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AUSTRALIA**

**RRT RESEARCH RESPONSE**

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**Questions**

**How are the following groups treated in Malaysia?**

- 1. Muslim to Christian converts;**
- 2. Non practising Muslims;**
- 3. Disabled children.**

**Is there any evidence in support of the following?**

- 4. Forced female circumcision;**
- 5. Christian females being forced to marry Muslims;**
- 6. Children being removed if not being raised as Muslims;**
- 7. Anything else of relevance.**

**RESPONSE**

**How are the following groups treated in Malaysia?**

**1. Muslim to Christian converts**

Several previous RRT Research Responses have addressed the issue of apostasy in Malaysia. In March 2007 *RRT Research Response MYS31437* provided information regarding the legal status of religious freedom in Malaysia, with particular reference to the treatment of Hindus. In July 2005 *RRT Research Response MYS17446* provides information on conversion from Islam and the legal sanctions imposed upon those who commit apostasy. *RRT Research Response MYS17054* and *RRT Research Response MYS17055*, both dated 22 October 2004, provide information relating to the laws of apostasy, including the constitutional and legal status of those who convert from Islam, and case histories from the Federal and Sharia courts. More recent information relating to the situation of Muslim converts to Christianity follows

below (RRT Country Research 2007, *RRT Research Response MYS31437*, 7 March – Attachment 18; RRT Country Research 2005, *RRT Research Response MYS17446*, 30 July – Attachment 19; RRT Country Research 2004, *RRT Research Response MYS17055*, 22 October – Attachment 20; RRT Country Research 2004, *RRT Research Response MYS17054*, 22 October – Attachment 21).

Sources indicate that converting from Islam to Christianity in Malaysia is very difficult, if not illegal and impossible. The US Department of State's *International Religious Freedom Report 2007 – Malaysia* states that "Muslims may generally not convert to another religion" and that the Federal Court's decision to refer all apostasy cases to Sharia courts "effectively precludes any legal right of Muslims to convert to another religion". A 2007 article in the *Asian Journal of Comparative Law* provides a state-by-state overview of laws of apostasy in Malaysia, and suggests that although some states are more willing than others to consider allowing Muslims to convert to other religions, others imprison and/or administer corporal punishment to apostates. A 2006 interview with a lecturer in Islamic law, published in *Malaysia Today*, provides information on the low numbers of official applicants to Sharia courts seeking to convert from Islam to another religion, and provides more information on the various state regulations regarding apostasy (for an overview of religious freedom in Malaysia, see: US Department of State 2007, *International Religious Freedom Report for 2007 – Malaysia*, September 14 – Attachment 1; for a state-by-state overview of apostasy laws in Malaysia, see: Adil, M. 2007, 'Law of Apostasy and Freedom of Religion in Malaysia', *Asian Journal of Comparative Law*, Vol. 2 Issue 1 <http://www.bepress.com/asjcl/vol2/iss1/art6> – Accessed 25 March 2008 – Attachment 29; for a legal opinion on the numbers of people requesting to leave Islam, see: Aziz, F. 2006, 'Apostasy: Official numbers are minimal', *Malaysiakini* website, 11 November <http://www.malaysiakini.com/news/59420> – Accessed 25 March 2008 – Attachment 28).

The US Department of State's *International Religious Freedom Report 2007 – Malaysia* suggests that although religious freedom is guaranteed under the Federal Constitution of Malaysia, in practice "Muslims may generally not convert to another religion" because approval is required from a Shari'a court, and this is highly unlikely to be granted:

State authorities impose Islamic religious laws administered through Islamic courts on all ethnic Malays (and other Muslims) in family law and other civil matters... Muslims may generally not convert to another religion... Although article 11 of the Federal Constitution guarantees religious freedom, the country's highest court ruled during the reporting period that Muslims wanting to convert to another religion must first obtain approval from a Shari'a court. The court's decision effectively precludes the conversion of Muslims, since the Shari'a courts have granted only a handful of requests to convert to another religion in recent years... In practice Muslims are not permitted to convert to another religion... On May 30, 2007, the Federal Court ruled that Muslim individuals must obtain an order from the Shari'a Court stating that they have become an 'apostate' (they have renounced Islam) before they can change their national identity card. As apostasy grants (grants of permission to convert to another religion) by the Shari'a Court are extremely rare, the court's decision effectively precludes any legal right of Muslims to convert to another religion (US Department of State 2007, *International Religious Freedom Report for 2007 – Malaysia*, September 14 – Attachment 1).

A 2007 article in the *Asian Journal of Comparative Law* provides an overview of the history of apostasy in Islamic law, the debate over the role of Islamic law in Malaysia and whether Malaysia is a secular or Islamic state, and the different approaches taken by the states of

Malaysia to the issue of apostasy. The article states that “as the question of Islamic law is under the jurisdiction of the respective states ... the Parliament cannot make laws with respect to any matters of Islamic law or the custom of the Malays.” As such, “the administration of Islamic law and Muslim matters is under the authority of the Ruler of each state.” The article sets out the different approaches taken to apostasy in each state of Malaysia:

As far as the law of apostasy is concerned, there are three approaches taken by the states. First, states have enacted laws whereby apostates are subject to punishment. This can be seen in Perak, Pahang, Terengganu, Malacca and Sabah. All these five states laid down provisions whereby any Muslim who renounced Islam shall be punished with fine, imprisonment or whipping (in Pahang). In a decisive provision on apostasy, Pahang made apostasy an offence in its Administration of the Religion of Islam and the Malay Custom Enactment of 1982 (Amended 1989). Section 185 provides, “Any Muslim who states that he has ceased to be a Muslim, whether orally, in writing or in any other manner whatsoever, with any intent whatsoever, commits an offence, and on conviction shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both and to whipping of not more than six strokes”.

In Perak for example, it is provided in Section 13 of the Perak Islamic Criminal Law Enactment of 1992 that “Any Muslim who by his word or conduct whatsoever intentionally claims to cease to profess the religion of Islam or declares himself to be non-Muslim, shall be considered as insulting the religion of Islam, and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or both”.

Melaka also incorporated the punishment of apostasy in its enactment. Section 209(1) of the Melaka Administration of Islamic Law Enactment of 1986 provides that insulting the religion of Islam is an offence. Any Muslim convicted of this offence shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or both. Under section 209(2), the Enactment reiterates that a Muslim who declares himself to be out of the religion of Islam, shall also be regarded as insulting the religion of Islam, and upon conviction is subject to a fine and imprisonment as provided under clause (1).

Unlike Sarawak, Sabah declares apostasy an offence under its Islamic Criminal Law Enactment of 1995. Section 55(1) states “whoever by words spoken or written or by visible representation or in any other manner which insults or brings into contempt or ridicule the religion of Islam or the tenets of any lawful school or any lawfully appointed religious officer, religious teacher, Imam, any lawfully issued fatwa by the Majlis or the Mufti under the provisions of any law or this Enactment shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or both”. Section 55(2) reiterates “A Muslim who claims that he is not a Muslim shall be guilty of an offence under subsection (1) and shall, on conviction, be liable to the punishment thereof provided”.

Terengganu also introduces the punishment on apostasy. Section 29 of the Terengganu Administration of Islamic Law Enactment of 1996 provides: “Any Muslim who attempts to renounce the religion of Islam or declares himself to be non-Muslim, shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or both”.

In other states, those who leave Islam are not regarded as offenders (apostates) but are detained and given counselling in a “faith” rehabilitation centre. At least three states adopt this practice. In Sabah and Kelantan, for example, if a person leaves Islam or intends to leave

Islam, he can be detained at a faith rehabilitation centre for a period not exceeding 36 months. In Malacca he can be detained for a period of 6 months.

In Negeri Sembilan, the law does not provide for detention. In fact, it provides a remedy to any Muslim who intends to renounce the Islamic faith, although the applicant is subject to certain procedural conditions that are consistent with the requirements of the Shari'a. The Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003 provides that a Muslim shall not renounce or be deemed to have renounced the Religion of Islam until and unless he has obtained a declaration to that effect from the Shari'a High Court of that State. The procedure is laid down in Section 119(2) of the Enactment, which provides that an application for such a declaration shall be made ex-parte to the Shari'a High Court Judge in open court by the person intending to leave Islam. The applicant must specify the grounds on which he intends to renounce the religion with an affidavit specifying all facts supporting the grounds of the application. After receiving the application, the judge hearing it will advise the applicant to repent, and if the judge is satisfied that the applicant has repented in accordance with Hukum Shara', he will record the repentance. Alternatively, if the applicant refuses to repent, the judge shall, before making any order against the applicant, adjourn the hearing of the application for a period of 90 days and at the same time require the applicant to undergo a counselling session for the purpose of advising him to reconsider Islam as his religion.

If at any time the person undergoing counselling has repented, the officer who is responsible for him shall prepare a report as soon as possible and bring him to the Shari'a High Court. If the judge is satisfied that the person brought before him has repented according to Hukum Shara', the judge will record the person's repentance. If after the expiry of 90 days, the person still refuses to repent, the officer shall prepare a report as soon as possible and bring him before the Shari'a High Court, and if after receiving the report, the Court is of the opinion that there is still hope the person may repent, the Court may adjourn the hearing of the application, and at the same time order the person to undergo further counselling session for a period not exceeding one year. If after the issuance of such an order, the person repents, the earlier procedure applies (i.e. a report is made to the Shari'a Court whose judge, if satisfied that the person brought before him has repented according to Hukum Shara', will record the person's repentance).

If after expiry of the extended period for repentance under Section 119(8), the person still refuses to repent, the officer who is responsible for him shall prepare a report as soon as possible and bring him to the Shari'a High Court. This time, the Court declares that the person has renounced Islam. It is to be noted that before the Court declares that the person has renounced Islam, it shall make an order in relation to the dissolution of marriage, the division of harta sepencarian (joint property of spouses), the right of perwalian (the right of guardianship over an unmarried girl), the right to property and hadhanah (custody). No mandatory punishment for apostasy is provided in this Enactment.

...States such as Perlis, Kedah, Penang, Selangor, Federal Territories, Johor and Sarawak do not make any provision on the punishment for apostasy, nor do they provide any facilitation for apostasy. Since these States' Enactments are silent on this matter, Muslims particularly by conversion who wish to leave the Islamic religion are in a legal quandary. Such experience could be seen in the Federal Territory of Kuala Lumpur, where until August 2004, twelve applications to renounce Islam at the Shari'a Court were rejected due to there being no provision in the Administration of Islamic Law (Federal Territories) Act of 1998 to deal with such applications. In one case, Rashidah bt Mohamad Myodin, the applicant was a Muslim by birth. At the age of three, she was adopted by a Hindu foster parent. She was brought up as a Hindu and practiced Hinduism her entire life. She filed an application to renounce Islam at the Federal Territories of Kuala Lumpur Shari'a Court. On 21 August 2003, the Shari'a Court rejected her application on the ground that the Court had no such power and jurisdiction to do so since the Administration of Islamic Law (Federal Territories) Act of 1998 was silent on

this. The Court also ruled that the applicant had never practiced the religion of Islam since she was adopted by her Hindu parent and therefore adhered to the religion of Hinduism. By virtue of Section 2(1) of the Administration of Islamic Law (Federal Territories) Act of 1998, she cannot be classified as a Muslim.

The problem faced by the applicant is that her birth certificate indicated her Muslim name. She also had difficulties in her attempt to change her Muslim name to a non-Muslim name as the Registration Department of Malaysia had introduced a new rule, namely the National Registration Rules (Amendment) of 2001, that any application to change a name must not be in connection with changing a religion. A new requirement was introduced, that an application to change a Muslim name to a non-Muslim name must be supported by the Religious Department approval or any Shari'a Court decree. With such new rule introduced by the Registration Department of Malaysia, Ms. Rashidah will not have a chance to change her name to non-Muslim name although she never practiced the religion of Islam. The Federal Territory of Kuala Lumpur Shari'a Court cannot issue any decree on conversion out of Islam since it has no power and jurisdiction to do so. Further questions arise from the consequences of this case. By virtue of Article 121(1A) of the Federal Constitution, an application in the Civil Court will bear no fruit as such jurisdiction is given to the Shari'a Courts. Since the Shari'a Court has turned down her application, she has no other channel to enforce her religious right.

In Kedah, there have been at least two applications for apostasy. The first was an oral application and no proper application was made to the Shari'a Court. In the written application, a Muslim by conversion had renounced and abandoned the Islamic religion. He made a deed poll and statutory declaration before an Oath Commissioner in Penang dated 10 August 2002. The applicant, through his counsel had sent an application for conversion out of Islam to the Registrar of Shari'a Court in Alor Setar on 18 August 2002, for the Shari'a Court to take further steps over the application; because there is no provision for Muslims to convert out of Islam in the State's Enactment, the matter was not brought forward. His attempt to renounce Islam and return to his original religion, Hinduism, could not be proceeded with even though he never practiced the religion of Islam.

Muslims in Sabah who wish to renounce Islam may face either punishment or mandatory detention at rehabilitation centre. In addition, there is no provision on conversion out of Islam. As the State's Enactment provides punishment for apostasy and mandatory detention at the rehabilitation centre, Muslims who intend to renounce the religion of Islam may abandon their attempt. There are at least seven cases with regard to apostasy but only two were filed at the Sabah Shari'a Court. The two cases were about the charge under Section 63 of the Sabah Shari'a Criminal Offences Enactment of 1995, which allows the Court to detain, at the rehabilitation centre for a term not exceeding 36 months, a Muslim who intentionally claims to cease to profess the religion of Islam or declares himself to be non-Muslim. According to Sakaria Samela, the Sabah Shari'a Public Prosecutor, the main reason why he did not charge the apostates under Section 55(1) and (2) was to give them a chance to repent. Section 55(1) and (2) provides a punishment of imprisonment for a term not exceeding one year or a fine not exceeding RM2000 or both. Moreover, the two cases were not preceded with mainly because the Islamic Rehabilitation Centre had not been gazetted.

Penang also does not have any provision on conversion out of Islam in its Enactment. As a result, Muslims (mainly by conversion) have made an attempt to do so in the Civil High Court. The Federal Court, however, has in many cases ruled that the Civil Court has no such jurisdiction when matters concerning Islamic law arise. Since apostasy cases are strictly under the jurisdiction of the Shari'a Court, the Civil High Court must distance itself from making any judgement on that matter. The battle of jurisdiction in apostasy cases between the Civil High Court and the Shari'a Court has brought about a jurisdictional conflict, when the former

argues that it has jurisdiction on matters over Islamic law, including apostasy, in the event where there is no express provision in the State List.

As there is no provision on conversion out of Islam in Penang, application for apostasy will normally be channelled to the Shari'a judges or Mufti for counselling sessions and repentance purposes only. Both the Shari'a judges and Mufti seem reluctant to make any declaration where there is no jurisdictional provision in the State Enactment. Application to renounce Islam may also be made at the Religious Department but until now no approval has been made.

Sarawak seems lenient in approving applications to renounce Islam. As the majority of the applicants are Muslims by conversion, the Chief Minister appears to have compromised on the matter. Though the Shari'a Court seems reluctant to declare a person has apostatised, such approval could be obtained from the Religious Department. The procedure seems very straightforward. Muslims who wish to convert out of Islam may apply for approval from the Religious Department. The officer-in-charge will ask the applicant the reason why he intends to renounce Islam. In most cases, the applicant will undergo a series of counselling for the purpose of repentance. If such process fails, the officer will issue a letter confirming that such person is no longer professing the religion of Islam. By this document, the person can apply to change his Muslim name to a non-Muslim name at the Department of Registration, which in this case faces no obstacle. It is believed that Sarawak has one of the highest numbers of such applications to renounce Islam in Malaysia (Adil, M. 2007, 'Law of Apostasy and Freedom of Religion in Malaysia', *Asian Journal of Comparative Law*, Vol. 2 Issue 1 <http://www.bepress.com/asjcl/vol2/iss1/art6> – Accessed 25 March 2008 – Attachment 29).

In an interview on the *Malaysia Today* website Dr Mohamed Azam Mohamed Adil, lecturer at Universiti Teknologi Mari's Centre for Islamic Thought and Understanding, provides statistical detail on the numbers of apostates in Malaysia, and also provides information on the different approaches taken by states to apostasy:

Official data that I have obtained from the Syariah courts, State Religious Departments and the National Registration Department (NRD) show that the number of apostates among the Muslims is less than 300. My research shows that 750 Muslims applied to the NRD to change their names to non-Muslim names between 1999 and July 2003, and of the number only 220 were successful. Most of them were converts to Islam. But the number of Muslims who actually applied to the Syariah courts to renounce Islam is much lower — there were only 100 between 1994 and 2003.

...The number of born Muslims who renounce Islam is very small. Most of the applicants are Muslim converts who decide to leave Islam upon dissolution of the marriage, or the death of their spouse. The born Muslims who apply to renounce Islam are usually women who do it because of love — when they decide to marry someone of another faith. In some isolated cases, children from mixed marriages (where one parent is a Muslim), or those who were born illegitimate, applied to renounce the religion.

...Negri Sembilan is the only state which “allows” a Muslim to leave Islam subject to certain procedural conditions. Under its Administration of Islamic Law Enactment 2003 (the new law), a Muslim cannot renounce or be deemed to have renounced Islam unless he has a declaration to the effect from the Syariah High Court of the state. Other states do not have such a provision in their Syariah laws and that is why they do not receive any applications to renounce and even if they do, the number is very small because of their punitive laws.

Perak, Malacca, Sabah and Terengganu have criminalised apostasy with fines not exceeding RM3,000 and/or imprisonment of not more than two years. Pahang has the most deterrent

law, where upon conviction, an apostate can be fined up to RM5,000 and/or imprisoned up to three years and could even get six strokes of the rotan. In Sarawak, for example, applicants can go directly to the state's Islamic Affairs Department, which will then certify their conversions from Islam upon determining that the person "irreconcilably seeks to renounce the religion".

These documents certifying that such a person is no longer a Muslim are considered valid by the NRD, which under the National Registration Regulations 1990 (amended 2001) could accept such declarations only from either the state Syariah courts or the Islamic Affairs Departments. In some states, such as Kedah, applications to renounce Islam are rejected on the grounds that there is no provision under their Syariah laws for such applications to be heard. The 12 applications received by the Federal Territories between 2001 and August 2003 were dismissed by the Syariah courts on the grounds that there were no provisions for its judges to decide for or against such cases (Selverani, P. 2006, 'Very few have abandoned the faith', *Malaysia Today* website (source: *New Straits Times*), November 19 <http://malaysia-today.net/blog2006/newsncom.php?itemid=840> – Accessed 25 March 2008 – Attachment 25; for another interview with Dr. Adil, please see: Aziz, F. 2006, 'Apostasy: Official numbers are minimal', *Malaysiakini* website, 11 November <http://www.malaysiakini.com/news/59420> – Accessed 25 March 2008 – Attachment 28).

Information on several high-profile apostasy cases is provided through the following sources. A 2007 report from the Council on Foreign Relations outlines the background to debate over the law of apostasy, and provides an introduction to the case of Lina Joy, perhaps the highest profile apostate in recent Malaysian history, and her unsuccessful attempt to have her case heard by a secular rather than a Sharia court. A *Washington Post* article, also from 2007, provides additional detail on the Lina Joy case, and considers the apostasy laws as a challenge to Malaysia's reputation for religious freedom and tolerance. A 2006 *BBC Radio 4* report provides information regarding 'Maria', a Malay Muslim convert to Christianity who must keep her religious status secret from her family and community for fear of reprisal. A March 2008 report from *Asia News* provides information regarding the jailing of apostates in the Malaysian state of Terengganu (for background on apostasy in Islam and introduction to the Lina Joy case, see: Beehner, L. 2007, 'Religious conversion and Sharia law', Council on Foreign Relations website, 8 June – Attachment 3; for more on the Joy case, see: 'Malaysian Christian tests Islamic law' 2007, *Washington Post* (source: *Associated Press*), 27 May – Attachment 7; for personal testimony on life as a Christian convert in Malaysia, see: Pressly, L. 2006, 'Life as a secret Christian convert', *BBC Radio 4* 'Crossing Continents', 16 November [http://news.bbc.co.uk/2/hi/programmes/crossing\\_continents/6150340.stm](http://news.bbc.co.uk/2/hi/programmes/crossing_continents/6150340.stm) – Accessed 25 March 2008 – Attachment 26; for the jailing of apostates, see: 'Worship of teapot, two years in prison for apostasy' 2008, *Asia News*, 4 March – Attachment 9).

The Council on Foreign Relations website carries an article that considers the legal status of apostasy under Sharia, and which concurs with the USDOS claim that apostasy is "forbidden under most interpretations of sharia". It also introduces the case of Lina Joy, a Malaysian woman whose attempts to convert to Christianity have been rejected by the Malaysian Federal Court. The court decision states that because she was born Muslim, and is Malay, Joy must apply to the Sharia courts, which are unlikely to allow her to convert and may find her guilty of apostasy and thus liable to criminal prosecution:

Conversion by Muslims to other faiths is forbidden under most interpretations of sharia and converts are considered apostates (non-Muslims, however, are allowed to convert into Islam). Some Muslim clerics equate this apostasy to treason, a crime punishable by death. The legal precedent stretches back to the seventh century when Prophet Mohammed ordered a Muslim

man to death who joined the enemies of Islam at a time of war. However, because apostasy is not a crime under the criminal codes of Muslim states, generally the murtad (apostate) is not subject to any criminal sanction. “The Quran contains a provision that says ‘he who has embraced Islam and then abandons it will receive punishment in hell after Judgment Day,’” says M. Cherif Bassiouni, an expert on Islamic law at DePaul University College of Law, and therefore there is no punishment on earth. But traditional scholars, in Bassiouni’s opinion, misinterpreted early practices of the Prophet Mohammed and consider apostasy a crime punishable by death. They give religious converts a grace period of up to ten days to reconsider their decision before the judgment is entered.

...Lina Joy, born an ethnic Malay Muslim, appealed to the nation’s highest court to be recognized as a Christian, the faith of her Indian boyfriend. The forty-three-year-old Joy took up the Catholic faith in 1990, was baptized eight years later, and changed her name to Azlina Jailani in 1999. The next year, Joy sought to remove the word “Islam” from her identification card – that way, she could legally marry her boyfriend – but the lower civil courts ruled that only sharia courts could officially sanction her conversion. Under sharia law in Malaysia, Joy could face criminal prosecution for apostasy, punishable by imprisonment, a hefty fine, or time spent at a “rehabilitation” camp. Last year, she fled into hiding worried for her safety. Malaysia, though a multiconfessional state whose constitution guarantees religious freedoms, has seen rising religious tensions in recent years between its Muslim Malay majority (about 60 percent of its population) and its mostly Indian and Chinese Hindu, Buddhist, and Christian minorities. Hundreds of Muslim demonstrators flanked the federal court building during the decision, shouting “God is great” (Beehner, L. 2007, ‘Religious conversion and Sharia law’, Council on Foreign Relations website, 8 June – Attachment 3).

The *Washington Post* provides greater detail of the Joy case, and states that “Islam is increasingly conflicting with minority religions, challenging Malaysia’s reputation as a moderate Muslim and multicultural nation that guarantees freedom of worship”. The report quotes Joy’s attorney questioning whether Malaysia is “evolving into an Islamic state” and quotes the head of the Muslim Youth Movement claiming that Joy, “by doing this openly ... is encouraging others to do the same” and that her case is “about challenging the Islamic system in Malaysia”:

Lina Joy has been disowned by her family, shunned by friends and forced into hiding because she renounced Islam and embraced Christianity in Muslim-majority Malaysia. Now, after a seven-year legal struggle, Malaysia’s highest court will decide on Wednesday whether her constitutional right to choose her religion overrides an Islamic law that prohibits Malay Muslims from leaving Islam. Either way, the verdict will have profound implications in a country where Islam is increasingly conflicting with minority religions, challenging Malaysia’s reputation as a moderate Muslim and multicultural nation that guarantees freedom of worship.

...Joy, who was born Azlina Jailani, appealed the decision to a civil court but was told she must take it to sharia courts, which handle Islamic issues. But Joy, 42, has argued that she should not be bound by Islamic law because she is a Christian. Subsequent appeals ruled that the sharia court should decide the case. The highest court, the Federal Court, will make the final decision on whether Muslims who renounce their faith must still answer to Islamic courts.

About 60 percent of Malaysia’s 25 million citizens are Muslim, and their civil, family, marriage and personal rights are decided by sharia courts. The minorities – the ethnic Chinese, Indians and other smaller communities – are governed by civil courts. But the constitution does not say who has the final word in cases such as Joy’s, when Islam confronts



Christianity, Hinduism, Buddhism or other religions. If Joy loses her appeal and continues to insist she is a Christian, it could lead to charges of apostasy and a possible jail sentence.

“Our country is at a crossroad,” said Benjamin Dawson, Joy’s attorney. “Are we evolving into an Islamic state or are we going to maintain the secular character of the constitution?” The founding fathers of Malaysia deliberately left the constitution vague, unwilling to upset any of the three ethnic groups dominant at the time of independence from Britain 50 years ago, when the goal was to build a peaceful, multiracial country.

Joy’s decision to convert has sparked angry street protests and led to e-mail death threats against a Muslim lawyer supporting her. Some Muslim groups say Joy is questioning the position of Islam by taking the case to civil courts. “It is not about one person, it is about challenging the Islamic system in Malaysia,” said Muslim Youth Movement President Yusri Mohammad, who set up a coalition of 80 Islamic groups to oppose Joy’s case. “By doing this openly, she is encouraging others to do the same. It may open the floodgates to other Muslims, because once it is a precedent, it becomes an option” (‘Malaysian Christian tests Islamic law’ 2007, *Washington Post* (source: *Associated Press*), 27 May – Attachment 7).

In 2006 *BBC Radio 4* reported on the case of ‘Maria’, a Malaysian convert from Islam to Christianity who must keep her Christianity secret from her family and community. The report states that “only a tiny number of people have converted from Islam in Malaysia”:

Abandoning Islam for Christianity is such a sensitive issue in Malaysia that many converts find themselves leading a secret, double life. “If people know that I’ve converted to Christianity, they might take the law into their own hands. If they are not broadminded, they might take a stone and throw it at me.”

Maria – not her real name – is a young Malaysian woman who has lived a secret and sometimes fearful life since she converted from Islam to Christianity. Apostasy, as it is known, has become one of the most controversial issues in Malaysia today. Maria became a Christian over a decade ago when she was 18. She says no-one forced her to convert, that she made the decision after studying different religious texts.

Conversion is deemed so sensitive in Malaysia that even the priest who baptised her refused to give her a baptismal certificate. And, even now, the church she attends asked her to sign a declaration stating the church is not responsible for her conversion. “My church says if the authorities come, they are not going to stand up for me. I have to stand up for myself,” she said.

Not even Maria’s family know she has converted. “If my family find out I am no longer a Muslim they will completely cut me off. That means my name in the family will be erased. I could migrate, but the problem is I want to stay in Malaysia, because this is my country. And I love my family. I just want to live peacefully.”

Malay-Muslims make up 60% of Malaysia’s population. The rest are mostly Christians, Hindus and Buddhists. But many Malaysian Muslims believe that people like Maria pose a threat to Islam. And the debate between those who say Maria should have the right to officially convert, and those who are against apostasy has become so heated that the prime minister has asked both sides not to discuss sensitive religious questions in public.

Fearful of what could happen, Maria would only talk to us on the phone from the privacy of her car. She is very aware of the possible consequences of her decision to become a Christian if she is discovered. “If the authorities find out, I will be in big trouble. They will create hell between me and my family, and hell in my life so that I will no longer get any privileges or

employment.” Her fears are not unfounded. Another convert – Lina Joy – has been forced to go into hiding since her case went to court. And at least one of the lawyers involved in that case has had a death threat against him.

Both Lina Joy and Maria want to make their conversion legal. That means changing the identity cards that state they are Muslim. Until now, the state has refused to do this until an apostasy order is granted from the Sharia court. But both women claim they are no longer Muslim, so why should they go to the Sharia court?

For Maria there is a lot at stake. She has a boyfriend who is also a Christian and knows she is too. The couple want to get married. But while Maria is still officially a Muslim, the only way they could wed in Malaysia would be if he converted to Islam. And Maria’s family – unhappy with her choice of partner – are pressuring him to do just that.

Maria is tired of living a double life. “It’s very frustrating,” she tells us tearfully. “It means I have to limit my scope with friends. I have to be able to completely trust someone before I dare to reveal myself. I know some other secret converts, but I never keep in touch with them. I can’t let my network widen, because you don’t always know who you are dealing with.”

Only a tiny number of people have converted from Islam in Malaysia. But the coming months will be crucial for them because a decision is expected in the case of Lina Joy. The outcome of that case may well determine whether Maria will be able to live the life she dreams of – to be married to her boyfriend and live openly as a Christian. Right now she can’t imagine it.

“I feel that I am all alone in this struggle,” she says, “and I am frightened because I am alone against the odds” (Pressly, L. 2006, ‘Life as a secret Christian convert’, *BBC Radio 4 ‘Crossing Continents’*, 16 November [http://news.bbc.co.uk/2/hi/programmes/crossing\\_continents/6150340.stm](http://news.bbc.co.uk/2/hi/programmes/crossing_continents/6150340.stm) – Accessed 25 March 2008 – Attachment 26).

A recent apostasy case is detailed in this March 2008 report from *Asia News*. Although the case does not involve a convert to Christianity, it may be of interest:

Two years in prison for having abandoned Islam and joined an “illegal” sect. That was the sentence handed down to Kamariah Ali by the Islamic High Court in the Malaysian state of Terengganu, a sentence effective as of today. Days before Malaysia’s general election the case has reopened debate on religious freedom in the country, where two legislations – religious and civil – increasingly encroach one another.

According to judges, the woman is an apostate. 57 year-old Kamariah was arrested in July 2005 along with another 58 companions for belonging to a small sect known as the “Sky Kingdom”. Born in the mid ‘80’s, the community grew outside state control until 1998, when its followers set up a Disneyland style games park – with buildings in the form of umbrellas, colourful boats, Greek and roman columns – at the centre of which they placed a gigantic teapot and equally massive blue vase. By this means they began proselytising among villagers and foreigners. Followers of the “sect” worshipped the teapot, which symbolised the pouring out of peace and blessings of the Sky on humanity. In August of 2005, Islamic fundamentalists destroyed their deity and the structures where they gathered.

Already in 1998 Kamariah had asked a civilian court to recognise her conversion. In 2004 however, the Federal Court established that the case was not in its jurisdiction, referring it on to the Islamic Courts, which should in theory only try civilian cases of Muslim citizens. For years now religious and ethnic minorities in the country have denounced the intrusion of the Islamic courts even in cases which involve non-Muslims. The Federal Constitution guarantees

the right to change religions an art. 3 [sic] declares that Islam is the nation's official religion. Ethnic Malay citizens, the majority of the population, are however strictly tied to the definition "people who profess Islam". Those who negates this loose their civil rights, and their conversion is not recognised by Muslim Religious Councils In reality, Muslims are not allowed to convert to other religions, because apostasy is considered one of the worst sins in Islam, punishable with death. Muslims who "renounce" Islam, re condemned to re-education camps ('Worship of teapot, two years in prison for apostasy' 2008, *Asia News*, 4 March – Attachment 9).

Two articles from the Malaysian government-sponsored Institute of Islamic Understanding Malaysia (IKIM) website provide the reasoning behind the opposition to allowing conversion from Islam. These sources are provided as they may be of assistance in ascertaining the official attitude to cases of apostasy. A report on the Sun2Surf website provides the opinions of two International Islamic University Malaysia lecturers from the "Convention on Freedom of Religion and the Issue of Apostasy: Towards Practical Solutions", organised by the IIUM Law Faculty's Islamic Law Department and the Syariah Judiciary Department of Malaysia in November 2006. This source may be of interest as it provides an indication of Islamist academic/legal theories about apostasy, and to note the quarters from which the calls for the death penalty for apostasy are coming (for the IKIM material, see: Ahmad, W. 2007, 'Some Reflections on Lina Joy (Let Syariah Court Deal With Issue', Institute of Islamic Understanding Malaysia (IKIM) website (source: *The Star*), 19 June [http://www.ikim.gov.my/v5/index.php?lg=2&opt=com\\_article&grp=2&sec=&key=1283&md=resetall](http://www.ikim.gov.my/v5/index.php?lg=2&opt=com_article&grp=2&sec=&key=1283&md=resetall) – Accessed 19 March 2008 – Attachment 16; and Al-Attas, S. & Ahmad, A. 2006, 'Is Religion a Matter of Taste?', Institute of Islamic Understanding Malaysia (IKIM) website (source: *The Star*), 11 July [http://www.ikim.gov.my/v5/index.php?lg=2&opt=com\\_article&grp=2&sec=&key=1038&md=resetall](http://www.ikim.gov.my/v5/index.php?lg=2&opt=com_article&grp=2&sec=&key=1038&md=resetall) – Accessed 19 March 2008 – Attachment 17; for the IIUM material, see: Yusop, H. 2006, 'Death for apostates', Sun2Surf website, 30 November <http://www.sun2surf.com/article.cfm?id=16259> – Accessed 25 March 2008 – Attachment 27).

## **2. Non-practising Muslims**

No information was found on attitudes to non-practising Muslims in Malaysia. The following quote from the USDOS *International Religious Freedom Report 2007* for Malaysia may be of interest, as it states that the PAS (Pan-Malaysian Islamic Party) controlled government of Kelantan state has enacted dress code laws for women, whether Muslim or non-Muslim:

Government-controlled bodies exerted pressure upon non-Muslim women to wear headscarves while attending official functions. In December 2006 the Kelantan government enacted a law against 'indecent dressing' by Muslim women working in retail outlets and restaurants. The dress code requires headscarves and allows only faces and hands to be exposed. The law also stipulates that non-Muslim women should avoid dressing 'sexily or indecently.' Women who violate the dress code can be fined up to \$146 (500 ringgit). Women's rights leaders and the Minister of Women, Family, and Community Development criticized the new law as overly restrictive... Since the defeat of the PAS in Terengganu in March 2004 elections, state and local officials in that state have significantly reduced enforcement of dress codes for women (US Department of State 2007, *International Religious Freedom Report for 2007 – Malaysia*, September 14 – Attachment 1).

In the 2008 election, the PAS retained control in Kelantan, as well forming a ruling coalition with the PKR (People's Justice Party) and DAP (Democratic Action Party) opposition parties in the states of Kedah and Perak ('Malaysian general election, 2008' (undated), Wikipedia [http://en.wikipedia.org/wiki/Malaysian\\_general\\_election,\\_2008](http://en.wikipedia.org/wiki/Malaysian_general_election,_2008) – Accessed 26 March 2008 – Attachment 31. **Users should be aware that Wikipedia is a Web-based free-content encyclopaedia which is written collaboratively by volunteers.** The Research Service recommends that users of Wikipedia familiarise themselves with the regulatory practices which Wikipedia employs as a preventative measure against vandalism, bias and inaccuracy.).

### 3. Disabled children

Little information was found specifically relating to the position of disabled children in Malaysia.

The 2007 USDOS *Country Report on Human Rights Practices* for Malaysia provides the following information regarding the position of people with a disability in Malaysia:

Neither the constitution nor other laws explicitly prohibit discrimination based on physical or mental disabilities, but the government promoted public acceptance and integration of persons with disabilities.

The government did not discriminate against persons with disabilities in employment, education, or in the provision of other state services. A public sector regulation reserves 1 percent of all public sector jobs for persons with disabilities. The government did not mandate accessibility to transportation for persons with disabilities, and few older public facilities were adapted for such persons. New government buildings were generally outfitted with a full range of facilities for persons with disabilities.

A code of practice serves as a guideline for all government agencies, employers, employee associations, employees, and others to place suitable persons with disabilities in private sector jobs. SUHAKAM recommended legislation to address discriminatory practices and barriers facing persons with disabilities, and it organized dialogues among persons with disabilities, government departments, and NGOs to promote awareness of the rights of persons with disabilities.

Special education schools existed but were not sufficient to meet the needs of the population with disabilities. The government undertook initiatives to promote public acceptance of persons with disabilities, make public facilities more accessible to such persons, and increase budgetary allotments for programs aimed at aiding them. Recognizing that public transportation was not "disabled-friendly," the government maintained its 50 percent reduction of the excise duty on locally made cars and motorcycles adapted for persons with disabilities. The Ministry of Human Resources was responsible for safeguarding the rights of the disabled (US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Malaysia*, March 11 – Attachment 24).

A December 2007 report on the website of the Malaysian disability advocacy and training NGO the Independent Living and Training Centre stated that the Malaysian government had decided to sign the UN Convention on the Rights of the Disabled:

Malaysia will sign the United Nations Convention on the Rights of the Disabled, Women, Family and Community Development Minister Datuk Seri Shahrizat Abdul Jalil said today. She said the Cabinet had agreed to the ministry's request for Malaysia to sign the convention.

She, however, added that ratifying the convention by Malaysia would take a little bit more time. "So, we must make preparations for the ratification. Once ratified, Malaysia is bound by the convention." Shahrizat said among others, the convention provided for the right of the disabled to have equal rights to the law, the right not to be discriminated against due to their disabilities, the right to own and inherit property, and the right to education, health services and facilities, and employment. She said the theme, "Together Developing Human Capital Among the Disabled", was chosen for this year's Disabled Day celebration, to stress on the importance of providing equal opportunities for the disabled in various spheres of life ('Malaysia to Sign UN Convention on Rights of Disabled' 2007, Independent Living & Training Centre, Malaysia website (source: *Bernama*), 5 December <http://iltcmalaysia.blogspot.com/2007/12/malaysia-to-sign-un-convention-on.html> – Accessed 18 March 2008 – Attachment 11).

The state media agency *Bernama* reported on 17 September 2007 regarding the various government subsidies and payments available to the disabled and parents of disabled children in Malaysia:

Just like able-bodied people, disabled persons too engage in daily activities like travelling, working, buying a house or conducting business. In efforts to ensure they too lead a comfortable life like the rest, the Government has created guidelines and regulations. These among others include erecting disabled-friendly buildings, helping in acquiring a home, making a living and other provisions considered pertinent for their welfare. The Association of Chartered Certified Accountants (ACCA) lists some of the legislation governing the well being of the disabled persons, as outlined in its Guidebook on Personal Finance.

...It is a well-known fact that the support equipment or devices for the disabled can be very expensive. The Government has exempted sales tax on them, which are classified as medical or educational equipment. By exempting sales tax, the savings will be passed on to the customers. Thus, they become cheaper and more accessible to the disabled. Examples of these equipment and devices are orthopaedic appliances, hearing aids and wheelchairs. In addition to the sales tax, disabled persons can also apply for special funds to buy motorised tricycles and other devices from the National Welfare Foundation.

...The Inheritance (Family Provision) Act, 1971 protects the rights of the disabled children should the parents die. According to the Act, the deceased's estate will be reasonably divided among all the dependants. The dependants here refers to an infant son or a son who is, by reason of some mental or physical disability, incapable of maintaining himself and a daughter who has not been married or who is, by reasons of some mental or physical disability, incapable of maintaining herself. The Act further explains that if the deceased's will does not provide sufficient maintenance to these dependants, they have the right to request for the provisions to be given out differently to what has been stated in the will.

...To reduce the financial burden of parents with disabled children, a monthly allowance is given to every child attending school. Disabled students in primary and secondary schools are allocated RM25 each and RM300 for those studying at the institutions of higher learning.

...The many incentives given to the disabled are designed with the purpose of reducing their financial dependence on others and more importantly, to help them lead a meaningful life. Thus, the welfare of the disabled in Malaysia is well taken care of and they need not worry over their rights and opportunities (Ramly, R. 2007, 'Rights of the Disabled', *Bernama*, 17 September <http://www.bernama.com/bernama/v3/news.php?id=285362> – Accessed 18 March 2008 – Attachment 12).

A 2005 paper presented at a seminar at the University of Melbourne presents a different story, in which “a damaging double standard prevents Malaysia’s disabled from living normal lives”:

A damaging double standard prevents Malaysia’s disabled from living normal lives research has found. The difference between the political and social realities of life for the disabled in Malaysia was the topic of a seminar given at The University of Melbourne earlier this week.

Ms Lynne Norazit, academic visitor to the Key Centre for Women’s Health at the University presented the findings of her research into the depiction of disability in the Malaysian media. As part of her research, Ms Norazit compared government policy which had increased educational opportunities and incentives for employers to hire disabled staff with letters to the editor and press releases painting quite a different picture.

“Common complaints are a lack of access to public transport and public buildings, too much red-tape and/or a lack of sensitivity in the provision of services for those with disabilities and even the supply of inappropriate mobility aids,” Ms Norazit said. “One possible explanation for this apparent disparity between policy and practice is that the common perception of disability, and more particularly of people with disabilities, has resulted in a general lack of understanding of their real needs, desires and aspirations.”

“And it is the media, which both creates and reflects society’s perceptions and attitudes towards disability that perpetuates this misperception, further disabling the disabled. While there is a move towards a more positive portrayal of people with disabilities in the media, many of the misperceptions continue to be perpetuated. Except for the ‘exceptional’ few, disabled people are generally not seen as being like ‘normal’ people and therefore they do not carry out ‘normal’ activities such as using public transport. Instead they are usually seen as being helpless or needy, objects of pity and charity rather than being deserving of equal rights and opportunities” (‘Double standard for Malaysia’s disabled’ 2005, University of Melbourne website, 11 November [http://uninews.unimelb.edu.au/articleid\\_2988.html](http://uninews.unimelb.edu.au/articleid_2988.html) – Accessed 18 March 2008 – Attachment 13).

A 2000 report on the Aliran website, the online presence of the Aliran Kesedaran Negara (Malay for National Consciousness Movement), decries the lack of progress made in the Asia-Pacific region in regard to “disabled women and girls who continue to struggle to be recognised as persons and as females”. The report also notes that disabled females in Malaysia “are at high risk of being regularly abused physically and mentally” and that the “abuses range from beatings to rape”:

The progress made by women in the Asia Pacific region over the last 20 years or so has not extended to their disabled sisters. Neither the region’s economic growth nor the women’s movement has really benefited disabled women and girls who continue to struggle to be recognised as persons and as females. Disabled women and girls remain hidden and silent, their concerns unknown and their rights overlooked. They continue to live under the double burden of being disabled and female. Prejudice continues to prevail within each category making disabled women and girls one of the most marginalised groups in society.

Girls with disabilities grow up with the burden of a stigma and expect little of themselves. The perception that disabled women and girls are inferior and of little value contributes greatly to their lack of self-esteem. Given the gender bias in society, the subordinate status imposed on women further increases the likelihood that disabled women will have their individuality and rights ignored. Despite the social, cultural and economic changes in the region, the role and identity of a woman is still closely associated to that of a nurturer, a bearer of children.

...Disabled girls and women are at high risk of being regularly abused physically and mentally, most commonly by those around them – family members and caregivers – at home or in institutions. Abuses range from beatings to rape. Yet few of the victims talk about it or press charges. Many feel that they will not be believed and fear of reprisals is common. Most victims do not know where or to whom to turn for help. The issue of sexual assault on disabled girls and women needs to be highlighted so that the perpetrators can be punished and the victims protected.

...Disabled persons in general and poor disabled girls in particular are often not provided with or have little access to early intervention or rehabilitation services. The prejudice surrounding their ability and value continues to perpetuate the view that rehabilitating them is futile as can be seen by the resources allocated either by the family or the State for the health care of disabled women. Rehabilitation services in the developing countries of the region are generally still inadequate and poorly co-ordinated. Disabled women and girls must travel to cities or stay at residential facilities for a specific period of time. Commuting poses serious difficulties for women and girls with disabilities, not to mention added cost.

...Malaysia is one of very few countries in this world that do not have comprehensive laws to protect the rights of disabled persons against discrimination. The only law we have currently is the Uniform Building (Amendment) By-Laws 1993, which provides that all buildings specified in the amendment (which includes schools, hospitals, offices, banks, post offices, shops, supermarkets, factories, colleges, universities, hostels, hotels and residential buildings other than single family private dwellings) must provide for access to disabled persons and be designed with facilities for use by disabled persons (now by-law 34A). Yet most buildings in Malaysia have no such access or facilities. In addition, in Malaysia, there is no law to prohibit discrimination against the disabled, unlike in other countries all over the world (Cheng, L.K. and Deveraj, P. 2000, 'Doubly Disadvantaged', Aliran website <http://www.aliran.com/oldsite/monthly/2000/03f.html> – Accessed 18 March 2008 – Attachment 15).

## **Is there any evidence in support of the following?**

### **4. Forced female circumcision**

The issue of female circumcision (more commonly known as female genital mutilation or cutting – FGM/C) was addressed in 2004 by *RRT Research Response MYS16505* and in 2000 by *RRT Research Response MYS14117*. *RRT Research Response MYS14117* provided information suggesting that there was little solid information regarding the prevalence of FGM/C in Malaysia. Sources indicate that where FGM/C was found to be relatively common, it generally manifested in non-extreme forms, usually symbolic and leaving no physical damage or complications. *RRT Research Response MYS16505* provided information reporting that FGM/C is practised in Malaysia, and that Malaysia has no laws against FGM/C, but no statistical information regarding prevalence or severity of procedures carried out (*RRT Country Research 2004, RRT Research Response MYS16505*, 17 March – Attachment 22; *RRT Country Research 2000, RRT research Response MYS14117* – Attachment 23).

Very little recent information on the prevalence of FGM/C in Malaysia, or the severity of the procedure where it is performed, could be found.

A 2001 USDOS report on the prevalence of FGM/C suggested that the practice was not particularly widespread in Malaysia, and where it did take place, it was at the less severe end of the FGM range of practices:

It is reported by medical professionals to be practiced by a very small number of Malay Muslims in rural areas in Malaysia where it resembles a symbolic prick, a tiny ritual cut to the clitoris or where the blade is simply brought close to the clitoris... Because the incidence is believed to be so small or information is not available, this report does not further discuss Malaysia...(US Department of State 2001, *Prevalence of the Practice of Female Genital Mutilation (FGM); Laws Prohibiting FGM and their Enforcement; Recommendations on How to Best Work to Eliminate FGM*, US Department of State website <http://www.state.gov/documents/organization/9424.pdf> – Accessed 5 February 2008 – Attachment 10).

## **5. Christian females being forced to marry Muslims**

No reports were found of forced marriages involving Muslims and Christians in Malaysia.

The website of Karamah: Muslim Women Lawyers for Human Rights, contains an article titled ‘Women’s Rights Within Islamic Family Law in Southeast Asia’, which offers information on Malaysian federal and state law regarding marriage:

The Islamic Family Law (Federal Territories) Act 1984 provides that the minimum age of marriage, except where a Syariah Judge has granted his permission in writing in certain circumstances, shall be 18 years for men and 16 years for women. The Kelantan Islamic Family Law Enactment 1983 provides for the same minimum age limits, with what appears to be a stricter exception for consent obtained by a Qadhi in “exceptional circumstances.” Under the Federal Territories Act, a young woman who was given in marriage by her wali mujbir before she attained the age of baligh, but repudiates the marriage before the age of 18, is entitled to obtain an order for dissolution of marriage if the marriage is still unconsummated.

Most of the state enactments require consent of the bride and do not allow marriage by compulsion. For instance, the Islamic Family Law (Federal Territories) Act 1984 stipulates in section 13 that before a marriage can be recognised, both parties must consent and either the wali of the woman or the Syariah Judge as wali Raja must give his consent when there is no wali nasab available, the wali cannot be found or the wali refuses to consent without sufficient reason. Section 37(a) makes it an offence for a person to use force or threats to compel a person to marry against his or her will.

In the Malaysian state of Kelantan, however, section 13 of the Kelantan Islamic Family Law Enactment 1983 states that the consent of the bride is wajib (obligatory) if she is not a virgin or is a virgin whose wali is not mujbir (her father or paternal grandfather), but only sunat (recommended) if she is a virgin whose wali is mujbir. The marriage may take place without her consent if the wali mujbir or prospective husband are not hostile to her, if the husband is of the same status as she is, and if he is able to pay a reasonable maskahwin (dowry). This is despite the fact that Kelantan women enjoy a reputation of independence and entrepreneurship (‘Women’s Rights Within Islamic Family Law in Southeast Asia’ (undated), Karamah website [http://www.karamah.org/docs/Womens\\_rights\\_%20SEA.pdf](http://www.karamah.org/docs/Womens_rights_%20SEA.pdf) – Accessed 27 July 2005 – Attachment 14).



## 6. Children being removed if not being raised as Muslims

*RRT Research Response MYS17446* from July 2005 provides information on the manner in which courts are said to decide custody matters in a manner that favours an outcome in which the child (or children) will be raised in the Muslim faith (RRT Country Research 2005, *RRT Research Response MYS17446*, 30 July – Attachment 19).

The USDOS *International Religious Freedom Report 2007* for Malaysia states that a woman born a Muslim but raised as a Hindu, and married to a Hindu, had her daughter removed and placed in the custody of her Muslim mother. The woman concerned was accused of “deviating from Islam” and was taken into custody in January 2007:

One such case involved 29-year-old Revathi Masoosai who was raised as a Hindu by her grandmother, although she was born to Muslim parents and registered at birth as a Muslim. Revathi filed a statutory declaration in 2001 that identified herself as a Hindu. After she married a Hindu man in 2004, worshipped as a Hindu, and gave birth in December 2005, the Malacca Islamic Religious Department (MAIM) accused Revathi of deviating from Islam and demanded custody of her newborn daughter. Revathi refused. On January 8, 2007, Revathi was taken into custody under a Shari’a Court order. Despite the objections of Revathi and her husband, MAIM placed the couple’s daughter in the care of Revathi’s Muslim mother... As of June 30, 2007, Revathi remained in detention, and the High Court had not heard her husband’s habeas corpus application (US Department of State 2007, *International Religious Freedom Report for 2007 – Malaysia*, September 14 – Attachment 1).

## 7. Anything else of relevance.

Sources indicate that although Malaysia theoretically allows religious freedom in its Constitution, in practice such freedom appears to be severely limited. The USDOS *International Religious Freedom Report 2007* for Malaysia quotes Prime Minister Abdullah Badawi extolling “tolerant, progressive and peace-loving” Islam, but then suggests that open discussion of contentious religious matters is discouraged by police and government:

Non-Muslims were free to practice their religious beliefs with few restrictions... Longstanding Government policies provide material economic and educational preferences to the country’s majority population of ethnic Malays, all of whom are legally categorised as Muslims at birth.... Prime Minister Abdullah developed the concept of ‘Islam Hadhari’ (literally ‘civilisational Islam’), which he described as an ‘approach’ that reminds Muslims ‘that Islam in reality is a religion which is tolerant, progressive and peace-loving,’ and is intended to foster interreligious tolerance and moderation in a multiethnic and multireligious society... Article 11, an NGO named after the freedom of religion clause in the Constitution, organised four public forums to discuss the perceived erosion of constitutional protection of non Muslims’ religious freedom. The last three events sponsored were either cancelled or shortened at the request of police, following the actual or threatened appearance of a large number of Muslim protesters. As debate over religious topics intensified, in July and August 2006 the Prime Minister warned both mainstream and Internet-based media to refrain from publicizing debates about contentious religious topics. He also directed all NGOs--both Muslim and non-Muslim--to cease public statements and activities that could generate further religious controversy. Article 11 held no further public discussions during the reporting period... The Government is concerned that ‘deviationist’ teachings could cause divisions among Muslims... There were no reports of forced religious conversion... There were a few reports of societal abuse or discrimination based on religious belief or practice (US Department of State 2007, *International Religious Freedom Report for 2007 – Malaysia*, September 14 – Attachment 1).

The Freedom House *Freedom in the World – Malaysia (2007)* report claims that Malaysia is undergoing “Islamisation”, which it characterises as “a phenomenon encompassing a crystallised racial divide and a sharp downturn in religious tolerance”. It provides details of incidents and legal cases that lead the report to conclude that “religious freedom has recently declined more broadly”. The report also suggests that recent legal rulings are “essentially concluding that non-Muslims have no means for redress in religious matters”:

By far the most important issue in the country in 2006 was what has generally been termed the “Islamisation” of Malaysia, a phenomenon encompassing a crystallised racial divide and a sharp downturn in religious tolerance. A series of court cases raised concerns among non-Muslim minorities regarding their religious and legal rights. The ongoing case of Lina Joy, a former Muslim convert fighting to be recognized as a Christian by the state, emerged as a test of the state of religious freedom in the country. Wary of the sensitivity of the issues of race and religion, the government suppressed public and political discussion of religious rights along with related press coverage. UMNO’s refusal to entertain discussion of minority rights culminated at the party congress in November, where ministers demonstrated unrestrained racism and Islamic zeal, warning Chinese and Indian minorities (represented by UMNO’s BN partners) against continued questioning of the special status of Malays and Islam...

Religious freedom has recently declined more broadly with a series of court rulings that threatened non-Muslim minorities’ right to self-identify and to practice freely, as guaranteed by Article 11 of the constitution. In December 2005, a religious court ruled that Maniam Moorthy, a former army officer, died a Muslim and thus must be buried according to Islamic rites, while his wife insisted he was a practicing Hindu and had never converted. Non-Muslims were outraged when the High Court invoked Article 121B of the Constitution, a measure introduced during the Mahathir administration stipulating that only Sharia courts can deal with matters related to Islam, and refused to hear the case. Essentially concluding that non-Muslims have no means for redress in religious matters, the Moorthy ruling led nine non-UMNO ministers to file a memorandum in mid-January calling for a repeal of Article 121 and a review of constitutionally guaranteed religious freedoms. Widespread demonstrations by both non-Muslims and Islamic activists followed, prompting Abdullah to pressure the ministers to withdraw the memorandum.

Lina Joy, a Muslim who converted to Christianity in 1998, continues to fight for state recognition of her new religion so that she can marry a Christian man. She has fought her battle for the last five years in civil courts on the basis of Article 11 and argued that, since she renounced her Muslim faith, Sharia courts do not apply to her in marriage, property, and divorce. After a series of civil court decisions against her, which maintained that Malays cannot renounce Islam because the constitution declares Malays to be Muslims, her case was brought before the national Court of Appeals on the grounds that the national registration department, which lists the official religion of all Malaysians on identity cards, cannot force her to contest this matter in the Shariah courts. The case, with the verdict still pending at year’s end, has largely polarised the nation, with many Muslims viewing conversion as apostasy. A number of anti-apostasy campaigns and Islamic defenders groups have emerged in response, and this issue has raised racial tensions. In November, a large mob of Muslims organised outside a church in Ipoh in response to a false report that Muslims were being converted within the church. The government was forced to call on the state’s hardline religious leader or mufti Harussani Zakaria, who was conspicuously absent, to intervene to prevent violence. Still highly politicised, apostasy is predicted to remain a primary issue of contestation in the relationship between Islam and the state (*Freedom in the World – Malaysia (2007)*, 2007, Freedom House website – Attachment 2)

A report in *The Christian Science Monitor* concurs, stating that “the promises of religious and ethnic pluralism that nurtured a generation of Malaysians have begun to unravel.” The report claims that “minorities are largely invisible in the ranks of police, military, and civil service, while schools are increasingly segregated by race and language”. The report also details how “assertive Islamic shariah courts ... have forced civil courts to retreat on sensitive issues such as interfaith conversion” and quotes lawyers as stating that “several recent judgements have eroded the civil rights of non-Muslims and highlighted a creeping Islamisation in a secular judiciary”:

Such cases have become more common in Malaysia, whose leaders tout their multiracial democracy as a model of Islamic moderation and economic success. It’s a claim echoed by American diplomats and Muslim intellectuals seeking a credible counterpoint to extremist voices in the Islamic world.

But the promises of religious and ethnic pluralism that nurtured a generation of Malaysians have begun to unravel. A pro-Muslim shift among lawyers and judges is alarming Christians, Hindus, and other non-Muslims who make up about 40 percent of the population. The remainder are predominantly ethnic Malay-Muslims, who benefit from affirmative-action programs to redress historic economic disparities.

Diplomats, lawyers, and religious leaders say that Malaysia’s race-based coalition government – a power-sharing formula unchanged since independence in 1957 – is failing to address growing ethnic tensions fed by pro-Malay discrimination and a growing stress on Islamic governance. Minorities are largely invisible in the ranks of police, military, and civil service, while schools are increasingly segregated by race and language.

...The sharp end of the religious wedge is Malaysia’s legal system. Assertive Islamic shariah courts, backed by Muslim bureaucrats, have forced civil courts to retreat on sensitive issues such as interfaith conversions. Lawyers say several recent judgments have eroded the civil rights of non-Muslims and highlighted a creeping Islamisation in a secular judiciary.

A prominent case in 2006 pitted a Hindu widow against Islamic authorities who claimed the body of her husband, an Army corporal, for a Muslim burial. A civil court declined to rule on whether he had converted to Islam, deferring to the shariah court. Last year, a court refused to uphold a Malay woman’s conversion to Christianity.

“We can’t depend on the judiciary. Every case where a Muslim is involved in a dispute, the outcome isn’t favorable for us,” says A. Vaithilingam, a Hindu community leader.

Also troubling, say lawyers and analysts, is conservatives’ reaction to public debate on such issues. A proposed interfaith commission was shelved in 2005 after Islamists objected to the inclusion of liberal Muslim organisations.

Far from confronting these extremists, Malaysian leaders have resorted to media blackouts on sensitive topics. Deputy Prime Minister Najib Razak tried to end the debate last July by saying that Malaysia was an Islamic state, not a secular state, raising eyebrows among constitutional lawyers.

...Malik Imtiaz Sarwar, a human rights lawyer, traces the shift in the judiciary to the 1980s when the government tried to outdo political opponents by promoting Islam among civil servants and judges. At the same time, a purge of judges and a constitutional amendment to reinforce the jurisdiction of shariah courts removed a secular brake on Malay-Muslim policymakers. “We’ve let the tiger out of the cage, and we’re trying to catch it by the tail,” says Mr. Imtiaz.

Aides to Prime Minister Abdullah Badawi say he's aware of the sensitivity of recent legal judgments but won't intervene in shariah courts. A better way, they say, is to gradually appoint senior federal judges who will defend civil safeguards on religious freedom.

Mr. Badawi, an Islamic scholar who took office in 2003, said at a UN conference this month that Islam respected cultural and religious diversity, and that Muslim governments should put social justice before popularity. "A true Muslim will also not abdicate the principle of fairness in managing ethnic relations even if it makes him somewhat unpopular within his own ethnic community," he said.

But his actions in office haven't spoken as loudly, says Bridget Welsh, a professor at John Hopkins University. "What you're seeing is a serious deterioration of race relations" (Montlake, S. 2008, 'Pro-Muslim tilt in Malaysia's courts', *The Christian Science Monitor*, 28 January – Attachment 4).

A *Compass Direct* article from April 2007 reports that the Hindu wife of a Muslim convert, whose civil marriage had ended and whose younger son had allegedly been converted to Islam, was "directed ... to seek recourse through the sharia (Islamic) court system". The report quotes Malaysian Christian and Buddhist leaders expressing concern that a non-Muslim had been directed to "submit to the sharia courts", and stating that "religious laws cannot be applied to people who do not profess that religion":

The Hindu wife of a Muslim convert is appealing to the highest court in Malaysia after a lower court directed her to seek recourse through the sharia (Islamic) court system over the dissolution of her civil marriage and the alleged conversion of her younger son to Islam. The case holds implications for Christians and members of other minority religions in Malaysia, where non-Muslims such as Lina Joy, a Christian convert out of Islam, are often unduly subject to Islamic regulations.

...Bishop Paul Tan Chee Ing, executive committee chairman of the Christian Federation of Malaysia, expressed concern that the civil courts had directed a non-Muslim to submit to the sharia courts. Datuk Chee Peck Kiat, President of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism, told reporters from *The Star* that, "Religious laws cannot be applied to people who do not profess that religion."

For the whole of last week, the non-Muslim religious communities represented by the council held special prayers "for the restoration of religious freedom" in the country.

...Subashini's case fuels a continuing debate in Malaysia on the ability of the country's dual legal system to properly administer justice to its non-Muslim citizens. While the federal constitution guarantees freedom of religion for all citizens, some judges have refused to provide recourse to non-Muslims due to their interpretation of Article 121(1A) which states that the High Courts and the inferior courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Sharia Courts.

"Does this mean there is an extension of sharia laws to non-Muslims?" Karpal Singh, an opposition member of Parliament, asked recently in response to Subashini's case. Singh has called on the government and Parliament to urgently resolve issues arising from the overlap of jurisdictions between civil and sharia courts (Kay, J. 2007, 'Sharia jurisdiction challenged in divorce case in Malaysia', *Compass Direct News*, 16 April – Attachment 5)

A *Compass Direct* article from February 2008 relates the confiscation of Bibles “from a citizen returning from a trip to the Philippines”, described as “the latest in a series of seizures of Christian publications by officers from government agencies”:

A customs officer on January 28 confiscated two boxes containing 32 Bibles at a low-cost carrier terminal from a citizen returning from a trip to the Philippines, further troubling Malaysian Christians beset by government curbs on press and religious freedoms.

Online news agency Malaysiakini reported yesterday that upon arrival at the airport, Juliana Nichols was asked to open the boxes and declare their contents. Despite producing a letter from her parish priest stating that the English Bibles were meant for use in her church, the officer told Nichols the texts needed to be cleared with the Internal Security Ministry’s Control Division of Publications and Al-Quran Texts.

...The incident is the latest in a series of seizures of Christian publications by officers from government agencies.

Earlier this year, officers from the Control Division of Publications and Al-Quran Texts seized Christian publications for children from bookstores in several states across the country because they contained illustrations of prophets deemed offensive to Muslims. Islam shares some prophets in common with Christianity but disallows the portrayal of prophets in any form.

Following protests from the Christian community that the books were not meant for Muslims, the books have since been returned to bookstores.

Late last year, the Evangelical Church of Borneo (Sidang Injil Borneo, or SIB) filed a lawsuit against the government for disallowing it from importing six titles of Christian educational materials for children which contained the Arabic term for God, “Allah” (Kay, J. 2008, ‘Bibles confiscated at airport in Malaysia’, *Compass Direct*, 5 February – Attachment 6)

The recent election may have some effect on the marginalisation of non-Malay and non-Muslim communities, although at this stage this is only speculation. Nonetheless, a March 2008 report in *The International Herald Tribune* claimed there would be “a major reversal of policy”, and that the election result “in part reflected anger among the country’s sizeable ethnic Chinese and Indian minorities over social and racial inequalities”:

Malaysia’s opposition-governed states will no longer follow an affirmative-action program that benefits ethnic Malays, top leaders said Tuesday in a major reversal of policy after an election upheaval clipped the governing coalition’s powers. A three-party opposition alliance won control of the governments in 5 of Malaysia’s 13 states in elections Saturday, the biggest loss for the governing National Front since independence from Britain in 1957. The result in part reflected anger among the country’s sizable ethnic Chinese and Indian minorities over social and racial inequalities.

The clearest policy reversals were announced by Lim Guan Eng, who was sworn in Tuesday as the chief minister of the northern state of Penang, which is dominated by ethnic Chinese. The industrial state is the site of many multinational electronics companies such as Intel and Dell, and is also known as the country’s tourism jewel. Lim said his government will do away with the New Economic Policy, the 37-year-old affirmative-action program for Malays, in awarding state contracts. “We will run the government administration free from the New Economic Policy that breeds cronyism, corruption and systemic inefficiency,” Lim, an ethnic Chinese, told reporters.

In other reforms, Lim said all state government members and civil servants will be required to publicly declare their assets. "This is a government that is based on democracy. This is also a government that believes in equal opportunity and social economic justice. We are here to build a dynamic Penang for all," he said.

Following the elections, Lim's Democratic Action Party, the Pan-Malaysian Islamic Party and the People's Justice Party of Anwar Ibrahim, the former deputy prime minister, formed coalition governments in the states of Penang, Kedah, Perak and Selangor. The Pan-Malaysian Islamic Party will rule by itself in Kelantan State, which it has held for the past 18 years. It was the first time the National Front had given up control of so many states.

At the federal level, the opposition increased its strength in Parliament to 82 from 19, leaving the National Front with a simple majority of 140 seats in the 222-member house. Anwar told reporters in Kuala Lumpur that the opposition did not have the power to abolish the New Economic Policy nationwide. But in the five opposition-governed states, the governments will "reduce race-based affirmative-action policies and begin to implement a more competitive merit-based system," Anwar said.

He said that the five states will try to ensure that the poor among all races receive benefits such as low-cost homes and education, and that affirmative-action policies become obsolete ('Opposition parties vow to end race-based policy in 5 Malaysian states', 2008, *The International Herald Tribune*, 13 March – Attachment 8)

A report on the CNSNews.com website indicated that, in the lead-up to the election, the PAS were emphasising social justice and anti-poverty measures rather than Islamic issues, perhaps as a result of losing Terengganu in the 2004 elections and barely holding on to Kelantan. The report quoted a PAS leader as stating that just "because PAS isn't highlighting shari'a this time doesn't mean it no longer wants to see it implemented in Malaysia", and that "PAS supporters know the party's position on Islamic law without having to have it spelled out for them":

An Islamist party in Malaysia that has drawn attention in the past for supporting controversial shari'a corporal punishment has changed tack ahead of general elections next weekend, in a bid to regain waning support. The opposition Parti Islam se-Malaysia (PAS), which controls one of Malaysia's 13 states, is instead highlighting social issues and simmering dissatisfaction with the United Malays National Organization (UMNO)-led moderate Muslim coalition that has ruled for half a century.

Up for grabs in the March 8 election are 222 seats in the national parliament and 505 seats in state legislatures. The UMNO-dominated National Front coalition in 2004 took 91 percent of parliamentary seats and is expected to dominate the new parliament again. But key battlegrounds include northern Kelantan state, which has been governed by PAS since 1990, and neighbouring Terengganu state, which PAS controlled from 1999 to 2004.

In previous elections, the Islamist party won headlines with its opposition to nightclubs and alcohol and its aggressive promotion of shari'a-associated "hudud" punishments such as amputations and stoning -- and saw its support slide as a result. In 2004, PAS hoped to expand its hold from two states -- Kelantan and Terengganu -- to three or four. Instead it lost Terengganu, and only just managed to hold onto Kelantan.

This time around, with an eye on holding onto Kelantan, retaking Terengganu and perhaps even adding a third state, Kedah, PAS leader Abdul Hadi Awang is focusing on such issues as affordable health care, lowering fuel prices and a minimum wage. "We offer equal justice to all, justice in economy opportunities and freedom of religion," he told reporters at a launch of

the party's manifesto. Other moves aimed at widening PAS's appeal include a slate of fresh candidates, including an ethnic Chinese Muslim and 13 female candidates. One of the women is the party's first non-Muslim candidate, a law graduate who is standing for a seat in a stronghold of the governing coalition.

But because PAS isn't highlighting shari'a this time doesn't mean it no longer wants to see it implemented in Malaysia; Hadi said PAS supporters know the party's position on Islamic law without having to have it spelled out for them. "The party realises its mistakes" in past elections, the *New Straits Times* daily quoted him as saying at the manifesto launch. "The party wants to keep with the changing times ... one way is not to openly back the Islamic state." Hadi said PAS's main pillar remained Islam, but that there would be "justice for all" (Goodenough, P. 2008, 'Islamist Party Downplays Shari'a Ahead of Malaysia Election', CNSNews.com website, February 26

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