

# Policing Belief



## THE IMPACT OF BLASPHEMY LAWSON HUMAN RIGHTS



A FREEDOM HOUSE SPECIAL REPORT

# Malaysia

## INTRODUCTION

Despite Malaysia's demographic diversity, religious freedom and freedom of expression are threatened by laws banning blasphemy and other forms of religious insult. In terms of religious affiliation, the national population of 28.3 million is 60 percent Muslim, 19 percent Buddhist, 9 percent Christian, and 6 percent Hindu.<sup>1</sup> The main ethnic groups are the Malays (53 percent), Chinese (26 percent), indigenous (12 percent), and Indians (8 percent).<sup>2</sup> Since the 1970s, the coalition government, led by the United Malays National Organization (UMNO), has slowly but surely pursued policies promoting greater state interference in religious affairs.

UMNO has raised the profile of Shari'a (Islamic law) in Malaysian law, politics, and society to gain support among its Malay constituency, which is predominantly Sunni Muslim. Although blasphemy laws exist in both the secular and Islamic legal systems, the adoption of Shari'a statutes and the establishment of Shari'a courts have brought severe limits to freedom of expression and freedom of religion.<sup>3</sup> The Islamization efforts also include the establishment of the Department of Islamic Development (JAKIM), which maintains a list of religious sects deemed unorthodox or "deviant," such as Shia Islam, Ahmadiyya, and the Baha'i faith.<sup>4</sup> While charges of deviancy do not fall neatly within the scope of traditional blasphemy and religious insult laws, they are illustrative of the Malaysian government's general hostility to the expression of theological differences or dissent, and the negative effects of that hostility on human rights.

## BACKGROUND

Modern Malaysia, which gained independence from the British Empire between 1957 and 1963, is a federation of 13 states (plus three federal territories), nine of which are still nominally ruled by hereditary sultans. Before colonization, these monarchs were the political and religious leaders of independent Muslim states.<sup>5</sup> The Malay sultanates practiced Shari'a as early as the 14th century,<sup>6</sup> but common law was introduced under British rule and became the main system of jurisprudence, with Shari'a limited to personal and family matters among Muslims only.<sup>7</sup> The role of Shari'a in modern, federal Malaysia, with its large non-Muslim minorities, has been hotly debated in the political sphere, often by politicians catering to ethnic and religious constituencies.

### Religion and the State

Though all ethnic groups are represented in Malaysian politics, UMNO has been the dominant party since independence, maintaining power through coalition governments.<sup>8</sup> It was influential in the drafting of the constitution and the inclusion of Article 3, which designates Islam as the state religion but does not declare Malaysia to be an Islamic state, and Article 160, which defines "Malay" in part as someone professing the Muslim faith.<sup>9</sup> The constitution provides for freedom of religion under Article 11, in addition to other fundamental rights guarantees.<sup>10</sup>

Experts have argued that in the early 1980s, UMNO responded to a growing Islamic revival as well as the political threat posed by the opposition Islamic Party of Malaysia (PAS) by taking on a more Islamic image.<sup>11</sup> As one scholar has explained: "UMNO, like any other political party, aims at maintaining power. Islamization is a convenient tool to achieve this objective."<sup>12</sup> Under Prime Minister Mahathir Mohamed, who led the country from 1981 to 2003, the government established a series of programs and enacted legislation that effectively contributed to the Islamization of Malaysian institutions. This process included expanded influence for JAKIM and Shari'a in governance and the legal system.<sup>13</sup> Meanwhile, PAS made significant gains in federal and state elections in 1999, taking control of the state governments in Kelantan and Terengganu and working toward the adoption of *hudud* laws that would impose Shari'a punishments for certain crimes.<sup>14</sup>

The efforts under Mahathir also brought Muslim religious figures into the government, introduced Islamic banking and insurance systems, and codified Shari'a at the state level by enacting statutes establishing Shari'a courts.<sup>15</sup> JAKIM,

established in 1997, “actively interprets and implements Islam in Malaysia and has widely been accepted as an appropriate authority.”<sup>16</sup> According to its website, JAKIM is responsible for formulating policies for the advancement of Islamic affairs, streamlining laws and regulations, and enforcing mechanisms of laws and administrative procedures pertaining to Islamic affairs.<sup>17</sup> It is also the body that drafts guidelines on what constitutes “deviancy,”<sup>18</sup> monitors religious groups, and maintains the list of banned sects.

UMNO’s Islamization drive has exacerbated communal tensions and resulted in outbreaks of violence.<sup>19</sup> Since the 2008 general elections, in which the ruling coalition lost considerable ground to opposition parties, UMNO has undertaken efforts to rein in divisive rhetoric, most notably through the adoption of the “1Malaysia” concept, which “emphasizes ‘acceptance’ among the various races... so that all of them live as the people of one nation.”<sup>20</sup> However, long-standing communal rifts are not so easily mended, as was seen in January 2010 when riots broke out over a court ruling that allowed a Roman Catholic periodical to use the word Allah to refer to God. Moreover, laws that punish blasphemy and deviancy remain in effect and continue to work against ethnic and religious peace.

## Dual Legal System

Malaysia has a two-track legal system consisting of civil or secular law, based on English common law, and Shari’a. While the Shari’a system was previously somewhat informal and subordinate to the civil court system, today the two operate in parallel with respect to hierarchy, as the government has steadily “upgraded” the status of the state-level Shari’a court systems. The jurisdiction of Shari’a courts extends only to Muslims and their family, personal, and religious concerns. The civil law applies to both Muslims and non-Muslims. As noted above, both systems criminalize blasphemy.

Shari’a is administered exclusively at the state level; all of Malaysia’s 13 states and the federal territories have adopted their own Shari’a criminal statutes and established courts to enforce them.<sup>21</sup> The statutes vary from state to state. In some states where PAS has been in power, such as Kelantan, Perlis, and Terengganu, punishments for violations of Shari’a can be particularly harsh and include caning and stoning. In other places, such as the federal territories, punishments range from fines to several years in prison.<sup>22</sup> All states have some religious enforcement officers, ranging from five in Perlis to 122 in Selangor, who work with the state-level police to ensure that Shari’a is not violated.<sup>23</sup> In addition, Islamic Religious Councils in each state are tasked with overseeing the enforcement of Shari’a.

## Apostasy

The Shari'a offense of apostasy exists only at the state level in Malaysia. People accused and convicted of apostasy are required to repent, and even if they do so, they can be sentenced to imprisonment for up to five years, depending on the state.<sup>24</sup> In Kelantan and Terengganu, those who refuse to repent for apostasy can be sentenced to death.<sup>25</sup>

## Emergency Law

Emergency law-enforcement powers associated with the colonial-era fight against leftist insurgents were made permanent through the passage of the Internal Security Act (ISA) in 1960. The ISA provides for detention without warrant or trial for an initial 60 days, but the home affairs minister can extend the detention for an indefinite number of two-year periods. (The home affairs minister has similar authority under the Emergency Ordinance, which was originally issued in response to race riots in 1969.) These expansive detention powers have exacerbated the abuse of Malaysia's blasphemy and other religious insult laws. As outlined below, people accused of religious crimes, and indeed of defamation or criticism of government officials or policies, have been arrested and detained under the ISA.<sup>26</sup>

## BLASPHEMY LAWS

Blasphemy and religious insults are prohibited in both the state-level Shari'a statutes and in federal law. At the federal level, Section XV (Articles 295–298A) of the Malaysian Penal Code addresses religious offenses such as desecrating a place of worship, disturbing a religious assembly, and trespassing on burial places.<sup>27</sup> Articles 298 and 298A prohibit “uttering words, etc., with deliberate intent to wound the religious feeling of any person,” and “causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill-will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion.”<sup>28</sup> Notably, the laws in Section XV do not specify any particular religion, indicating that all religions in Malaysia (aside from those that have been banned by JAKIM) are nominally protected from blasphemy or insult.

Blasphemy and insulting Islam specifically are prohibited at the state level. For example, according to Section III of the Shari'a Criminal Offences Act 1997 (No. 559) of the Federal Territories:

7. Any person who orally or in writing or by visible representation or in any other manner—
  - (a) insults or brings into contempt the religion of Islam;
  - (b) derides, apes or ridicules the practices or ceremonies relating to the religion of Islam; or
  - (c) degrades or brings into contempt any law relating to the religion of Islam for the time being in force in the Federal Territories, shall be guilty of an offence 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 to both.
8. Any person who, by his words or acts, derides, insults, ridicules or brings into contempt the verses of *Al-Quran* or *Hadith* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.<sup>29</sup>

The Shari'a criminal statutes of other states include similar provisions, though the punishments and the degree of enforcement of the statutes varies. These statutes are broad in scope and address a range of other Shari'a violations, which in some cases fall under the rubric of "insulting Islam."

### **Incompatibility with International Law**

Laws at both the federal and state levels contravene human rights norms and place undue limitations on freedoms of opinion, expression, religion, and belief. The Shari'a statutes in particular impose strict regulations on speech and behavior, and violations can draw harsh punishments. Moreover, the federal and state laws lack clarity as to what kind of speech is prohibited as well as safeguards to prevent abusive or selective application, leading to discrimination against certain religious groups.

Malaysia has neither signed nor ratified several core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture.<sup>30</sup> However, in May 2010, Malaysia was elected to the UN Human Rights Council. As part of the campaigning and election process, the government pledged to "strengthen capacities for implementation and enforcement for human rights conventions which Malaysia is party to, alongside reconsidering of instruments which it has yet to accede to."<sup>31</sup> As a member of the Human Rights Council, Malaysia is obliged to robustly uphold and protect the global human rights norms enshrined in the Universal Declaration of Human Rights,<sup>32</sup> many of which are violated in practice within its borders as a result of the

blasphemy and religious insult laws.

### **Lack of Safeguards to Prevent Abuse**

Because Malaysia's blasphemy and religious insult laws are so vaguely worded, lacking any clear definition for blasphemy itself, they are prone to abuse. They have been used to harass, intimidate, and silence government critics as well as those deemed to "deviate" from the state-sanctioned version of Sunni Islam. One example is the case of outspoken government critic and blogger Raja Petra Kamaruddin. He is the founder and editor of the online newspaper *Malaysia Today*, and also directed a 2001 campaign in support of opposition leader Anwar Ibrahim, who had been jailed on politically tainted charges of corruption and sodomy.<sup>33</sup> In 2007, Raja Petra was investigated for allegedly insulting Islam; at the time of his arrest, he was also facing charges of sedition and criminal defamation. According to Human Rights Watch, these charges appear to have been politically motivated.<sup>34</sup> In September 2008, he was arrested and detained under the ISA for demeaning Islam and thereby posing a threat to national security. He appealed, and he was released in November 2008 after a High Court judge found his detention to be unconstitutionally "unfettered and arbitrary."<sup>35</sup>

Raja Petra had been arrested under the ISA on similar grounds in 2001, along with nine other activists involved in public protests against Anwar's sodomy and corruption convictions.<sup>36</sup> As in 2008, he was detained for over a month before being released.<sup>37</sup>

These cases indicate that the government is willing to misuse blasphemy laws to justify politically motivated arrests, and to harass and intimidate its most vocal critics. At the time of this writing, Raja Petra was living in London, having fled Malaysia to avoid prosecution under the Sedition Act.<sup>38</sup>

## **IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS**

### **Freedom of Expression**

The prosecutions for blasphemy and other religious insults have created an environment in which exercising one's right to free expression can carry heavy costs. The government has initiated countless investigations into blogs and online newspapers for a range of suspected speech offenses, including defamation of public officials and blasphemy.<sup>39</sup> As seen in the case of Raja Petra, such laws are used to silence government critics and theological dissenters.

In 2004, a police report was filed against the Malaysian Bar Association for an article in its monthly newsletter *Infoline* that was found to be blasphemous and insulting to Islam. The article discussed the possibility that for non-Muslims, the call to prayer (azan) may be a source of noise pollution.<sup>40</sup> The government also engages in censorship, and in 2009 a total of 57 books discussing religious issues were reportedly banned, including the notable *Muslim Women and the Challenge of Islamic Extremism* by Norani Othman, cofounder of the nongovernmental organization (NGO) Sisters in Islam.<sup>41</sup> The organization appealed, and in January 2010 a judge overturned the ban.<sup>42</sup>

Also in early 2010, police initiated an investigation into Sisters in Islam over a statement in which the NGO condemned the Malaysian government for allowing the caning of three Muslim women as punishment for “illicit sex.”<sup>43</sup> The Selangor Islamic Religious Council lodged the complaint that triggered the probe, objecting to the statement’s allegations of human rights violations including discrimination against women and cruel, inhuman, and degrading treatment.<sup>44</sup> The ongoing case was filed under Article 298A of the Malaysian Penal Code.<sup>45</sup> It should be noted that this sort of harassment of civil society groups for legitimate criticism is not always initiated by official bodies. In March 2010, the Malaysian Assembly of Mosque Youth filed a lawsuit against Sisters in Islam regarding the use of the word “Islam” in its name. The plaintiffs reportedly argued: “The use of the word ‘Islam’ in names must be restricted and protected. The so-called Sisters in Islam uses the word to attract attention, but it issues statements that contradict what other Muslims believe. It causes confusion among Muslims who might think that the group represents Islam.”<sup>46</sup>

In a related incident that also took place in early 2010, police reports were filed against P. Gunasegaram, managing editor of the *Star*, an online daily, for articles criticizing the caning of the three women.<sup>47</sup> According to a news report, the police investigation report read: “The article clearly wants to challenge [and] anger the Muslims and insult Islam. [The author] has no right to comment about Islamic jurisprudence because he is not a Muslim.”<sup>48</sup> The *Star* received a “show cause” letter from the Malaysian government, giving it 14 days to explain the articles and justify why its publishing license should not be revoked.<sup>49</sup>

Ten of Malaysia’s states have reportedly banned non-Muslims from uttering certain words related to Islam, such as *Allah*, *ulema*, and *hadith*.<sup>50</sup> In December 2008, a Roman Catholic newspaper, the *Herald*, was banned from using the word Allah for the Christian God in its Malay-language publication.<sup>51</sup> The newspaper appealed the decision, and a court overturned the ban in December 2009. The

government then challenged that ruling, and the court issued a final stay in January 2010.<sup>52</sup> As mentioned above, the decision to overturn the ban was met with angry protests by Malaysian Muslims, despite the fact that the Arabic word for God—Allah—is used by Christians all over the Muslim world.<sup>53</sup> The protests escalated into violent attacks on churches, which were condemned by Prime Minister Najib Tun Razak.<sup>54</sup> The dispute reportedly stemmed from some Muslims' concerns that "the use of the word by other religions could confuse believers and tempt them to convert from Islam."<sup>55</sup>

## Freedom of Religion

The application of Malaysia's blasphemy and other religious insult laws effectively restricts religious freedom for all residents. Non-Sunni Muslims face persecution for their "deviant" beliefs, and are monitored and targeted by JAKIM as well as the state-level Islamic Religious Councils. Meanwhile, Sunni Muslims are forced to practice their religion within the strict confines imposed by the state and its interpretation of Islam. Individuals found to be in breach of these regulations are arrested and prosecuted, and locations where suspected Shari'a violations take place, such as bars and nightclubs, are raided by religious enforcement officers as well as state and federal police.<sup>56</sup>

One case involving a "deviant" form of Islam centered on Abdul Kahar Ahmad, who claimed to be an Islamic prophet; the assertion amounted to blasphemy under state Shari'a statutes.<sup>57</sup> He was arrested in September 2009 and charged with five counts of "deviationist teachings," including blasphemy and spreading false belief.<sup>58</sup> In October, he was found guilty by the Selangor Shari'a court. According to the national news service Bernama, the judge noted that the accused was "a Muslim from birth," and admonished him for having "poked fun at Islam's teachings and proclaimed himself as a Malay prophet" rather than tending to his responsibility to ensure his family's proper observance of Islam.<sup>59</sup> His punishment consisted of a fine of 16,500 ringgit (\$5,000), 10 years' imprisonment, and six cane strokes.<sup>60</sup>

State religious authorities generally follow federal guidelines concerning what constitutes deviant behavior or belief, and JAKIM's list of deviant sects includes 56 different groups.<sup>61</sup> For example, the martial arts organization Nasrul Haq was formed in 1977, and by 1978 it had a membership of approximately 300,000. UMNO had apparently viewed the group as a possible counterweight to PAS, which was gaining popularity among Malay Muslims,<sup>62</sup> but when attempts to exploit it for this end failed, the government reacted by banning it on the grounds

that it invoked Islam and Allah “inappropriately,” used Sufi-style chanting in its self-defense sessions, and held some sessions in mosques.<sup>63</sup> Another group, Al-Arqam, was established in 1968 by Ashaari Muhammad. It was devoted to promoting an Islamic way of life and by 1994 had a strong following and considerable assets.<sup>64</sup> Fearing that the group had political ambitions, the government banned it in 1994 and arrested Ashaari under the ISA for “deviating from the teachings of Islam.” He made a public apology and was jailed for 10 years.<sup>65</sup>

## Freedom from Discrimination

Article 11 of the constitution guarantees freedom of religion, which includes the freedom to change one’s religion, and Articles 8 and 12 ensure equality for all Malaysians and prohibit discrimination based on religion or belief.<sup>66</sup> Nevertheless, the operation of the civil legal system in practice and jurisdiction of Shari’a courts over any issue related to Islam mean that Muslims and non-Muslims are treated quite differently. When it comes to conversion, it seems that freedom of religion exists only for non-Muslims in Malaysia. Civil courts have set precedents for referring cases of conversion from Islam to Shari’a courts, and the government maintains that renouncement of Islam cannot be recognized without an order from a Shari’a court, despite the fact that such courts have no mechanisms for accepting these conversions.<sup>67</sup> In fact, Shari’a courts view deliberate departure from Islam as apostasy, a serious and punishable offense.<sup>68</sup>

Although Articles 298 and 298A of the Malaysian Penal Code ostensibly protect all recognized religions from blasphemy and insult, in practice non-Muslim religions do not appear to receive the same level of “protection” as Sunni Islam. This disparity was highlighted in a recent incident in which two Muslim journalists pretended to be Roman Catholics while conducting research for a story. The men attended a church service and took communion.<sup>69</sup> When it came to light that the men were Muslims, the Catholic community was outraged. Archbishop Murphy Pakiam criticized the government for failing to charge the men with insulting Catholicism. Malaysia’s attorney general responded by saying that the men had not been prosecuted because they had only committed “an act of sheer ignorance,” and that there had been no malicious intent.<sup>70</sup> The lack of malicious intent has been no defense against prosecution in other cases.

The implementation of blasphemy-related Shari’a provisions in some states has led to instances of discrimination against women. In one incident in 2000, a group of 25 people, including 15 women, were arrested by the Islamic Religious Council in Selangor for being “in premises where alcohol was served.”<sup>71</sup>

The women were charged with the crime of “insulting Islam,” a charge that the 10 men reportedly did not face.<sup>72</sup> Then deputy prime minister Abdullah Ahmad Badawi criticized the arrests, saying it “is not right to arrest Muslims based on the fact that they were in restaurants that served non-halal food and drinks.”<sup>73</sup> All of the charges were eventually dropped, and no prosecutions were initiated,<sup>74</sup> but the harsher treatment meted out to the women drew accusations of gender bias on the part of the religious authorities.<sup>75</sup>

### **Right to Due Process**

The case of Raja Petra, discussed above, illustrates how individuals accused of blasphemy or religious insult can be detained arbitrarily, without charge or trial, under laws like the ISA. The nightclub and bar raids overseen by state-level religious enforcement officers and Islamic Religious Councils have also led to arbitrary arrest and detention, as have enforcement actions against “deviant” Muslim sects. In 2006, the Selangor Islamic Religious Council reportedly detained 107 people, including children, who were suspected of belonging to the banned religious group Al-Arqam. All but four alleged leaders were later released.<sup>76</sup>

Threats to the right to a fair trial and due process in the context of blasphemy and religious insult laws in Malaysia have been most notable in conversion cases and in prosecutions of people accused of “deviancy.” As noted above, former Muslims seeking to have their conversions recognized are shunted to the Shari’a courts, which offer them no legal recourse. Members of banned sects, meanwhile, can encounter considerable obstacles in obtaining counsel.

In August 2005, a group of 45 members of the religious sect known as the Sky Kingdom were arrested following a violent attack on their compound the previous month. They were reportedly charged with “violating Islamic precepts” under the Terengganu Shari’a Criminal Offences Act of 2001.<sup>77</sup> According to Human Rights Watch and the Malaysian Bar Association, they faced serious difficulties in securing legal representation prior to the start of their trial; the Malaysian Bar Association commissioned a lawyer from another state to speak for the group on the day of the trial, but only to let the judge know that the accused had not secured representation. Shari’a-accredited lawyers in Terengganu were reportedly unwilling to take the case, fearing reprisals from religious extremists.<sup>78</sup> After three postponements due to the lack of legal representation, lawyer Wan Haidi Wan Jusoh of the firm Ubaidullah Aziz and Company came forward to act as counsel for all of the accused. He asked the judge to bar newspapers from using his name or the

name of his firm when reporting on the case to prevent it from being blacklisted, but the request was denied.<sup>79</sup>

The Terengganu lawyers' concerns about reprisals were not without merit. Lawyers have been subjected to harassment and intimidation for defending such clients. For example, Malik Imtiaz Sarwar, who has represented individuals charged with blasphemy and other religious offenses in the civil court system, has reported receiving death threats as a result of his involvement in these cases. According to the International Federation of Human Rights, Malik received a threat via e-mail consisting of a photograph of himself with the caption "Wanted Dead." The threat was also circulated to other addresses and via mobile-phone text message.<sup>80</sup>

## CONCLUSION

The enforcement of Malaysia's blasphemy and religious insult laws has led to a range of human rights violations. Individuals charged with such offenses in both the civil and Shari'a courts have experienced deprivations of their right to freedom of religion and freedom of expression, as well as their right to be free from discrimination and arbitrary detention. In addition, the laws appear to be selectively applied, leading to further discrimination based on religion and gender. More broadly, the use of blasphemy laws to impose narrow interpretations of religious doctrine, impede the work of human rights organizations, and prevent the empowerment of potential political challengers hampers the democratic and social development of Malaysia as a whole.

dom in Indonesia, 2009, there were 200 reported incidents of religiously motivated violence that year in the 12 provinces the organization monitors. Of these, 101 cases featured “active” involvement by state officials, and in 38 cases officials were guilty of standing by and taking no action. See “‘Government Complicity’ Lets Religious Conflict Go On,” *Jakarta Post*; Setara Institute for Democracy and Peace, *Condition of Religious Faith and Freedom in Indonesia, 2009*.

<sup>118</sup> USCIRF, “Indonesia,” in *Annual Report 2010*, 259.

<sup>119</sup> Siahhan, Osman, and Haryanto, “Caucus Tells SBY to Get Tough on Islamic Hardliners.”

<sup>120</sup> “Masohi in Recovery, 2 Named Suspects,” *Jakarta Post*, December 11, 2008, <http://www.thejakartapost.com/news/2008/12/11/masohi-recovery-two-named-suspects.html>; “Freedom of Religion in Indonesia,” *Caveat*.

<sup>121</sup> Nancy-Amelia Collins, “Indonesia Sends Troops to Quell Sectarian Violence in Maluku Islands,” *Voice of America*, December 10, 2008, [http://www.51voa.com/VOA\\_Standard\\_English/VOA\\_Standard\\_English\\_26924.html](http://www.51voa.com/VOA_Standard_English/VOA_Standard_English_26924.html).

<sup>122</sup> “Church, Homes Burned in Masohi Blasphemy Riot,” *Jakarta Post*, December 10, 2008, <http://www.thejakartapost.com/news/2008/12/10/church-homes-burned-masohi-blasphemy-riot.html>.

<sup>123</sup> Collins, “Indonesia Sends Troops to Quell Sectarian Violence in Maluku Islands.”

<sup>124</sup> M. Azis Tunny, “Forum Blasts Police for Late Response in Masohi,” *Jakarta Post*, December 17, 2008, <http://www.thejakartapost.com/news/2008/12/17/forum-blasts-police-late-response-masohi.html>.

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<sup>1</sup> U.S. Department of State, “Background Note: Malaysia,” July 14, 2010, <http://www.state.gov/r/pa/ei/bgn/2777.htm>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Donald L. Horowitz, “The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change,” *American Journal of Comparative Law* 42 (Spring 1994).

<sup>4</sup> Bureau of Democracy, Human Rights, and Labor, “Malaysia,” in *International Religious Freedom Report 2009* (Washington, DC: U.S. Department of State, 2009), <http://www.state.gov/g/drl/rls/irf/2009/127277.htm>.

<sup>5</sup> Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Aldershot, UK: Ashgate, 2004), 125.

<sup>6</sup> Nurjaanah Abdullah, “Legislating Faith in Malaysia,” *Singapore Journal of Legal Studies* (December 2007): 264.

<sup>7</sup> Horowitz, “The Qur’an and the Common Law.”

<sup>8</sup> U.S. Department of State, “Background Note: Malaysia.”

<sup>9</sup> Constitution of Malaysia, Article 3 and Article 160; see Appendix A, available at <http://confinder.richmond.edu/admin/docs/malaysia.pdf>. The drafters of the constitution specified that Article 3 was not intended to declare Malaysia an Islamic state, according to the Reid Commission, the body established to facilitate the drafting process. However, UMNO politicians have opportunistically invoked the idea of Malaysia as an Islamic state over the past decade to rally support among Muslim Malay voters, exacerbating ethnic and religious tensions and bolstering identity-based politics for all constituencies. See Tommy Thomas,

- “Is Malaysia an Islamic State?” Malaysian Bar Association, November 17, 2005, [http://www.malaysianbar.org.my/constitutional\\_law/is\\_malaysia\\_an\\_islamic\\_state\\_.html](http://www.malaysianbar.org.my/constitutional_law/is_malaysia_an_islamic_state_.html); Mahnaz Mohamed, “Is Malaysia an Islamic State?” *Guardian*, September 21, 2006, <http://www.guardian.co.uk/commentisfree/2006/sep/21/post406>.
- <sup>10</sup> Constitution of Malaysia, Article 11.
- <sup>11</sup> Religious scholars formed PAS in 1951 with the declared goal of establishing an Islamic state, though it has softened this position in recent years. See Saeed, *Freedom of Religion, Apostasy and Islam*, 132; U.S. Department of State, “Background Note: Malaysia”; Horowitz, “The Qur’an and the Common Law.”
- <sup>12</sup> Saeed, *Freedom of Religion, Apostasy and Islam*, 163.
- <sup>13</sup> Saeed, *Freedom of Religion, Apostasy and Islam*, 162, 165; Horowitz, “The Qur’an and the Common Law.”
- <sup>14</sup> Sisters in Islam, “Review of ‘Hudud’ Proposals,” May 23, 2002, [http://www.sistersinislam.org.my/index.php?option=com\\_content&task=view&id=408&Itemid=298](http://www.sistersinislam.org.my/index.php?option=com_content&task=view&id=408&Itemid=298).
- <sup>15</sup> These statutes vary considerably, and punish offenses including “declaring oneself to be non-Muslim, insulting the religion of Islam, deriding the Quran or the Sunnah..., defying religious authorities, worshipping wrongfully, teaching false doctrine, propagating non-Islamic religious doctrine among Muslims, falsely claiming to be a prophet or other religious authority, and propagating any opinion contrary to a fatwa presently in force.” See Perry Smith, “Speak No Evil: Apostasy, Blasphemy and Heresy in Malaysian Syariah Law,” *UC Davis Journal of International Law and Policy* 10.2 (Spring 2004).
- <sup>16</sup> Jaclyn Ling-Chien Neo, “‘Anti-God, Anti-Islam, Anti-Quran’: Expanding the Range of Participants and Parameters over Women’s Rights and Islam in Malaysia,” *UCLA Pacific Basin Law Journal* 21 (Fall 2003): 49. JAKIM has also allegedly carried out forced conversions of indigenous groups, notably the Orang Asli. According to the news site Malaysiakini, Orang Asli have experienced forced conversions by governmental and quasi-governmental bodies, including the state Islamic and Malay Custom Council (MAIK), JAKIM, Muslim Welfare Organization Malaysia, and the Muslim Youth Movement of Malaysia (ABIM). See Claudia Theophilus, “Orang Asli Cry Foul Over ‘Forced’ Conversion,” Malaysiakini, February 3, 2005, <http://www.malaysiakini.com/news/33358>.
- <sup>17</sup> For some factions of UMNO, these “streamlining” measures are aimed at the establishment of a federal Shari’a court system to standardize the jurisprudence of the state-level Shari’a courts. However, this would necessitate uniformity in the interpretation of Sunni Islam and Shari’a. See Horowitz, “The Qur’an and the Common Law”; Saeed, *Freedom of Religion, Apostasy and Islam*, 160. For more on the role of JAKIM, see Department of Islamic Development, “About JAKIM,” <http://www.islam.gov.my/english/jakim.html>.
- <sup>18</sup> Bureau of Democracy, Human Rights, and Labor, “Malaysia,” in *International Religious Freedom Report 2009*.
- <sup>19</sup> Saeed, *Freedom of Religion, Apostasy and Islam*, 165.
- <sup>20</sup> V. Vasuvedan and Suganti Suparmaniam, “Najib: 1Malaysia Idea for Everyone,” *New Straits Times* (Malaysia), June 16, 2009.
- <sup>21</sup> Women Living Under Muslim Laws, “Update: Malaysia: Caning Sentence of Kartika Upheld,” news release, September 28, 2009, <http://www.wluml.org/node/5433>.
- <sup>22</sup> Ibid.

- <sup>23</sup> Siti Zubaidah Ismail, "The Implementation of Shariah Offences in Malaysia: Issues, Challenges and the Way Forward" (paper presented at 5th Asian Law Institute Conference, Singapore, May 23, 2008), 3, [http://eprints.um.edu.my/849/1/siti\\_zubaidah\\_university\\_of\\_malaya.pdf](http://eprints.um.edu.my/849/1/siti_zubaidah_university_of_malaya.pdf).
- <sup>24</sup> For example, the Shariah Criminal Code (II) of Kelantan mandates up to five years' imprisonment for apostasy, after repentance, under Section 23(4). See Saeed, *Freedom of Religion, Apostasy and Islam*, 135.
- <sup>25</sup> Shariah Criminal Code (II) Kelantan, 1993, Section 23(4), as cited in Saeed, *Freedom of Religion, Apostasy and Islam*, 35; see also Bureau of Democracy, Human Rights, and Labor, "Malaysia," in *2008 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of State, 2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119046.htm>.
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- <sup>28</sup> *Ibid.*
- <sup>29</sup> Shariah Criminal Offences (Federal Territories), Act 559, 1997, incorporating all amendments through January 1, 2006, available at [http://www.mylawyer.com.my/law/Syariah\\_Criminal\\_Offences\\_Federal\\_Territories\\_Act.php](http://www.mylawyer.com.my/law/Syariah_Criminal_Offences_Federal_Territories_Act.php).
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- <sup>43</sup> Sisters in Islam, “Malaysia: Sisters in Islam Condemns Caning of 3 Muslim Women under Shariah Law,” news release, February 17, 2010, <http://www.wluml.org/node/5989>.
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- <sup>47</sup> Goh Seng Ching and Nigel Aw, “Muslim Groups See Red Over Newspaper Article,” *Malaysiakini*, February 23, 2010, <http://www.malaysiakini.com/news/124980>.
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- <sup>54</sup> “Malaysia: Churches Firebombed Amid Allah Dispute,” CNN, January 9, 2010, <http://edition.cnn.com/2010/WORLD/asiacfp/01/08/malaysia.churches.attacked/index.html>.
- <sup>55</sup> Mydans, “Churches Attacked in Malaysian ‘Allah’ Dispute.”
- <sup>56</sup> Individuals arrested during these raids have reportedly been subjected to violence and mistreatment at the hands of law enforcement personnel, and detained in appalling conditions. See Ahirudin Attan, “It Matters How the Job Is Done,” *New Straits Times* (Malaysia), January 30, 2005.
- <sup>57</sup> “Self-Proclaimed Malay Prophet Sentenced to 10 Years in Jail,” *Hindustan Times*, October 22, 2009.

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- <sup>59</sup> "Malay Prophet' Jailed 10 Years, Sentenced to Six Strokes of Rotan and Fined RM16,500," *Bernama*, October 21, 2009. It should be noted that in this article, the news agency included the complete address of the defendant, infringing on his family's right to privacy and security. See Jennifer Gomez, "10 Years' Jail, Rotan for 'Malay Prophet,'" *New Straits Times* (Malaysia), October 22, 2009.
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- <sup>61</sup> Bureau of Democracy, Human Rights, and Labor, "Malaysia," in *International Religious Freedom Report 2009*.
- <sup>62</sup> Saeed, *Freedom of Religion, Apostasy and Islam*, 130.
- <sup>63</sup> *Ibid.*
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- <sup>66</sup> Constitution of Malaysia, available at <http://confinder.richmond.edu/admin/docs/malaysia.pdf>.
- <sup>67</sup> Nurjaanah Abdullah, "Legislating Faith in Malaysia."
- <sup>68</sup> Bureau of Democracy, Human Rights, and Labor, "Malaysia," in *International Religious Freedom Report 2009*.
- <sup>69</sup> Sean Yoong, "Malaysia Muslim Magazine Apologizes for Upsetting Christians over Article on Church Masquerade," *Associated Press*, March 6, 2010, available at <http://abcnews.go.com/International/wireStory?id=10026706>.
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- <sup>71</sup> Sisters in Islam, "You Belong to Me," *Baraza* no. 3, <http://www.sistersinislam.org.my/baraza/BARAZA%203-2%20FINAL.pdf>.
- <sup>72</sup> "Two Earlier Controversial Enforcement Actions Today," *Malay Mail* (Kuala Lumpur), June 5, 2003.
- <sup>73</sup> Michael Ng, "Officers Should Understand the Law Before Embarking on Raids," *New Straits Times* (Malaysia), July 3, 2000.
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- <sup>77</sup> Human Rights Watch, "Malaysia," in *2006 World Report* (New York: Human Rights Watch, January 2006), <http://www.hrw.org/wr2k6/>.
- <sup>78</sup> Malaysian Bar Association, "The Ayah Pin Saga," news release, August 9, 2005, [http://www.malaysianbar.org.my/press\\_statements/the\\_ayah\\_pin\\_saga.html](http://www.malaysianbar.org.my/press_statements/the_ayah_pin_saga.html); Human Rights Watch, "Malaysia: Respect Rights of Religious Community," news release, August 4, 2005, <http://www.hrw.org/en/news/2005/08/03/malaysia-respect-rights-religious-community>.
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- <sup>80</sup> International Federation for Human Rights, *Steadfast in Protest: 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders* (Paris: International Federation for Human Rights, March 2007), <http://www.fidh.org/IMG/pdf/FIDH-EN-ASIA.pdf>.

## PAKISTAN

- <sup>1</sup> YouTube and Facebook were blocked for about two weeks in May 2010 due to allegedly blasphemous content directed at the prophet Muhammad. See “Pakistan Blocks YouTube over ‘Blasphemous’ Material,” *Dawn*, May 20, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/03-pakistan-blocks-youtube-over-blasphemous-material-ss-01>.
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- <sup>4</sup> Mansoor Raza, “The Unholy War,” *Dawn*, January 19, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/02-the-unholy-law-02>.
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- <sup>7</sup> David F. Forte, “Apostasy and Blasphemy in Pakistan,” *Connecticut Journal of International Law* 10 (Fall 1994): 31–32.
- <sup>8</sup> Pakistan Constitution, ANNEX, Article 2(A): The Objectives Resolution, available at [http://www.pakistani.org/pakistan/constitution/annex\\_objres.html](http://www.pakistani.org/pakistan/constitution/annex_objres.html). It should be noted that at the time of its adoption in 1949, the resolution stated that “adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures.” When the resolution was made a substantive part of the Pakistani constitution by Presidential Order No. 14 of 1985, the word “freely” was dropped.
- <sup>9</sup> Forte, “Apostasy and Blasphemy in Pakistan.”
- <sup>10</sup> First Amend., Act I of 1964 (amending Pak. Const. of 1962), cited in Forte, “Apostasy and Blasphemy in Pakistan.”
- <sup>11</sup> Pakistan Constitution of 1962, Part X, Chapter 1, Article 204, available at <http://www.cii.gov.pk/docs/con1962.pdf>.
- <sup>12</sup> Website of the Council of Islamic Ideology, available at <http://www.cii.gov.pk/>. See also Pakistan Constitution of 1973, Articles 227–230, available at <http://www.cii.gov.pk/docs/constitution.pdf>.