave the religion of Islam.
- 9.4 Malay-Muslims who wish to leave the religion of Islam for whatever the reasons.

10. The matter is complicated by recent developments in the state of Kelantan and Terengganu. Both states have passed the Kelantan Shariah Criminal Code II Enactment 1993 (Amended 2015) and the Syariah Criminal Offences (Hudud and Qisas) Bill 2002 (“Hudud Enactments”). The Hudud Enactment both provides for punishment for apostasy as follows:

- 10.1 Kelantan – Apostasy means the voluntarily, deliberately and aware, make an act or utter words against the aqidah in Islam. The offence is punishable by imprisonment or when deem suitable by the Shari’a court, send for rehabilitation. If no repentance is forth coming, the punishment is by death and forfeiture of property.
- 10.2 Terengganu – Definition of apostasy is the same as Kelantan except the term Muslim is substituted by mukallaf by reason of taklif (Muslims under obligation or duty). Upon discovery of the conversion, there is an opportunity to repent 3 days after discovery. If the person refuses or continues in the act, it is punishable by death and forfeiture of property.

The Expansion of the Powers of the Shari’ah Courts in Malayasia would erode religious liberty protections.

11. In May 2016, a Private Member's Bill was tabled as motion for debate in the Dewan Rakyat (Lower House of the Malaysian Parliament). The subject matter was the Shari’ah Courts (Criminal Jurisdiction) (Amendment) Bill 2016. The bill was aimed at upgrading the jurisdiction of the shari’ah courts.

12. At present, the Shari’ah Courts (Criminal Jurisdiction) Act of 1965 confers jurisdiction upon the sharia courts to adjudicate on offences against the precepts of Islam with punishment of imprisonment for a term not exceeding *three years* or with any fine not exceeding *five thousand ringgit* or with whipping not exceeding *six strokes* or with any of the combination above.

13. The bill tabled in Parliament sought to increase the present jurisdiction of the sharia courts by removing the upper limit and ceiling of punishment by allowing the sharia courts to dispense with matters relating to *offences against the precepts of Islam*.

14. At the Parliamentary sitting in October 2017, the bill was amended by reinstating an upper limit for punishments with provisions for imprisonment up to a term of *thirty years*’ jail, a fine not exceeding *one hundred thousand ringgit* and whipping of up to *one hundred strokes* of the cane or with any of the combination above.

15. Although further attempts have not been made to re-table the bill for Parliament to pass, the intention is clear. It is an act to up lift the status of the Sharia courts to a level that commensurate with the civil courts.⁸ In the long run, this dual legal jurisdiction will seek to marginalise the rights of non-Muslim minorities to the extent that the jurisdiction of the civil courts are limited to matters purely outside the domain of Islam. This is untenable given that Malaysia is a plural and multi-religious society where the rights and interest of Muslims and non-Muslims interact and intersect with one another.

The Dominance of Islamic Polity has reinterpreted the meaning of Article 3 of the Malaysian Constitution in a manner incongruent with the promotion of religious freedom.

16. Article 3 of the Constitution states that Islam is the religion of the Federation but other religions may be practiced in peace and harmony. While Islam is declared as the religion of the Federation of Malaysia, this does not mean that Malaysia is an Islamic State as generally understood.⁹ The Constitutional Commission of the Federation of Malaya (Reid Commission) reiterated that Article 3 did not affect Malaya’s position as a *secular state*.¹⁰

17. This was also the position when the Federation of Malaysia was formed with the coming together of Malaya with Singapore, Sabah and Sarawak. The Cobbold Commission and Inter-governmental Commission recorded among others the opposition in Sabah and Sarawak to make Islam the official religion of Malaysia, to which the Federal Government responded that Malaysia would remain a *secular nation* and Islam was the religion of the federation for official purposes only.¹¹

18. More recently however, Article 3 has been re-interpreted as the “basic provision” in the Constitution. This implies that all other provisions in the Constitution must be read in consonant with Article 3.¹² If Islam is the official religion of Malaysia, it follows Islamic law must be the

⁸ See <http://www.themalaymailonline.com/malaysia/article/jakim-confirms-putrajayas-plan-for-shariah-equivalent-to-federal-court>

⁹ Ahmad Ibrahim, “The position of Islam in the Constitution of Malaysia”, in A. Ibrahim, S. Siddique and Y. Hussain (eds.), *Readings on Islam in Southeast Asia* (Singapore, Institute of Southeast Asian Studies), 1985

¹⁰ Report of the Federation of Malaysia Constitutional Commission, para 168, 100

¹¹ Cobbold Report ‘Recommendations’ Section A para 148 (e)

¹² For example, see the position of ex-Chief Judge of Malaysia when he says “laws in contradiction of Islamic laws are void” in <http://www.nst.com.my/news/2017/03/224249/laws-contradiction-islamic-laws-are-void-says-former-chief-justice>. Also the position of Islamic NGO, IKSIM, which declares that Islam “as the country's official religion,

basic law of the land and Islamic legal system given the pre-eminence, with civil laws being subordinate to Islamic law. Social order and public policies must also necessarily follow the dictates and will of Islamic prescriptions and norms. The State and government must therefore shoulder the responsibility to ensure the glorious and noble standing of Islam is promoted and defended.

Other Infringement of Freedom of Religion Arising from the Push for Sharia Compliance

Unilateral Conversion

19. This happens where one spouse in a non-Muslim marriage converts to Islam and at the same time converts the children to Islam without the knowledge or consent of the non-Muslim spouse. With the Federal Court decision in the Indira Gandhi case, the non-Muslims spouse would now have some recourse to challenge the children's conversion to Islam by moving the civil courts to question if there are procedural irregularity in the process of converting the non-Muslim children to Islam.¹³

18. It is however still early to say if this ground breaking decision would become a mainstay in Malaysian jurisprudence or deemed an act of judicial overreach confined to the factual matrix of the case.

Unethical Conversion

19. These are cases where non-Muslims have been converted to Islam by dubious or questionable means. Once converted, the non-Muslims are not allowed to leave the religion of Islam unless by consent and declaration of the Sharia courts. This is discriminatory and against international norms and practices of religious freedom.

“Body Snatching”

20. These are cases where the deceased is said to have converted to Islam while alive, but the alleged conversion is doubtful or challenged by family members. In such situations, the Islamic religious authorities would disregard any protest and objections of family members and proceed to take the deceased body—usually by force—and bury the deceased as a Muslim, on the grounds that Sharia prescribed a Muslim must be buried a Muslim.

Abuses against the Shi'ites

21. These are cases where the Shi'ite community is vilified, persecuted and treated as deviants based on a fatwa that Shi'ites are deviants. Any religious practises of the Shi'ites are therefore banned and cannot be openly practised. This is against the accepted understanding and norms of freedom of religion which includes intra-religious rights and freedom

the Islamic mechanism should command the highest position, not as an alternative to the legacy of the colonial times” in <http://www.mysinchew.com/node/117289#sthash.6cE0HmGh.dpuf>

¹³ Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 3 CLJ 145

Conclusion

22. We believe that these political and legal attempts at religious hegemony should not be underestimated. Its clear intention is to make Malaysia into a more fundamentalist Islamic country with the notion of Islamic sovereignty rather than constitutional supremacy. The work of these more extreme religious actors coupled with the religious bureaucracy will lead ultimately to the erosion of Malaysia as a secular state with the protection of fundamental liberties severely weakened.

23. Malaysians are now witnessing the push by one religious group *dictating* to another religious group how it should practice and manage her own religion and state authorities *imposing* its will on religious groups.¹⁴

Recommendations

24. This coalition of stakeholders recommends the following steps, in order to establish religious freedom for all Malaysians in congruence with the country's constitutional and international legal obligation:

- 24.1 Revise Malaysia's legislative framework to give adequate protection and to ensure freedom of religion or belief for all persons, in particular religious minorities.
- 24.2 Take measures to ensure all persons, including those classified as Muslims, can freely exercise their right to freedom of religion and belief without interference by the state including the right to change one's religion. These measures should include a policy provisions to allow for an administrative process or a Standard Operating Procedure (SOP) for those who voluntarily wish to leave the religion of Islam.
- 24.3 Take concrete steps to implement Malaysia's international commitment to promote and protect the rights of all people to worship in peace and security without discrimination or restriction through education and by having compliance procedures or mechanisms with all religious groups based on the 1966 International Covenant on Civil and Political Rights, *Article 18* and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
- 24.4 Continue its efforts to promote inter-religious dialogues and reconcile different schools of Islamic thought and other religions by renouncing and nullify all actions and steps taken against "thought policing" of religious ideas, ban on publications, printings and materials that is against state sanction or official interpretation of religious dogmas.
- 24.5 Continue efforts and engage in a structured interfaith dialogue that must involve the religious bureaucrats and state Islamic leaders with religious minorities on a common and equal platform.

¹⁴ This follows from the principles enunciated by Alfred Stepan which he calls "twin toleration". See "Religion, Democracy, and the 'Twin Tolerations,'" *Journal of Democracy* 11 (October 2000): 37–57