

2008 Annual Report of the U.S. Commission on International Religious Freedom

Other Countries under Review: Kazakhstan, Malaysia, and Turkey

Malaysia

Religious freedom is a highly contentious political issue in Malaysia that is debated openly by politicians, human rights activists, lawyers' groups, journalists, and other sectors of civil society. Many non-Muslims express concern about the Muslim majority's commitment to religious freedom and freedom of expression and call for interfaith dialogue; many Muslims perceive these concerns as an attack on Islam's officially respected position. Although religious freedom concerns are debated openly and actively in Malaysia, there have been few political resolutions, as Malaysia's courts and parliament have failed to address some of the most problematic issues.

The Constitution of Malaysia formally proclaims the state to be secular and guarantees "every person the freedom to practice his or her religion in peace and harmony." At the same time, the document also recognizes Islam as the "religion of the Federation," defines Malays as Muslims, and limits the "propagation" of other faiths. Sunni Muslims are free to practice their religious beliefs with few limitations, but those deviating from accepted Sunni beliefs face some discrimination or other restrictions, including being subject to arrest and "rehabilitation."

For the most part, non-Muslims are free to practice their religious beliefs with few restrictions. In states where Muslims are a majority, local governments carefully control the building of non-Muslim places of worship, the allocation of land for non-Muslim cemeteries, and the distribution of religious materials. Approvals are needed for building religious venues and printing religious materials—approvals that are often granted slowly or through corruption. In peninsular Malaysia, the federal government restricts the distribution of books, movies, Web sites, and music it alleges might incite racial or religious disharmony. This ban does not extend to eastern Malaysia, where there are Chinese and Indian majorities.

In recent years, however, ethnic Malay Christians and ethnic Indian Hindus have faced various problems that reflect the country's long-contested political issues, including the viability of Malaysia's dual legal systems (civil and sharia), the definition of who is a Muslim in Malaysia, and the many special privileges afforded ethnic Malay Muslims. Buddhist, Christian, and Hindu leaders are currently offering cautious support for Malaysia's "secular" Constitution and an end to the positive discrimination policies benefiting Malay Muslims at the expense of other ethnic minorities. In the March 2008 elections, opposition parties scored important gains in the Parliament and gained control of several state-level governments. At least one state won by the opposition, Penang, announced that it will end all economic, educational, and political privileges reserved for ethnic Malays, sparking several small Malay protests.

Civil Courts vs. Sharia Courts

Malaysia maintains two parallel justice systems: the secular court system based on parliamentary law and a sharia court system based on Islamic law. Sharia, enacted and enforced

at the state rather than the federal level, applies only to Muslims, but legal problems have emerged when ethnic Malays convert to another religion or in family disputes between Malays and non-Malays. Where sharia court decisions affect a non-Muslim, he or she can seek recourse in the secular courts that, in theory, can overrule the sharia courts. For most of Malaysia's history, there have been few jurisdictional battles between the two court systems. However, in recent years, questions of apostasy, conversion, divorce, child custody, and burial rights—and the interplay between sharia and civil courts—have become major legal and political issues.

Under sharia law, Malaysians wishing to renounce Islam in order to profess another belief are subject to criminal sanctions, including being sentenced to “rehabilitation.” In 1998, after a controversial incident involving a Muslim converting to Christianity, the government stated that “apostates” would not face government punishment as long as they did not defame Islam after their conversion. However, the issue of which court—civil or sharia—would make the decision on conversions was not clarified. After the 1998 ruling, enforcement of apostasy laws has occurred only occasionally, and almost entirely among Muslims considered to be “deviant.” In 1999, the Malaysian State Court ruled that secular courts have no jurisdiction to hear applications by Muslims to change religion. In May 2007, the Federal Court, Malaysia's Supreme Court, supported this ruling and stated further that Malaysians wishing to convert from Islam to another religion must obtain an order from the sharia court.

In March 2007, the Court of Appeals upheld a previous Federal Court ruling that allowed Muslims (or recent Muslim converts) to initiate divorce or child custody proceedings against a non-Muslim spouse in sharia courts. There are also sporadic cases in which provincial or local officials have intervened in family law matters; the most prominent cases involved marriages between Hindus and Muslims. In several other cases, state religious authorities detained and attempted to “rehabilitate” Muslim spouses who sought to renounce Islam or who married non-Muslims in a temple. Such marriages are not legally recognized. In one case, the child resulting from an interfaith union was removed from parental custody, pending “rehabilitation” of the detained Muslim parent. Lawyers and human rights advocates have spoken out about these practices and several cases remain under review at the Court of Appeals and the Federal Court.

In 1999, Azlina Jailani, also known as Lina Joy, a Muslim who converted to Christianity, went to court to take “Muslim” off her identity card in order legally to marry another Christian. The 1976 Law Reform Act prohibits a Muslim from solemnizing a marriage under civil law with a non-Muslim. Subsequent local court decisions have contended that as an ethnic Malay, Joy's constitutional right to religious freedom was limited by Article 160 of the Constitution, which states that all Malays are Muslims. A lower court hearing the Joy case decided that as a Muslim, her appeal should be decided by sharia courts. However, Joy refuses to acknowledge the standing of the sharia court over her case, claiming that sharia courts are for deciding personal status issues for Muslims. In September 2005, the Court of Appeals ruled that the sharia court had to settle Joy's appeal to have “Muslim” removed from her identify card. On May 30, 2007, the Federal Court backed the Court of Appeals decision.

Problems for Ethnic Indian Hindus

The majority of Hindus face few restrictions on the practice of their religion. However, disputes over the presence or expansion of Hindu religious sites have added to already tense ethnic relations and resulted in claims of discrimination. After a violent conflict in Penang between Hindus and Muslims in March 1998, the government announced a nationwide review of “unlicensed” Hindu temples and shrines. Although implementation was not vigorous, beginning in 2005, state and local governments started to demolish “unlicensed” Hindu temples to make way for other development projects, claiming that the temples were located on government land.

The Hindu temple and shrine destructions are spurred by ethnic and political competition in the countryside and battles over eminent domain in urban areas. Lawyers for the Hindu communities have had some success in raising the issue with national politicians; however, they have succeeded only in slowing—but not stopping—shrine and temple destruction, particularly outside of Kuala Lumpur. In October 2007, authorities demolished the 100-year-old Maha Mariamman Hindu Temple and reportedly assaulted its Chief Priest. In December 2007, the Sri Periyachi Amman Temple in Tambak Paya, Malacca was demolished by local authorities to make way for a development project, despite having received a “stay order” from state officials.

Defining “Deviancy”

The government continues to publish a list of groups with “deviant” interpretations of Islam, maintaining that those groups endanger national security or cause divisions among Muslims. Fifty-six deviant teachings have been identified and prohibited, including Shi’a Islam, the Baha’i religion, the Ahmadi religion, transcendental meditation, and some messianic sects of Islam. The government has established guidelines on what constitutes “deviant” behavior, and practitioners of religions so deemed may be arrested or detained with the consent of the sharia court, in order to “rehabilitate” them and return them to the “true path of Islam.” According to the State Department’s 2007 religious freedom report, although the small Shi’a community is listed as a “deviant” sect, its members are allowed to worship and operate openly. However, Shi’a Muslims face discrimination in employment and are closely monitored by the government.

In November 2006, Malaysian police detained 107 persons, including several children, during a raid in Kuala Lumpur against suspected followers of the banned al Arqam Islamic group. While all the detainees were subsequently released, Malaysian police stated that their intention to press charges in a sharia court against six of the arrested individuals. The government had banned al Arqam in 1994, labeling it a “deviant” sect. Ashaari Muhammad, the leader of the group’s approximately 10,000 followers, subsequently spent 10 years under house arrest. In June 2007, authorities announced that they were seeking Ayah Pin, the leader of a non-violent religious group in Terengganu known as the Sky Kingdom, for supporting “deviant” religious practices. In 2005, at the instruction of state officials, police arrested approximately 70 Sky Kingdom members and destroyed all non-residential buildings on the group’s compound. One of the 70 arrested agreed to undergo religious rehabilitation; the cases against the other Ayah Pin followers were pending. In July 2004, the Federal Court dismissed an appeal by four followers of Ayah Pin seeking a statutory declaration that Sky Kingdom followers have the right to practice the religion of their choice. The Federal Court held that their attempt to renounce Islam did not free them from the jurisdiction of the state sharia court.

