



NGO: EUROPEAN CENTRE FOR LAW AND JUSTICE (ECLJ)

**UNIVERSAL PERIODIC REVIEW
2013**

RELIGIOUS FREEDOM IN MALAYSIA

www.ECLJ.org
4, quai Koch
67000 Strasbourg, France
Phone: +33 (0)3.88.24.94.40
Fax: +33 (0)3.88.24.94.47

RELIGIOUS FREEDOM IN MALAYSIA

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative Status before the United Nations Economic and Social Council. The purpose of this report is to highlight systematic human rights abuses in Malaysia for the 2013 Universal Periodic Review (UPR). These abuses result primarily from the Malaysian government's restrictions on religious freedom and tolerance of violence and discrimination against religious minorities. In Malaysia, the conversion from Islam to another religion is a criminal offense.¹

Government Restricts Religious Freedom and Discriminates Against Minorities

2. The 2009 UPR expressed concerns “about the rights of non-Muslims in cases involving Shar’iah law and freedom of religion.”² It recommended that the Malaysian government “continu[e] to guarantee religious freedom by taking away any impediment to the full enjoyment of this basic human right for all its citizens.”³ Article 10 of the Constitution of Malaysia provides that “every citizen has the right to freedom of speech and expression,”⁴ and “[e]very person has the right to profess and practice his religion and, subject to Clause (4) to propagate it.”⁵ Clause (4) gives state and federal governments the right to “control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.”⁶

3. Although the Constitution of Malaysia prohibits discrimination generally, it is inherently contradictory. For example, article 153 of the Constitution provides unique and exclusive educational and employment-related opportunities to Muslim Malays.⁷ The Constitution ensures that article 153 does not discriminate based on race, but provides no such protection against

¹U.S. DEP’T OF STATE, *2011 International Religious Freedom Report – Malaysia*, 3 (30 July 2012), <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dlid=192641> [hereinafter *2011 Int’l Religious Freedom Report*].

²Rep. of the Working Group on the Universal Periodic Review, Human Rights Council, 11th sess., Oct. 2009, para. 34, U.N. Doc. A/HRC/11/30 (Oct. 2009) [hereinafter 2009 Working Group Report].

³*Id.* para. 106(14).

⁴CONSTITUTION OF MALAYSIA (1957), art. 10(1)(a).

⁵*Id.* art. 11(1).

⁶*Id.* art. 11(4).

⁷“It shall be the responsibility of the [head of state] to safeguard the special position of Malays . . . in accordance with the provisions of this Article.” CONSTITUTION OF MALAYSIA, *supra* note 4, art. 153(1). The head of state

shall exercise his functions under this Constitution and federal law in such a manner . . . to ensure the reservation for Malays . . . such proportion as he may deem reasonable of positions in the public service . . . and of scholarships, exhibitions and other similar educational or training privileges or special facilities

Id. art. 153(2). “Malay means a person who professes the religion of Islam” *Id.* art. 160(2) (internal quotation marks omitted).

discrimination based on religion.⁸ Some universities, such as the University Teknologi Mara, only admit Muslim Malay students.⁹ Employment discrimination is evidenced by the fact that 95% of 1.2 million government employees are Muslim Malays¹⁰ whereas Muslim Malays, at most, comprise 50% of the Malaysian population.¹¹ As a member of the UN, Malaysia is bound by article 55 of the UN Charter, which calls for “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, *or religion*.”¹² The unique benefits accorded to Muslim Malays at the expense of other religious groups are explicitly prohibited by article 55 of the UN Charter. Under article 153 of the Constitution, the head of state is directed to provide benefits *solely* on the basis of religion, in contravention of the prescriptions of the UN Charter.

4. The Malaysian government “maintains a dual legal system, whereby Sharia courts rule on religious, family, and some criminal issues involving Muslims and other secular courts rule on other issues pertaining to both Muslims and the broader population.”¹³ However, “concerns have grown in recent years about the rights of non-Muslims when a dispute between a Muslim and a non-Muslim is heard in a Sharia[] court.”¹⁴ One example is a custody dispute case in which a Sharia court had jurisdiction over the husband because he was a Muslim convert. However, the wife was Hindu. A civil court ruled that a Sharia court had jurisdiction to hear the case, making it possible for the Sharia court to award custody of the children to the husband, while not having jurisdiction over the non-Muslim wife.¹⁵

Apostasy Laws

5. The Constitution of Malaysia defines all ethnic Malays as Muslim.¹⁶ In Malaysia, “conversion from Islam to another religion is a criminal offense, punishable by a fine or a jail term.”¹⁷ “Muslims who deviate from accepted Sunni principles [are] subject . . . to mandatory ‘rehabilitation.’”¹⁸ Additionally, the “government strictly prohibits religious groups from

⁸CONSTITUTION OF MALAYSIA, *supra* note 4, arts. 153(5), 136. “All persons of whatever *race* in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.” *Id.* art. 136 (emphasis added).

⁹*Malaysia Policy Brief: 2010-2011*, HINDU AMERICAN FOUND., 2 (2011), <http://www.hafsite.org/sites/default/files/Malaysia%20Policy%20Brief%202011.pdf>.

¹⁰*Id.*

¹¹*Malaysia*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> (last updated 5 Feb. 2013).

¹²U.N. Charter art. 55 (emphasis added).

¹³2011 *Int’l Religious Freedom Report*, *supra* note 1, at 1.

¹⁴Liz Gooch, *Clearer Limits Sought in Malaysia for Shariah Courts’ Role*, N.Y. TIMES (12 Mar. 2012), http://www.nytimes.com/2010/03/13/world/asia/13malay.html?_r=0.

¹⁵Norman Fernandez, *Subashini Case: When Judges Fail Justice*, MALAYSIAKINI (30 Mar. 2007), <http://www.malaysiakini.com/letters/65284>; *see also Court Decisions Threaten Non-Muslim Rights*, COMPASS DIRECT NEWS (6 Feb 2008),

http://www.worldwatchmonitor.org/english/country/malaysia/2008/newsarticle_5229.html/.

¹⁶“Malay means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and – [was born in Malaysia or Singapore, born to parents one of whom was born in Malaysia or Singapore, or is the issue of such a person]” CONSTITUTION OF MALAYSIA, *supra* note 4, art. 160(2) (internal quotation marks omitted).

¹⁷2011 *Int’l Religious Freedom Report*, *supra* note 1, at 8.

¹⁸*Id.* at 3.

proselytizing Muslims, although proselytizing non-Muslims is allowed.”¹⁹ Currently, there are no reported cases in which apostasy has been punished. However, “Muslims who seek to convert to another religion must first obtain approval from a Sharia court to declare themselves ‘apostates.’”²⁰ The mandatory diversion of conversion cases to Sharia courts dramatically reduces the likelihood of a Muslim being able to convert to another religion because Sharia courts “seldom grant such requests and can impose penalties . . . on apostates.”²¹ Practically, the only time Sharia courts grant conversion requests is when “non-ethnic Malay individuals who had previously converted to Islam for marriage . . . were seeking to reconvert to their previous religious affiliation after their marriages dissolved.”²² Even in these exceptional circumstances, Sharia courts deny apostasy requests.²³

6. Although Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR), as a UN member, it is nevertheless obligated to protect the fundamental rights of its citizens equally. Freedom of religion is a fundamental right, which neither the ICCPR nor the Universal Declaration of Human Rights (UDHR) limit under any circumstances,²⁴ unlike the limitations that may be placed on the freedom of expression.²⁵ Because of the general acceptance

¹⁹*Id.* at 4.

²⁰2011 *Int'l Religious Freedom Report*, *supra* note 1, at 3.

²¹*Id.*

²²*Id.* at 8; *see, e.g.*, Bridget Johnson, *Apostasy Allowed by Malaysian Court* (8 May 2008), <http://worldnews.about.com/b/2008/05/08/apostasy-allowed-by-malaysian-court.htm>.

²³*See, e.g.*, *Court Denies Woman's Appeal to Leave Islam*, WORLD WATCH MONITOR (15 Aug. 2006), http://www.worldwatchmonitor.org/english/country/malaysia/2008/newsarticle_5521.html/.

²⁴Article 18 of the ICCPR states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

International Covenant on Civil and Political Rights, 16 Dec. 1966, art 18, 999 U.N.T.S. 171 [hereinafter ICCPR]. In addition, CCPR General Comment 22 on the ICCPR states

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever 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 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

General Comment no. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18) CCPR/C/21/Rev.1/Add.4. (30 July 1993).

²⁵Article 19 of the ICCPR states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

of both the ICCPR and the UDHR, many international scholars consider the right to freedom of religion or belief as *jus cogens*, from which no derogation is allowed: “The basic elements of the freedom of religion and belief have no doubt the status of *jus cogens*, or international customary law. A state is thus obliged to respect the right regardless of ratification of international texts.”²⁶ Malaysia’s apostasy law is thus in contravention to the fundamental right to freedom of religion.

Confiscation and Destruction of Bibles

7. In March, 2011, “the government agreed to release 35,000 imported Bibles seized by customs officials and held for approximately two years [because of] a dispute over their use of the word ‘Allah’ as a translation for God.”²⁷ In January 2013 Perkasa, an Islamic political group in Malaysia, threatened to “burn Bibles [written] in the Malay language.”²⁸ This threat was spurred by a dispute over “the use of the name Allah for God in Malay Bibles.”²⁹ The “Arabic term for God has been used in Malay Bibles for more than 400 years,”³⁰ however, “many Malay Muslims claim that Allah is a sacred name for God to be used only in Islam.”³¹

Discrimination and Violence against Christians

8. In October 2012, Perkasa called for Muslims nationwide to boycott singer Jaclyn Victor because of a lyric in one of her songs that stated “all races in this country hope in you, Jesus.”³² The Secretary-general of Perkasa, Syed Hassan Syed Ali, stated that there is no right to voice an opinion in Malaysia if that opinion “hurts the feelings of others.”³³ Such an oppressive restriction on expression is directly contrary to provisions in the Constitution of Malaysia regarding freedom of expression,³⁴ and cannot be supported by the Malaysian government.

9. In January 2013, Sharafuddin Idris Shah, Sultan of the Malaysian state of Selangor, “issued a fatwa prohibiting non-Muslims from using the word ‘Allah’ in Arabic.”³⁵ The fatwa requires “the Islamic Council of Selangor and the Islamic Affairs Department in the state to take strict action against all groups that question the fatwa”³⁶ Article 10 of the Malaysian Constitution guarantees that “every citizen has the right to freedom of speech and expression,”³⁷

ICCPR, *supra* note 24.

²⁶ *Freedom of Religion*, FORUM 18, 9 (Feb. 2001), <http://www.forum18.org/PDF/freedomofreligion.pdf>.

²⁷ *2011 Int’l Religious Freedom Report*, *supra* note 1, at 11.

²⁸ *Threat to Burn Bibles in Wake of Sultans Ban on Word “Allah,”* OPENDOORS (30 Jan. 2013), <http://www.opendoorsusa.org/pray/prayer-updates/2013/01-January/Threat-to-Burn-Bibles>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Musician Accused of “Insulting Islam” for Singing Christian Lyrics in Malaysia*, INT’L CHRISTIAN CONCERN, (28 Oct. 2012), <http://www.persecution.org/2012/10/30/musician-accused-of-insulting-islam-for-singing-christian-lyrics-in-malaysia/>.

³³ *Id.*

³⁴ CONSTITUTION OF MALAYSIA, *supra* note 4, art. 10(1)(a).

³⁵ Daniel Blake, *Christians Banned from Using Word ‘Allah’ in Arabic by New Fatwa in Malaysia*, CHRISTIAN POST (10 Jan. 2013, 11:04 AM), <http://www.christianpost.com/news/christians-banned-from-using-word-allah-in-arabic-by-new-fatwa-in-malaysia-88034/>.

³⁶ *Id.*

³⁷ CONSTITUTION OF MALAYSIA, *supra* note 4, art. 10(1)(a).

and this illegal fatwa is in direct contradiction, not only to the Constitution, but also a High Court decision rendered in 2009. On 31 December 2009, Judge Lau Bee Lan of Malaysia's high court rescinded a "prohibition that forbade the Malay-language edition of the Catholic monthly the *Herald* to use *Allah* to denote the Christian God" and ruled that Malaysian Catholics and others may use the term.³⁸ This ruling was followed by violent attacks on churches, including the bombing of several churches,³⁹ and "gutting the ground floor of the Metro Tabernacle Church" in the capital.⁴⁰ The attacks included Molotov cocktails and vandalism such as splashes of black paint and thrown rocks.⁴¹ At least nine churches were attacked after the ruling.⁴²

Conclusion

10. The Malaysian Constitution, the Malaysian judicial system, and the Malaysian government permit and promote a variety of forms of religious discrimination. Article 11, Clause (4) of the Constitution impermissibly provides state and federal governments the right to unfettered control over "propagation of any religious . . . belief among persons professing the religion of Islam."⁴³ Considering that over sixty percent of the Malaysian population practices Islam,⁴⁴ this means that most religious propagation will occur among persons professing the religion of Islam. This permits severe government infringement on religious expression in these settings. The Constitution further promotes discrimination against religious minorities by providing educational and employment opportunities to Muslim Malays, while not providing the same benefits to other religious groups. Additionally, the mandatory jurisdiction of Sharia courts over conversion applications from Islam to another religion allows Sharia courts to effectively prohibit conversion from Islam. Finally, the Malaysian government has fostered an environment that is intolerant of non-Islamic religious freedom. Violence is used to protest judicial rulings, and threats of violence are used to silence expression. The 2013 UPR must stress the importance of freedom of religion and expression, and urge the Malaysian government to implement constitutional reforms and other measures to ensure that religious freedom is guaranteed to all its citizens.

³⁸Baradan Kuppusamy, *Can Christians Say 'Allah'? In Malaysia, Muslims Say No*, TIME WORLD (8 Jan. 2010), <http://www.time.com/time/world/article/0,8599,1952497,00.html>; *Church Buildings Attacked in Malaysia Following Court Decision*, COMPASS DIRECT NEWS (11 Jan. 2010), <http://www.worldwatchmonitor.org/english/country/malaysia/13906/>.

³⁹*Church Buildings Attacked in Malaysia*, *supra* note 38.

⁴⁰Kuppusamy, *supra* note 38.

⁴¹*Church Buildings Attacked in Malaysia*, *supra* note 38.

⁴²*Malaysia Defends Stance on "Allah" Dispute*, AL ARABIYA NEWS (11 Jan. 2010), <http://www.alarabiya.net/articles/2010/01/11/96980.html>.

⁴³CONSTITUTION OF MALAYSIA, *supra* note 4, art. 11(4).

⁴⁴*Malaysia*, *supra* note 11.