

# **FREEDOM OF RELIGION AND SUSTAINABLE DEVELOPMENT FOR AN INCLUSIVE SOCIETY IN MALAYSIA**

## **Introduction**

This submission is submitted on behalf of Jubilee Campaign and the Religious Freedom and Liberty Partnership to address the problems and difficulties faced by the indigenous people of Malaysia due to existing laws and policy. These laws have wrongly classified the indigenous peoples as Muslims in their Identity Documents or Card while preventing and/or restricting their ability to change their religious identity and status. These laws and policies represent patterns and examples of discrimination against minority religious or belief communities in terms of access to justice and effective remedies. The indigenous Malaysians are victims of inequalities arising from religion which has impacted their wellbeing and prospect for human development.

This submission is in line with the target stipulated pursuant to Sustainable Development Goal 16 - to protect fundamental freedoms, in accordance with national legislation and international agreements and promote and enforce non-discriminatory laws and policies for sustainable development.

We call on the Special Rapporteur on freedom of religion or belief in accordance with his mandate to present the circumstances in this submission in his thematic report at the 75th Session of the General Assembly.

## **Background**

1. Malaysia is a multi-ethnic, multi-religious country. The total population of Malaysia is estimated at 32.7 million in July 2020.<sup>1</sup> According to the 2010 Malaysian census, 61.3 per cent of the population practices Islam; 19.8 per cent, Buddhism; 9.2 per cent, Christianity; 6.3 per cent, Hinduism; and 1.3 per cent, Confucianism, Taoism, or other religions. Some religious groups such as the Shi'a, Ahmadiyya, Baha'i, and Al-Arqam groups are deemed 'deviant' by Islamic authorities and banned.<sup>2</sup>
2. Ethnic Malays, who are defined by the Federal Constitution ("Constitution") as Muslims, account for approximately 63.1 per cent of the population in Peninsular Malaysia and 55 per cent of the total population. Rural areas are predominantly Muslim, and Islam is the largest religion in all states except Sarawak, where Christianity is the majority religion of a population of 200,000. There are also large Buddhist minorities in

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<sup>1</sup> CIA World Factbook, 1 April 2020, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> [accessed 21 May 2020].

<sup>2</sup> United States Department of State, Malaysia 2018 International Religious Freedom Report, available at: <https://www.state.gov/wp-content/uploads/2019/05/MALAYSIA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> [accessed 21 May 2020];

US Commission on International Religious Freedom, United States Commission on International Religious Freedom, *USCIRF Annual Report 2018 - Tier 2 - Malaysia, 25 April 2018*, available at: <https://www.ref-world.org/docid/5b278ee60.html> [accessed 21 May 2020].

the states of Penang and Selangor, while the second East Malaysian state of Sabah has a large Christian minority.<sup>3</sup>

3. According to the Pew Centre's tenth annual report, Malaysia remains a country with "very high" government restrictions on religion since 2007 with a score of 8.3 in 2017 on a 10 level scale.<sup>4</sup>

### **Registration of Religious Status and Identity**

1. The National Registration Act 1959 does not provide what details should be shown on Malaysians' identity cards. But Section 6 of the Act states that the Home Affairs Minister may make regulations, including rules on how Malaysians' identity cards will appear and what details they must display. These regulations are contained in a subsidiary legislation, the National Registration Regulations of 1990.
2. In 2000, there was an amendment to the National Registration Regulations wherein by virtue of Regulation 4(c)(iv), Malaysian Muslims applying for identity cards must provide information on their religion. Muslims were now required under law to inform the national registration department they were of the Islamic faith when applying or updating details on the identity cards.
3. In addition the word "Islam" was required to be printed and visible on the identity cards of Malaysian Muslims.<sup>5</sup>
4. In 2001, there was a further amendment to the National Registration Regulations requiring all Malaysians, Muslims and Non-Muslims, to provide information on his or her religion in their identity cards. With this new regulation, all Malaysians are required to give details on their religion when applying or updating the details in their identity cards.
5. As a result of the National Registration Regulation of 2001, the information on the Identity Cards of all Malaysians is prima facie evidence of the person's religious status and identity.

### **Leaving Islam under Jurisdiction of the Shari'a Courts**

1. The right to freedom of religion is guaranteed under Article 11 of the Constitution that provides for freedom of religion for all persons. The expression "every person" confers

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<sup>3</sup> Population and Housing Census of Malaysia, *Population Distribution and Basic Demographic Characteristics*, 28 June 2011, available at: [https://web.archive.org/web/20150301154300/http://www.statistics.gov.my/portal/download\\_Population/files/census2010/Taburan\\_Penduduk\\_dan\\_Ciri-ciri\\_Asas\\_Demografi.pdf](https://web.archive.org/web/20150301154300/http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf) [accessed 21 May 2020].

<sup>4</sup> Pew Research Forum, *A Closer Look at How Religious Restrictions have Arisen around the World*, July 15 2019, available at: [https://www.pewforum.org/wp-content/uploads/sites/7/2019/07/2-PF\\_19.07.15\\_Restrictions2019appendixA.pdf](https://www.pewforum.org/wp-content/uploads/sites/7/2019/07/2-PF_19.07.15_Restrictions2019appendixA.pdf) [accessed 21 May 2020] p. 93.

<sup>5</sup> Tan, Ben. "Home Ministry to Retain Religion on MyKad: Malay Mail." *Malaysia / Malay Mail*, Malay Mail, 28 Apr. 2019, available at: [www.malaymail.com/news/malaysia/2019/04/28/home-ministry-to-retain-religion-on-mykad/1747826](http://www.malaymail.com/news/malaysia/2019/04/28/home-ministry-to-retain-religion-on-mykad/1747826) [accessed 26 May 2020].

personal liberties on every citizen of the nation to profess and practice the religion of his choice, this includes Muslims. Judicial precedent has affirmed this interpretation.<sup>6</sup>

2. However, the decision by the Supreme Court in the Lina Joy case declared that a Muslim's right to profess and practise his religion under Article 11 of the Constitution must also comply with Islamic laws, specifically those on conversion out of Islam.<sup>7</sup> This means Muslims who wish to leave the religion of Islam have to subject themselves to the provisions of Islamic Laws as enacted in the respective states and come under the jurisdiction of the Shari'a courts. This position is reaffirmed in a recent appeal decided by the Federal Court.<sup>8</sup>
3. This legal position is contrary to Article 18 of the Universal Declaration of Human Rights<sup>9</sup> in that before a person can exercise his liberty in freedom of thought and conscience including the right to change his religion or belief, he has to satisfy the religious requirement and legality by seeking an order of apostasy from the Shari'a courts.

### **Unclear Jurisdiction of the Shari'a Courts Create Practical Problems**

1. The jurisdiction of the Shari'a court poses several practical problems for (1) any persons who are classified or registered as a Muslim but who wish to leave the religion of Islam; and (2) any persons who have changed their Islamic beliefs and convictions to another religion and who now wish to profess and practice the other religion. The following are practical problems encountered:
  - a) Not all state Islamic enactments have clear provisions or procedure for the conversion out of Islam. For those wishing to leave the religion of Islam or who have changed their religious beliefs and convictions to another religion, such persons must subject themselves to these Islamic legal uncertainties.
  - b) The Islamic enactments have provisions which makes it an offence to deride verses of the Al-Quran or Hadith or acts that are deemed to bring insult or contempt to the religion of Islam. These are widely worded provisions and it is arguable that when a person leaves Islam, they fall into the ambit of such provisions for professing their new or different belief.
  - c) Islamic enactments stipulates punishments for persons who wish to leave the religion of Islam or for persons who have changed their Islamic beliefs and convictions to another religion. In certain states and under certain circumstances, the Shari'a

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<sup>6</sup> *Minister for Home Affairs Malaysia v Jamaluddin bin Othman* [1989] 1 MLJ 369.

<sup>7</sup> *Lina Joy v The Federal Territory Islamic Council*, Government of Malaysia and the Director General of the National Registration Department [2007] 3 AMR 693.

<sup>8</sup> The cases of Mohd Syafiq Abdullah (Tiong Choo Ting), Salina Jau Abdullah (Salina Jau) and Nur Muzdhaliyah Abdullah (Jenny Peter) and Syarifah Nooraffyza Wan Hosen vs Director of Jabatan Agama Islam Sarawak, Majlis Agama Islam, Director-General of National Registration Department and State Government of Sarawak (Federal Court). See the decision as reported in <https://www.ucanews.com/news/top-malaysian-court-refuses-to-allow-conversion-to-christianity/81656> [accessed 21 May 2020].

<sup>9</sup> General Assembly, resolution 217 A (III), *Universal Declaration of Human Rights*, A/RES/3/217 A, 10 December 1948.

courts may order such persons to undergo enforced rehabilitation in a reeducation centre for a period up to six months.<sup>10</sup>

2. These practical problems illustrates the reality that Shari'a courts in Malaysia are ill-equipped and unable to address practical problems associated with persons who wish to leave Islam and have their conversion out of Islam legally recognised. In fact, the present Shari'a courts system perpetuates injustice and hinders access to justice in these circumstances.

### **What about those who have been Wrongly Classified or Registered as Muslims?**

1. Religious Freedom and Liberty Partnership (RFL) Partnership have recorded over thousands of cases of Malaysians who have been wrongly classified and registered as Muslims in their identity documents or cards, however, no exact number can be ascertained as many live in the jungles and the government refuses to acknowledge the discrimination. Many of these Malaysians are indigenous people who have been deliberately or wrongly classified and registered as Muslim though they are Non-Muslims.
2. Malaysian authorities have prevented and restricted the rights of indigenous people to change their religious identity and status in their identity card due to the existing law that leaving the religion of Islam falls under the jurisdiction of the Shari'a Courts.
3. The Malaysian indigenous people who fall under this category of wrongly classified or registered Muslims in their identity cards are:
  - a) Those who are registered as Muslims on account their names are very similar or sound very similar to a Malay-Muslim name
  - b) Those who are registered as Muslims by error or mistakes by the national registration department
  - c) Those who are have converted into the religion of Islam and registered as Muslims due to illiteracy or enticement
  - d) Those who are Non-Muslims but who have since married those who have been wrongly registered as Muslim listed in caption (a) to (c) above now deemed a Muslim
  - e) The children and grandchildren or the offsprings of those who have been registered as Muslims listed in caption (a) to (d) above

### **Seeking Appropriate Remedy and Access to Justice**

1. These groups of Malaysian indigenous people who have been wrongly classified and registered as Muslims are seeking remedies for a just and fair solution:
  - A declaration that they are not Muslims
  - An amendment to their religious status in their identity cards to reflect their true religion and belief and consequently also register their children in their religion.

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<sup>10</sup> The States of Johor, Pahang, Penang, Sabah, Melaka, Sarawak, Selangor, Terengganu and Wilayah Persekutuan (Federal Territory) all provide for rehabilitation centres with terms for detention. See also the case of Revathi Masoosai reported at <https://www.malaysiakini.com/news/69818> [accessed 21 May 2020].

- Alternatively, to have the Shari'a Court declare they are allowed to leave the religion of Islam and are no longer Muslims
2. Due to the existing legislation in the National Registration Regulations and the case law of *Lina Joy*,<sup>11</sup> these groups of indigenous people have not been successful in seeking the remedies they so desire without the need to appear before the Shari'a Courts, which only covers Muslims; whereas the Malaysian indigenous people, though deemed Muslim, have never been Muslim in faith or practice. This failure to obtain the remedies is a denial of access to justice, discriminatory and a detriment to their wellbeing.

## CONCLUSION & RECOMMENDATIONS

Article 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.”<sup>12</sup>

The Malay government have been wrongly classifying and registering thousands of indigenous Malaysians as Muslims in their Identity Cards and preventing and/or restricting them from changing their religious identity and status in their Identity Card due to existing laws and policy. This has led to non-Muslim indigenous Malaysians having to compromise their identity, practicing their religious choice publicly without legal recognition or some, afraid of societal repercussions, practice secretly. Furthermore this lack of recognition then translates to the religious designation of their children, a practicing Christian or Buddhist will still have their child automatically registered as a Muslim. These complications have resulted in many opting not to register their children and offspring with the National Registration Department for fear their children may suffer the same fate as they do. These children then risk being later regarded as stateless people, denied of their basic rights like education in public schools, job security and the status of citizenship simply because they could not possess identity cards that correctly acknowledge their true religious status and to which they no remedy against. The Religious Freedom and Liberty Partnership prepared a concise but pertinent documentary regarding this identity crisis that highlight what these families face.<sup>13</sup>

These indigenous people are therefore denied equal access to justice due to the discriminatory laws and policies which deprives them of the opportunity and condition for equal treatment to social and developmental wellbeing, with the absence of fear and harassment from religious authorities, and economic stigmatization.

We call on the international community and the General Assembly to urge the government of Malaysia to:

1. Provide a mechanism and standard operating procedure to allow any persons or groups of persons who have been wrongly classified and registered as Muslims, including the indigenous people of Malaysia, to be able to change their identity cards and register

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<sup>11</sup> *Lina Joy v The Federal Territory Islamic Council*, Government of Malaysia and the Director General of the National Registration Department [2007] 3 AMR 693.

<sup>12</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, available at: <https://www.refworld.org/docid/3b00f02e40.html> [accessed 26 May 2020]

<sup>13</sup> ERLC, *Malaysia a Fight for Freedom and Identity*, 2 August 2018, available at: <https://youtu.be/R-G1SC5Pt7A> [accessed 26 May 2020].

their children according to their faith in accordance with Article 30 of the Convention on the Rights of the Child.

2. Grant new indigenous registrants the right to state their religion without regards to the religion registered under their parents' ID cards or presuming their religion according to their name.
3. Ultimately, amend the National Registration Regulations of 2001 to make it an option rather than a requirement whether to give details on a person's religion when applying or updating the details in their identity cards.