

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Please provide information on discrimination against Christians in Malaysia.**
- 2. What effect is one spouse's alleged conversion to Islam likely to have on the other where the couple were previously both Christians?**
- 3. Is this more likely to make a person a target than if their spouse had remained a Christian?**
- 4. Could the Christian spouse have applied for asylum in [a third country]?**

RESPONSE

- 1. Please provide information on discrimination against Christians in Malaysia.**

According to a recent survey of the situation for Christians in Malaysia there has been some deterioration in religious tolerance:

In contrast to the past, when such religious matters were treated with much greater sensitivity, there were multiple high-profile incidents, such as conversions out of Islam, destruction of places of worship, confiscation of religious material and enforced burials by religious authorities in 2007. Confronted with aggressive denials by the government that anything was wrong and the apparent unwillingness to do anything about them, all ethnic minorities, especially Malaysians of Indian origin, grew more overtly frustrated and resentful. (Introduction)

...

2.3.3. Statues & Crosses in Missionary Schools

On 29 October, an Umno member of parliament (MP) from Parit Sulong, Johor, called for the removal of statues and crosses in the mission schools. His comments drew criticism when the extract from the parliament's Hansard was posted on the Internet. His remarks were also deemed seditious by some. In December, in replying to a question posed by an opposition MP, the deputy education minister said that the government would not remove statues and crosses from the mission schools as it was a tradition. However, no action was taken against the Parit Sulong MP.

As pointed out earlier, the Islamic authorities have been particularly aggressive in their expansionist mode during the year under review. This has encouraged the Muslim advocates to seize the opportunity to make political gains out of the situation. Besides political sabre-rattling, the statement by the Parit Sulong MP seeks to eliminate all visible traces of minority religions from the Malaysian society. This Commission calls on the government and those within its ranks to be sensitive to the feelings of religious minorities and to honour their civic responsibility to respect and protect the minorities in Malaysia.

...

3.2. Interfaith Conference

In May, the Government banned an interfaith conference due to be chaired by the Archbishop of Canterbury, Dr Rowan Williams. It was called off with just a two-week notice. The Building Bridges Conference, the sixth in a series, was intended to foster dialogue between the Christians and Muslims. It was set up in the wake of September 11 and meant to be an annual get-together of Christian and Muslim academics in an attempt to find theological understandings that might help prevent future terrorist attacks. The government however allowed Dr Williams into the country to preach at the consecration of a new Anglican bishop.

Former deputy prime minister Anwar Ibrahim called the act of banning the conference “a disservice to Islam,” a blow to the country’s reputation for religious tolerance. Prime Minister Dato’ Seri Abdullah Ahmad Badawi later clarified that the seminar was not cancelled but postponed and that the government would find another suitable date. Many however were perplexed as the seminar was not a government function but private and its approval was not necessary.

...

4. CONCLUSION

As in previous years, the one under review saw further curbs on fundamental religious liberty. In many respects, however, 2007 saw a culmination of the tightening regime with the Federal Court’s landmark cases such as Lina Joy and Subashini. These effectively abrogated the constitutional responsibility of the civil courts to hear and decide on the petitions of former converts and believers. For these people, and those closely associated to them such as spouses and children, they have no means of legal redress except from the courts of the religion that they are seeking to leave. Meanwhile, religious authorities continue the practice of incarcerating would-be apostates and snatching the bodies of deceased converts (or alleged converts) from their loved ones. These acts have done more to cause public discontent and stir up negative perceptions about the religion than any speech or writing that can be deemed seditious. State governments, for reasons best known to them, continue to demolish places of worship, while federal government agencies pursue a course of confiscating religious literature and prohibiting the use of certain words in religious publications. It is clear that there is a great deal of dissatisfaction with the state of religious liberty in this country; the authorities however do not want to be seen as being responsive to discontent as this would be seen as caving in to ethnic minorities. This is as tragic as it is unfortunate. Religious liberty is a fundamental right granted by the Federal Constitution to all Malaysians and not a bargaining chip or a gift of political largesse. Given the dour reluctance to engage in any kind of meaningful discourse and given what can only be interpreted as stonewalling to rectify the consistent and systematic infringements of this right, it would seem that all right-thinking Malaysians have no avenues of recourse but to take their protests to the polling booths (Religious Liberty Commission, National Evangelical Christian Fellowship (NECF) Malaysia 2008, ‘Report on the State of Religious Liberty in Malaysia for the Year 2007’, June <http://www.necf.org.my/newsmaster.cfm?&menuid=154&action=view&retrieveid=998> – Accessed 10 September 2008 – Attachment 1).

2. What effect is one spouse's alleged conversion to Islam likely to have on the other where the couple were previously both Christians?

There is scant information about the effect of a conversion by a former Christian [spouse] who converts to Islam after marriage.

However Catholic bishops of Malaysia have voiced their concern that Sharia law impacts on the non-Muslim spouse:

Islamic law in the country's 13 states clashes with the constitution and creates difficulties for non-Muslims.

...

To better understand the situation and contradictions inherent in Malaysian legislation, AsiaNews caught up with Leonard Teoh, a member of the Association of Catholic Lawyers and an expert in problems linked to freedom of worship.

Dr Teoh, the most urgent theme of the bishops' documents is that of apostasy in Islam. They fear that if neo-converts want to return to Christianity, they will face fines, flogging and imprisonment.

...

The reality is that one may convert to Islam, knowing little or nothing about the Islam faith. But once converted, for the state you will always be a Muslim, in so far as your civil status is registered as such.

...

"In the case that your wife converts to Islam, you will not have any right over your children or your property." ('Malaysia bishops worried: the shadow of the Sharia extends over non-Muslims too' 2005, *Asia News*, 22 September - Attachment 2)

As far as the Malaysian authorities are concerned, the civil marriage continues to exist in spite of the [spouse]'s conversion to Islam:

"Civil courts continue to have jurisdiction, notwithstanding his conversion to Islam. A non-Muslim marriage continues to exist until the (civil court) dissolves it...('Verdict muddies inter-religious ties; Hindu woman left puzzled on whether civil or Islamic court should handle divorce from now Muslim husband' 2007, *Today* (Singapore), 28 December – Attachment 3)

In the case of children issued from that marriage, it appears that the person who has converted to Islam has also the power to convert minor children without the other spouse's permission:

last December the Federal Court – Malaysia's highest court – told a Hindu woman that her husband, who had converted to Islam, could unilaterally convert their minor children to Islam without her permission.

Local observers have expressed concern over the recent court decisions and are questioning whether the country's dual legal system is able to adequately protect the rights of non-Muslims, especially in instances where one spouse or family member converts to Islam. Under Malaysia's dual legal system, all citizens are subject to civil laws, while Muslims are subject to sharia laws in religious, personal and family matters ('Malaysia: court decisions threaten non-Muslim rights', 2008, *Compass Direct* website, 6 February

<http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5229&backpage=archives&critere=malaysia&countryname=&rowcur=0> – Accessed 13 March 2009 – Attachment 4)

3. Is this more likely to make a person a target than if their spouse had remained a Christian?

A search of the available resources has failed to confirm or deny that a [spouse] would be the subject of adverse attention because [the other spouse] has become a Muslim.

The Canadian authorities have made the following comments which may be of relevance:

Information regarding the likelihood of a non-Muslim man being threatened by the members of his Muslim girlfriend's family could not be found among the sources consulted by the Research Directorate.

Information on state protection for non-Muslim men threatened by the family members of his Muslim girlfriend could not be found among the sources consulted by the Research Directorate. (Immigration and Refugee Board of Canada 2004, *MYS42737.E – Malaysia: Update to MYS38913.E of May 2002 on societal and governmental attitudes towards mixed marriages and relationships between Muslim women and non-Muslim men; police protection or legal recourse available to a non-Muslim male who is threatened by family members of his Muslim girlfriend; reports of police discrimination based on the religion of the complainant (2002-2004)*, 24 June – Attachment 5).

4. Could the Christian spouse have applied for asylum in [a third country]?

Third Country Asylum

Information on safe third country is contained in section the Migration Act (1958) as follows:

91D Safe third countries

- (1) A country is a *safe third country* in relation to a non-citizen if:
 - (a) the country is prescribed as a safe third country in relation to the non-citizen, or in relation to a class of persons of which the non-citizen is a member; and
 - (b) the non-citizen has a prescribed connection with the country.
- (2) Without limiting paragraph (1)(b), the regulations may provide that a person has a prescribed connection with a country if:
 - (a) the person is or was present in the country at a particular time or at any time during a particular period; or
 - (b) the person has a right to enter and reside in the country (however that right arose or is expressed).
- (3) The Minister must, within 2 sitting days after a regulation under paragraph (1)(a) is laid before a House of the Parliament, cause to be laid before that House a statement, covering the country, or each of the countries, prescribed as a safe third country by the regulation, about:
 - (a) the compliance by the country, or each of the countries, with relevant international law concerning the protection of persons seeking asylum; and
 - (b) the meeting by the country, or each of the countries, of relevant human rights standards for the persons in relation to whom the country is prescribed as a safe third country; and
 - (c) the willingness of the country, or each of the countries, to allow any person in relation to whom the country is prescribed as a safe third country:
 - (i) to go to the country; and

- (ii) to remain in the country during the period in which any claim by the person for asylum is determined; and
 - (iii) if the person is determined to be a refugee while in the country—to remain in the country until a durable solution relating to the permanent settlement of the person is found.
- (4) A regulation made for the purposes of paragraph (1)(a) ceases to be in force at the end of 2 years after the regulation commences (Migration Act 1958, 91D Safe third countries. [Excerpt]
[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/4D46AE823498328ECA25755C000C08B1/\\$file/Migration1958Vol1_WD02.doc](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/4D46AE823498328ECA25755C000C08B1/$file/Migration1958Vol1_WD02.doc) - Accessed 13 March 2009 - Attachment 7)

The matter of [a person]’s right to access third country asylum is contingent on a series of complex issues based on the time of [their] application and variations in [their] circumstances.

List of Sources Consulted

Internet Sources:

Government Information & Reports

UK Home Office website <http://www.ind.homeoffice.gov.uk>

US Department of State website <http://www.state.gov>

Immigration and Refugee Board Canada <http://www.irb-cisr.gc.ca/>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org/>

Human Rights Watch (HRW) website <http://www.hrw.org/>

International News & Politics

BBC News website <http://news.bbc.co.uk/>

Topic Specific Links

Compass Direct www.compassdirect.org

Search Engines

Google search engine <http://www.google.com.au/>

Copernic search engine

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

1. Religious Liberty Commission, National Evangelical Christian Fellowship (NECF) Malaysia 2008, ‘Report on the State of Religious Liberty in Malaysia for the Year 2007’, June <http://www.necf.org.my/newsmaster.cfm?&menuid=154&action=view&retrieveid=998> - Part 1 & <http://www.necf.org.my/newsmaster.cfm?&menuid=154&action=view&retrieveid=999> - Part 2 – Accessed 10 September 2008.

2. 'Malaysia bishops worried: the shadow of the Sharia extends over non-Muslims too' 2005, *Asia News*, 22 September. (CISNET Malaysia CX159951)
3. 'Verdict muddies inter-religious ties; Hindu woman left puzzled on whether civil or Islamic court should handle divorce from now Muslim husband' 2007, *Today* (Singapore), 28 December. (FACTIVA)
4. Malaysia: court decisions threaten non-Muslim rights', 2008, *Compass Direct* website, 6 February
<http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5229&backpage=archives&critere=malaysia&countryname=&rowcur=0> – Accessed 13 March 2009.
5. Immigration and Refugee Board of Canada 2004, MYS42737.E – *Malaysia: Update to MYS38913.E of May 2002 on societal and governmental attitudes towards mixed marriages and relationships between Muslim women and non-Muslim men; police protection or legal recourse available to a non-Muslim male who is threatened by family members of his Muslim girlfriend; reports of police discrimination based on the religion of the complainant (2002-2004)*, 24 June. (REFINFO)
6. 'Operations Manual' 2008, New Zealand Immigration Service, 31 March [excerpt].
http://www.immigration.govt.nz/nzis/operations_manual/3339.htm - Accessed 13 March 2009.
7. Migration Act 1958, 91D Safe third countries. [Excerpt]
([http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/4D46AE823498328ECA25755C000C08B1/\\$file/Migration1958Vol1_WD02.doc](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/4D46AE823498328ECA25755C000C08B1/$file/Migration1958Vol1_WD02.doc) - - Accessed 13 March 2009.