



Standard Q&A Report

Malaysia: CI180706152819587 – Religion – Relationships – State protection

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Background

S. 47F(1)

Questions

1. What harm or punishment, if any, could a non-Muslim person be subject to in Malaysia for breaching Muslim law, beliefs, or practices because their partner has converted from Islam and they are living in a *de facto* relationship with their partner? Would it be different if the couple were married?
2. Is there information to suggest that the police and authorities in Malaysia (other than specifically Islamic religious departments and bodies who have authority over Muslims) would fail to protect a non-Muslim person from harm by non-state agents because the person's partner has converted from Islam and/or they are in a *de facto* relationship with a partner who has converted from Islam?
3. Is there any other information which might be relevant?

Answers

- 1. What harm or punishment, if any, could a non-Muslim person be subject to in Malaysia for breaching Muslim law, beliefs, or practices because their partner has converted from Islam and they are living in a *de facto* relationship with their partner? Would it be different if the couple were married?**

Country information indicates that Islamic (or *sharia*) law applies to Muslims only.¹ A non-Muslim cannot legally marry a Muslim without converting to Islam first,² and would then be subject to *sharia* law by virtue of being Muslim. Furthermore, a Malay-Muslim is prohibited from converting out of Islam.³ Limited country information located indicates that societal attitudes towards interfaith relationships may be negative, but are unlikely to result in violence against the couple.⁴

In its April 2018 country information report for Malaysia, the Australian Department of Foreign Affairs and Trade (DFAT) outlines the dual legal system in Malaysia that consists of Islamic law alongside the civil law system. DFAT note that Islamic law in Malaysia applies only to Muslims, although its judgements may affect non-Muslims under some circumstances:

3.28 Malaysia has a two-track legal system: common law, administered at federal level; and sharia-based law, administered at the state level, which varies by jurisdiction. Matters considered by states under sharia based law relate to succession, betrothal, marriage, divorce, adoption, guardianship, approval of mosques or any Islamic place of worship, and the 'determination of matters of Islamic law and Malay customs'. The federal government delivers national rulings and provides guidance to state religious departments through the National Department of Islamic Development (JAKIM) and the National Fatwa Council. These bodies sit within the Prime Minister's portfolio.

3.29 *Sharia*-based law applies only to 'persons professing the religion of Islam'. However, the enforcement of *sharia* sometimes affects non-Muslims, particularly on matters involving religious conversion and family.⁵

In its 2018 religious freedom report on Malaysia, the US Department of State acknowledged that there are limited circumstances whereby a non-Muslim may be affected by a *sharia* ruling:

Sharia courts have jurisdiction over Muslims in matters of family law and religious observances. A constitutional amendment provides that civil courts have no jurisdiction with respect to any matter within the jurisdiction of the sharia courts. Non-Muslims have no standing in sharia proceedings, leading to some cases where sharia court rulings have affected non-Muslims who have no ability to defend their position or appeal the court's decision, most frequently in rulings affecting custody, divorce, inheritance, burial, and conversion in interfaith families.⁶

DFAT note that Malaysia does not legally recognise marriage between a Muslim and non-Muslim. Furthermore, a Muslim cannot convert out of Islam unless that person was not born a Muslim. For a non-Malay Muslim, conversion out of Islam is a difficult and lengthy process. Accordingly:

3.58 Several sharia-based laws apply to Muslims at state level. State governments do not recognise marriages between Muslims and non-Muslims and children born of such marriages are considered illegitimate.

3.59 Individuals who have attempted to convert from Islam have faced long and expensive legal battles, involving both the federal civil courts and state sharia courts. An individual wishing to convert from Islam must first obtain permission from a state sharia court. The court will declare them an apostate. State

¹ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 3.28-3.29, p.14

² Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, section 3.58, p.18

³ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 3.58-3.61, p.18

⁴ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 3.110, p.26

⁵ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 3.28-3.29, p.14

⁶ [International Religious Freedom Report for 2017 – Malaysia](#), US Department of State, 29 May 2018, OGD95BE927494, section II, p.5

sharia courts rarely grant such declarations and, in some states, including Melaka, Pahang, Perak and Sabah, apostasy is a crime punishable by fine, a jail sentence, or caning. In Kelantan and Terengganu, state laws allow the death penalty for apostasy although federal law does not allow its implementation. In 2016, the US State Department reported cases where individuals who attempted to convert from Islam were compelled to attend religious rehabilitation centres. In many cases, converts concealed their new beliefs. Muslim women and girls face social pressure to continue wearing a headscarf ('tudung').

3.60 Only 168 of 863 Muslims who attempted to convert between 2000 and 2010 received permission to do so. In these cases, the sharia courts determined that all 168 applicants had not been Muslim to begin with, which thereby prevented any legal precedent supporting conversion from Islam. The landmark case of Lina Joy, a Muslim who converted to Christianity to marry a Christian in 1998, demonstrated the impediments to conversion from Islam. The federal court found in 2007 that she was legally a Muslim and her religious status could not be removed from her national identity card, as 'a person cannot, at one's whim and fancies renounce or embrace a religion'. She was thus unable to marry her Christian partner.

3.61 Conversely, in December 2015, a 40 year-old man in Sarawak, who had been a Christian until his parents converted to Islam when he was eight years old, received a letter of release from Islam by the civil court on the basis that his conversion occurred when he was a minor, and had no choice in the matter. The civil court judge ruled that the sharia court had no jurisdiction and the 'Lina Joy' case did not apply, as he was not a Muslim from birth.⁷

In 2018, DFAT assessed that '[a]n interfaith couple whose families oppose their marriage may face family or social pressure or ostracism, but is unlikely to face violence'.⁸

Additional Reading

- Apostasy in Malaysia. Malaysia: CI180221160358094 – Apostasy, COISS, 5 April 2018, CR837DFFB107.

2. Is there information to suggest that the police and authorities in Malaysia (other than specifically Islamic religious departments and bodies who have authority over Muslims) would fail to protect a non-Muslim person from harm by non-state agents because the person's partner has converted from Islam and/or they are in a *de facto* relationship with a partner who has converted from Islam?

Country information was not located indicating that a person in the applicant's position would not be afforded state protection.⁹ Country information indicates that Malaysia's police force is generally 'professional and effective' but prone to some corruption.¹⁰

In its April 2018 country information report for Malaysia, the Australian Department of Foreign Affairs and Trade (DFAT) provided an overview of state protection in Malaysia. DFAT provide the following information about Malaysia's police force:

5.5 The RMP [Royal Malaysia Police] employs approximately 115,000 officers and operates 837 police stations across Malaysia. The Inspector General of Police is responsible for the RMP and reports to the Minister for Home Affairs. Local and international sources consider the RMP to be a professional and effective police force, although the quality of its members' responses varies depending on levels of training, capacity and engagement in corruption. RMP officers receive limited training, particularly on human rights. Suhakam [Human Rights Commission of Malaysia] conducts some human rights training and workshops for police and prison officials. Police officers are among the lowest paid members of the Malaysian civil service. According to Transparency International, Malaysians perceive the police as one of the most corrupt institutions in the country (see Police Integrity and Accountability). The RMP is 80 – 85

⁷ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 3.58-3.61, p.18

⁸ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 3.110, p.26

⁹ Sources consulted include CISNET, government and non-government reports, domestic and international media outlets, and Internet searches.

¹⁰ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 5.5, pp.35-36

per cent Malay. The government undertakes targeted recruitment to increase the number of women, Chinese Malaysians and Indian Malaysians.¹¹

Additional Reading

- Nil.

3. Is there any other information which might to relevant?

No further relevant information was located.

Additional Reading

- Nil.

¹¹ Country Information Report – Malaysia, Department of Foreign Affairs and Trade, 18 April 2018, CIS7B83941829, sections 5.5, pp.35-36