Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN
Malaysia
Malaysia

Formal Name | Malaysia
---|---
Capital City | Kuala Lumpur
Declared Relationship with Religion | "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation." (Article 3(1) of the Federal Constitution)²
Form of Government | Federal System
Regulation of Religion | State Powers
Total Population | 29,947,000 (2013)³

Religious Demography in 2010:⁴

<table>
<thead>
<tr>
<th>Year</th>
<th>Islam (%)</th>
<th>Buddhist (%)</th>
<th>Christian (%)</th>
<th>Hindu (%)</th>
<th>Confucianism, Taoism, Tribal/folk/ other traditional Chinese religion (%)</th>
<th>Unknown (%)</th>
<th>No religion (%)</th>
<th>Other religion (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>61.3</td>
<td>19.8</td>
<td>9.2</td>
<td>6.3</td>
<td>1.3</td>
<td>1.0</td>
<td>0.7</td>
<td>0.4</td>
</tr>
</tbody>
</table>

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1 The Malaysian Centre for Constitutionalism and Human Rights would like to thank Long Seh Lih, K. Shanmuga, Paula Tena, Khairil Zhafri and Zaharom Nain for their contribution to the research.

2 Article 3 of the Federal Constitution reads, "(1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. (2) in every State other than States not having a Ruler the position of the Ruler as the head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as head of that religion, are unaffected and unimpaired; but in any acts, observances or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity as head of the religion of Islam authorise the Yang di-Pertuan Agong to represent him. (3) the Constitution of the States of Malacca, Penang, Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong the position of head of the religion of Islam in that State. (4) nothing in this Article derogates from any other provision of this Constitution. (5) notwithstanding anything in this Constitution the Yang di-Pertuan Agong shall be the head of the religion of Islam in the Federal territories of Kuala Lumpur, Labuan and Putrajaya; and for this purpose Parliament may by law make provisions for regulating Islamic religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam."


## Religious demography by ethnic group in 2010:

<table>
<thead>
<tr>
<th>Religion</th>
<th>Malay</th>
<th>Other Bumiputera</th>
<th>Chinese</th>
<th>Indians</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Islam</td>
<td>14,191,720</td>
<td>1,347,208</td>
<td>42,048</td>
<td>78,702</td>
<td>102,334</td>
</tr>
<tr>
<td>Christianity</td>
<td>-</td>
<td>1,549,193</td>
<td>706,479</td>
<td>114,281</td>
<td>22,870</td>
</tr>
<tr>
<td>Buddhism</td>
<td>-</td>
<td>33,663</td>
<td>5,341,687</td>
<td>32,441</td>
<td>51,274</td>
</tr>
<tr>
<td>Hinduism</td>
<td>-</td>
<td>2,941</td>
<td>14,878</td>
<td>1,644,072</td>
<td>4,474</td>
</tr>
<tr>
<td>Confucianism, Taoism and Tribal/ folk/other traditional Chinese religion</td>
<td>-</td>
<td>131,407</td>
<td>218,261</td>
<td>716</td>
<td>689</td>
</tr>
<tr>
<td>Other religion</td>
<td>-</td>
<td>50,347</td>
<td>8,576</td>
<td>36,599</td>
<td>856</td>
</tr>
<tr>
<td>No religion</td>
<td>-</td>
<td>132,560</td>
<td>49,320</td>
<td>824</td>
<td>1,104</td>
</tr>
<tr>
<td>Unknown</td>
<td>-</td>
<td>84,469</td>
<td>11,387</td>
<td>192</td>
<td>5,784</td>
</tr>
</tbody>
</table>

## Changing Religious Demography (in 10 year intervals):

<table>
<thead>
<tr>
<th>Year</th>
<th>Islam (%)</th>
<th>Buddhist (%)</th>
<th>Christian (%)</th>
<th>Hindu (%)</th>
<th>Confucianism, Taoism, Tribal/ folk/ other traditional Chinese religion (%)</th>
<th>Folk#</th>
<th>Unknown (%)</th>
<th>No religion (%)</th>
<th>Other religion (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>61.3</td>
<td>19.8</td>
<td>9.2</td>
<td>6.3</td>
<td>1.3</td>
<td>N/A</td>
<td>1.0</td>
<td>0.7</td>
<td>0.4</td>
</tr>
<tr>
<td>2000</td>
<td>60.4</td>
<td>19.2</td>
<td>9.1</td>
<td>6.3</td>
<td>2.6*</td>
<td>0.8</td>
<td>0.3</td>
<td>0.8</td>
<td>0.4</td>
</tr>
<tr>
<td>1991</td>
<td>58.6</td>
<td>18.4</td>
<td>8.1</td>
<td>6.4</td>
<td>5.3*</td>
<td>1.2</td>
<td>0.1</td>
<td>1.4</td>
<td>0.5</td>
</tr>
<tr>
<td>1980</td>
<td>52.9</td>
<td>17.3</td>
<td>6.4</td>
<td>7.0</td>
<td>11.6*</td>
<td>2.0</td>
<td>0.0</td>
<td>2.1</td>
<td>0.5</td>
</tr>
<tr>
<td>1970</td>
<td>50.04</td>
<td>25.54</td>
<td>5.33</td>
<td>7.42</td>
<td>Category not included in the census</td>
<td>Category not included in the census</td>
<td>Category not included in the census</td>
<td>3.99</td>
<td>7.69</td>
</tr>
</tbody>
</table>

*These figures include only ‘Confucianism, Taoism and other traditional Chinese religion’.

# This category applies only to the years 2000, 1991 and 1980. In 2010, ‘Folk’ was combined with ‘Confucianism, Taoism and other traditional Chinese religion’.

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6 The Population Distribution and Basic Demographic Characteristic Reports do not define or explain the different religious categories.
INTRODUCTION

Malaysia is a federal state and, under the Federal Constitution, religion falls under the State List and is thus a state matter. From the time of its independence in 1957, every state has adopted Islam as the its respective official state religion. In states having a Sultan as the head of state, the Sultan is also the head of the religion of Islam. For states without Sultans, the head of Islam is the Yang di-Pertuan Agong (the King). This is provided for under article 3 of the Federal Constitution. The Sultan is empowered with all the rights and privileges as head of Islam except in matters that the Conference of Rulers agrees applies to the whole Federation. Each Sultan is assisted and advised by their respective state Islamic Religious Council (Majlis Agama Islam). Each respective state has its own Islamic Religious Department (Jabatan Agama Islam), Mufti, Fatwa Committee and Syariah Subordinate Courts and Syariah High Court. Depending on the state Syariah law, generally, Syariah court judges are appointed by the Sultan on the advice of the Islamic Religious Council.

These state machineries are responsible for regulating Islam in the following areas - succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions, and non-charitable trusts; wakafs (pious endowment), and the definition and regulation of charitable and religious trusts. They have jurisdiction only over persons professing the religion of Islam.

Beyond these state establishments, there are Federal government agencies that regulate some aspects of Islam such as banking and pilgrimages. For example, one of the functions of the Ministry of Home Affairs is to regulate the publication, printing and distribution of printed materials and to ensure the authenticity and prevent the distortion of Qur’anic texts and materials; any person who wishes to print or publish any Al-Quran text must apply for a licence from the Board of Control and Licence of Al-Quran, Ministry of Home Affairs. Also, the Department of Islamic Development Malaysia (JAKIM) under the Prime Minister’s Department is the main Federal agency managing Islamic affairs; JAKIM is tasked with three functions: formulation and standardisation of Islamic Law; Islamic coordination and administration; and coordination and development of Islamic education.

As for the judiciary, the delineation of jurisdiction of Syariah courts and civil courts can be found in article 121(1A) of the Federal Constitution, which states that the High Court shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

As regards religion other than Islam, article 3 of the Federal Constitution provides that while Islam is the religion of the Federation, other religions may be practised in peace and harmony. As such, the regulation of religion other than Islam falls within the purview of the Federal government. Different ministries in the Federal government govern different aspects of religion. For example, the Registrar of Societies (ROS), Ministry of Home Affairs is in-charge of registration of, amongst others, religious organisations; the Immigration Department provides for issuance of visas to foreign nationals, including Muslim and non-Muslim clergy.

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7 Melaka, Penang, Sabah and Sarawak.
8 A Muslim legal expert who is empowered to give rulings on religious matters.
9 For example for the state of Kelantan, Syariah Court judges are appointed by the Sultan on the advice of the State Service Commission (section 7 of the Administration of the Syariah Court Enactment 1982 (Kelantan).
10 List II (State List) of the Ninth Schedule of the Federal Constitution.
12 Section 5(1) of the Printing of Al-Quran Texts Act 1986.
The current regulation and administration of religion (as expounded by article 3 and Item 1, State List, Ninth Schedule of the Federal Constitution) is very much a by-product of British colonial policies in Malaya and political manoeuvrings by the colonial powers at that time. Article 3 of the Federal Constitution, which has given rise to contentious debate as to whether Malaysia is a secular or theocratic state stems from the time when Malaysia was about to gain independence from the British. The Reid Commission, which was tasked to, inter alia, draw up the federal constitution, had meant to make Malaysia a secular country but at the same time, it included in the constitution that Islam is the religion of the Federation; Reid Commission papers stated that this was merely for ceremonial purposes. Some have argued that this makes the Federal Constitution a hybrid one – it does not create an Islamic state but it contains provisions that allow the state to establish or maintain Islamic educational institutions; and it allows for the formation of Syariah courts.

As regards the position of the Sultan as the head of Islam in each state in Malaysia in article 3(2) to (5) of the Federal Constitution, this is rooted in the 1874 Treaty of Pangkor between the British and the Sultans where the Sultans' powers were removed except in two areas – Islam and adat (Malay custom). The carving out of Islam and Malay custom from the rest of the political arena of the Sultan also provided the template of reserving Islam as the religion of the state and hence the Sultans saw themselves as the protector of Islam and the Malay culture.

To give practical effect to the Sultan's power over Islam and Malay custom, the British created a bureaucratic and legal machinery to ensure that the Sultans are able to implement their directives in a systematic way. This started with the codification of Islamic law followed by the establishment of a system of administration of Islamic law - Syariah courts were established to administer Muslim affairs, muftis, kadis and Imams were officially appointed as state personnel and each state had a Majlis Agama Islam dan Adat Istiadat Melayu (Council of Islamic Religion and Malay Customs) and a Jabatan Hal Ehwal Agama Islam (Department of Religious Affairs).

Co-opting the religious bodies and personnel into bureaucratic machinery meant that their salaries were paid from the state budget, they were empowered with an elevated status and given the official power to govern the religion, such as offering the right to religious instruction (tauliah)

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to religious teachers and issuing fatwas.\textsuperscript{21} This marked a significant departure from its traditional role where these religious personnel/bodies relied on income from donations, gifts and zakat and fitrah payments.

This Federal-state division of powers in relation to Islam (as explained above) has been a point of contention of late, particularly in two areas – Islamic civil law and Islamic penal law in terms of state assemblies enacting Hudud laws.\textsuperscript{22}

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

1. Ratified Conventions

Malaysia is party to three main international human rights conventions.\textsuperscript{23}

<table>
<thead>
<tr>
<th>International Document</th>
<th>Year of Signature</th>
<th>Year of Ratification / Accession</th>
<th>Reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</td>
<td>N/A</td>
<td>1995</td>
<td>Articles 9 (2), and 16 (1) (a), (c), (f) and (g)</td>
</tr>
<tr>
<td>Convention on the Rights of the Child (CRC)</td>
<td>N/A</td>
<td>1995</td>
<td>Articles 2, 7, 14, 28 paragraph 1 (a) and 37</td>
</tr>
<tr>
<td>Convention on the Rights of Persons with Disabilities (CRPD)</td>
<td>2008</td>
<td>2010</td>
<td>Articles 15 and 18</td>
</tr>
</tbody>
</table>

For both CEDAW and CRC, some of the reservations made were on the basis of religious grounds - for CEDAW, Malaysia declared that the accession is “subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law...”, with the majority of the reservations made pertaining to family matters in article 16 of CEDAW. Reservations were made to article 16(1)(a) on the same right to enter into marriage; article 16(1)(c) on the same rights and responsibilities during marriage and at its dissolution; article 16(1)(f) on equal rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children; and article 16(1)(g) on equal rights to choose a family name, profession and occupation.\textsuperscript{24} In July 2010, Malaysia withdrew its reservations to articles 5(a),


\textsuperscript{22} ‘Document of Destiny the Constitution of the Federation of Malaysia’, pp. 133 and 145.


\textsuperscript{24} The Government of Malaysia declares that Malaysia’s accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia. With regard thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 9 (2), 16 (1) (a), 16 (1) (c), 16 (1) (f) and 16 (1) (g) of the aforesaid Convention. In relation to article 11 of the Convention, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only’, United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed 24 March 2014.
2. Dualism and the Incorporation of International Obligations

Malaysia adopts a dualist approach to international law and which requires an Act of Parliament before international human rights conventions are directly applicable in Malaysia. Thus far, no specific law has been passed to incorporate CRC, CEDAW and the CRPD into domestic law, although parts of the CRC are reflected in the Child Act 2001. Furthermore, the Constitution was amended in 2001 to include gender as a prohibited basis for discrimination under article 8(2) of the Federal Constitution, with the stated aim of complying with Malaysia’s CEDAW obligations.

Whilst there are no structured mechanisms to implement these international human rights conventions, the government has taken steps to streamline compliance and implementation of its obligations under international human rights conventions, including creating specialised committees to implement obligations and monitor compliance.28

The Malaysian courts have conventionally taken a strict interpretation of the dualist system adhered to by Malaysia26 and have held that domestic law takes precedence over customary international law and treaty law.30 A recent Court of Appeal decision in Air Asia Berhad v Rafizah Shima Binti Mohamed Aris31 held that the provisions of CEDAW could not be enforced in Malaysia without express incorporation into domestic law by an act of Parliament.


30 The Human Rights Commission of Malaysia Act 1999 (SUHAKAM Act 1999) makes reference to the Universal Declaration of Human Rights (UDHR); section 4(4) of the 1999 Act states that “regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution”. In the case of Mohd. Ezam bin Mohd Noor v Ketua Polis Negara and Anor Appeal [2002] 4 MLJ 449, pg. 514, the Federal Court, in discussing section 4(4) of the SUHAKAM Act 1999, held that the UDHR is not a convention subject to the usual ratification and ascension requirements for treaties and since the principles are only declaratory in nature, they do not have the force of law or binding on member states.

In two landmark cases - *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and 5 others*, 32 and *Indira Gandhi d/o Mutho v Perak Registrar of Converts, Perak Islamic Religious Department, State Government of Perak, Ministry of Education, Government of Malaysia, & Patmanathan s/o Krishnan*, 33 the courts seem to indicate a departure from this strict dualist stance. In *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and 5 others*, the High Court for the first time held that even though CEDAW has not been incorporated into domestic law, the Court is compelled to interpret the principle of gender equality in article 8(2) of the Federal Constitution in light of Malaysia's international obligations under CEDAW; the appeal against the judgement of the High Court was withdrawn by the Attorney-General's Chambers.

In the *Indira Gandhi* case, the High Court held that ratification of CEDAW, public statements by government ministers and the Bangalore principles meant that Malaysia is bound to give legal effect to the rights in CEDAW. The Court went further to state that the Universal Declaration of Human Rights (UDHR) is part of the corpus of Malaysian law as section 4(4) of the Human Rights Commission of Malaysia Act 1999 requires the Human Rights Commission of Malaysia (SUHAKAM) to have regard to the UDHR to the extent that it is not inconsistent with the Federal Constitution. The High Court judge held that articles 18, 26, and 29 of the UDHR is not inconsistent with the Federal Constitution. The appeal of the High Court decision is pending at the Court of Appeal.

### B. Domestic Laws and Policies

**Constitutional provisions on freedom of thought, conscience and religion**

Article 11(1) of the Federal Constitution guarantees every Malaysian the “right to profess and practice his religion”, and article 12(3) provides that all persons have the right not to receive instruction in or take part in any ceremony or act of worship of a religion other than one’s own religion. The Federal Constitution also provides that religious freedom cannot be abrogated even in times of emergency. 34

The Federal Constitution also prohibits discrimination on the grounds of religion in various areas:

- Article 8 of the Federal Constitution prohibits discrimination on the basis of religion generally;
- Article 12(1)(a) specifically prohibits discrimination on the grounds of religion in the administration of any educational institution maintained by a public authority, particularly in the admission of pupils or students or the payment of fees; and
- Article 12(1)(b) of the Federal Constitution prohibits discrimination on the basis of religion in the provision of financial aid (from funds of a public authority) for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside Malaysia).

Furthermore, the Federal Constitution guarantees every religious group the right to manage its own religious affairs, establish and maintain institutions for religious or charitable purposes, as well as to acquire and own property and hold and administer it in accordance with law (article 11(3)). Religious groups also have the right to establish and maintain institutions for religious education of children (article 12(2)).

33 [2013] 7 CLJ 82 (HC).
34 Article 150(6A) of the Federal Constitution.
The right to religious freedom under article 11 is qualified by sub-article (5), which provides that the right to profess and practice one's religion may be restricted by general law relating to public order, public health or morality.

The courts have shied away from providing a concrete definition of the limitations of “public order, public health or morality” listed in article 11(5) of the Federal Constitution.

i. National security

In *Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals*, the courts merely held that the executive (i.e. the Minister) is the sole judge of what is “national security” and that the test of what amounts to national security is a subjective one.

Although the Syariah courts have not provided a definition of national security, in *Pendakwa Syarie Pulau Pinang v. Azemi Aziz & Anor*, the Syariah High Court in Penang elaborated on the notion of “security” which it divided into five areas: religion, life, dignity, property and lineage. The Syariah Court held that deviant teachings will lead to an erosion of the Muslim faith and practice, which is contrary to the true Islamic teachings, and that distortions of faith may contribute to the collapse of family institutions and destabilisation of individual life. This would result in a society that is not proactive and will eventually affect the country’s political and economic stability.

ii. Public order

The courts have only provided a hint of the elements of public order - in *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors*, and *Darma Suria Risman Saleh v. Menteri Dalam Negeri Malaysia & Ors*, it was held that public order is not necessarily antithetical to disorder but would include considerations of “public safety”, “danger to human life and safety” and “disturbances of public tranquillity”.

iii. Peace and harmony

In the recent case of *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* (the *Herald* case), the Court of Appeal appeared to read into the Constitution a further restriction on the religious freedom of non-Muslims. It held that the words “peace and harmony” in article 3(1) of the Federal Constitution was intended to “protect the sanctity of Islam as the religion of the country and also to insulate against any threat faced or any possible and probable threat to the religion of Islam... the most possible and probable threat to Islam, in the context of this country is the propagation of other religion to the followers of Islam”. The Court also held that “potential disruption of the even tempo of the community” is an acceptable ground to restrict freedom of expression and freedom to practice one's religion.

In sum, several provisions in the Federal Constitution, case law, as well as other domestic laws that restrict the right to the freedom of thought, conscience, and religion in Malaysia, could possibly violate international standards of religious freedom. One such restriction is found in Article 11(4) of the Federal Constitution, which prohibits the propagation of religion other than Islam to persons...
professing the religion of Islam.40 (See below for a more detailed discussion on this prohibition.)

1. Freedom to adopt, change or renounce a religion or belief; and freedom from coercion

a. Persons professing religion other than Islam

There are no restrictions for persons converting out of their religion (other than Islam) or converting into Islam. Non-Muslims are free to recant their religion or belief, replace one’s religion or belief with another or to adopt atheistic views, or to convert to another religion, in accordance with article 18(1) of the ICCPR.

Generally, non-Muslims are not coerced to embrace or leave a particular religion. However, there is anecdotal evidence of individuals being subjected to physical and emotional coercion to convert to Islam, usually with the inducement of monetary and other rewards.

In Thayalan,41 a young man alleged that he was kidnapped, beaten up and tortured and threatened with death if he did not convert to Islam and marry the sister of the four men who alleged kidnapped him. Thayalan and their sister had a relationship and she claimed to be pregnant.

In Ragu,42 the accused alleged that while he was in his practical wiring class, he was abruptly taken away by two religious teachers and the administrator and brought to the Selangor Islamic Council. He was there for about three hours and was reportedly forced to sign documents that showed that he had embraced Islam and given a new name, Muhammad Ashraf Abdullah. Ragu claimed that he signed the document as he was afraid that if he did not, the school would fail him.

Also, the Native Solidarity of Sabah alleged that the government was organising mass conversions through fraudulent means, taking advantage of the illiteracy and the Sabahans’ poverty-stricken conditions to trick people into thinking that they will bring welfare and aid.43 In addition, the said organisation pointed out that Sabahans who have a “bin” or “binti” in their names are automatically listed as Muslims in their national identification card by the National Registration Department as a matter of policy, regardless of the religion of that person.

b. Persons professing Islam

For Muslims, the process of leaving Islam is often difficult and cumbersome. This situation is further complicated by the negative connotation attached to the term “apostasy” since it implies that the person concerned has committed an offence and must be judged according to religious laws.

Different states have different laws, procedures (if any) and punishment for persons intending to leave Islam; some states allow apostasy although detention for rehabilitation is a pre-requisite (Negeri Sembilan, Melaka and Sabah), while others do not allow apostasy at all (Terengganu). In Terengganu, apostasy is a capital offence but to date, there have been no known convictions. See Annex 1 for the specific provisions in the different state Syariah laws pertaining to apostasy.

The majority of states allow the Syariah court to declare a person no longer a Muslim but there is no corresponding procedure to allow a Muslim to leave Islam (Kelantan, Perlis, Perak, Johor, Kedah, Selangor and Penang). The Syariah courts have held that this provision does not allow anyone

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40 Article 11(4) of the Federal Constitution states, “... except that this right does not include the right to propagate any religious doctrine or belief among persons professing the religion of Islam; State law and federal law may control or restrict proselytisation to Muslims”.

41 Ipoh High Court Originating Summons.


to renounce Islam. In *Majlis Agama Islam Pulau Pinang lwn. Siti Fatimah Tan Abdullah*, the Syariah Court of Appeal held that section 61(3)(b)(x) of the 2004 Administration of the Religion of Islam (Penang) 2004 does not allow anyone to renounce Islam. Taking into consideration section 107(1) of the 2004 Enactment, the word “no longer” in section 61(3)(b)(x) of the 2004 Enactment does not allow anyone to renounce Islam; instead, it refers to persons who have already taken the declaration of faith (syahadah) but whose status (whether they had put to practice the conditions and requirements embodied in the syahadah) was as yet unascertained. If that person refuses to fulfil the conditions, the Syariah court may declare that person no longer a Muslim. However, if that person complies with the conditions of the syahadah, he or she becomes a Muslim as a matter of course. This is because, in cases of apostasy, a person must be shown to be a genuine Muslim prior to his riddah (apostasy).

The Syariah Court of Appeal further stated that, “clothing the Syariah Court with jurisdiction to grant leave to anyone to abandon the religion of Islam is abhorrent and repugnant to the principles of Hukum Syarak.”

Recently, the Minister in the Prime Minister’s Department, Jamil Khir Baharom, stated (in Parliament) that there have been no apostasy applications by Muslims through the Syariah courts in the past 10 years.

There are a number of reported cases of coercive practices employed by religious authorities to ensure that a Muslim continues to profess the religion of Islam. Coercive methods have also been used on persons who have contravened Syariah law. These coercive practices are codified in Syariah state laws and are usually in the form of detention for rehabilitation or a sentence of imprisonment and are sometimes enforced with the help of the police. Examples of such cases include *Revathi Masosai*. Revathi was an ethnic Indian and was born to Muslim parents who gave her the name Siti Fatimah binti Ab Karim. Revathi married a Hindu man called Suresh in a traditional Hindu marriage and the couple had an infant daughter. As the marriage cannot be registered under the Law Reform (Marriage and Divorce) Act 1976 and the National Registration Department refused to register the baby, Revathi submitted to the jurisdiction of the Syariah court and asked the court permission to renounce Islam. The Syariah court ordered Revathi to be detained at the Ulu Yam Aqidah Rehabilitation Centre, Selangor, for six months. Throughout her detention, she continued to assert that she was a Hindu and did not want to live as a Muslim. While in detention, Revathi’s Muslim mother obtained a Syariah court order granting her custody of Revathi’s daughter; the order also directed the police to assist in enforcing the order. On 26 March 2007, the police, Revathi’s mother and Islamic enforcement officials went to Suresh’s house and took the infant away. The Syariah court released her from detention and dismissed her application to leave Islam and ordered her into the custody of her father; Revathi was 28 years old at that time.

Similarly in *Kamariah Ali & Yang Lain lwn Kerajaan Negeri Kelantan & Satu Lagi*, Kamariah and three others affirmed statutory declarations renouncing Islam. They were subsequently convicted by the Syariah High Court for failing to comply with the sentence of the Syariah Appeal Court to report every month to express their repentance.

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44 [2009] 1 CLJ (Sya) 162.

45 Section 107(1) of the 2004 Enactment states, “Kehendak-kehendak yang berikut hendaklah dipatuhi bagi pemelukan sah agama Islam oleh seseorang: (a) orang itu mestilah mengucapkan dua kalimah Syahadah dalam bahasa Arab secara semunasabahnya jelas; (b) pada masa dia mengucap kalimah Syahadah itu, orang itu mestilah sedar bahawa kalimah itu bermakna “Aku menjadi saksi bahawa tiada Tuhan melainkan Allah dan aku menjadi saksi bahawa Nabi Muhammad s.a.w. ialah Pesuruh Allah”; dan pengucapan itu mestilah dibuat dengan kerelaan had orang itu sendiri”.

In *Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor*, in the first set of charges, the applicants claimed that they apostatised and were convicted by the Syariah court and sentenced to jail. Their imprisonment orders were subsequently set aside (by the Syariah Court of Appeal) and ordered to appear at the Kadi’s office every month for three years, and were required to repent (*melafazkan taubat*). Subsequently, the applicants, in a purported move to oust the jurisdiction of the Syariah court, swore under oath that they had apostatised; this brought about fresh charges of apostasy against them (second charges). They were then remanded and the court subsequently detained them. The Syariah court then sentenced the applicants to three years’ imprisonment pursuant to section 102 of the Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994.

c. Successful applications to be declared a non-Muslim

Despite the strict laws and the difficult process, courts have declared individuals non-Muslims. However, there are very few such cases and are allowed only in very specific circumstances – either on a technicality or when the person had been brought up as a non-Muslim. There are no cases dealing with genuine changes of belief or faith.

In the case of *Nyonya Tahir*, the Negeri Sembilan Islamic Religious Council and two others applied for a declaration of a deceased person’s religious status, namely, whether she was a Muslim at the time of her demise. The Syariah High Court of Seremban held that she was not a Muslim at the time of her death, even though she was brought up as a non-Muslim. When she was 18 years old, she married a non-Muslim (Chinese), lived a life of a Chinese, eating pork, worshipping idols, embracing and practicing Buddhism, and bearing children, all of whom were non-Muslim. In addition, she executed a statutory declaration renouncing Islam. It was interesting that the Syariah High Court judgment explained the three ways of leaving Islam – first is through his or her act, a person worships other God apart from Allah; the second way is if a person utters the words that shows his or her *kekufuran* (impiety); and third, *iktikad* or that he or she believes in his heart that he or she is no longer a Muslim.

In *Majlis Agama Islam Pulau Pinang lwn. Siti Fatimah Tan Abdullah*, the applicant converted to Islam when she married an Iranian. She later decided to revert to Buddhism when her husband left her and applied to the Syariah High Court of Penang for a declaration that she was no longer a Muslim and for her Certificate of Conversion to be revoked. During the trial, her admission that she professed Islam solely only to get married and that she continued to engage in idol worshipping thereafter was unchallenged. The Syariah Court of Appeal held that she failed to comply with section 107(1)(b) of the 2004 Enactment and the conditions of her *syahadah*. As such, her declaration of faith did not constitute a valid conversion into Islam and, since she was not a Muslim, she could not be accused of apostasy.

d. Wide definition of “Muslim”

Item 1 of the State List, Ninth Schedule of the Federal Constitution specifically allows Islamic laws to be applied and enacted only over “persons professing the religion of Islam”, with no mention of the word “Muslim”. However, over the years, the application of Islamic law has been expanded from “persons professing the religion of Islam” to “Muslims”. The latter definition includes a wider class of persons; under it, a person who may not personally profess the religion of Islam may nonetheless be regarded as a Muslim. For example, the Administration of Islamic Law (Federal Territories) Act 1993 defines a Muslim as:

49  [2004] CLJ (ISL) 204.
50  Islamic judge.
51  [2006] 1 CLJ (Sya) 335.
52  *Siti Fatimah Tan Abdullah*, para. 45–46.
(a) a person who professes the religion of Islam;
(b) a person either or both of whose parents were, at the time of the person's birth, Muslim;
(c) a person whose upbringing was conducted on the basis that he was a Muslim;
(d) a person who has converted to Islam in accordance with the requirements of section 85;
(e) a person who is commonly reputed to be a Muslim; or
(f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written.

Other state Syariah laws have similar provisions.

Widening the definition of those who may be subjected to Islamic law is problematic as Syariah law may apply to persons who do not necessarily profess Islam. This would be inconsistent with an individual's freedom of religion guaranteed in article 11 of the Federal Constitution since Islamic law should only apply to adherents of the religion of Islam.53

The courts have not expressly included atheism and non-religion in their interpretation of freedom of religion though Article 11 presumably protects persons claiming to be atheists or professing no religion. However, this presumption would only apply to non-Muslims since they are free to change their religion whereas Muslims wishing to express atheistic or non-religious beliefs, must first go through the hurdle of leaving Islam first (see above).

2. Right to Manifest One's Religion or Belief

a. Freedom to worship

i. Persons professing religion or belief other than Islam

Generally, Malaysians enjoy the freedom to worship in Malaysia. Save for specific groups (Falun Gong, communist followers – see below), most religious and belief communities are free to worship or assemble in connection with a religion or belief and make, acquire and use the necessary articles related to rites or customs of their religion or belief.

- Falun Gong. In 2005, it was reported that 17,000 copies of the Chinese-language weekly Epoch Times June issue, which supports the spiritual movement Falun Gong and critiques China's communist policies, were seized by the court.

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54 In Lina Joy, the High Court and the Federal Court did not consider the meaning of the word “profess”.
55 [2004] 3 CLJ 409 (FC).
57 [2006] 4 CLJ 513.
the Ministry of Home Affairs. In mid-2010, the Falun Gong community complained to SUHAKAM about interference in their activities – according to their complaint, the police disrupted their art exhibition and group exercise in a public park; they also complained that they were stopped from peacefully protesting at the Chinese Embassy in Kuala Lumpur by the Federal Reserve Unit (FRU).

**Communism.** There seems to be low tolerance for followers of communism, possibly due to the history of the Communist Party of Malaysia (CPM) in Malaysia. For example, in 2011, before the Emergency Proclamations were repealed, the Minister in the Prime Minister’s Department, Dato’ Seri Mohamed Nazri, stated that the Emergency Ordinance was needed as communism is still a threat to national security. When Chin Peng, the exiled leader of CPM died in Thailand in 2013, two men who arrived from Bangkok were detained and arrested; the police seized books, CDs and a cap with the communist emblem.

Literary works related to communism have also been banned. In May 2006, the Ministry of Home Affairs banned the movie, “The Last Communist”, a semi-musical documentary movie based on the life of Chin Peng; the ban was provoked by a local newspaper Berita Harian denouncing the film as a glorification of communism. From the same filmmaker (Amir Muhammad), the authorities also banned the film “Village People Radio Show”, a documentary about former Malay-Muslim Communists living in exile in Southern Thailand; the Film Censorship Board banned the film for being sympathetic towards communism. Similarly, the film “New Village”, which tells a love story between a village girl and a young communist guerrilla, and offers a glimpse into the lives of Chinese citizens during the Malayan emergency, was banned by the authorities.

Most religious communities may establish and maintain institutions for religious purposes. This is guaranteed by Article 11(3)(b) of the Federal Constitution. There are no mandatory registration requirements for a person to practise his or her religion, apart from registration to acquire legal personality and related benefits. Religious communities may form a society and register under

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the Societies Act 1966. Apart from registering as a society, religious communities may establish a private trust (registration is unnecessary) by way of a trust deed/declaration, a charitable trust, or a company.

Generally, registration may be refused if the proposed institution is likely to be used for unlawful purposes or any purpose prejudicial to/ incompatible with peace, welfare, security, public order, morality, national security or public interest. There are no known cases of outright refusal based on religion save for a few allegations that the Registrar of Societies refused to register Jehovah’s Witnesses and The Church of Jesus Christ of Latter-day Saints (Mormons).

ii. Persons professing Islam

Sunni Islam of the Shafi’i school is the official and legal form of Islam practised in Malaysia; non-Sunni Islamic communities find it difficult to exercise their freedom to worship. Their teachings are perceived by the National Fatwa Committee as against the teachings of Sunni Islam and should not be tolerated. A number of such communities have been banned and some of their followers have been arrested and detained (see below).

In 1996, the National Fatwa Committee held that Shia Islam is not allowed in Malaysia; this fatwa prohibiting Shia in Malaysia was gazetted (hence in force) in 11 states. Since then, there have been several reports of arrest of Shia followers:

- In 1997, seven Shia followers were detained for spreading their teachings;
- In 2001, six Shia followers were arrested under the (then) Internal Security Act 1960 (ISA);
- In December 2010, more than 200 Shiites including Iranians and Pakistanis were arrested by the Selangor Islamic Religious Department (JAIS) as they observed Ashura, the Shiite holy day commemorating the death of the Prophet Muhammad’s grandson Ali;
- In May 2011, four Shiites were arrested at a lunch celebrating the birthday of Fatimah Zahra, the daughter of Prophet Muhammad;
- In September 2013, religious enforcement authorities detained 16 people and carried out 120 inspections in connection with those identified as linked to the dissemination of Shia teachings in the country;

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66 A trust for charitable purposes must be non-profit, prohibited from political/trade union activities and come within one of four categories: - relief of poverty; advancement of education; advancement of religion; other purposes beneficial to the community.

67 Section 24(2)(a) of the Companies Act 1965 permits a public company with limited liability to be formed for the purposes of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community.


- On 9 March 2014, the Perak Islamic Religious Affairs Department and the police arrested 114 individuals for their alleged involvement in the Shia religious community.72

According to the government, there are approximately 1,500 Shia followers in Malaysia73 and the Minister in the Prime Minister’s Department Datuk Seri Jamil Khir Baharom said that 139 cases were being monitored.74

Apart from Shias, a review of fatwas issued by the National Fatwa Council show that a number of other religious communities have been banned and their activities proscribed; such groups were regarded as false, misguided, aberrant as their teachings and beliefs deviate from Sunni Islam. Such groups include the Al-Arqam group lead by Haji Ashaari Muhammad,75 Ayah Pin,76 Tal Tujuh group,77 black metal groups,78 the teachings of Azhar bin Wahab,79 Tariqat Naqsyabandiah Al-Aliyyah Syeikh Nazim Al-Haqqan led by Syeikh Nazim,80 teachings of Wahdatul Wujud,81 the teachings of the Al-Mas Syed Mohamad Al-Masyhor group,82 and Tarekat Naqsyabandiah Khalidiah Kadirun Yahya.83

At state level, the various state fatwa committees have prohibited other groups and communities, viewing the teachings of these communities as false, misguided, aberrant, and a deviation from Sunni Islam. For example:

- In the state of Johor, the teachings of Kumpulan Layar Bahtera has been banned;84

- In Kedah, Selangor and Kelantan, the teachings of Tok Hussin Janggut/Ahmad Laksamana have been prohibited;85

- In Kelantan, the teachings of Awang Teh bin Kamal (Pak Teh Selamat) and Hassan Anak Rimau have been prohibited;86

- In Melaka, the teachings of Asalama religion, Zamre bin Ab. Wahab, Hassan bin Jont, Haji Abdul Hadi, Hakikat Insan, Qadiani and Hasan


74 Ibid.


Anak Rimau have been banned;\textsuperscript{87} 
- In Perak, the teachings of \textit{Cahaya} Qursani, Hassan bin Jonit and the Al-Maunah group have been prohibited on the same grounds;\textsuperscript{88} 
- In Penang, the teachings of Tok Husin Janggut, Laduni Ramatullah, and Tok Mat Janggut were declared as teachings that deviate from Islam;\textsuperscript{89} 
- In Sabah, three groups have been prohibited – Qadiani, Tuan Haji Uyat Utun and Nasrul Haq;\textsuperscript{90} 
- In Selangor, a number of groups and their teachings have been prohibited by the state fatwa committee; these groups include the teachings of Zamree bin Ab. Wahab, Haji Banuar bin Roslan, Ahmadiah. Qadiani, Syed Muhamad Al-Masyhor, Tarikat Samaniah Ibrahim Bonjol, \textit{Tujuh Pimpinan} Hamzah bin Embi, Jahar bin Dumin (\textit{Ilmu Hakikat}), Nordin bin Putih, and Haji Ghazali bin Otheman;\textsuperscript{91} and 
- In Kuala Lumpur, the following teachings have been prohibited – Tariqat Hasan Anak Rimau and Ayah Pin, Haji Kahar bin Haji Ahmad Jalal, Abdul Rahim bin Abdul Razak, Mohd. Seman al-Banjari, Ahmadiah/Qadiani led by Mirza Ghulam Ahmad, Juruzon bin Abd. Latif, Tijah@Khatijah binti Ali, and Nordin Putih and \textit{Kumpulan} Ikhwan.\textsuperscript{92} 

The sole acceptance of Sunni Islam in Malaysia appears to be sanctioned by the country’s leaders. In December 2013, Prime Minister Najib Razak declared at the general assembly of his party, the United Malays Nationalist Organisation (UMNO), that UMNO’s constitution would be amended to indicate that Islam in Malaysia is of \textit{Sunna wal Jamaah} or the Sunni sect of Islam.\textsuperscript{93} Other factions of UMNO went further to call for an amendment to the Federal Constitution to reflect this. However, the chairman of the National Fatwa Committee recently stated that whilst Shia teachings conflict

with Sunni teachings, Shias are not infidels and they are still part of the Islamic community.94

iii. Narrow interpretation of the right to profess and practise his/her religion

The Malaysian civil courts have either avoided dealing with this constitutional question or have explicitly excluded the right of a Muslim to renounce his or her religion from the ambit of freedom of religion. In Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor,95 in deciding whether the applicant’s rights pursuant to article 11(1) of the Federal Constitution had been infringed (the applicants had apostatised), the High Court held that “the act of exiting from a religion is certainly not a religion, or could be equated with the right ‘to profess and practise’ their religion. To seriously accept that exiting from a religion may be equated to the latter two interpretations, would stretch the scope of article 11(1) to ridiculous heights, and rebel against the canon of construction.”

In Kamariah Ali & Yang Lain Iwn Kerajaan Negeri Kelantan & Satu Lagi,96 the court appeared to vacillate. When Kamariah Ali and three others wanted to renounce Islam, she sought a declaration and habeas corpus relief from the civil courts. The High Court held that article 11 of the Federal Constitution did not give Muslims the right to choose his or her religion. Since the four had not obtained permission from the Syariah court to renounce Islam, they must still be considered Muslim and their renunciation a matter within the jurisdiction of the Syariah court. On the other hand, the Court of Appeal appeared to acknowledge that there was a right to renounce Islam but this right was subject to provisions of Islamic law. The Federal Court dismissed the appeal and held that the issue as to whether the appellants had the right to convert out of Islam was irrelevant because at the material time, they had not yet signed the declaration renouncing Islam and so must be considered as still Muslim. The Federal Court further held that it did not need to answer the question as to whether article 11(1) of the Federal Constitution, which guarantees freedom of religion, includes the right of a Muslim to leave Islam.

iv. Blasphemy, deviant behaviour, heretic

Civil law does not define the words “blasphemy”, “deviant behaviour”, or “heretic”. Similarly, state Syariah laws do not use or define “blasphemy”, “deviant behaviour”, or “heretic”. There are no reported cases where courts have defined “blasphemy” or “heretic”.

However, Syariah and civil courts have used the term “deviant teachings” in a few cases. In Fathul Bari Mat Jahya & Anor v. Majlis Agama Islam Negeri Sembilan & Ors,97 the petitioner was arrested by religious enforcement officers from the Negeri Sembilan Department of Islamic Affairs, for conducting a religious talk without tauliah (credentials). The petitioners were charged under section 53(1) of the Syariah Criminal Enactment (Negeri Sembilan) 1992.98 The petitioners challenged section 53(1) of the 1992 Enactment as invalid on the grounds that it is not an offence against the precepts of Islam as provided in Item 1, State List, Ninth Schedule of the Federal Constitution. The Federal Court held that section 53 of the 1992 Enactment is necessary to “protect the integrity of the aqidah (belief), syariah (law), and akhlak (morality), which constitutes the precepts of Islam. This measure is to stop the spread of deviant teachings among Muslims… it

95 [2004] CLJ (ISL) 204.
96 Kamariah Ali (FC), pg. 422.
97 [2012] 1 CJ (Sy) 233.
98 Section 52(1) reads, “(1) Any person who engages in the teaching of religion without a tauliah from the Tauliah Committee under subsection 118(3) of the Administration Enactment, except to members of his family at his place of residence only, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or both.”
is commonly accepted that deviant teachings is an offence against the precepts of Islam’. The Federal Court went further to state that, “it is necessary in this day and age for the authority to regulate the teachings or preaching of the religion in order to control, if not eliminate, deviant teachings. The integrity of the religion needs to be safeguarded at all cost”.

In Pendakwa Syarie Pulau Pinang v. Azemi Aziz & Anor,99 the first accused person was charged under section 4(1)100 and 6(b) 101 of the Syariah Criminal Offences (State of Penang) Enactment 1996, which prohibits dissemination of false claims against Islam and performing rituals that had transgressed Hukum Syarak. The Penang Syariah High Court regarded the accused’s claim that he was the last messenger of Allah, that a stick he had was from Allah and that he could communicate with Allah directly; and that the accused performed a ceremony where he had put a stick between the toes of the second accused person and then claimed that he had spoken directly to God through the medium of the second accused person, amounted to “deviant teachings”. In convicting both accused persons, the Syariah High Court held that there were elements of syirik (elements of worship contrary to the teachings of Islam); the false claims were misleading and damaging to the public’s faith, especially since the first accused did not have a strong religious background to talk about the supernatural openly. The said Syariah Court further regarded the offences as fitnah (defaming the religion), extreme and outrageous and that the accused persons have indirectly insulted the ruler of the state as the official head of Islam.

b. Places of worship

Generally, all religious communities in Malaysia have the freedom to establish and maintain places of worship, subject to the usual requirement of a planning permission, which are applicable to all buildings, regardless of their use or purpose. However, two areas of concern have arisen over the years – first, the demolition of Hindu temples and churches build on indigenous peoples’ land; and second, building approvals.

i. Demolition of places of worship

Section 295 of the Penal Code provides that whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

However, between 2003 and 2006, SUHAKAM received 11 memoranda and complaints pertaining to the demolition of places of worship, of which, six were Hindu Temples, three were Mosques, one each a Church and a Buddhist Temple; these demolitions had been carried out mostly because these structures were built without approval of the local authority or on government or private land without the owner’s permission.102 There were also other reported incidents of demolition or threats of

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100 Section 4(1) reads, “(1) Any person who teaches or expounds in any place, whether private or public, any doctrine or performs any ceremony or act relating to the religion of Islam shall, if such doctrine or ceremony or act is contrary to Islamic Law or any fatwa for the time being in force in the State of Penang, be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof”.
101 Section 6(b) reads, “Any person who - (b) states or claims that he or some other person knows of unnatural happenings, such declaration, statement or claim being false and contrary to the teachings of Islam, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.”

demolition of places of worship by the state. This is discussed further in the next section.

Other reported incidents of demolition or threats of demolition of places of worship include:

**Hindu temples**

- In February 2006, the 65-year-old Sri Ayyanar Sathiswary Alayam Temple in Jalan Davies (in Kuala Lumpur) was demolished as it was along the path of the RM2 billion Stormwater Management and Road Tunnel (SMART) project;
- In April 2006, the century-old Malaimel Sri Selva Kalianman Temple was demolished, supposedly to give way to a government project in the area;
- In June 2006, the Om Sri Siva Balakrishnan Muniswarar Temple was threatened with demolition;\(^\text{103}\)
- In October 2007, the 60-year-old Sri Maha Mariamman Hindu temple in Shah Alam was demolished just before Deepavali;
- In September 2007, the Ampang Jaya Municipal Council (MPAJ) demolished the Sri Maha Kalianman Temple;\(^\text{104}\)
- In November 2013, the prayer hall of the 101-year old Sri Muneswarar Kaliyaman Hindu Temple was demolished by City Hall officers; allegedly without prior notice.\(^\text{105}\) The Natural Resources and Environment Minister commented that only the stalls and sides of the temple were demolished.\(^\text{106}\) The Federal Territories Minister added that the temple committee had accepted the offer of RM50,000 and a plot of land to relocate but did not want to move; this was denied by the temple’s management committee. The temple committee also alleged that some statues were damaged and four small shrines were demolished.\(^\text{107}\) Whilst emotions were running high due to the sensitive nature of the issue, it was made worst when the Federal Territories Minister stated that the temple was used as a facade for illegal activities and that bottles of liquor were found in the temple bathroom;\(^\text{108}\)

**Church**

- In February 2014, the Chinese Methodist Church Kepong received a second eviction notice from the Kuala Lumpur City Hall (DBKL), and were given 14 days to move out or “face demolition”; the notices dated 19 September 2013 and 4 February 2014 stated that the church had violated section 26 of the Federal Territories (Planning) Act 1982 for changing the land use from institutional centres (kindergarten) and to places of worship (church) without a Development Order. The Pastor-in-charge said the committee had applied for land use change with the local authority after they received the first notice, and expressed surprise that the second eviction notice was issued.

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Churches in indigenous peoples’ settlement

- In 2005, the state demolished a chapel build by the Orang Laut of Kuala Masai, Johor, on the grounds that the church was sitting on state land. The matter was brought to court and in August 2012, the Court of Appeal affirmed the High Court’s decision (in August 2010) to award damages to the Orang Asli Laut of Kuala Masai, Johor, after ruling that the authorities unlawfully demolished their Christian chapel. The High Court ruled that the state government had trespassed on their land and failed to honour a pledge made in 2001 to list the site as customary native land (Khalip bin Bachik v Pengarah Tanah & Galian Johor);

- In June 2007, an indigenous church of the Temiar Orang Asli in Gua Musang, Kelantan, was demolished; the state claimed that the building was constructed on state land without proper approval. The Temiar Orang Asli disputed this, arguing that the building was built on land belonging to village headman Pedik bin Busu, who had donated it to the Temiar Orang Asli community. The indigenous community sued the government and sought a declaration that they have rights to the land as well as the constitutional guarantee to practice their religion. They also sought a declaration that in demolishing their church, local authorities violated their rights under the Aboriginal Peoples Act 1954 and the Federal Constitution. The court held that Orang Asli were owners of the land in question although documents of title were yet to be issued, and entitled to punitive damages for the wrongful demolition of the church. Damages were ordered as the local authority demolished the church prior to the 30-day notice period it had given to the Orang Asli community pursuant to section 425 of the National Land Code and section 72 of the Street, Drainage and Building Act 1974, respectively. However, the court also held that the lands were not customary lands and that the Christian religion is not part of the plaintiffs’ ancestral practices;

- In January 2008, the Orang Asli community in Kuala Krau, Pahang, brought a judicial review application in the High Court over the Temerloh land and district office’s decision to deny the supply of electricity and water to their church building. The local authorities explained that the refusal was because the church was built without the permission of the local authority and that the land on which the church stands.

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113 [2013] 5 CLJ 639.


115 Yg Dipertua Majlis Daerah Gua Musang v Pedik Bin Busu [2010] 5 MLJ 849.

has not been reserved or gazetted as *Orang Asli* land;\(^{117}\)

- In August 2008, a private developer tried to demolish an over 80 year old Catholic church/chapel in Triang, Pahang; it was reported that 1,000 people protested the demolition;\(^{118}\)

- In August 2010, the *Orang Asli* who are Christians in Temiar village, Pos Pasik, Kelantan, were informed by the Department of *Orang Asli* Affairs (JHEOA) to stop building works of a church on their land. This denial of permission was pursuant to a letter from the head of the village merely informing the JHEOA that the *Orang Asli* were building a church on their land;\(^{119}\)

- In May 2012, the Alor Gajah Municipal Council wanted to demolish a chapel built on ancestral/customary land in *Kampung Machap Umboo*; The Melaka High Court granted leave to challenge the decision of the said municipal council.\(^{120}\)

ii. Symbol of worship

There have been isolated incidents of desecration of symbols of worship. In August 2009, about 50 residents of Shah Alam protested the proposal to relocate a Hindu temple to their area; the protestors gathered after the Friday prayers, placed the head of a cow outside the gates of the state secretariat building for a short period before removing it; the cow is considered sacred to Hindus.\(^{121}\) Twelve persons pleaded guilty to a charge of illegal assembly and were fined RM1,000 each; two of them were fined for a sedition charge, one of whom was sentenced to a week imprisonment as well.

iii. Building approvals and conditions attached

Section 70 of the Street, Drainage and Building Act 1974 requires approval of local authorities before the construction of any building, including places of worship. Some complaints have been reported on the rather cumbersome process of obtaining approval from local authorities for the construction of religious places of worship. For example, the building plan for the construction of the Vihara Samadhi Temple in Shah Alam was submitted to the Municipal Council in the early 1990s. The application was rejected five years later on the grounds that there was a large Muslim population there. The municipal council compensated with another piece of land nearby and that took another three years to approve; the plan was finally approved in 2008.\(^{122}\)

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\(^{119}\) Haris Ibrahim, *Another Orang Asli church building in Kelantan under threat of demolition?*, 17 September 2010, <http://harisibrahim.wordpress.com/category/nation-in-distress/> accessed 13 April 2014; The background to this incident is that in December 2001, 297 villagers of Pos Pasik were baptized as Christians, including the two *Penghulu* (headmen). A bamboo church was then built in the old village across the river (Sungei Jenera). In 2004, the floods washed away their houses and the church. As a result, the villagers shifted to the current side of the river and the bamboo church was relocated there as well. In late 2009, the Christians requested the pastor from the Gospel to the Poor church to help them build a brick/concrete church since most of their houses are already made of brick. This is to replace the dilapidated bamboo church.


In 2006, the construction of a Taoist statue (Goddess of Sea Mazu) in Kudat, Sabah was halted when the state government rescinded the approval to build the statue; the approval was rescinded after the state Mufti issued a fatwa against the construction of the statue. The former Sabah Chief Minister sued the incumbent, seeking amongst others, a court order to revoke Kudat Town Board’s withdrawal of the letter of approval and a declaration that the letter of approval was valid and binding on all parties.

There is also anecdotal evidence that unnecessarily onerous conditions have been imposed on approvals of building of non-Muslim places of worship; for example, height restrictions on temples, church steeples and Sikh Gurdwaras. It has also been alleged that Gurdwaras are not allowed to have their traditional domes as the authorities are worried that it could be confused as a mosque. Also churches have been relocated numerous times even after approvals have been given. This sentiment was reflected in the High Court judgement of Meor Atiqulrahman Ishak & Yang Lain lwn. Fatimah Sihi & Yang Lain, where the judge held that because Islam is the religion of the Federation, this means that the federal government has the responsibility to promulgate laws that ensure that non-Muslim places of worship do not compete with national and state mosques, in terms of location, size, and shape and to ensure that the number of non-Muslim places of worship is not excessive.

c. Religious symbols

Generally, Malaysians enjoy the freedom to make, acquire and use articles and materials related to the rites or customs of their religion or belief. There are no laws prohibiting any religious communities from displaying their respective religious symbols, including distinctive clothing or head coverings. Malaysians are also able to display their religious symbols and wear distinctive clothing or head coverings, subject to reasonable limitations.

However, two cases relating to the Islamic clothing have surfaced where in both cases the courts held that the prohibition of the purdah (attire covering the face) and serban (turban) did not infringe the individual’s right to practice and profess his or her religion.

i. Distinctive clothing

In Hjh Halimatussaadiah bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor, the appellant had been dismissed under the Public Officers (Conduct and Discipline) (Chapter “D”) General Orders 1980, for wearing a purdah as her office attire, in contravention of the dress code prescribed for civil servants by Service Circular No. 2 of 1985. The Supreme Court dismissed her appeal, holding that the prohibition against the wearing of purdah during work did not affect the appellant’s constitutional right to practice her religion. Islam does not prohibit a Muslim woman from wearing, nor does it require her to wear a purdah; it is not a religious injunction that must be followed strictly. In the premises, the wearing of purdah had nothing to do with the appellant’s constitutional right to profess and practice her Muslim religion.

In the case of Meor Atiqulrahman Ishak & Ors v. Fatimah Sihi & Ors, students were expelled from school for refusing to comply with the Peraturan Sekolah Kebangsaan Serting (FELDA) 1997 (“The

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School Regulations 1997”), made pursuant to Surat Pekeliling Ikhtisas Bil. 9/1975 issued by the Ministry of Education, which prohibited students from wearing the serban. The school authorities had requested the students to wear the songkok instead of the serban; some students refused to comply with this request. The Federal Court held that the wearing of the serban was not part of “Islamic prophetic teaching” and there was no fatwa on wearing the serban. The Court went further to state that the prohibition was not a total one – the students were only prohibited from wearing the serban during school hours and they were therefore allowed to wear the serban at other times, for example when performing their prayers. As such, the Federal Court held that the regulation prohibiting wearing serban did not violate article 11(1) of the Federal Constitution.

d. Observance of holidays and days of rest

Most religious holidays are observed in Malaysia and the state recognises religious holidays of Muslims, Christians, Buddhists and Hindus. In Sabah and Sarawak, religious of holidays of Christians (Easter) and the indigenous community (Hari Gawai Dayak and Pesta Menuai) are observed.

e. Appointing clergy

Article 11(3) of the Federal Constitution gives religious communities the right to manage their own religious affairs, including the right to appoint religious leaders, priests and teachers.

i. Communities professing religion other than Islam

The appointment of religious leaders, priests and teachers is governed by their respective religions – for example, the appointment of Catholic priests, bishops and archbishops are by the Catholic Church and the Vatican in Rome.

ii. Communities professing the religion of Islam

In states with hereditary rulers, the Sultan, after consulting the state Islamic Religious Council, appoints the Mufti for their respective states.

f. Teaching and disseminating materials

Under Article 11(4) of the Federal Constitution, states may enact laws to control or restrict the propagation of any religious doctrine or belief among persons professing Islam. State Syariah laws have defined “proselytising” to include persuading, influencing, coercing or inciting a Muslim to become a follower or member of a non-Islamic religion or to send, deliver or distribute publications concerning any non-Islamic religion to a Muslim.

All states in Malaysia, save two (Perlis and Sabah), criminalise a number of propagation activities such as persuading, influencing, coercing or inciting a Muslim to become a follower or member of a non-Islamic religion; subjecting a Muslim under the age of 18 years to influences of non-Islamic religion; approaching a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion; sending or delivering publications concerning any non-Islamic religion to a Muslim; and distributing any publication or publicity material concerning non-Islamic religion to a Muslim. If found guilty, the punishment ranges between RM1,000 and RM10,000 or imprisonment of a term between three and five years, depending on the offence and the state concerned. The state of Kelantan also imposes a punishment of whipping upon conviction. State Syariah laws prohibiting proselytisation to Muslims are found in Annex 2.

In March 2011, the Ministry of Home Affairs imposed two conditions on the release of a shipment of 35,000 Malay Bibles. Before they could be released to the Christian Federation of Malaysia (CFM), the Bibles had to be stamped with the words, “Reminder: This ‘Al Kitab Berita Baik’ is for the use of Christians only. By order of the Home Minister”
and the cover of the Bibles would be stamped with the department’s official seal and dated as well.\textsuperscript{128} The second condition was for the importers to stamp a serial number on each copy to enable the Bible to be traced back to the port of import. In addition, the CFM was informed that 5,100 Malay Bibles had already been stamped with the official seal of the Ministry of Home Affairs.

In August of the same year, JAIS raided the Damansara Utama Methodist Church (DUMC) compound when the DUMC was having its thanksgiving dinner for all those involved in social services, which covered a number of community projects.\textsuperscript{129} JAIS and a Selangor state executive councillor member, Datuk Hasan Ali of PAS stated that the raid was due to evidence of proselytisation to Muslims. The reaction from politicians were varied – Datuk Hasan Ali of PAS defended the raid and stated that a person was quoted saying the words “Quran” and “pray” in a speech; however, the Menteri Besar of Selangor, Tan Sri Khalid Ibrahim expressed regret over the incident.\textsuperscript{130} In a statement by JAIS, it explained that the 12 Muslims who attended the event were asked to provide details and directed to attend counselling sessions.\textsuperscript{131} In addition, there were reports that the names, identification card numbers and other details of the 12 Muslims who attended the said dinner were leaked and these 12 persons suffered harassment and death threats.\textsuperscript{132}

Recently, the Pahang Malay and Islamic Customs Council (MUIP) informed hotels in that state that they were prohibited from putting any non-Islamic religions materials in public reading places, including hotel rooms, as this could amount to proselytisation to Muslims.\textsuperscript{133}

i. Persons professing the religion of Islam

For followers of the Islamic faith, the Board of Control and Licence Al-Quran, Ministry of Home Affairs regulates the printing and publication of Al-Quran text, through the Printing of Al-Quran Text Act 1986. Section 5 of the 1986 Act states that any person wishing to print or publish Al-Quran text must first obtain a licence from the Ministry of Home Affairs. Failure to do so attracts a fine of RM10,000 or imprisonment of up to three years or both. This licensing requirement applies to all forms of printing/publishing of at least one verse of Al-Quran text.

The Syariah law of each state governs the teaching of religion of Islam in that state. Any person wishing to teach anything relating to Islam must obtain a \textit{tauliah}. Failure to do so makes the “teacher” liable for an offence punishable with a fine or imprisonment or both. This requirement does not apply to a person who teaches Islam in his own residence to members


of his own household.\textsuperscript{134}

ii. Persons professing religion other than Islam

Recently, the use of the word “Allah” and other words associated with Islam were highlighted in the \textit{Herald} case. The case concerned the use of the word “Allah” in the Malay version of the \textit{Herald}, a Catholic weekly. In overturning the High Court’s decision, the Court of Appeal allowed the Minister’s ban on the \textit{Herald}, holding that:

- The usage of the word “Allah” in the Malay version of the \textit{Herald} will have an adverse effect upon the sanctity of Islam as envisaged under article 3(1) and the right for other religions to be practiced in peace and harmony in any part of the Federation;

- Any such disruption of the even tempo is contrary to the hope and desire of peaceful and harmonious co-existence of other religions other than Islam in the country, particularly that the majority population in this country are Malay and whose religion is Islam. The Court of Appeal went further to state that the usage of the word “Allah” in this context would cause unnecessary confusion within the Islamic community;

- The prohibition of the use of the word “Allah” in the \textit{Herald} does not inhibit the respondent’s right to practice their religion;

- The word “Allah” is not an essential or integral part of the religion of Christianity and does not attract the constitutional guarantee of article 11(1) of the Federal Constitution.

Application for leave to appeal the Court of Appeal’s decision was recently denied by the Federal. This decision was lamented by the Bar Council which stated that the constitutional questions posed by the applicant should have been allowed under Section 96 (b) of the Court of Judicature Act 1964.\textsuperscript{135}

Apart from the \textit{Herald} case, the use of the word “Allah” by non-Muslims triggered the promulgation of a number of \textit{fatwas}, laws, seizures of Bibles, book bans and police investigations. In 2008, JAKIM issued a \textit{fatwa} prohibiting the use of the word Allah, stating that to allow non-Muslims to use the word “Allah” would be detrimental to the faith and to the followers of Islam. It was thus the government’s responsibility to ensure the purity of the faith and to safeguard the \textit{akidah} of followers of Islam.\textsuperscript{136} Six states (Selangor, Perak, Kedah, Johor, Pulau Pinang and Sabah) gazetted this \textit{fatwa}.

This prohibition can also be found in state Syariah laws – section 9 of the Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (Kedah) makes it an offence to publish in writing or say in any public speech or statement 24 words\textsuperscript{137} to express or describe any fact, belief, idea, concept, act, activity, matter, or

\begin{itemize}
\item Section 11 of the Syariah Criminal Offences Enactment 1997 (Johor); Section 11 of the Syariah Criminal Offences (Federal Territories) Act 1997 (Kuala Lumpur); Section 84 of the Administration Of Islamic Law (Kedah Darul Aman) Enactment 2008; Section 91 of the Council Of The Religion Of Islam And Malay Custom, Kelantan Enactment 1994; Section 107 of the Administration Of The Religion Of Islam (State Of Malacca) Enactment 2002; Section 11 of the Syariah Criminal Offences (State Of Penang) Enactment 1996; Section 108 of the Administration Of The Religion Of Islam (Perak) Enactment 2004; Section 119 of the Administration Of The Religion Of Islam Enactment 2006 (Perlis); Section 49 of the Syariah Criminal Offences Enactment 1995 (Sabah); Section 11 of the Syariah Criminal Offences Ordinance, 2001 (Sarawak); Section 14 of the Syariah Criminal Offences (Selangor) Enactment 1995; Section 103 of the Administration Of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M.
\end{itemize}

\begin{itemize}
\item Masjid, Allah, Qiblat, Rasul, Surau, Firman Allah, Haji, Dakwah, Musalla, Hadis, Fatwa, Imam, Mussabaqah, Kaabah, Hajjah, Solat, Zakat, Kadi, Mufti, Khalifah, Fitrah, Ibadah, Khutbah, Quran.
\end{itemize}
thing of or pertaining to any non-Islamic religion. Similar provisions can be found in the Syariah laws of Kelantan, Melaka, Negeri Sembilan, Pahang, Selangor, and Terengganu.

In January 2014, JAIS seized 321 copies of Malay-language Bibles and 10 copies of the Iban-language Bibles from the Bible Society of Malaysia (BSM). JAIS also detained a staff member of BSM, arguing that the Bibles contained words exclusive to Muslims. BSM argued that they were mere importers of the Bibles and not propagating the Islamic faith.138 The Bibles were returned 11 months later subject to condition that the Bible containing the word “Allah” should not be distributed in Selangor.139 Similarly, the comic book “The Ultra Power” was banned by the Ministry of Home Affairs because the word “Allah” was used.140

Not only have Syariah authorities taken steps to ensure that non-Muslims do not use certain words pertaining to Islam, but federal authorities have begun taking measures to stop non-Muslims from using the word “Allah”. In January 2014, the police began investigating the editor of Herald (a Catholic priest) under the Sedition Act 1984 because the priest stated that churches in Selangor would continue using the word “Allah” in its Malay church services.141

g. The right of parents to ensure the religious and moral education of their children

i. To provide direction to the child in the child’s religious education

Parents have the right to ensure the religious and moral education of their children. This right is guaranteed in article 12(4) of the Federal Constitution, which explicitly states that the religion of a person under the age of 18 years shall be decided by his parent or guardian. The case of Indira Gandhi, affirming the case of Teoh Eng Huat v The Kadhi of Pasir Mas, Kelantan & Anor,142 interpreted this provision to include the right of both parents (father and mother) to determine the religious and moral education of their children. In Indira Gandhi, the High Court also held that sections 3 and 5 of the Guardianship of Infants Act 1961 conferred equal parental rights to the father and mother in the custody or upbringing of a child, religious upbringing and education of the child.

ii. To teach the tenets of their faith to their child

The case of Indira Gandhi also recognised that the right to freedom of religion includes the parent’s right to teach the tenets of their faith to their children. The Court held that freedom of religion is inextricably linked to right to life and personal liberty and “liberty” includes the freedom to bring one’s own child to a place of worship. A non-converting parent who is unable to teach his or her child the tenets of his or her faith amounts to a deprivation of that parent’s right to practice his or her religion in peace and harmony.

iii. Education curriculum

The National Curriculum for both primary and secondary schools include the compulsory subject of Islamic education for Muslim students and Moral education for non-Muslim students. The Malaysian Education Blueprint 2013–2025 states that, “in


line with policy that states that every Muslim child must receive Islamic education in school, the KSSR curriculum (as well as the KBSR curriculum before it) provides 160 minutes per week of Islamic Education to Muslim students and 120 minutes per week of Moral Education to non-Muslim students. These are compulsory subjects with no opt-out possibility for students. In the case of Noorliyana Yasira Mohd. Noor Iwn Menteri Pendidikan Malaysia, the court refused a father’s application for his daughter to be exempted from attending Islamic religious class in school on conscientious grounds. The court held that any one professing the religion of Islam had to study the Islamic studies subject in a state-run school and could not dictate what subjects she wished to learn.

h. Registration

Registration is not a pre-condition to practising one’s religion in Malaysia, except for acquiring legal personality and related benefits (see above).

i. Identification card

Regulation 4 of the National Registration Regulation 1990 requires that a person provide his religion when applying for the national identification card. Whilst Regulation 4 applies to all Malaysians regardless of their religion, only persons professing the Islamic religion will have the word “Islam” explicitly written on their identification card.

If a person wishes to change the religion in his or her identification, he or she must bring the following documents (as the case may be):

- Card certifying embracing of Islam from the Islamic Religious Department or State Islamic Religious Council for Muslims regardless of name change or name retention; or

- A Syariah court order or certification from the Islamic Religious Council or Department for the application to convert from Islam to another religion, and to change from a Muslim name to a non-Muslim one; or

- Baptism certificate or certification that the applicant is a follower of Buddhism, Hinduism or Sikhism for religion change application affecting name; these documents are needed only if the applicant wishes to change his or her original name.

In the case of Lina Joy, the High Court, Court of Appeal and the Federal Court refused to allow Lina Joy, an ethnic Malay Muslim who had converted to Christianity to remove the word “Islam” from her identification card without a Syariah court order permitting this. This decision was followed in the recent case of Noraini Soon Mohamed Ivan Soon. Recently, the plight of Zarena Abdul Majid who tried to remove the word “Islam” from her identity card, as she was not a practising Muslim, was highlighted when JAIS disrupted her wedding to a Hindu Man (see below).

144 [2007] 5 MLJ 65.
i. Communicate with individuals and communities on religious matters at the national and international level

There are no known laws or policies prohibiting religious communities from communicating with individuals or other communities on religious matters at the national and international level.

j. Establish and maintain charitable and humanitarian institutions/solicit and receive funding

Article 11(3) of the Federal Constitution provides that every religious community has the right to establish and maintain institutions for religious and charitable purposes.

There are no known laws or policies prohibiting religious communities from establishing and maintaining charitable and humanitarian institutions or to solicit and receive funding.

k. Conscientious objection

Malaysia does not have mandatory military service. However, the National Service Act 1952, provides that the Yang di-Pertuan Agong may, from time to time, call up every male person between the ages of 17 and 55 years old, who is in Malaysia, to perform services in the armed forces, the police forces and civil defence forces.149 A person liable to register under the 1952 Act but fails to comply with enlistment notice shall be guilty of an offence and is liable to be imprisoned for up to six months or fined up to RM2,000 or both.150 The only exception is if one is statutorily exempted under section 3(1) of the 1952 Act; this provision makes no mention of conscientious objectors.151

Apart from the 1952 Act, under the National Service Training Act 2003, Malaysia implements national service training, which is not a military service but the modules contain training on unarmed combat.152 The aim of national service training is to “prepare Malaysians youths for national service under the National Service Act 1952 and generally for creating a nation, which is patriotic and resilient and imbued with the spirit of volunteerism guided by the principles of the Rukun Negara”.153 The Minister of Defence may order any person to undergo national service training.154 Failure to present oneself for national service training is an offence punishable with a fine or imprisonment of not more than six months.155

The National Service Training Act 2003 does not make reference to conscientious objection; it contains a general clause stating that those wishing to avoid or postpone national service training may ask the Minister for exemption156 or apply for a certificate of postponement of liability.157 To date, there has been no call up under the 1952 Act and

149 Section 4(1) of the National Service Act 1952.
150 Sections 10, 11(3), 12 and 14 of the National Service Act 1952.
151 Section 3(1) of the National Service Act 1952 states that, that persons who may be exempted include Judges, members of the Cabinet and any House of Parliament, members of any Executive Council or any Legislative Assembly as defined in the Constitution, accredited diplomatic or consular representatives and diplomatic or consular employees who are not domiciled in Malaysia, civil servants, serving members of the regular forces and police forces, persons in holy orders and regular ministers, religious officials or lay missionaries of a recognised religious denomination, mentally disordered persons, blind persons, members of fire brigades, persons who have left or been discharged from the regular forces in consequence of disablement or ill-health, and any other persons or categories of persons exempted by order of the Yang di-Pertuan Agong.
153 Section 2 of the National Service Training Act 2003.
154 Section 16 of the National Service Training Act 2003.
155 Section 18(1) of the National Service Training Act 2003.
156 Section 4(1) of the National Service Training Act 2003.
157 Section 20(1) of the National Service Training Act 2003.
there have been no reported cases of conscientious objectors.

3. Freedom from intolerance and discrimination

Differential treatment based on religion is most pronounced in four areas - freedom of religion, freedom of expression, religious education, and right to privacy and family life.

a. Freedom of religion

Prospelytising. The way restrictions against proselytism apply depends on whether the act of proselytization is targeted at Muslims or non-Muslims since the prohibition applies only to the former. The rationale of including article 11(4) in the Federal Constitution can be traced back to the social contract of pre-independence, where two reasons have emerged - firstly, it has been surmised that the prohibition was based on public order and not religious priority, namely, to curb the proselytization of non-indigenous religions by the merchants, the military and the missionaries.\(^{158}\)

The second hypothesis is that because Malays and Muslims are often treated as synonymous, any attempt to weaken Malay religious faith may be perceived as an indirect attempt to erode Malay power; as such, article 11(4) was a pre-Merdeka compromise between the Malays and non-Malays.\(^{159}\)

This prohibition is not applied on an equal basis to all religious communities in Malaysia where there is no corresponding prohibition of proselytisation imposed on Muslims. Rather, one of the functions of JAKIM is to “strengthen da’wah (invitation to Islam) to the non-Islamic society, the aborigines and the minority groups”\(^{160}\).

In the case of Jamaluddin Othman v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor,\(^{161}\) he was detained under the (then) Internal Security Act 1960 for propagating Christianity amongst Malays; his activities of participating in meetings, seminars and work camps were viewed by the Ministry of Home Affairs as prejudicial to the security of Malaysia.\(^{162}\) Jamaluddin Othman and 105 others were detained under the (then) Internal Security Act 1960 as part of the infamous “Operasi Lalang”. According to the White Paper entitled “Towards Preserving National Security”, these 106 persons were involved in activities that were prejudicial to the security of Malaysia – these activities included, amongst others, the propagation of Christianity to Malays and taking part in Marxist activities.

In Jamaluddin Othman, the courts held his detention under the Internal Security Act 1960 unlawful as the Minister did not have the power to deprive a person of his right under article 11 of the Federal Constitution. However, recent incidents show how state and Federal authorities enforced this prohibition strictly, with reported incidents of interference in the activities of the DUMC, restrictions imposed on distributing Malay Bibles, and a directive from the Ministry of Home Affairs instructing that the words “Not for Muslims” be printed on Malay Bibles, that Malay Bibles only be distributed in churches and Christian bookshops, and that certain words pertaining to Islam not be used by non-Muslims. The authorities have justified their interference on the need to protect the sanctity of Islam as the religion of the country and to insulate the religion against any threat.\(^{163}\)

Pilgrimage. Malaysians are severely limited from visiting Israel, regardless of their religion. However, this prohibition disproportionately affects Christians (compared to other religious communities) as most of the Christian holy sites

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159 Ibid.

are situated in Israel. In this regard, the government has imposed a number of restrictions on Christians if they intend to make pilgrimages to holy sites in Israel – only 700 Malaysians a year are allowed to visit Israel (with only 40 persons from one church) and Malaysians are only allowed to stay for 10 days at a time. Persons allowed to visit Israel must be at least 18 years old and not allowed to visit Israel more than once in three years.164 No such restrictions are placed on other faiths with regard to pilgrimages. However, at the end of 2012, the government relaxed these restrictions, doing away with quotas on religious visits to Israel, minimum age, number of visits and the number per group; however, Malaysian Christians are only allowed to visit Israel for a maximum of 21 days.165

Freedom to change or renounce one’s religion. The restrictions and difficulties placed on Muslims in leaving or changing their religion sees no comparable restrictions for non-Muslims. Such restrictions on Muslims are codified in law and ranges from a total prohibition to detention for rehabilitation before the Syariah court grants him or her permission to leave Islam (see above).

The cases above show that for a Muslim, any avenue available to him or her to renounce Islam is diminutive. In addition, the issue of jurisdiction of the civil and Syariah courts (see below) in apostasy cases, where the civil courts have held that only the Syariah courts have jurisdiction over conversion cases, creates another impediment to an already cumbersome process.166

The courts and the authorities have often defended these restrictions on the basis that it is needed to maintain the proper working of the Syariah system of administration (Lina Joy167) and any limitation on the grounds of public order or national security have been linked to the need to protect the sanctity of Islam.

The cumulative effect of the onerous state Syariah law, the lacunae in the law in some states with regard to apostasy, the criminalisation of apostasy and the claimed exclusive jurisdiction of the Syariah court places excessive discretion in the authorities and is liable to be abused without any possibility of judicial review. At the same time, this could have a discriminatory effect on persons professing Islam.

Non-Sunni Muslims. Malaysia’s Islamic religious authorities tend to be intolerant towards non-Sunni Islamic communities. A number of groups, such as Shias, Al Arqam, and Sky Kingdom, have suffered such intolerance. They have been deemed “deviant” and their members arrested and detained by state religious authorities. These groups are subjected to severe state control of their religious doctrine, teachings and freedom to manifest their religion and belief.

Religious authorities have justified the prohibition of Shia in Malaysia on various grounds. The Chair of the National Fatwa Committee stated that Shia is unsuitable as it is against Ahli Sunnah Wal Jamaah and would cause misunderstanding and confusion to Muslims; the Mufti of Perak, Tan Sri Harussani Zakaria and the adviser to the Islamic Religious Council of Johor, Datuk Nooh Gadut, both felt that Shia would destroy national Islamic unity in Malaysia;168 the Minister in charge of religious affairs, Jamil Khir Bahrom went so far as to say that

165 Ibid.
there would be bloodshed if more than one Islamic school of thought was allowed to be taught.¹⁶⁹

This push for one official view of Islam supported by enforcement to silence differences in opinion was noted by the UN Country Team (UNCT) in its report to the Second Cycle of the UPR process. The UNCT felt that this would breed fear and ignorance and encourage intolerance in interactions within the communities.¹⁷⁰ In addition, the strict controls could also result in a lack of recognition (of these minority groups) within the Muslim society in Malaysia as they are seen as inferior compared to groups practicing Sunni Islam.

b. Private and family life

In private and family life, Muslims are subject to different laws from all others. Islamic law applies in areas such as succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, and partitions.¹⁷¹ This has resulted in concerns about how these laws unnecessarily intrude into the private and family life of Muslims. For example, sexual intercourse outside marriage is prohibited by Syariah law and upon conviction a couple can be punished with imprisonment or fine or both, drinking alcohol is prohibited, gambling is similarly prohibited and marriages between Muslim and non-Muslims are not recognised in Malaysia.¹⁷² State religious authorities have rigorously implemented these laws. For example, in 2012, the Selangor religious authorities recorded 1,734 cases of khalwat, 75 arrests for gambling and 18 cases for consumption of alcohol.¹⁷³ These acts are not offences for non-Muslims and prompts questions as to whether this differential treatment might violate international human rights standards on the prohibition of discrimination based on religion. This is exacerbated by the fact that Regulation 4 of the National Registration Regulation 1990 requires only Muslims to state their religion in the national identification card.

c. Freedom of expression

In Malaysia, persons professing religions other than Islam are prohibited from using certain words that pertain to the Islamic religion. As a result of this prohibition, a number of publications have been banned by the Ministry of Home Affairs. For example, the publishing permit of the Malay version of the Catholic Herald was revoked and the comic book “Ultraman: The Ultra Power” was banned. Also, Erykah Badu’s concert was banned because she had the word “Allah” tattooed on her body.

The prohibition not only pertains to specific words but also any publications and literary works thought to be offensive to Islam. Books such as Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom (Malay version)¹⁷⁴ and The Vagina


¹⁷¹ For the complete list, please refer to List II (State List) of the Ninth Schedule of the Federal Constitution.


Monologues have been banned alongside films such as *Noah*, Mel Gibson's *The Passion of Christ*, and the cartoon *The Prince of Egypt*. Recently, author Kassim Ahmad was arrested and charged under sections 7(b) and 9 of the Syariah Criminal Offences Act (Federal Territories) 1997 for deriding Islam and failing to abide by a *fatwa* when he stated (at a seminar) that “people seemed to idolise Prophet Muhammad and that the *aurat* of a woman does not include her hair” and for citing and delivering views from two books authored by him that had been banned by the state religious authorities. At the time of writing, Kassim Ahmad’s case is on-going with the Court of Appeal granting leave to hear the merits of the judicial review application.

Reasons given for the ban of these publications and literary works are that they are prejudicial to public order as such works would offend Muslims in Malaysia or that it might cause religious confusion among Muslims. This line of argument was however rejected in the case of *ZI Publications Sdn. Bhd. & 1 Ors v Jabatan Agama Islam Selangor & 5 Ors* where the High Court, in setting aside the ban on the book *Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom*, held that the Ministry of Home Affairs failed to show that the book is prejudicial to public order, especially since no action had been taken to ban the English version when it was first circulated. As to the respondents’ concern that the book might cause religious confusion of Muslims, the Court pointed out that the book had been in circulation for about two weeks before the Malay version was banned, while the English version had been in circulation since June 2011.

Additionally, freedom of expression of the lesbian, gay, bisexual and transsexual (LGBT) community continues to be threatened, with incidents of harassment by state and non-state actors. In two cases - *Abdul Qawi bin Jamil & Mohd Suhairi bin Md. Din v Director of the Islamic Affairs Department, Melaka & 2 Ors* and *Muhamad Juzaili Mohd. Khamis & 3 Ors v Government of Negeri Sembilan & 4 Ors* - the applicants in the judicial review applications were arrested, prosecuted and forced to undergo mandatory rehabilitation. The authorities relied on state Syariah provisions to prosecute the applicants. In both these cases, the applicants are Malay Muslim men who identified themselves as women on account of gender identity disorder. They were ordered by the respective state Islamic religious authorities to report for a mandatory course and counselling for the purposes of rehabilitation, failing which they were threatened with Syariah criminal proceedings for the offence of dressing as women. If found guilty, they could face six months imprisonment or up to RM1,000 fine or both. However, it is encouraging that the Court of Appeal in *Muhamad Juzaili* recently held that the Syariah provision criminalising cross dressing was unconstitutional as it violated articles 5(1), 8(1) and (2), 9(2) and 10(1)(a) of the Federal Constitution.

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178 ‘Hadis: Satu Penilaian Semula; Hadis: Jawapan Kepada Pengkritik’.
183 *Semakan Kehakiman* No. 13-3-2011.
184 High Court Seremban Judicial Review Application No. 13-1-2011.
185 Civil Appeal No. N-01-498-11/2012 (Court of Appeal)(7 November 2014).
d. Religious education in public schools and financial assistance

Religious education opportunities. Religious education is provided for in public schools in Malaysia as stipulated by sections 50(1) and 51 of the Education Act 1996. Section 50(1) provides that where there are five or more pupils professing the Islamic religion in an educational institution, such pupils shall be given religious teaching in Islam; whereas section 51 merely states that religious teaching in a religion other than Islam may be provided to pupils of an educational institution and such religious teachings can only be carried out if it does not incur government funds.\(^ {186} \)

The bias towards Islamic religious education in public schools is not only apparent in the law but in practice since there are many more options for Islamic religious education compared to non-Islamic religious education.

According to the Ministry of Education, there are more than 90,000 students enrolled in public religious schools. These schools comprise federal religious schools or Sekolah Agama Kerajaan, which are under the jurisdiction of the Ministry of Education; state religious schools or Sekolah Agama Negeri (SAN), which are under the jurisdiction of state religious authorities; and government-aided religious schools or Sekolah Agama Bantuan Kerajaan (SABK), which are jointly controlled by the Ministry and the state religious authority or school’s board of trustees. All Sekolah Agama Kerajaan teach the national curriculum, while the SAN and SABK teach the national and religious (dini) curriculum. These religious schools are not compulsory.\(^ {187} \) In addition, between the years 2016 and 2020, public schools should have designated spaces for Islamic education activities.\(^ {188} \) For Muslim students, compulsory Islamic education means that they cannot opt out of these religious classes. For non-Muslim students, the current education policy and blueprint fails to provide them with the opportunity to receive religious education in their own or other religions.

Financial assistance. Following from the above, article 12(2) of the Federal Constitution permits expenditure in favour of Islam only – the Federal and state governments have the right to establish or maintain or assist in the establishment or maintenance of Islamic institutions or the provision or assistance in providing instruction in the religion of Islam, including incurring expenditure for that purpose. This is further fortified by section 52 of the Education Act 1996, under which the government may provide financial assistance to a non-state Islamic educational institution.\(^ {189} \) There is no corresponding provision with respect to financial assistance to a non-state non-Islamic educational institution; section 34 of the 1996 Act merely provides that the government may establish, maintain and provide financial assistance to other types of educational institutions, with no explicit mention of other non-Islamic religious educational

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\(^ {186} \) Section 51 reads as follows, “The governors of a government-aided educational institution may provide for religious teaching in a religion other than Islam to the pupils of the educational institution or to any of them but—(a) no such provision shall be defrayed from moneys provided by Parliament; and (b) no pupil shall attend teaching in a religion other than that which he professes, except with the written consent of his parent.”


\(^ {189} \) Section 52 reads, “Subject to such conditions and limitations as the Minister may deem fit to impose, financial assistance by way of grant may be given out of moneys provided by Parliament to an Islamic educational institution which is not maintained by the Minister under this Act or by the Government of a State and which is either an educational institution within the meaning of this Act or is not such an educational institution only because the teaching therein is confined exclusively to the teaching of the religion of Islam.”
A similar emphasis on Islam can also be seen in the budget allocation of the federal and state governments for building of places of worship. Between 2005 and 2008, it was reported that the federal government earmarked RM8 million for building non-Muslim places of worship and RM428 million for Muslim facilities. In the Budget 2009 speech, the Selangor Menteri Besar Tan Sri Abdul Khalid Ibrahim proposed RM6 million for non-Muslim places of worship and RM103.5 million for the state Islamic Religious Department to build, maintain and upgrade religious primary schools, offices and mosques.

4. Right of vulnerable groups to freedom of religion and belief

a. Women

Women professing religions other than Islam are free to choose their religion/belief and are subjected to the same laws and policies as their male counterparts. Muslim women, like Muslim men, are subject to the restrictive laws and policies regarding leaving their religion, discussed above.

However, in marriage, divorce and other aspects of Islamic family law, Muslim women are disproportionately affected when compared to Muslim men. It has been argued that such laws, which have a religious basis, appear to discriminate against women. For example, it is more difficult for a woman to secure a divorce than a man. Syariah law places women in a weaker position in the division of matrimonial assets, and it provides women with fewer rights in the issue of custody of children and maintenance. In addition, Islamic family law requires a woman to have a wali’s (guardian’s) consent before she can get married, a wife is denied maintenance or alimony if she unreasonably refuses to obey the lawful wishes or commands of her husband. A Muslim man can marry without a wali’s consent, a husband is able to divorce his wife outside court and in a straightforward manner; a wife can only divorce her husband in court and procedures can be rather lengthy if her husband does not consent. Islamic family law also enumerates the conditions under which a mother can lose her limited custody due to reasons of irresponsibility whereas no such conditions are stipulated for fathers.

The CEDAW Committee in its Concluding Comments noted that these personal laws for women ascribed to the Islamic religion could result in continuing discrimination against women in marriage and family life (Malaysia made reservations to articles 16(1)(a), (c), (f) and (g) of CEDAW). The said Committee also expressed its concern over the lack of clarity on whether Syariah law applies to marriages of non-Muslim women whose husbands convert to Islam.


194 Ibid.

195 Ibid.


197 Ibid, para. 13.
b. Children

One problem is where a Muslim convert unilaterally converts his or her child to Islam without the consent of his or her non-convert spouse. A slew of cases concerning unilateral conversion by a Muslim parent have left the other parent without a remedy or the right to be heard in the conversion or custody of the children in question. This problem was noted by the CRC Committee, which recommended that the government take necessary measures to create a more harmonious legal framework, which is able to provide consistent solutions to family law disputes between Muslims and non-Muslims.198

The problem of unilateral conversion of children is typically illustrated in Subashini a/p Rajasingam v Saravanan a/l Thangathoray (and 2 other appeals).199 Subashini Rajasingam was married to her husband Saravanan under the civil law and under Hindu rites and had two sons. After the birth of the second son, Subashini became estranged with her husband, who left the marital home. In May 2006, her husband came back and told her that he had converted to Islam and that she could have nothing more to do with her elder child. She did not hear from her husband again, until she suddenly received a notification from the Islamic courts that they would be hearing a custody application in respect of her elder son, who had been given a Muslim name. She went to the civil courts to get an injunction to stop Saravanan from getting an Islamic court order in respect of her marriage and in respect of either of her children. The High Court refused Subashini’s application for an injunction but granted her a temporary injunction pending an appeal. To make matters worse, the Federal Court affirmed in an obiter dictum that a Muslim convert had a unilateral right to convert his or her minor children to Islam. Cases with similar facts were Genga Devi a/p Chelliah Iwn Santanam a/l Damodaran,200 Shamala Sathyaseelan’s,201 Nedunchelian,202 and Priyathaseny & Ors v Pegawai Penguatkuasa Agama Jabatan Hal Ehwal Agama Islam Perak & Ors. In 2009, in response to these cases, the Cabinet announced a prohibition against the unilateral conversion of children to Islam by either parent, to prevent further cases where custody battles are locked in a legal limbo between the civil and Syariah court systems.203 However, unilateral conversion continues to exist as can be seen in the recent case of Deepa, where her husband unilaterally converted her children in 2013.

In the landmark case of Indira Gandhi, three children were converted to Islam when they were aged 12 years, 10 years and 1 year old by their father. The Hindu mother was separated from the father and she maintained that the conversion, which took place in April 2009, was carried out without her knowledge or permission. The first and second respondents (the Perak Registrar of Converts and the Perak Islamic Religious Department) issued Certificates of Conversion pursuant to sections 99 to 101 of the Administration of the Religion of Islam (Perak) Enactment 2004. The applicant mother only found out about the conversion of her children when she read an affidavit by the 6th respondent (her estranged husband). The children were also not present during the alleged conversion. A judicial review application was filed to nullify the certificate of conversion of the three children.

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199 Subashini a/p Rajasingam v Saravanan a/l Thangathoray [2007] 2 MLJ 798 (HC); Saravanan v Subashini [2007] 2 MLJ 205, 2 AMR 540, 2 CLJ 451 (CA); Subashini v Saravanan (No. 2) [2007] 3 AMR 370, 3 CLJ 209, 4 MLJ 97 (CA); [2008] 1 AMR 561 (FC).
201 Shamala a/p Sathyaseelan v Dr Jeyaganesh a/l C Mogarajah [2004] 2 MLJ 241 (HC); [2004] 2 MLJ 648 (HC).
202 Nedunchelian a/l V uthiradam v Nurshafiqah binti Mah Singai Annal @ Valarmathy a/p Mah Singai Annal & 9 Ors [2005] 2 AMR 711 (HC).
The High Court made several landmark rulings:

- Article 12(4) of the Federal Constitution, which provides that the religious education of a child is to be decided by his parent or guardian, includes the right to determine the choice of a child’s religion. The reference to “parent” in article 12(4) means both parents and to interpret it otherwise would lead to an undesirable situation of repeated conversions of one parent against the conversion of the other parent.

- In comparing the guardianship rights of the converted parent against those of the non-converting parent, the Guardianship of Infants Act 1961 confers equal parental rights to both the father and the mother in a civil marriage, including matters regarding the child’s religious upbringing and education. A unilateral conversion of a child to Islam deprives the non-converting parent of his/her guardianship rights and his/her right to be heard on matters of custody in a Syariah court. This creates unequal rights with respect to the upbringing and education of a child and violates article 8 of the Federal Constitution.

- The right to freedom of religion is inextricably linked to right to life and personal liberty, and “liberty” includes the freedom to bring one’s own child to a place of worship. A non-converting parent who is unable to teach his or her child the tenets of his or her faith amounts to a deprivation of that parent’s right to practice his or her religion in peace and harmony.

Despite the High Court’s judgment and an order to award custody to the mother, this case continues to drag out, with the father refusing to hand over custody of the youngest child to the mother.

It should be noted that the High Court judge did not discuss the right to freedom of religion from the child’s point of view. In fact, the learned judge affirmed the Supreme Court’s decision in Teoh Eng Huat v The Kadhi of Pasir Mas, Kelantan & Anor,\(^\text{204}\) in interpreting article 12(4) of the Federal Constitution, which held that a person below 18 years of age lacks capacity to choose his or her own religion and that the child’s right of religious practice belongs to the guardian until the child reaches 18 years. The fact that the minor in question in Teoh Eng Huat case was 17 years and eight months old at the material time was not considered. This ruling may contravene article 14 of the CRC, which guarantees the child’s right to freedom of thought, conscience and religion in tandem with the rights and duties of parents to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Malaysia has, however, made a reservation to article 14 of the CRC.

c. Migrant workers

Migrant workers are subject to the same laws and policies as Malaysian citizens. Therefore, the above laws governing persons professing the Islamic faith and persons professing religions other than the Islamic faith, applies equally to migrant workers in Malaysia.

d. Persons deprived of their liberty\(^\text{205}\)

For persons deprived of their liberty, regulation 145 of the Prison Regulations 2000 requires every prisoner on reception (at a prison or detention centre or lock-up) to state his or her religious denomination and he or she will be treated as a member of that denomination.

Regulation 146 of the 2000 Regulations prohibits any prisoner from changing his or her religion save in exceptional circumstances where the Officer-in-Charge is satisfied that “after due enquiry, that the change is proposed from conscientious motives and...\(^{[1990]}\) CLJ 277 (SC).

204 Section 2 of the Prison Act 1995 defines “prisoner” as a person, whether convicted or not, under confinement in a prison and in relation to a convicted prisoner, includes a prisoner released on parole.
not from any idle whim or caprice or from desire to escape prison discipline”.

Regulation 147 requires the Officer-in-Charge to make arrangements for the conduct of religious or moral education for prisoners under his charge; this is to be done equally for Muslim and non-Muslim prisoners. Also, the 2000 Regulation provides that prison authorities should make provision for religious services, such as visits from religious personnel. Books of religious observance and instruction or any other religious articles may be made available to prisoners so far as it is practicable (Regulation 150).

There are no provisions allowing for a variation of diets of prisoners on the grounds of religion; variation to diets of prisoners can only be made on medical grounds or at the discretion of the Officer-in-Charge (Regulation 63). There are, however, provisions made for vegetarian prisoners (Section II of the First Schedule) but beef (which is not eaten by Hindus) is part of the daily diet for prisoners (Section I of the First Schedule).

e. Refugees

Malaysia is not a party to the Convention Relating to the Status of Refugees 1951. As such, there is no specific law regulating the rights of refugees in Malaysia. All laws and policies elaborated above apply equally to persons seeking asylum in Malaysia.

f. Minorities

i. Islamisation and wilful conversion of indigenous peoples

Indigenous peoples in Malaysia enjoy the same guarantees of freedom of religion and belief stipulated in the Federal Constitution. There are no specific provisions protecting the freedom of religion of indigenous peoples; the Aboriginal Peoples Act 1974 Act is silent in this respect.

However, there have been allegations of Islamisation by the Department of Orang Asli Development (JAKOA) and its predecessor department, the Department of Orang Asli Affairs (JHEOA). A number of civil society organisations have asserted that JAKOA/JHEOA had implemented an Islamisation programme with material benefits with a view to change the Orang Asli identity. The Centre for Orang Asli Concerns (COAC), an NGO, has accused the JAKOA/JHEOA of encouraging missionary organisations, including university students from Islamic faculties, to gain access to the Orang Asli, although the JHEOA has categorically denied being involved in conversion activities.

There are, however, indications that the promotion of Islam is taking place. The JAKIM website shows that an officer is appointed to head proselytisation to Orang Asli and Bumiputeras. In 2006, the Kelantan government announced that they would pay a reward of RM10,000 to each Muslim preacher who marries an indigenous woman and converts her. Also, in a JHEOA report in 1974, reference was made to state-led institutionalised Islamic missionary activities where the government requested the JHEOA to promote Islamic missions to the indigenous community. A report entitled Strategic Perkembangan Uagma Islm di Kelangan Masyarakat Orang Asli enumerates two objectives: (a) Islamisation of the whole indigenous community;


and (b) integration/assimilation of the indigenous peoples within the Malay community. It was also noted that the Islamisation policy was rooted in the early years of independence – the “Statement of Policy Regarding the Administration of the Aborigine Peoples of the Federation of Malaya” 1961 included the aim of integration of Orang Asli within the Malay section of the community. Some have attributed the increase of Muslim population amongst the indigenous peoples, from 5% in 1974 to 16% in 1997, to the Islamisation programme.210

The possibility of wilful conversion of the indigenous community has arisen where there have been reports that the vulnerability of the indigenous community, particularly their lack of economic independence and the high level of illiteracy, have been exploited by some religious communities. In 2010, some indigenous peoples claimed that they were converted to Islam against their will; some were asked to attend a banquet and told to recite the syahadah and then given food and cash.211 Recently 64 people in Sabah were allegedly tricked into converting to Islam in exchange for RM100. They were reportedly initially promised RM800 and were brought to a mosque where they were treated to refreshments, asked for their identification card and asked to sign a form. All of them were illiterate but no explanation was given as to what the form was. They were then asked to recite some words and thereafter, a man told them that they had converted to Islam.212 Similar reports have also emerged in Sarawak where it was reported that students in Betong, Sarawak were allegedly prevented from bringing their Bibles to their boarding schools and male students were forced to wear the “songkok”.213

ii. Demolition of places of churches in indigenous settlements

As discussed above, there have been reported incidents of churches built by the indigenous community that were demolished by state authorities (see above Section 2 (b)(i)).

iii. Freedom of religion of indigenous children

There is explicit protection of indigenous children’s right to religion. Section 17 of the Aboriginal Peoples Act 1954 states that no aboriginal child attending any school shall be obliged to attend any religious instruction unless the prior consent of his or her parents or legal guardian is obtained. To date, there are no known complaints of interference of the freedom of religion of indigenous children save for one reported incident in October 2012. In this case, the parents of a number of indigenous and non-Muslim children lodged a police report against teachers in a school in Kelantan for slapping their children because they did not recite the Islamic prayer.214 The Education Department and JAKOA apologised for the incident and the Education Department denied any wilful conversion at the school.215

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215 Ibid.
C. Redress Mechanisms and Interpretation of Policies

1. Judiciary

The courts provide an avenue of redress for complaints of violation of freedom of religion. However, the Malaysian courts have been criticised for its lack of independence, its unwillingness to apply international human rights conventions to domestic law and its restrained approach in human rights issues, and in religious freedom cases, the approach of the courts has been far from satisfactory.

217 (See Part One (A)(2); Part Two (B)(1)(b) and (c); Part Two (B)(2)(a)(iii) and (f) above.)

When article 121(1A) of the Federal Constitution218 – which provides that the “civil courts have no jurisdiction in any matter within the jurisdiction of the Syariah courts” – was introduced to demarcate jurisdiction between civil and Syariah courts, a jurisdictional conflict between civil and Syariah courts arose. This amendment evoked a number of issues that remain unresolved. For example, who has the power to determine whether a matter lies within civil or Syariah jurisdiction; which court has jurisdiction if a case involves a Muslim and a non-Muslim or if it involves both elements of civil and Syariah law; and what if the remedy asked for is unavailable in the Syariah courts.219 This problem has been made worse by the civil courts’ willingness to give way to Syariah courts whenever a possible conflict arises, thus avoiding the need to address any constitutional issues occasioned by religious freedom cases.220 Many scholars have argued that the introduction of article 121(1A) was not meant to give Syariah courts superior status over civil courts.221

Some judges have also issued judgments suggesting their bias towards Islam. This is exacerbated by the fact that in many cases where the outcomes favour Islam over individual religious liberty, the judges have been Muslims. For example, in Dalip Kaur,222 Soon Singh,223 Daud Mamat, Priyathaseny, Shamala Sathyaseelan and, most recently, the Herald case, Malaysian courts have consistently eschewed the restrictive interpretation of “Islam” in article 3(1) of the Federal Constitution expounded in the case of Che Omar Che Soh.224

2. Administrative Bodies

There are no administrative bodies in Malaysia that deal with complaints of violation of freedom of religion.

3. Independent Bodies

Persons whose freedom of religion have been violated can lodge a complaint with SUHAKAM, the national human rights institution (NHRI) in Malaysia. Established in 1999, the initiative to set up SUHAKAM began when Malaysia was elected as a member of the United Nations Commission on Human Rights.216


218 Par(1) states, “There shall be two High Courts of coordinate jurisdiction and status, namely - (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine; (c)(Repealed), and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law. (1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.”


220 Ibid.

221 Ibid.

222 (1992) 1 MLJ 1.

223 (1999) 1 MLJ 690.

224 Document of Destiny the Constitution of the Federation of Malaysia’, pg. 347.
Human Rights (UNCHR) from 1993 to 1995; other factors included Malaysia’s active participation in the UN system and the fact that the Philippines and Indonesia had already established their own NHRI.\(^{225}\) Section 4 of the SUHAKAM Act 1999 sets out the functions and powers of SUHAKAM, which includes the power to inquire into complaints regarding infringements of human rights, to recommend to the government with regard to accession of treaties and other international human rights instruments, to advise and assist the government in formulating legislation, and to promote awareness of and provide education in relation to human rights. Since its inception, SUHAKAM has carried out trainings, public inquiries (where it has the power to subpoena any persons in Malaysia to facilitate the public inquiries), research on various laws, investigations of allegations of human rights violations, visits to places of detention, and roundtable discussions and dialogues with government agencies, civil society and members of the public.

SUHAKAM’s engagement in the area of religious freedom is through its investigation of complaints. Through its annual reports, it also tracks human rights violations in Malaysia. A review of SUHAKAM’s annual reports from 2000 to 2013 shows that it received 13 complaints concerning religious freedom;\(^{226}\) the nature of the complaints includes attacks on places of worship and persecution of minority religious communities.\(^{227}\) SUHAKAM has not conducted any public inquiry or national inquiry on the issue of freedom of religion. It has, however, issued statements condemning the demolition of Hindu temples and the seizure of Bibles from the BSM and submitted an amicus brief in religious freedom cases, such as the Indira Gandhi case. Some have criticised SUHAKAM for glossing over the issue of violations of religious freedom in Malaysia in its annual reports.\(^{228}\) There is also doubt over SUHAKAM’s impact on state practice.

### PART TWO: TRENDS IN RELIGIOUS FREEDOM

#### A. Significant Changes in the Law

There have been no significant changes in laws relating to freedom of religion. However, the repeal of the Internal Security Act in 2012 is a welcome change as the Act was previously used to preventively detain Shia followers and individuals accused of propagating Christianity to Malays.

Whilst there have been no significant amendments in the law or any repeal or enactment of new laws, there have been significant changes in the interpretation of the law, particularly article 3 of the Federal Constitution. Of late, the courts have elevated the status of Islam in Malaysia, through its interpretation of article 3(1), which states that, “Islam is the religion of the Federation”.

Since independence in 1957, scholars have regarded the position of Islam in article 3 as confined to rituals and ceremonies. Professor Ahmad Ibrahim notably observed that:

> “...making Islam the official religion of the Federation was primarily for ceremonial purposes, for instance to enable prayers to be offered in the Islamic way on official occasions such as the installation of the Yang di-Pertuan Agong, Merdeka Day and

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226 For SUHAKAM Annual Reports 2000 to 2006, there is no ‘freedom of religion’ category for complaints received.


similar occasions…”

This view was reinforced in the case of *Che Omar bin Che Soh v Public Prosecutor & Anor Case*, where the Supreme Court – then Malaysia’s highest court – traced the history of Islam in Malaysia and held that “Islam” as understood in the context of article 3 restricts Islamic law to the narrow ambit of the law relating to marriage, divorce and inheritance.

However, a number of subsequent decisions have given greater significance to the position of Islam. The High Court judge in *Meor Atiqulrahman* stated that the phrase “Islam is the religion of the Federation” in article 3 of the Federal Constitution meant that Islam is above other religions in Malaysia and that the government has the responsibility to expand and develop Islam in Malaysia. This decision was overruled by the Court of Appeal and the Federal Court. In *Lina Joy*, the High Court held Islam to be the “main and dominant religion in the Federation”. The Court of Appeal and Federal Court, in affirming this decision similarly held Islam’s special position in Malaysia. Recently in the *Herald* case, the Court of Appeal interpreted the words “in peace and harmony” in article 3(1) to mean “to protect the sanctity of Islam as the religion of the country and also to insulate against any threat faced or any possible and probable threat to the religion of Islam”.

**B. Significant Changes in State Enforcement**

Data in publications by the police, Attorney-General Chambers and judiciary of cases investigated/prosecuted/adjudicated respectively, are not sufficiently disaggregated to allow any meaningful analysis of trends in state enforcement. Nevertheless, some constitutional lawyers have noted that of late, there has been more assertive enforcement of state Syariah laws into areas beyond Islamic family matters and to non-Muslims, areas which the Syariah court and Syariah law are not meant to have jurisdiction over. For example, in 2012, a Christian Indonesian woman was convicted by the Penang Syariah Court for *khalwat* (close proximity); the case is pending an appeal before the Syariah Court of Appeal. Similarly, in *Indira Gandhi*, the Syariah court granted custody of the children to the Muslim father (who had converted to Islam after his marriage which had been solemnised under civil law and not Islamic law). The Syariah court has no jurisdiction to grant custody orders in a non-Muslim marriage.

In addition, concern has been expressed over the recent raid of and seizure of Bibles from the Bible Society of Malaysia and the ruling by Pahang Malay and Islamic Customs Council that hotels in the state of Pahang should not carry non-Islamic religious materials. From these two incidents, on the reasoning that the law prohibits propagation of non-Muslim religion to Muslims, the Syariah authorities have extended its reach to non-Muslim religious materials, a matter which does not fall within their jurisdiction.


231 *Meor Atiqulrahman Ishak & Yang Lain*, at 353.


233 *Lina Joy* (FC), pg. 83.

234 *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* (CA), pg. 926.


236 Ibid.

237 Ibid.
Civil liberty lawyers have expressed concern that state Syariah authorities have assumed a larger role in regulating the lives of Muslims and non-Muslims alike, at the expense of fundamental freedoms guaranteed in the Federal Constitution.239

C. Significant Changes in Religious Claims
(by Non-State Actors)

When the Herald case was adjudicated by the courts, a few organisations used the case to make a more general claim that non-Muslims should refrain from using the word “Allah” and that Islam is supreme in Malaysia; such claims go beyond the matter adjudicated by the courts (i.e. the use of “Allah” in the Malay publication of Herald).

In October 2013, about 150 Muslims – mostly members of Pertubuhan Pribumi Perkasa Malaysia (PERKASA) and Pertubuhan Kebajikan Darul Islam Malaysia (PERKID) – held a protest outside the Court of Appeal holding banners that read “Allah just for Muslim, fight, no fear”.240 The President of PERKASA claimed that the word “Allah” could not be abused for any purpose.241 Similarly, when the Court of Appeal delivered its judgment in March 2014, similar claims were made by PERKASA that the word “Allah” could not be used by outsiders or Christians.242

At around the same time, Muslim groups claim the supremacy of Islam over other religions. Ikatan Muslimin Malaysia (ISMA) President Abdullah Zaik Abdul Rahman said that Christians must accept the supremacy of Islam to safeguard harmony among the different races and religion, stating that “They can choose to move to another country if they cannot accept the supremacy of Islam and the royalty that protects the supremacy of the religion.”243 Some Muslim groups have said that the Christian use of the word Allah might be used to encourage Muslims to convert to Christianity.244

In addition to making the above claims, such groups have also lodged police reports and organised protests outside churches. The police started investigating Father Lawrence Andrew under section 4 of the Sedition Act 1948 as a result of police reports made by Muslim groups who alleged that Father Andrew’s comments violated the Sultan’s fatwa.245 Similarly, a coalition of Klang Muslims Solidarity Secretariat246 organised a rally outside a Catholic church over the use of the word “Allah”; the said coalition blamed church leaders for sparking the current row over the Arabic word and threatened an “uprising” if their demand to stop


239 Ibid.


246 Organisations in this coalition include Jalur Tiga Malaysia (JATI), Selangor PERKASA, ISMA, and Pertubuhan Ikatan Kebajikan dan Dakwah Selangor (IKDAS).
non-Muslims from using it is ignored.\textsuperscript{247}

D. Significant Events of State Persecution of Religious Groups

1. Non-violent state persecution

a. Denial of personal status rights

Persons who are denied the right to renounce Islam continue to be subjected to Islamic religious laws (including criminal laws) although they may not profess or believe in the religion of Islam. As a consequence, such persons are unable to enjoy a number of fundamental rights, namely:

- The right to marry the person of their choice
  - Such person cannot marry a non-Muslim (section 3(3) of the Law Reform (Marriage and Divorce) Act 1976). Recently, JAIS stopped a Hindu wedding (at a Hindu temple) and took away the bride for questioning as JAIS suspected that the bride (Zarena Abdul Majid) was a Muslim; it was reported that the bride's father had converted her to Islam without her knowledge.\textsuperscript{248} JAIS is investigating Zarena under Section 10 of the Syariah Criminal Offences (Selangor) Enactment 1995 for insulting or bringing disrepute to Islam;\textsuperscript{249}

- Right to personal identity. After the case of Lina Joy, a person professing the religion of Islam cannot remove the classification of his or her religion as Islam on the identification card;

- The right to a private life. Such persons may be prosecuted for contravening any offence in the various Syariah criminal offences enactments. For example, a person may be arrested for eating in public during the fasting month, for failure to perform Friday prayers, breaking fast during Ramadhan, gambling, drinking and sexual deviance.\textsuperscript{250}

- Right to perform ritual and ceremonial acts. Upon the death of such a person, his/her body will not be allowed to be buried or cremated according to the rites and rituals of the religion she actually professes. A number of disputes regarding the deceased have risen over the years. In the much-publicised case of Everest Moorthy,\textsuperscript{251} upon the death of Moorthy Maniam (a member of the Malaysian team that climbed Mount Everest), the Islamic Religious Affairs Council came to collect the body from the morgue.\textsuperscript{252} In the Chandran Dharma Dass\textsuperscript{253} case, Islamic authorities, assisted by about 50 police and/or riot police, went to the deceased's family to take the body away for an Islamic burial. The deceased's family members were only allowed to view the body briefly and the presiding police officer instructed them not to pray. Similar incidents occurred in the Nyonya Tahir\textsuperscript{254} and Gan Eng Gor\textsuperscript{255} cases. Recently, the Penang Islamic Affairs Department took away


\textsuperscript{251} Kaliammal a/p Sinhasamy Iwn Pengarah Jabatan Agama Islam Wilayah Persekutuan & Lain-Lain [2006] 1 MLJ 685(HC).

\textsuperscript{252} Ibid.


\textsuperscript{254} Dalam Perkara Nyonya Binti Tahir, Ex P Majlis Agama Islam Negeri Sembilan & Yang Lain [2006] 1 CLJ (Sy) 335.

the body of Teoh Cheng Cheng as they had documents showing that she had converted to Islam in 1997 and had adopted the Muslim name Nora Teoh Abdullah.  

- Inheritance rights. The estate of such a person will not go to her non-Muslim family members but will instead be used by Baitul Mal (fund administered by the state’s Islamic affairs authorities to assist in the improvement of welfare of Muslims). This was also the case in Majlis Agama Islam Wilayah Persekutuan hvn Lim Ee Seng & Yg Lain, where the High Court allowed the Islamic Affairs Council to claim the entirety of a deceased estate because their records showed that he had converted to Islam more than 25 years ago; he however did not divorce his non-Muslim wife.

b. Denial of the right to freedom of expression

In June 2012, the religious authorities began to use Syariah law to interfere in the freedom of expression of publishers and book distributors. One of the first cases was the prosecution of Nik Raina (manager of a book store) and Ezra Zaid (director of the publishing house ZI publications) in the Syariah courts for distributing the Malay translation of Irshad Manji’s book Allah, Liberty & Love. They were charged with publishing and distributing publications contrary to Islamic law. In March 2013, even after the High Court ruled that the Syariah criminal charge against Nik Raina violated article 7 of the Federal Constitution, the Syariah court refused a discontinuance of the Syariah criminal charge as it insisted on upholding the Syariah court’s independence. Similarly, the Syariah criminal charge against Ezra Zaid subsists.

c. Denial of freedom to publish and distribute religious materials

Integral to the right to proselytise is the freedom to publish and distribute religious publications. However, in Malaysia, non-Muslims are prohibited from propagating non-Islamic religion to Muslims. A number of incidents have occurred where the prohibition was enforced - seizure of Malay bibles from BSM; conditions imposed on more than 5,000 Malay and Iban Bibles on CFM and the raid of the DUMC activities. Whilst these incidents did not result in any charges due to insufficient evidence, the harsh effect of the law prohibiting propagation to Muslims cannot be denied.

In addition, the Herald case is of particular importance as it is the first case before the civil courts concerning the prohibition of propagating non-Islamic religion to Muslims. The judgements in the Herald case can pose a number of problems for the Christian community as almost two-thirds of Christians in Malaysia are Bumiputera. They use Bahasa Malaysia and indigenous languages in their religious practices and they describe God as “Allah” in their prayers and holy book. Also this ruling affects not only Christians but also other religions.

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257 [2000] 2 AMR 1890.


such as Sikhs, who also refer to God as “Allah”.

Interpreting the constitutional provision through the privileging of Islam could have a negative impact on religious minorities and friendly relations between the different religious communities. At the same time, this may run contrary to international human rights standards, which ensure that the freedom to profess and practice religion and belief includes the right of believers and communities of believers to acquire, possess and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion and belief.

d. Denial of parenting rights

The courts have also (apart from the Indira Gandhi case) held that one parent’s consent is all that is required in order to convert a child to Islam (for more details on unilateral conversion of children, please see Part One (B)(4)(b) above).

2. Violent state persecution

Since 2000, there have been reports of violent persecution on account of religion and/or belief. These incidents fall into two main areas of concern: (a) incidents of demolition of Hindu temples and churches of indigenous peoples; and (b) prosecution of Muslim minorities and apostates.

Hindu places of worship. A number of Hindu temples have in the past, been demolished by authorities. Most of these demolitions were carried out at the behest of private developers keen on building roads or airports. Some of these temples were built without the approval of the local authority or the private owner. As discussed above, since 2006, the media and SUHAKAM have recorded incidents of about a dozen Hindu temples being either completely or partially demolished. Recently, the prehistoric ruins of a candi (tomb temple) at an archaeological site in Bujang valley, which was about 1,200 years old, was secretly demolished by a developer. Although the Minister of Home Affairs denied that the candi was a religious site, excavations there have revealed relics dating back to a Hindu-Buddhist kingdom from as far back as 110 CE.

According to SUHAKAM, the Hindu temples were demolished by authorities and private developers because they were illegal or because these structures were built (some dating back to the last century) before the National Land Code came into force when a building permit was not required. Others such as the President of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) surmised that the difficulty of establishing non-Muslim houses of worship leads to “illegal” temples and shop houses being turned into churches. Whilst it is acknowledged that the demolitions were

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263 Principle 16 of the Concluding Document of the 1989 Vienna Meeting of Representatives of the Participating States of the CSCE Conference.


265 Ibid.


probably not religiously motivated, they show a disregard for the sensitivities of followers of these religions. SUHAKAM has, in the meantime, made recommendations to ensure that this issue is dealt with in a fair manner (see below).

**Demolition of churches in indigenous settlement.**
Over the years, the indigenous community have been faced with threats or actual demolition of churches built on their ancestral land. Between 2005 and 2014, there were six cases of churches or chapels built by the indigenous community that were demolished by the local authorities. These incidents occurred in Kuala Masai (Johor), Gua Musang (Kelantan), Kuala Krau (Pahang), Triang (Pahang), Pos Pasik (Kelantan), and Alor Gajah (Melaka). As with the demolition of Hindu temples, authorities justified the demolition on the grounds that the church was built without proper approval.

Religion and land are closely connected issues for the indigenous people and, as such, the security of land tenure becomes an important aspect of freedom of religion. Thus, the demolition of places of worship will continue since state governments regard the land as belonging to the state and may be freely dealt with it.268

3. **Prosecution of Muslim minorities and apostates**

This intra-religious persecution is targeted at Islamic religious communities that are not aligned with Sunni Islam and apostates. In the former, since Malaysia adopts Sunni Islam, all other teachings are generally perceived to deviate from Sunni Islam and members of these minority religious groups face arrest, detention and prosecution by the state Syariah authorities. Groups that have been prosecuted include, amongst others, Shias, Al-Arqam group, Ayah Pin and the Sky Kingdom. For more details, see Part One (B)(2)(a)(ii).

In addition to the religious communities mentioned above, prosecutions have also been levelled against those who wish to renounce Islam. For more details, see Part One (B)(1)(b), (c) and (d) and Part One (B) (2)(a)(iii) and (iv).

E. Significant Events of Non-State Persecution of Religious Groups

See section F - Attacks on places of worship, below. There are no reported incidents of state complicity in these attacks. Also, it is not known whether these attacks were spontaneously and randomly perpetrated by individuals or are part of a systematic effort by religious groups / organizations.

F. Significant Events of Inter-Religious Conflict

**Attacks on places of worship**

All recorded incidents of attacks on places of worship were triggered by the *Herald* case. When the High Court ruled that the Catholic church was allowed to use the term “Allah” in the Malay language version of the *Herald* newsletter, distributed only to Catholics in early 2010, 10 churches and one Sikh Gurdwara were reportedly attacked:

- Desa Melawati (Metro Tabernacle) church was burned down;269
- Two attacks (firebombs) on Assumption


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Two burned patches on the wall of Good Shepherd Lutheran Church were seen in Petaling Jaya;271

A Molotov cocktail was hurled at the All Saints church in Taiping, Perak – police found burn marks on the wall but no damage to the building was reported;272

The outer wall of the Malacca Baptist church was splashed with black paint;273

In Taiping, a broken kerosene bottle with an unlit wick was found inside the compound of the St Louis Catholic church;274

Attackers hurled bricks and stones at glass windows of the Good Shepherd Catholic church in Miri, Sarawak;275

The main entrance of the Sidang Injil Borneo (SIB) church in Seremban, Negeri Sembilan was scorched in an arson attempt;276

The St Elizabeth Catholic church in Kota Kecil (Johor) was splashed with red paint;277

Windows of the Grace Global Prayer Church in Negeri Sembilan, were found to have been smashed;278

Stones were thrown at a Sikh Gurdwara Sahib in Sentul.279

Two brothers were sentenced to five years of prison after they were found guilty for attacking one of the churches. Raja Mohamad Faizal Raja Ibrahim, 24, and his brother Raja Mohamad Idzham Mohd Ibrahim, 22, pleaded not guilty. On the flipside, Muslims also suffered attacks. Pigs’ heads were thrown into the compounds of two mosques in Petaling Jaya and Jalan Klang Lama (Masjid Taman Datuk Harun and Masjid Taman Seri Sentosa);280 two suraus in Muar and a surau in Klang were attacked.281 In the recent Court of Appeal hearing of the same case in January 2014, Molotov cocktails were thrown at a church in Penang after a banner with the word “Allah” was found outside the church.282 In all these incidents, no casualties were reported.


273 Ibid.

274 Ibid.

275 Ibid.


G. Significant Events of Terrorism and/or Terrorist Threats

There are no links to terrorist groups in the aforementioned violent and non-violent religious persecutions.

H. Significant Cross-Border Incidents

1. Muslim insurgency in Southern Thailand

In the insurgency in the Southern provinces of Thailand of Pattani, Yala and Narathiwat, religion has been cited as one of the causes of the unrest. These three regions share a commonality with Malaysia, as they are predominantly Malay Muslim. Malaysia has played a small role in this insurgency as it has participated in peace talks and has in the past reportedly offered a safe haven to some of the separatist members.

Malaysia’s involvement with the insurgency movement in Southern provinces of Thailand dates back to the 1960s and 1970s, when Malaysia was accused of providing assistance to the separatists groups. The support waned in the 1990s after Thailand assisted Malaysia in eradicating the Communist Party of Malaysia (CPM). When the separatist movement re-emerged in the early 2000, there were allegations that Malaysian authorities knew that the separatists were using Malaysian territory as a sanctuary from Thai forces and did not do anything. In August 2005, 131 Thais, including women and children, sought shelter in two mosques in the Kelantan, in Malaysia. The (then) Prime Minister of Thailand alleged that these 131 Thais were separatist militants trying to spread the bloody insurgency in Thailand’s southern provinces. The (then) Minister of Foreign Affairs of Malaysia reportedly agreed to release these persons only if Thailand could guarantee their human rights and safety. This was followed by secret talks between the separatist movement and Thai security officials in late 2005/ early 2006, which were facilitated by the Malaysian government. The talks failed as it lacked top-level support from both sides.

After the bombings in Yala town in March 2012, it was reported that the secretary-general of the Thailand Southern Border Provinces Administrative Centre came to Malaysia to meet with the Malaysian Special Branch Police; speculation was rife that the meeting was to request the Malaysian authorities to contact the separatist leaders to persuade them to agree to a ceasefire during the Ramadhan month. A dialogue between both countries ensued with a view to diffuse the tension and mistrust. In June 2013, Malaysia hosted the peace talk between the Thai government and the Barisan Revolusi Nasional, in an effort to be the peace mediator in this conflict and to assure Thailand that Malaysia is serious in


286 Ibid.

287 Ibid.


291 Ibid.
its efforts in helping Thailand find a comprehensive solution to the conflict.292

2. Rohingya asylum seekers

Since 1992, the Office of the UN High Commissioner for Refugees (UNHCR) in Malaysia has been dealing with the arrival of Rohingyas in Malaysia. The Rohingyas have come to Malaysia as a result of the inter-communal tension in the Rakhine state in Myanmar293 and UN describes the Rohingyas as a persecuted religious and linguistic minority from western Burma.294 According to UNHCR Malaysia, as of the end April 2014, there are approximately 133,830 asylum seekers from Myanmar, comprising some 51,810 Chins, 36,290 Rohingyas, 11,790 Myanmar Muslims, 7,790 Rakhine, 3,620 Burmese & Bamars, 5,400 Mon, 5,150 Kachins, and other ethnicities from Myanmar.295

Although Malaysia is not a party to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons or the 1967 Convention on the Reduction of Statelessness, UNHCR noted that Malaysia continued to ensure some level of protection and assistance for the current refugee population.296


I. Governmental Response

1. Government

In the immediate aftermath of the incidents of persecution mentioned above, the Prime Minister and some Cabinet Ministers responded positively, urging Malaysians to stay calm and not to heed extremist elements. For example, during the recent 2014 Federal Court appeal hearing of the Herald case, the Prime Minister called on Malaysians to ignore extremist elements, while opposition leader, Lim Kit Siang called on Malaysians to “isolate extremists and traitors who wish to create chaos by inciting racial and religious hatred, conflict and tensions”.297 After the 2010 Herald case High Court ruling, Prime Minister Najib Razak visited one of the targeted churches and called for calm.298 In response to the firebombing of a church in Penang, the Prime Minister Najib said he directed action be taken to curb any acts that can be construed as “provocative” which will affect race relations.299

When the cow head protest took place, Koh Tsu Koon, then Minister in the Prime Minister’s Department stated that the protest was uncalled for and unnecessarily provocative, especially since the cow is sacred to Hindus. The Prime Minister also instructed the police to investigate this case and take prompt action.300


Additionally, during the Universal Periodic Review (UPR) process, the government reaffirmed its respect for the different religions in Malaysia and that the Federal Constitution espouses “moderation, tolerance, understanding and acceptance”.

The government went further to underscore “its commitment to continue ensuring the promotion and protection of all human rights in the country, taking into account the needs of the most vulnerable and disadvantaged segments as well as society’s readiness particularly with regard to certain sensitive issues such as religion, race.”

However, despite the good faith of the statements above, the government’s response to violent and non-violent religious persecutions has been far from satisfactory – most of the time, the government has either made rather unhelpful comments or stayed silent on the issue, allowing religious bodies to continue to issue statements that Islam is under threat. For example, when a group of Muslim organisations threatened to hold mass protests outside churches in Selangor on Sunday over the issue of the use of “Allah” by non-Muslims, the Deputy Prime Minister stated that the protestors were merely upholding the decree of the Sultan (as the head of Islam in the state of Selangor). The Deputy Prime Minister also stated that non-Muslims were insulting Islam and he called for stern action to be taken on activities that touch on Muslim sensitivities.

As regards inflammatory statements made by religious groups, the reluctance of the government to castigate these groups emboldens them and affords the impression that these groups can act with relative impunity. For example, the government did not respond when ISMA urged Muslims nationwide to be aggressive in defending Islam, which it claimed is under attack from certain bands of non-Muslims, or when Datuk Zulkifli Noordin, Deputy President of PERKASA, stated that the move by Christians to drag Malaysia’s “Allah” issue to court was provocative and one which insulted Muslims.

Neither was there any response when the President of PERKASA, Ibrahim Ali, called for "moderation, tolerance, understanding and acceptance”.


302 Ibid.


Muslims to burn Malay Bibles written in Jawi script, which contain the word “Allah” or when Perkasa information chief Ruslan Kassim threatened to “chop the heads off” those who “ridicule” Islam and the Sultan of Selangor, although he later clarified that it was a figure of speech.

a) Prosecutions of perpetrators

In the case of non-state perpetrators, prosecution has been inadequate in two instances. First, in incidents of demolition of places of worship, private developers have not been charged; any relief is sought through damages for trespass. The courts have taken a rather narrow view of such incidents, preferring to treat them as land issues instead of religious freedom cases. For example, in Pedik bin Busu, which involved the demolition of a church for indigenous community by the land administrator, much of the case revolved around whether the construction of the church complied with the Street, Drainage and Building Act 1974. The courts held that the construction was illegal but nevertheless held that the demolition of the church was illegal as the local authority demolished the church before the expiration of the 30-day notice period. Secondly, in the past, the assistance of the police has been sought by religious authorities on an ad hoc basis. However, in wilful/unilateral conversions of children to Islam, it has been difficult to enforce court orders granting custody to the non-Muslim parent. The police have been wary of going against anything that is perceived to be Islamic and have actively assisted in enforcing Syariah court orders, but will not assist in enforcing civil court orders. In the recent case of Deepa, the police, sanctioned by the Inspector General of Police, refused to act on the report lodged by Deepa, whose son was snatched by her estranged Muslim convert husband, as there were two court orders awarding the respective parents’ custody. Deepa had won custody through the civil court but it was reported that her husband, Izwan Abdullah, also obtained a similar order from the Syariah court. Similarly, in the Indira Gandhi case, the Inspector General of Police refused to execute the court order to arrest the ex-husband and return the youngest child to her mother; instead the Inspector General of Police wanted the children involved in the interfaith cases to be placed in welfare homes. The Attorney-General has applied to intervene in the case, seeking a stay on both civil and Syariah High Court orders issued to police to locate the children involved.

In addition, civil society organisations have expressed concern over the selective investigation and prosecution of religious freedom cases, citing the example that the Attorney-General refused to take action against Ibrahim Ali, President of PERKASA, when he called on all Muslims to seize and burn copies of the Bible that contain the word “Allah”.


315 COMANGO, ‘Stakeholder Report on Malaysia for the 17th Session in the 2nd Cycle of the HRC’s Universal Periodic Review in 2013’.
b) Other measures

In cases of demolition of places of worship, SUHAKAM has come out strongly, stating that such issues should not be viewed narrowly as land and permits issues but one which is linked to one’s religion and regarded as sacred. Additionally, SUHAKAM has recommended that in dealing with such matters, the Ministry of Housing and Local Government and the Ministry of Federal Territories should consult the affected community and be more sensitive when dealing with religious traditions and sacred objects; provide an alternative site; preserve historical places of worship; and allow the operation of existing places of worship if their operations were allowed by various authorities before the National Land Code was enforced.

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

In the past decade or so, a number of initiatives have been made to promote inter-religious dialogues and address the religious friction in Malaysia. For example, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST), which was established in 1983, have held several interfaith dialogues with several groups, notably MCA (in January 2010) and the Global Peace Convention (in 2013). The MCCBCHST is made up of about nine organisations from various religions – Buddhist, Christian, Hindu, Sikh and Taoist, all of whom share the common aim of promoting understanding, mutual respect and cooperation between people of different religions. The MCCBCHST enjoys some non-financial support from the government, with relatively easier accesses to high ranking government officials, possibly due to the fact that Executive Committee members are religious leaders. Notably, when Parliament discussed the issue of establishing a formal religious consultative body, the role of the MCCBCHST in promoting harmony amongst the different religions was acknowledged by a deputy minister who went further to state that the existence of the MCCBCHST and an Advisory Panel on National Unity were sufficient and that there was no need for a formal religious consultative body.

In November 2013, the government, as part of its national reconciliation plan, established the National Unity Consultative Council (NUCC). Its term of reference includes drafting a National Unity Blueprint to serve as the national framework for the promotion of national unity, social cohesion and national reconciliation. In its first meeting in January 2014, the NUCC discussed the issue of the use of “Allah” by non-Muslims and the raid by JAIS of the BSM and concluded that acts causing disharmony should be deplored, especially the politicisation of religion and that all Malaysians should respect all places of worship. The NUCC drafted three bills – the Racial and Religious Hate Crimes Bill; the National Harmony and Reconciliation Bill; and the National Harmony and Reconciliation Commission Bill – aimed at strengthening national unity and eliminating hate crimes against any race or religion. The NUCC saw these three bills as a replacement to the Sedition

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Act 1948. However, a group of Muslim NGOs were critical of the bills as they felt that the bills attempted to destroy the sovereignty of the Malay rulers and Islam as the religion of the Federation, and Malay privileges. PERKASA Secretary-General Syed Hassan Syed Ali threatened to quit UMNO if the government accepted the said three bills as he felt that the bills were aimed at weakening Malay political power; to date, the bills have yet to be tabled in Parliament.

The NUCC also holds dialogues with the Malaysian public to hear views, positive experiences and stories of achievements in ethnic relations, contemporary critical concerns pertaining to national unity and solutions, recommendations and the way forward in strengthening ethnic harmony of Malaysians; a total of 18 dialogues have been organised in the first quarter of 2014. Other efforts include the participation of the Deputy Prime Minister in the World Interfaith Harmony Week (in February 2012), and an interfaith forum entitled Gateway to Interfaith Goodwill (GEMA) 2012 organised by the Perlis Al Islah Association and the Islamic Council of Perlis, as a platform for interaction among different religions with the hope of creating a better understanding between the religious groups. Seventeen religious groups, including representatives of Islam, Christianity, Buddhism, Hinduism, Sikhism, and Taoism, attended the forum (November 2012), and events organised by the Global Movement of Moderates. In February 2014, Malaysians for Malaysia, a loose gathering of Malaysians, organised a peaceful walk to various houses of worship in Penang, including a church, a Taoist temple, a Hindu temple and a mosque. The “A Walk in the Park” event saw some 50 Malaysians walking with purple balloons and handing out stalks of carnations to people they met along the way. In March 2014, a PAS member of Parliament organised a “Peace dinner” in Penang in an effort to reach out to the Christian community and non-Muslims.

K. Analysing the Trends

1. Non-violent religious persecution

There are no official data or statistics tracking incidents of non-violent religious persecutions. There is no discernible increase in incidents of non-violent religious prosecution, particularly in the area of wilful/unilateral conversion of children to Islam and the denial of personal status rights – in both areas, incidents seem to occur at the same pace, without any perceptible increase.

2. Violent religious persecution

There is no official data of the number of prosecution of apostates. At the height of the incidents of demolition of Hindu temples between

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2006 and 2007, this issue sparked a street protest led by Hindraf (a coalition of 30 Hindu NGOs) on 25 November 2007. According to media reports, approximately 10,000 ethnic Indian gathered to protest, *inter alia*, the demolition of Hindu temples, lack of educational and business opportunities available to ethnic Indians in Malaysia. A number of activists were arrested and some detained under the now repealed Internal Security Act 1960. However, it is noted that the spate of demolition of Hindu places of worship by local authorities has been happening with less frequency.

As for attacks on places of worship, there has been an increase in social hostilities involving religion and increase in the level of intimidation against Christians since 2009. This increase could be because Muslims perceive the *Herald* case as a threat to Islam and its followers. Whilst the number of incidents have increased, individual incidents have not escalated. Many of the incidents, whether attacks against churches or mosques, are left as it is without any further escalation of attacks and these incidents have not been used by the majority (whether Christians or Muslims) to further target each other; furthermore, incidents of attacks have stopped.

As for prosecution of Muslim minorities, the number of arrests of Shiites saw a spike between 2010 and 2014. In this regard, although the number of arrests of Shiites has been erratic, without any discernible pattern (of increase or decrease), it is observed that the call for Sunni Islam to be the only school recognised in Malaysia has become louder in the recent years. Not only religious authorities but also Federal ministers have shown support for this.

**PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES**

**A. Negative Contributing Factors**

The situation of religious freedom is Malaysia made more complicated by several circumstances. Although it is unlikely that the factors below would contribute to a likelihood of violent conflict, they do contribute negatively to any efforts to promote or protect freedom of religion in Malaysia.

1. **Religion used as a pawn in the political game**

Religion has unfortunately been used by politicians (of both sides of the divide) as a tool to discredit the other party and to gain favour amongst their own party members and the electorate. Within the Muslim divide, politicians often try to prove their Islamic-ness and Malay-ness through religion. Both UMNO (ruling party) and *Parti Islam se-Malaysia* (PAS) (opposition) seek to prove their piety to gain favour of their Malay-Muslim members. For example, when Shia followers were arrested and detained, the President of UMNO stated (in the last UMNO general assembly) that the UMNO constitution should be amended to indicate that Islam in Malaysia is of *Sunna wal Jamaah*; the UMNO youth wing and the Penang UMNO delegate went further to call for an amendment to the Federal Constitution to reflect this; UMNO vice-president Datuk Seri Ahmad Zahid Hamidi, attacked a certain “No. 2 in PAS” at the general assembly, calling the PAS leader a “top Shia leader”. In the same vein, some political analysts are of the opinion that UMNO is using the *Herald* case to boost their Islamic credentials amongst its members.

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331 Ibid.
Malay-Muslim voters.\(^{332}\)

The Prime Minister’s statement that the *Herald* ruling would not affect Christians in Sabah and Sarawak\(^ {333}\) was supported by some Cabinet ministers who suggested introducing a Bill to override the court’s ruling.\(^ {334}\) This was seen as an effort to appease the voters in Sabah and Sarawak, who were promised (through the Ten-Point-Solution) just before the Sarawak elections in 2011 that Bibles in Malay language, which contained the word “Allah” could be imported.\(^ {335}\)

Religion has also been used by the political parties to discredit each other. In the recent debate on the issue of implementation of *hudud* in the state of Kelantan, *Barisan Nasional* component parties and *Pakatan Rakyat* (opposition) both chipped in but, instead of focusing on the human rights and constitutional implications of *hudud* law, politicians made unhelpful comments that do not promote religious harmony within the different religions in Malaysia. For example, the MCA president, Datuk Seri Liow Tiong Lai, stated that it was the responsibility of DAP to tell PAS to withdraw its decision to table the *Hudud* Bill. Similarly, Baljit Singh, Gerakan’s legal bureau chief, said that “DAP got non-Muslims to vote for PAS but now we want to know what is it going to do to stop Kelantan PAS on *hudud*.\(^ {336}\) In response to the raid by JAIS on the BSM, two Cabinet ministers (Youth and Sports Minister Khairil Jamaluddin and Minister in Prime Minister’s Department Nancy Shukri), pushed the responsibility to the Selangor (opposition) government to deal with the problem from a state perspective.\(^ {337}\)

When politicians try to tackle the issue (of freedom of religion) from a rights-based approach, they have been criticised for promoting apostasy. For example, when Nurul Izzah, member of Parliament, said that religious freedom was for all, including the Malays, the Perak *Mufti* Tan Sri Harussani Zakaria responded, stating that her views should not be condoned as it contained elements of liberalism; *Wanita* UMNO chief Datuk Seri Shahrizat Abdul Jalil and the Chairman of the National Fatwa Council Tan Sri Abdul Shukor Husin both responded saying that the statement could create chaos and confusion among Muslims.\(^ {338}\)

When religion is used as political tool, it distracts the dialogue on religious freedom from focusing on human rights and the impact of the injustices on the lives of ordinary Malaysians. It also runs the risk of creating a division between the different religious communities in Malaysia, pitting one against the other.

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2. Race and religion

Malays are guaranteed a special position by article 153 of the Federal Constitution, which authorises quotas for Malays for positions in the public service (other than the public service of a state); for scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal government; and for when any permit or license for the operation of any trade or business is required by Federal law. Article 153 was introduced when Malaysia gained independence in 1957 as part of an affirmative action policy for the Malays and as part of "ethnic bargaining and accommodation."\(^{339}\) It was part of the Federation of Malaya Agreement 1948 that required that the British safeguard the special position of the Malays and the legitimate interests of the other communities.\(^{340}\)

Article 153 has always been a contentious issue and some have felt that article 153 is unnecessary in this day and age when it is perceived that the economic position between the races have been equalised. Because race and religion are interlinked – Article 160 defines a Malay as a person "who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom..." – the discontent with the special position of Malays created by article 153 has assumed a religious dimension. Whilst many Malaysians accept the original objective of article 153, many have begun asking if affirmative action should be founded on poverty levels instead of race. These discussions have, to a certain extent, inflamed the discussion on religion, as they are seen as an attack on Islam. The situation is made worse by politicians playing up the issue to gain popularity.

3. Rising influence of Islamic conservatism

Over the years, the voice of conservative Islamic groups has become louder. The rise of Islamic conservatism did not occur overnight. Since 1957, each Malaysian Prime Minister approached Islam from different angles, but all of them contributed to the Islamisation of Malaysia.\(^{341}\)

Perhaps one rather important contributing factor to the rise in Islamic conservatism is the institutionalisation of Islam. This intensified in the 1980s and 1990s with the establishment of a number of organisations such as the Institute of Islamic Understanding Malaysia (IKIM) and the International Islamic University of Malaysia (IIUM).\(^{342}\) This was expanded to education curricula to include Islamic civilisation in the history curriculum in secondary schools. In law, the Administration of Islamic Law Act was enacted in all the states and the legislation created religious authorities (Majlis Agama Islam, Mufti and the Islamic Consultative Council) charged with the responsibility of religious interpretation and enforcement, administration of mosques, and appointment and regulation of local imams. At around the same time, the Syariah courts (Subordinate Courts, High Court and Appeal Court) were established.

In the last few years, conservatism within the Muslim communities appeared to have intensified due to two factors – first, the belief that non-Muslims and liberal thinking were threatening the dominance of Islam and of Malays, where the use of the word

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340 Ibid.
“Allah” by the Herald was the last straw. 343 Secondly, the waning support for the ruling Barisan Nasional party has triggered policies in favour of majority ethnic Malays.344 Whilst the Prime Minister has called for moderation and a rejection of fanaticism and extremism,345 this call for moderation seems to imply a rejection of humanism, secularism, liberalism and human rights, which the Prime Minister views as threats to Islam.346 With the Islamisation of Malaysia and the rise in conservatism – whatever its roots or motivations – this state of affairs can only be counterproductive to a rational dialogue on freedom of religion.

4. Civil/Syariah courts jurisdiction

The protection of freedom of religion in Malaysia is constrained by the lack of political will to deal with issue of jurisdiction between the civil and Syariah courts, particularly in matters of apostasy and wilful/unilateral conversion of children. This issue has created numerous problems over the years, where the civil courts have shied away from dealing with this issue, as evident in the cases of Genga

Devi a/p Chelliah lwn Santanam a/l Damodaram, Shamala Sathyaseelan, Subashini, Priyathaseny & Ors v Pegawai Penguatkuasa Agama Jabatan Hal Ehwal Agama Islam Perak & Ors, and Lina Joy v Majlis Agama Islam Wilayah Persekutuan. For more details about the problematic civil/Syariah courts jurisdiction, see Part One (C)(1).

Whilst the courts know that a non-Muslim has no remedy as he or she is unable to go to the Syariah courts, they have continued to be ambivalent. In Subashini, the Court of Appeal held that even though Subashini was a Hindu, she was obliged to go to the Syariah court for relief as her husband had commenced proceedings there. However, the Federal Court made obiter dicta pronouncements stating that a non-Muslim spouse could not be made to go to the Syariah courts. Curiously, the Federal Court (by majority) held that it could not stop a Muslim convert going to the Syariah courts for his “remedies” under Islamic law but that any pronouncement of the Syariah courts would have “no legal effect” in the civil courts. In Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor,347 the Federal Court held that although in some circumstances a non-Muslim would be without a remedy, the civil court was not vested with jurisdiction merely because the Syariah court did not have jurisdiction over a particular matter.

While Latifah appears to have clarified the law on the jurisdiction of the civil and Syariah courts, it appears that the Attorney-General’s Chambers continues to raise objections to the jurisdiction of the civil court to determine many issues relating to religious freedom.

5. The media

The media in Malaysia is divided into the mainstream/alternative media or the language-based media. Most print media is viewed as mainstream since they are owned by political parties or those closely-connected to politicians.
In the latter group, there is an array of English-language based media (News Straits Times, The Star, The Sun), Mandarin-based media (Sin Chew Jit Poh, Nanyang Siang Pau), and Malay-based media (Utusan Malaysia, Sinar Harian). It is thus not surprising that the treatment of freedom of religion by the media follows these delineations of political leanings or language. Additionally, such media articles rarely touch on theological or the rights aspects of issue. This polarisation comes out quite clearly when the media covers issues relating to Islam. Some have observed that the way the media cover religious issues depends very much on the ethnicity of their readers – for example, the Chinese media would criticise any government policy that imposes Islamic culture or norms on the Chinese population.

The English-language media has largely been silent on religious issues particularly if the matter concerns Islam. There is very little analysis and articles would merely report statements by UMNO leaders. On the other hand, Malay-language newspapers have become increasingly bold in matters relating to Islam, with articles such as “Pertahan Islam dalam apa cara” (Defend Islam in any way), “Sis ’hina’ Islam – Perkasa Selangor” (Sis “dishonors” Islam – Perkasa Selangor), “Kempen ’Saya Mahu Sentuh Anjing’ cabar kesucian Islam – Yadim” (“I want to touch dogs” campaign challenges the sanctity of Islam), “Demokrasi jadi alat ’serang’ Islam” (Democracy is used as a tool to “attack” Islam), and “Jangan cabar orang Islam” (Do not challenge Muslims).

The mainstream media has also played into the hands of politicians who use religion to discredit the opposition and consolidate their positions. For example, in 2000, when members of the Al-Ma‘unah sect were arrested, the mainstream media alleged that members of Al Ma‘unah were linked with PAS. This results in freedom of religion being portrayed as a political issue with racial and religious overtones. This dichotomous coverage does little to enrich the constructive dialogue on freedom of religion. Whilst online media (and some print media like The Sun and Sin Chew Jit Poh) have been more open to the issue of freedom of religion and have explored the issues in a more in-depth manner, some have felt that the limited reach (of these alternative media) coupled with the state of affairs have resulted in religious walls being...
built at the expense of mature and fair dialogue on freedom of religion.

B. Positive Contributing Factors

1. Non-retaliation

Despite the many aggravating factors (discussed above), all the incidents of violent and non-violent religious persecution have not escalated. In many incidents, there were no reprisals for the attacks against places of worship. Perhaps one reason is that, generally, Malaysians view these incidents as actions of a small group of extremists who do not necessarily represent the majority of that particular religious community. Many were also convinced that some incidents were perpetrated by agitators – for example, when controversial banners bearing the word “Allah” appeared on a banner outside several churches in Penang following the 2014 Court of Appeal judgement on the Herald case, many believed that these were not done by the churches themselves but by provocateurs. In addition, a show of solidarity by Malaysians has been encouraging – when Selangor UMNO threatened to hold massive protests outside Selangor churches after the Herald case, there was overwhelming support by Muslims and non-Muslims, who showed up with flowers outside Selangor churches during Sunday mass.

2. Increased access to information

Access to information in Malaysia has changed significantly over the past two decades, largely due to the Internet. The Internet opened up new avenues for journalists and readers and triggered the rapid proliferation of online news portals such as Malaysiakini.com and Free Malaysia Today. The public, too, have begun to express their opinions through blogs and social media forums.

Equally, Malaysians have become increasingly Internet savvy and Malaysia has one of the highest Internet penetration rates across all age groups at 66% in 2012. A report commissioned by the United Nations’ International Telecommunication Union attributes this high proportion of “digital natives” to the “youth bulge”. The report also noted that despite having just 15% of the population with home Internet access in 2007, youths were able to access the Internet in other locations, particularly schools. With this increased space and the Internet being largely a free environment in Malaysia, many youths are finding their voices through blogs and online forums. Dissenting opinions and controversial discussions on Malaysian politics and current state of affairs are expressed freely, although the introduction of section 114A of the Evidence

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PART FOUR: CONCLUSION

The Federal Constitution protects freedom of thought, conscience and religion – it preserves both private rights to religious freedom as well as rights of religious communities to manage and administer themselves without interference from the state. However, some parts of the Federal Constitution, laws and policies and the enforcement of these laws and policies, derogate from international human rights protection. As there are two sets of laws governing Muslims and non-Muslims in Malaysia, where Syariah law administers religious, family and criminal issues of Muslims and civil law rules non-Muslims, the level of freedom of religion enjoyed by Muslims and non-Muslims varies.

For persons professing Islam, religious freedom is significantly eroded for individuals and communities who do not follow Sunni Islam. These persons and groups are viewed as “deviant” and subsequently banned and their members subjected to criminal prosecution under Syariah law. Also, the so-called “apostasy from Islam” cases are particularly problematic as there is almost no avenue for a Muslim to renounce his or her religion. Furthermore, coercive practices (detention for rehabilitation and prosecution) are used by religious authorities to ensure that a Muslim continues to profess the religion of Islam. The consequences of being unable to leave Islam are the denial of a wide range of human rights such as the right to marry, right to a private life, and inheritance rights.

For persons professing religion other than Islam, a number of limitations have been placed on their religious freedom. The strict implementation of the restriction of propagation of religions amongst persons professing the religion of Islam, triggered by the use of “Allah” and other words pertaining to Islam by non-Muslims, have gained traction recently. In addition, the wilful conversion of children, provisions permitting governmental expenditure in favour of the religion of Islam only, and the treatment of demolition of places of worship from a narrow viewpoint of trespass to land instead of a religious freedom issue, could offend principles

Act 1950 has been criticised as an attempt to erode freedom of expression online.

As a result of greater access to information and news, the Malaysian public, especially the youth, are becoming more conscious of governance and the quality of institutions. In terms of social justice and human rights, this has translated to higher levels of awareness of human rights, greater participation in the democratic process and higher voter turnout during the last general election. To a certain extent, the increased access to information has facilitated participation, particularly of the youth, in the rights discourse in Malaysia.

362 Section 114A of the Evidence Act 1950 reads, “114A. (1) A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved. (2) A person who is registered with a network service provider as a subscriber of a network service on which any publication originates from is presumed to be the person who published or re-published the publication unless the contrary is proved. (3) Any person who has in his custody or control any computer on which any publication originates from is presumed to have published or re-published the content of the publication unless the contrary is proved. (4) For the purpose of this section— (a “network service” and “network service provider” have the meaning assigned to them in section 6 of the Communications and Multimedia Act 1998 [Act 588]; and (b) “publication” means a statement or a representation, whether in written, printed, pictorial, film, graphical, acoustic or other form displayed on the screen of a computer.”.


of non-discrimination.

The level of intimidation and social hostilities against Christians due to the “Allah” issue and persecution of Islamic religious minorities have increased over the years. Any attempt to discuss these issues has been viewed as an attack on Islam and Malays.

At a macro level, a general “Islamisation” of government coupled with growing vocalism from the minority religious communities has seen more and more complaints of discrimination of minority religious communities and their right to worship in community with each other. This, coupled with religion being used as a political tool, has sowed seeds of intolerance towards divergent viewpoints within Islam and prejudice amongst religious communities in Malaysia.

The situation is not helped when the government continues to keep silent on many incidents of violent and non-violent persecutions, allowing religious groups to continue to issue inflammatory statements. If and when the government reacts, more often than not, the responses hew towards conservative Islam to shore up votes amongst ethnic Malays. To complicate the issue, the civil courts have been reluctant to clarify the issue of civil/Syariah jurisdiction and have disclaimed jurisdiction even though the outcome is to leave victims bereft of a remedy.

BIBLIOGRAPHY


Abdul Qawi bin Jamil & Mohd Suhairi bin Md. Din v Director of the Islamic Affairs Department, Melaka & 2 Ors Application for Judicial Review No.: 25-154-07/2012.


administration of Islamic Law (Kedah Darul Aman) Enactment 2008.
Administration of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M.


Administration of the Religion of Islam Enactment 2006 (Perlis).


Che Omar bin Che Soh v Public Prosecutor & Anor Case [1988] 2 MLJ 55.


COMANGO, ‘Stakeholder Report on Malaysia for the 17th Session in the 2nd Cycle of the HRC’s Universal Periodic Review in 2013’.


Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1989 (Pahang).

Control and Restriction of the Propagation of Non-Islamic Religious Enactment 1991 (Johor).

Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (Kedah).

Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1981 (Kelantan).

Control and Restriction of the Propagation of Non-Islamic Religions to Muslim Enactment 1988 (Malacca).
Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1980 (Terengganu).


*Dalam Perkara Nyonya Binti Tahir, Ex P Majlis Agama Islam Negeri Sembilan & Yang Lain [2006] 1 CLJ (Sya) 335.*

*Darma Suria Risman Saleh v. Menteri Dalam Negeri Malaysia & Ors [2010] 1 CLJ 300 (FC).*


*Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor [2004] CLJ (ISL) 339 (HC).*


Evidence Act 1950.


Federal Constitution.


Human Rights Council Working Group on the
Universal Periodic Review, 17th session,
Summary prepared by the Office of the High
Commissioner for Human Rights in accordance
with paragraph 15 (b) of the annex to Human
Rights Council resolution 5/1 and paragraph
5 of the annex to Council resolution 16/21 –
Malaysia (A/HRC/WG.6/17/MYS/3), 25 July
2013.

Human Rights Council, Working Group on the
Universal Periodic Review, 17th session,
Compilation prepared by the Office of the High
Commissioner for Human Rights in accordance
with paragraph 15 (b) of the annex to Human
Rights Council resolution 5/1 and paragraph
5 of the annex to Council resolution 16/21 –
Malaysia (A/HRC/WG.6/17/MYS/2), 9
August 2013.

‘Hundreds of Rohingya refugees reach Langkawi,
Malaysia’, BBC News Online, 31 December
asia-20873678> accessed 14 May 2014.

Ida Lim, ‘No to one country, two rule policy
on ‘Allah’, says Sabah church’, Malay Mail
themalaymailonline.com/malaysia/article/
no-to-one-country-two-rule-policy-on-allah-
says-sabah-church> accessed 27 April 2014.

Ida Lim, ‘Slippery slope, lawyers say of Pahang ban on
holy book in hotels’, The Malay Mail Online, 25
com/malaysia/article/slippery-slope-lawyers-
say-of-pahang-ban-on-holy-books-in-hotels>
accessed 7 May 2014.

‘IGP blasted for inaction on civil court decision’,
malaysiakini.com/news/259807> accessed 13
April 2014.

‘Indigenous Group in Malaysia Sues Over
Demolished Church’, Open Doors Canada, 24
January 2008 <http://www.opendoorsca.org/
content/view/420/139/> accessed 13 April
2014.

Indira Gandhi d/o Mutho v Perak Registrar of
Converts, Perak Islamic Religious Department,
State Government of Perak, Ministry of
Education, Government of Malaysia, &
Patmanathan s/o Krishnan [2013] 7 CLJ 82
(HC).

‘Islamisation, influx of foreigners hit Sabahans’,
malaysiakini.com/news/259808> accessed 13
April 2014.

‘Isu Tuntutan Penganut Kristian Terhadap
Penggunaan Kalimah Allah’, JAKIM,
kebangsaan/isu-tuntutan-penganut-kristian-
terhadap-penggunaan-kalimah-allah>
accessed 2 April 2014.

Jabatan Pendaftaran Pertubuhan Malaysia, Laporan
File/documents/Laporan_Tahunan_2011.pdf>
accessed 6 April 2014.


Jakob Renner v Scott King, Chairman of Board of
Directors of the International School of Kuala
Lumpur [2000] 3 CLJ 569.

‘Jamil Khir: 16 arrests, 120 inspections made in
connection with Shia teachings’, The New
Straits Times, 24 September 2013, <http://
www.nst.com.my/nation/general/jamil-
khir-16-arrests-120-inspections-made-in-
connection-with-shia-teachings-1.362315>
accessed 6 April 2014.

Jason Johnson, ‘Malaysian role vexes Thai conflict’,
Asia Times Online, 21 September 2012, <http://
www.atimes.com/atimes/Southeast_Asia/
NI21Ae01.html> accessed 13 April 2014.


*Majlis Agama Islam Pulau Pinang v Siti Fatimah Tan Abdullah* [2009] 1 CLJ (SyA) 162.

*Majlis Agama Islam Wilayah Persekutuan v Lwn Lim Ee Seng & Yg Lain* [2000] 2 AMR 1890.


Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur [2013] 8 CLJ 890 (CA)

Meor Atiqulrahman Ishak & Ors v. Fatimah Sihi & Ors [2004] CLJ (ISL) 339 (HC); [2006] 4 CLJ 1 (FC).


Muhamad Juzaili Mohd. Khamis & 3 Ors v Government of Negeri Sembilan & 4 Ors High Court Seremban Judicial Review Application No. 13-1-2011; Civil Appeal No.-01-498-11/2012 (Court of Appeal).


National Service Act 1952.


Nedunchelian a/l Vuthiradam v Nurshafiqah binti Mah Singai Annal @ Valarmathy a/p Mah Singai Annal & 9 Ors [2005] 2 AMR 711 (HC).


Non-Islamic Religions (Control Of Propagation Amongst Muslims) Enactment 1988 (Selangor).


Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and 5 others Saman Pemula No. MT-21-248-2010.


Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN


Principle 16 of the Concluding Document of the 1989 Vienna Meeting of Representatives of the Participating States of the CSCE Conference.


Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1976] 1 LNS 126.

Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (Perak).

Saravanan v Subashini [2007] 2 MLJ 205, 2 AMR 540, 2 CLJ 451 (CA).

Shamala a/p Sathyaaseelan v Dr Jeyaganesh a/l C Mogarajah [2004] 2 MLJ 241 (HC); [2004] 2 MLJ 648 (HC).

Shad Saleem Faruqi, Professor Dr., Document of Destiny the Constitution of the Federation of Malaysia,' (Kuala Lumpur: The Star Publications, 2008).


Siti Fatimah binti Ab. Karim v Majlis Agama Islam Melaka, Melaka Syariah High Court Case No.04200-043-0005-2006.


Subashini a/p Rajasingam v Saravanan a/l Thangathoray [2007] 2 MLJ 798 (HC).


*Sulaiman Takrib v Kerajaan Negeri Terengganu; Kerajaan Malaysia (Intervener) & Other Cases [2009] 2 CLJ 54 (FC).*


Syariah Criminal Offences (Selangor) Enactment 1995.

Syariah Criminal Offences (State Of Penang) Enactment 1996.

Syariah Criminal Offences Enactment 1995 (Sabah).

Syariah Criminal Offences Enactment 1997 (Johor).

Syariah Criminal Offences Ordinance 2001 (Sarawak).

Syariah Criminal Offences Ordinance, 2001 (Sarawak).


*Teoh Eng Huat v The Kadhi of Pasir Mas, Kelantan & Anor [1990] 1 CLJ 277 (SC).*


Yg Dipertua Majlis Daerah Gua Musang v Pedik Bin Busu [2010] 5 MLJ 849.


### ANNEX 1

**Different State Syariah Laws Pertaining to Apostasy**

<table>
<thead>
<tr>
<th>State</th>
<th>Relevant provision</th>
<th>Whether apostasy is allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kelantan</td>
<td>Sections 102 of the Kelantan Islamic Council and Malay Custom Enactment 1994.</td>
<td>- Persons intending to leave Islam must go through detention for “rehabilitation”.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- However, there are no explicit provisions permitting the Syariah Court to declare him/her an apostate.</td>
</tr>
<tr>
<td>Negeri Sembilan</td>
<td>Section 119 of the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003.</td>
<td>- There is provision for renunciation but before a person is permitted to leave, he/she must attend state sponsored counselling sessions and the Syariah Court has the discretion to refuse the application.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The Syariah Court can make a declaration that a person is no longer a Muslim.</td>
</tr>
<tr>
<td>Perak</td>
<td>Section 50(3)(b)(x) of the Administration of the Religion of Islam (Perak) Enactment 2004.</td>
<td>- There is an explicit provision permitting the Syariah Court to declare a person an apostate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- No explicit provision making apostasy a crime or any provision regarding renunciation.</td>
</tr>
<tr>
<td>Terengganu</td>
<td>Sections 4(f), 25 and 26 of the Shariah Criminal Offence (Hudud and Qisas) Terengganu Enactment 1423h/2002m.</td>
<td>- Apostasy is a crime and any person found guilty of being an apostate by the Syariah Court is given at least three days to repent. If the person refuses to repent, the Syariah Court shall pronounce the death sentence.</td>
</tr>
<tr>
<td>Perlis</td>
<td>Section 61(3)(b)(x) of the Perlis Administration of the Religion of Islam Enactment 2006.</td>
<td>- There is an explicit provision permitting the Syariah Court to declare a person an apostate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- No explicit provision making apostasy a crime or any provision regarding renunciation.</td>
</tr>
<tr>
<td>Johor</td>
<td>Section 61(3)(b)(x) of the Administration of the Religion of Islam (State of Johor) Enactment 2003.</td>
<td>- There is an explicit provision permitting the Syariah Court to declare a person an apostate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- No explicit provision making apostasy a crime or any provision regarding renunciation.</td>
</tr>
<tr>
<td>Pahang</td>
<td>N/A</td>
<td>- No explicit provisions in relation to leaving the religion of Islam.</td>
</tr>
<tr>
<td>Kedah</td>
<td>Section 13(3)(b)(x) of the Syariah Courts (Kedah Darul Aman) Enactment 2008.</td>
<td>- There is an explicit provision permitting the Syariah Court to declare a person an apostate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- No explicit provision making apostasy a crime or any provision regarding renunciation.</td>
</tr>
<tr>
<td>State</td>
<td>Relevant provision</td>
<td>Whether apostasy is allowed</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
</tbody>
</table>
| Selangor   | Section 61(3)(b)(x) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003. | - There is an explicit provision permitting the Syariah Court to declare a person an apostate.  
- No explicit provision making apostasy a crime or any provision regarding renunciation. |
| Melaka     | Section 49(3)(b)(x) of the Administration of the Religion of Islam (State of Malacca) Enactment 2002; Section 66 of the Syariah Offences Enactment (Melaka) 1991. | - Person intending to leave Islam must go through detention for “rehabilitation”.  
- There is an explicit provision permitting the Syariah Court to declare a person an apostate. |
| Penang     | Section 61(3)(b)(x) of the Administration of the Religion of Islam (State of Penang) Enactment 2004. | - There is an explicit provision permitting the Syariah Court to declare a person an apostate.  
- No explicit provision making apostasy a crime or any provision regarding renunciation. |
| Sabah      | Section 11(3)(b)(x) of the Sabah Syariah Courts Enactment 2004; Section 63 of the Syariah Criminal Offences Enactment 1995. | - Person intending to leave Islam must go through detention for “rehabilitation”.  
- There is an explicit provision permitting the Syariah Court to declare a person an apostate. |
| Sarawak    | N/A                                                                                | - No explicit provisions in relation to leaving the religion of Islam. |
| Federal Territory | N/A                                                                            | - No explicit provisions in relation to leaving the religion of Islam. |
## ANNEX 2

State Syariah Law - Control and Restriction of the Propagation of Non-Islamic Religion to Muslim

<table>
<thead>
<tr>
<th>State</th>
<th>Relevant provision</th>
<th>Whether proselytising to Muslims is allowed</th>
</tr>
</thead>
</table>
| Johor | Sections 4 to 8 of the Control And Restriction of the Propagation of Non-Islamic Religious Enactment 1991 | - It is an offence to persuade, influence, coerce or incite a Muslim to become a follower or member of, or, etc. a non-Islamic religion. This offence is punishable by fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or to both.  
It is an offence to subject a Muslim under the age of eighteen years to influences or non-Islamic religion, punishable by fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or to both.  
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. This offence is punishable by a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or to both.  
- It is an offence to send or deliver publications concerning any non-Islamic religion to Muslim. This offence is liable to a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or to both.  
- It is an offence to distribute any publication or publicity material concerning non-Islamic religion to a Muslim. Punishment is fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or to both. |
| Kedah | Sections 4 to 8 of the Control And Restriction Of The Propagation Of Non-Islamic Religions Enactment 1988 | - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion or to forsake or disfavour the religion of Islam. This offence is punishable with imprisonment for a term not exceeding four years.  
- It is an offence to subject a Muslim under the age of 18 years to take part in any ceremony, act of worship, or religious activity of a non-Islamic religion or in any activity which is sponsored or organised by or is for the benefit of a non-Islamic religion or any body or institution associated with a non-Islamic religion. This offence is punishable with imprisonment for a term not exceeding four years.  
- It is an offence to approach a Muslim for the purpose of subjecting the other person to any speech on, or display of any matter concerning, a non-Islamic religion; offence is punishable with imprisonment for a term not exceeding three years. |
<table>
<thead>
<tr>
<th>Kelantan</th>
<th>Sections 4 to 8 of Control and Restriction of the Propagation Of Non-Islamic Religions Enactment 1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>- It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. This offence is liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both.</td>
<td></td>
</tr>
<tr>
<td>- It is an offence to subject a Muslim under the age of 18 years to take part in any ceremony, act of worship, or religious activity of a non-Islamic religion or in any activity which is sponsored or organised by or is for the benefit of a non-Islamic religion or any body or institution associated with a non-Islamic religion. This offence is punishable with a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping.</td>
<td></td>
</tr>
<tr>
<td>- It is an offence to approach a Muslim and subject him to any speech on or display of any matter concerning a non-Islamic religion. This offence attracts a punishment of a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping.</td>
<td></td>
</tr>
<tr>
<td>- It is an offence send or deliver to a Muslim any publication concerning any non-Islamic religion, or any advertising material for any such publication, which has not be requested for by that other person himself. This offence attracts a punishment of a fine not exceeding RM10,000 or imprisonment for a term not exceeding five years or to both and shall also be liable to whipping.</td>
<td></td>
</tr>
<tr>
<td>- It is an offence to distribute in a public place publications concerning non-Islamic religion to Muslims. This offence attracts punishment of a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping.</td>
<td></td>
</tr>
<tr>
<td>Place</td>
<td>Section and Enactment</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Malacca           | Section 4 to 8 of the Control and Restriction of the Propagation of Non-Islamic Religions To Muslim Enactment 1988 | - It is an offence to persuade, influence or incite a Muslim to become a follower or member of, or to be inclined towards, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine of RM10,000 or to imprisonment for one year or both.  
- It is an offence to subject a Muslim under the age of 18 years old to take part in any ceremony, act of worship, or religious activity of a non-Islamic religion. Punishment is a fine of RM10,000 or to imprisonment for one year or both.  
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine of RM5,000 or to imprisonment for six months or to both.  
- It is an offence to send or deliver publication concerning any non-Islamic religion to a Muslim. Punishment is a fine of RM3,000 or to imprisonment for three months or to both.  
- It is an offence to distribute in a public place publication concerning non-Islamic religion to Muslims. Punishment is a fine of RM1,000. |
| Negeri Sembilan  | Section 4 to 8 of the Control and Restriction (The Propagation Of Non-Islamic Religions Amongst Muslims) (Negeri Sembilan) Enactment 1991 | - It is an offence to persuade, influence, coerce or incite a Muslim to become a follower, or member of, etc. a non-Islamic religion or to become inclined towards any non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding three years or both.  
- It is an offence to subject a Muslim under the age of eighteen years to influences of a non-Islamic religion. Punishment is a fine not exceeding RM10,000 or imprisonment for a term not exceeding three years or both.  
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter relating to a non-Islamic religion. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.  
- It is an offence to send or deliver publications relating to any non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.  
- It is an offence to distribute any publication or publicity material relating to non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM3,000 or to imprisonment for a term not exceeding one year or both. |
<table>
<thead>
<tr>
<th>Location</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
</table>
| Pahang | Section 4 to 8 of the Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1989 | - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or both.
- It is an offence to subject a Muslim to influences of a non-Islamic religion. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or both.
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.
- It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim, which was not requested by him/her. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.
- It is an offence to distribute any publication or publicity material concerning non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. |
| Penang | Section 5 of the Syariah Criminal Offences (State Of Penang) Enactment 1996 | - It is an offence to propagate religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith. Punishment is a fine not exceeding RM3,000 or to imprisonment for a term not exceeding two years or both. |
| Perak | Sections 4 to 8 of the Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (*enactment not yet in force*) | - It is an offence to persuade, influence, or incite, a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or both.
- It is an offence to subject a Muslim under the age of 18 years to influences of a non-Islamic religion. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or both.
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.
- It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.
- It is an offence to distribute any publication or publicity material concerning non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. |
<table>
<thead>
<tr>
<th>State</th>
<th>Law</th>
<th>Offence Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perlis</td>
<td>No laws prohibiting propagation of non-Islamic religious doctrines</td>
<td></td>
</tr>
<tr>
<td></td>
<td>or beliefs to Muslims.</td>
<td></td>
</tr>
<tr>
<td>Sabah</td>
<td>No laws prohibiting propagation of non-Islamic religious doctrines</td>
<td></td>
</tr>
<tr>
<td>Sarawak</td>
<td>Section 5 of the Syariah Criminal Offences Ordinance 2001.</td>
<td>It is an offence to propagate religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith. Punishment is a fine not exceeding RM3,000 or to imprisonment for a term not exceeding two years or both.</td>
</tr>
</tbody>
</table>
| Selangor   | Sections 4 to 8 of the Non-Islamic Religions (Control Of Propagation Amongst Muslims) Enactment 1988 | - It is an offence to persuade, influence or incite a Muslim to be inclined towards any non-Islamic religion, or to become a follower or member of a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is imprisonment for a term not exceeding one year or to a fine not exceeding RM10,000 or to both.  
- It is an offence to subject a minor who is a Muslim to influences of a non-Islamic religion. Punishment is imprisonment for a term not exceeding one year or to a fine not exceeding RM10,000 or both.  
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is imprisonment for a term not exceeding six months or to a fine not exceeding RM5,000 or both.  
- It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim. Punishment is imprisonment for a term not exceeding three months or to a fine not exceeding RM3,000 or both.  
- It is an offence to distribute in a public place publications concerning non-Islamic religion to Muslims. Punishment is a fine not exceeding RM1,000. |
| Terengganu | Sections 4 to 8 of the Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1980 | - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine of RM10,000 or to imprisonment for one year or both.  
- It is an offence to subject a Muslim under the age of 18 years to influences of a non-Islamic religion. Punishment is a fine RM10,000 or to imprisonment for one year or both.  
- It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine of RM5,000 or to imprisonment for six months or both. |
<table>
<thead>
<tr>
<th>Federal Territories</th>
<th>Section 5 of the Syariah Criminal Offences (Federal Territories) Act 1997</th>
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</thead>
<tbody>
<tr>
<td>- It is an offence for any person who propagates religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith; this offence is liable to a fine not exceeding RM3,000 or to imprisonment for a term not exceeding two years or both.</td>
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</tbody>
</table>

- It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim. Punishment is a fine of RM3,000 or to imprisonment for three months or both.

- It is an offence to distribute in a public place publication concerning non Islamic religion to Muslims. Punishment is a fine of RM1,000.