



September 3, 2008

Office of the High Commissioner of Human Rights: Submission on Malaysia

- 1) Malaysia is an officially Islamic country, with a 40% religious minority. For the most part, the country is free, but concern over freedom of expression and freedom of religion continues to grow with the government reacting extra judiciously towards peaceful protestors and refusing to grant change of religion status on identification cards for Muslims who wish to change religious identity.
- 2) Part II of the Federal Constitution grants fundamental freedoms to non-Muslim Malaysian citizens: the right to life and personal liberty, the right to equal protection under the law, freedom of movement, freedom of speech and expression, freedom to assemble peacefully, freedom of association, freedom of religion, and the right to private property. Malaysians have been in debate over the past four years as to whether all ethnic Malays have the right to choose their own religion under the terms of the constitution, the Quran and Sharia Law.
- 3) The Internal Security Act (ISA), Emergency Ordinance (EO), Official Secrets Act (OSA), and Printing Presses and Publications Act (PPPA) exemplify outdated and arbitrary laws that continue to undermine basic due process rights. The ISA has been used to arrest leaders in peaceful demonstrations against human rights violations. In November, approximately 40,000 Malaysians rallied in the capital to demand political and judicial reform, and another 10,000 protested the marginalization of ethnic Indians. The people's right to free expression was undermined by police who deemed the protests illegal and used tear gas to break up the crowd.
- 4) The Center for Public Policy Studies (CPPS) Fact Sheet on Malaysia shows these guaranteed freedoms fall apart under obsolete regulations like the ISA. Preventive detentions made under the Internal Security Act are completely exempt with regard to the Constitutional requirement that a detainee get trial within 24 hours and released if the judge finds the detention unlawful. According to Amnesty International, at least 83 people were detained in 2007 under the ISA.
- 5) Amnesty International reports that both the EO and the Dangerous Drugs Act (DDA) put suspects at risk of arbitrary detention and torture or other ill-treatment. Suspects could be detained for up to 60 days for investigation after which a two-year detention order, renewable indefinitely, could be applied. 550 people were detained within eight months under the DDA.
- 6) Refugees go unregistered and are often detained as illegal immigrants. The 2008 Human Rights Watch World Report states nearly 1.9 million documented migrants entered Malaysia in 2007. Total undocumented migrants are estimated at

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- around 700,000 or more. Of these, around 150,000 are believed to be either refugees or asylum seekers, and only one third of these are officially registered with United Nations High Commissioner for Refugees (UNHCR), who grants protection to refugees.
- 7) The result is the failure to differentiate between people in need of international protection and other migrants, which leads to enforcement of immigration laws that frequently involve violence by the authorities or their agents including the practice of caning.
  - 8) Human Rights Watch reports that “Prison abuse at times includes beatings so severe that hospitalization is required. The police also often rely on a policy of ‘remand first, investigate later.’” Suspects are denied the right to access family or a lawyer and can spend days in detention, greatly increasing the risk of mistreatment.
  - 9) An example from Human Rights Watch occurred in late June 2007 when 228 asylum seekers from Burma in Kuala Lumpur, most of which had been recognized as refugees by the office of the UNHCR, were raided by Malaysian Immigration officials and RELA volunteers.
  - 10) Migrant workers face horrible injustices and discrimination. Police force members are authorized to search public and private premises without a warrant and often raid migrant housing, physically abuse residents, steal valuables, and even destroy legal ID cards of the workers to justify their actions.
  - 11) The human trafficking situation in Malaysia is at a tier 2 Watch List level, established by the U.S. State Department Trafficking in Persons (TIP) Office. While this is a slight improvement from last year, Malaysia still does not comply with the Trafficking Victims Protection Act’s minimum standards and failed to provide evidence of increasing efforts from the previous year to tackle its trafficking problems.
  - 12) The report examines Malaysia’s role as more of a destination than a source and transit country for women and children trafficked for the purpose of commercial sexual exploitation and men, women, and children for forced labor. Men, women, and children migrate willingly from Indonesia, Nepal, Thailand, the People’s Republic of China (P.R.C.), the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam to work, but are frequently subjected to forced labor by Malaysian employers in the domestic, agricultural, construction, plantation, and industrial sectors.
  - 13) Victims are subject to physical and sexual abuse, debt bondage, non-payment of wages, threats, confinement, and withholding of travel documents to restrict their freedom of movement. Some Burmese who registered with the United Nations as

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- refugees, a status not recognized by the Malaysian government, are vulnerable to being trafficked for forced labor.
- 14) The TIP report concludes that while the Government of Malaysia enacted comprehensive anti-trafficking legislation in July 2007 by implementing guidelines, training law enforcement and social service officers, and issuing legislative supplements to enforce the law, it did not yet take action against exploitative employers or labor traffickers.
  - 15) The Minority Rights' Group International's State of the World's Minorities 2008 Report speaks to the lack of religious freedom for Muslims in Malaysia. Malaysia ratified the Convention on the Rights of the Child, yet children of migrants with temporary residence are not entitled to free public education.
  - 16) While freedom of religion and freedom of expression are Constitutional guarantees, those born into Muslim families have little or no religious freedom to choose their belief systems. Malaysia has eliminated Muslims' right to convert to other faiths and more ruled more imposingly against non-Muslims in religious cases.
  - 17) Compass Direct News Service reports that in December 2007, the Federal Court ruled that a Hindu woman's Muslim-convert husband could "unilaterally convert their minor children without her permission." The woman was unsettled and felt she had no bearing on raising the child with her religious views. She felt as a mother she had a say in how her children were raised, but the court ruled otherwise.
  - 18) Legal rulings effectively compelled Malaysians born as Muslims to stay Muslim. In her March 2007 report, the UN Special Representative on the Situation of Human Rights Defenders highlighted the case of a lawyer representing Lina Joy, a Malay woman who has renounced her Muslim faith and embraced Christianity, in the Federal Court of Malaysia. The case is widely regarded as a "watershed for religious freedom in Malaysia" according to Compass Direct. A ruling in Joy's favor would "affirm the supremacy of the secular constitution."
  - 19) The top secular court ruled that only the Sharia court had jurisdiction. The judge ruled in Lina Joy's case that she could not remove the religious affiliation on her identity card.
  - 20) Compass Direct reports on a similar case from August 5, 2008 where another woman, Lim Yoke Khoo, was denied permission to renounce Islam and embrace Christianity. A 2-1 majority ruling at the Shah Alam Court of Appeal denied her case on a technicality, saying that Lim had "ceased to exist under her original name when she converted to Islam and assumed a new name, Noorashikin Lim binti Abdullah."

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- 21) A disturbing Compass Direct article reveals that Malaysian citizens carrying Bibles can have them confiscated, as happened on January 28, 2008. A customs officer took 32 Bibles from a citizen returning from a trip to the Philippines even though the girl claimed they were for her church and had a note from the parish priest.
- 22) The press faces restrictions as well. In January 2008, a Catholic newspaper, the Weekly Herald, was prohibited from using the term "Allah" in its publications. The government threatened to close the newspaper if this change was not met.
- 23) Elections are corrupt in Malaysia. The ruling party ensured a 2/3 majority in March when, according to Human Rights Watch, "severe irregularities in the voter rolls" were documented. Numerous areas with large numbers of voters were suddenly transferred from one district to another. The coalition for clean and fair elections, Bersih, reports that some voters discovered that their electoral registration was changed without their knowledge to locations outside their home districts.
- 24) Jubilee Campaign applauds Malaysia for its efforts in 2007 to improve its human trafficking mechanisms. We encourage the government to now enforce its anti-trafficking in person's law and improve procedures for identifying trafficking victims among migrant and foreign workers who are punished as illegal immigrants or prostitutes. The government must no longer facilitate involuntary servitude of any kind.
- 25) We advocate for the Malaysian government to comply with the Federal Constitution it adheres to and grant religious freedom to Muslims as well as non-Muslims to choose their belief and practice. We admonish the government to empower the secular state over the Islamic state by allowing citizens like Lina Joy and Lim Yoke Khoo to convert legally on their identification cards. Citizens should be allowed to choose their belief systems and freely practice them in a peaceful manner. We encourage the government to give non-Muslims freedom from fundamentally Islamic policies as citizens, parents, and workers.

THANK YOU FOR YOUR CONSIDERATION OF OUR SUBMISSION

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