

TESTIMONY BEFORE THE CONGRESSIONAL HUMAN RIGHTS CAUCUS

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Thank you Mr. Chairman, for inviting The Becket Fund for Religious Liberty to speak to you today on religious pluralism and the disturbing resurgence of anti-conversion laws in South Asia and the Middle East. I thank my colleagues, and I am honored to be among such experts.

I will read a short statement today and request that the Committee accept a longer statement for the record.

For over a decade, The Becket Fund has been dedicated to protecting the free expression of all religious traditions. We are, to our knowledge, the only public-interest law firm that focuses exclusively on religious liberty, and that sues on behalf of people of all faiths. We have worked, among others, on behalf of Buddhists, Christians, Hindus, Jews, Muslims, Sikhs, and Zoroastrians. We at The Becket Fund believe that *all* human beings are entitled to religious freedom. This is because religious freedom is rooted in the inherent dignity of the human person, not in the fickle will of the state.

The agreement to disagree – the right to be wrong, in the words of The Becket Fund’s founder, Seamus Hasson – is significant here. Defending the right of people with different beliefs does not imply (a) that we believe their truth claims are right; or (b) that there is no truth. Instead, we hold to a truth about the human person, *i.e.*, that human persons are inclined to seek the truth, and that, in order for that search to be as authentic as possible, government must interfere minimally with it.

It is clear that this is a message that has not been heard or understood by all. The strength and power of these hearings is that it shines the continual light of truth on areas of darkness.

While this hearing is inspired by the recent case of Abdul Rahman in Afghanistan, Mr. Rahman is far from being alone. The day after Mr. Rahman left Afghanistan, Compass Direct reported that two more Christians were jailed and one beaten unconscious for apostasy by their neighbors. State authorities did nothing to prosecute the perpetrators. The mainstream media did not carry these shocking cases of abuse, and Afghanistan’s precarious position protecting religious pluralism is already receding into the background. These high-profile stories of extremist violence is a contrast to the daily experience of many peaceable Muslim and Christian neighbors, as reported in the BBC’s article by Tom Coghlan on March 31, 2006 (*available at*

http://news.bbc.co.uk/1/hi/world/south_asia/4865818.stm), in which one Afghan Christian was quoted as emphasizing the shared heritage of Christianity and Islam, and saying that many Muslim friends regard his conversion as a private matter:

“Most of my friends know that I am a Christian,” he said. “I have many friends who are mullahs and maulvis. “Some of them say they like me more these days. Before I was a liar, I was cheating people and many other things. I don’t do that now.”

“Some political groups use Islam as a vehicle for their advantage; to get power and to keep power. They are still using it. These groups are discredited in Afghan society. They have used Abdul Rahman to promote their power. Afghans feel at ease with Christians. It is only a few political groups who don’t.”

Unfortunately, it is these political groups, who too often effectively use religious difference as an excuse for violence and oppression, when average citizens are open to diversity. It is for this reason that The Becket Fund has made a public offer of assistance to defend Mr. Rahman or any similarly situated Afghan’s religious freedoms under international law, in any legal forum, domestic or international.

Anti-conversion laws proliferating

Apostasy, and thus, conversion, is punishable by death in at least seven countries: Comoros, Iran, Mauritania, Pakistan, Saudi Arabia, Sudan and Yemen. In six others, apostasy is illegal but not punishable by death: Jordan, Kuwait, Malaysia, the Maldives, Oman and Qatar. Anti-blasphemy laws, which essentially have the same effect as anti-conversion laws, are already in place in Pakistan and Indonesia, and have been proposed by civilians throughout Western Europe and Australia following the Danish cartoons publication. Two weeks ago, March 20, Algeria became the latest country to put into effect an anti-conversion law punishing “instigating, constraining, or utilising means of seduction tending to convert a Muslim to another religion” (emphasis added) with 2-5 years in prison. Just this morning, the state of Rajasthan in India became the latest jurisdiction to adopt an anti-conversion law.

But let me speak of three South Asian countries that are at crucial points in their jurisprudence, and four practical responses.

Malaysia

Malaysia is a majority Muslim country with sizeable Buddhist, Christian, and Sikh minorities. The Federal Constitution declares Islam to be the state religion, but also states that “other religions may be practiced in peace and harmony in any part of the Federation.” (Article 3). The Constitution further defines an ethnic Malay (one of three main races in Malaysia, the other two being Chinese and Indian) to be “a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay

custom....” (Article 160(2)). Thus, according to the Federal Constitution, a Malay’s religion and beliefs are predetermined by birth.

But because the ability to choose is elemental to the search for truth, Article 18 of the Universal Declaration of Human Rights, which Malaysia, as a member of the United Nations, has vowed to uphold, declares a person’s freedom of religion to include “freedom to change his religion or belief.” The International Covenant on Civil and Political Rights similarly names the individual’s right “to adopt a religion or belief of one’s choice.”

To ignore the freedom to choose one’s religion is to say that beliefs and truth are subject merely to culture, tradition, or birth, or to ignore the plain differences between different truth traditions. This is a modern day epidemic, in which we debase the value of truth searching. I highlight this larger problem with the denigration of truth to show how religious freedom law reflects much wider issues that implicate the very understanding of who we are, what is important to us as a people, what we value. I want to emphasize how important that human dialogue is to promoting religious freedom.

There is not a single religious believer who will tell you that he or she does not believe by choice. In the Qu’ran it is clearly written, “There is no compulsion in belief.” Yet, Syariah law *as applied* in Malaysia forcibly subjects unwilling participants to draconian legal measures that entail first the assumption that the Syariah court can itself tell you whether or not you are a Muslim. Some of the consequences of Syariah jurisdiction are truly severe. In 1993, the Kelantan State Legislature passed the Syariah Criminal Code, which included matters of hudud law including sentences of amputation, stoning to death, and flogging. A copycat law was subsequently passed in July 2002 by the Terengganu State Legislature. The federal government intervened and supported petitions challenging the laws. The matters are still pending before the Federal Court.

Next Thursday, April 13, the Federal Court will hear the seminal case of Azlina binti Jailani. Lina, who is ethnically Malay, began attending church in 1990. She formally converted from Islam to Christianity by taking baptismal rites in the Catholic Church in 1998; the same year, she took the sacrament of marriage with a Catholic man. Her joyful demeanor prompted her to change her name, and today she is known as Lina Joy. Her conversion has estranged her from her family, but this personal heartache does not encapsulate her entire story.

The Civil Marriage provision of the 1976 Law Reform Act prohibits civil government from solemnising or registering marriage under civil law.¹ Because Lina Joy bore a Muslim name, the Civil Registry of Marriages did not permit her to register a civil marriage. After multiple applications, National Registration Department relented and permitted Lina to change her name.

¹ Section 2(3), on civil marriage, of the Law Reform Act of 1976 states that the Act “shall not apply to a Muslim or to any person who is married under Muslim law and no marriage of one of the parties which professes the religion of Islam shall be solemnised or registered under this Act.”

However, the MyKad identity card issued to Lina stated that she was a Muslim pursuant to a new regulation, despite her affirmative declaration that she was a Christian.² The Registration Department refused her application to have the statement that she is a Muslim removed and instead insisted that Lina Joy obtain an order from the Syariah or Muslim Law Court stating that she had become an apostate.

Lina Joy, together with Ben Dawson and other Malaysian human rights lawyers, took the matter to the civil courts. They sought various declarations that would confirm Lina Joy's status as a Christian, and thus allow her to register her marriage at the Civil Registry.

The court of first instance, the High Court, dismissed Lina Joy's application on two main grounds. The first is one we have already discussed. The High Court argued that Lina Joy misconstrued the Federal Constitution's statement "Every person has the right to profess and practise his religion...and to propagate it." Why did she misconstrue this? The High Court pointed to provisions in the Federal Constitution privileging Islam, and defining a Malay to be a Muslim. Malays could not renounce Islam at all because they were defined by the Federal Constitution to be persons of the Islamic faith.

The second ground was jurisdictional. The High Court ruled a conversion out of Islam is a religious matter that could only be dealt with by the Syariah Court. The High Court based its finding on Article 121 of the Federal Constitution, which states that the civil courts "shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts." This provision is similar in effect to Article 3 of the Afghan Constitution, which I think of the Supremacy Clause, and declares, "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam."

Lina Joy appealed to the Court of Appeal, which dismissed her case. Next Thursday, the Federal Court will hold a hearing, where The Becket Fund will be consulting with Lina Joy's domestic team, to decide whether or not to accept Lina's last chance of appeal.

If the Federal Court does not accept the case, Lina will officially and forever be considered Muslim. At least, until the Syariah Court sees fit to recognize her conversion, and designate her an apostate—legally labeling her as someone who defies God. What will this mean for her?

She cannot validly contract a civil marriage. Any child she gives birth to will not only be deemed illegitimate, but also a Muslim, notwithstanding Lina Joy or her husband's beliefs. Issues will arise as to whether Lina would be entitled to keep and raise such a child in a non-Islamic home. Lina will be subject to Syariah laws of the country, which vary from state to state. These laws include detention for rehabilitation of her faith, fines and imprisonment for attempting to become an apostate, and fines and

² Such a documentary requirement is only applicable to those who assert that they are no longer Muslims but not where a person leaves any other religion.

imprisonment for being an apostate. Any child would also be considered evidence of adultery, a serious Syariah offense.

Significantly, Lina Joy never applied to the Syariah Court to recognize her conversion, and instead has applied to the civil courts for marital recognition without a Syariah determination of her faith. She argues that it is not the place of any court to tell her what she believes.

Lina Joy is not the only person in Malaysia suffering from this Kafka-esque maze in which the state attempts to convince you that you do not believe what you think you believe.

The Federal Court already dismissed in 2005 habeas corpus applications by four former Muslims who were sentenced under the Syariah court to three years in jail for wrongly attempting to leave Islam and defying an order to appear before religious authorities on a regular basis to repent. The appeal was dismissed on the grounds that the application was “academic.” The Court did not address the legal status of the four appellants.

With Lina Joy’s hearing next week, Malaysia is once again at a critical point in deciding where the line between Syariah and civil law will be drawn, and whether it is indeed up to the state, de jure and de facto, to tell you what you believe.

Although many of the minority religious persecution cases affect Christians, who believe that a fundamental aspect of their faith is to share the Christian gospel, or the “good news,” all people are affected by these laws. Over the objections of his Hindu wife and family, M. Moorthy, the first Malaysian to climb Mount Everest, was declared a Muslim after his death, and buried as one. Faced with an appeal filed by Moorthy’s widow, who wished to exercise Hindu funeral rites, the civil court of first instance in Malaysia, the High Court, ruled it had no jurisdiction in religious matters. The High Court refused to hear testimony from Moorthy’s family that he was a Hindu, and deferred instead to the determination of the Syariah court. Haris Mohamad Ibrahim, a lawyer representing Malaysia’s Bar Council, said the verdict was a “human tragedy.”

Muhamad Burok, a lawyer for the Islamic Affairs Department, which urged the High Court to refuse jurisdiction in the Moorthy case, declared, “Non-Muslims must surrender to the jurisdiction of the Syariah court if they want justice in such matters. Islam is a religion of justice, which serves Muslims and non-Muslims alike.” Non-Muslims should not have to surrender to the jurisdiction of the Syariah court. But we hope that Islam is indeed a religion of justice. After the September 11 attacks, The Becket Fund took out a full page ad in the New York Times noting that many Muslims were among the more than 6,000 innocent victims of the terrorist attacks. We quoted some of the world’s most prominent Muslim leaders, who condemned the attacks and proclaimed Islam as a religion that protects universal human and moral values. For Islam to be a religion that serves Muslims and non-Muslims alike, it must indeed do so.

India

India, whose population has exquisite religious diversity, is on a day to day basis at a crossroads with respect to religious freedom. While the current federal government has embraced religious pluralism, many state governments have chosen to exploit religious tensions by passing anti-conversion laws. These laws have been passed in at least five states (Orissa, Madhya Pradesh, Arunachal Pradesh, Gujarat, Chattisgarh) and are being considered right now in Jharkhand. As I already stated, Rajasthan State Parliament adopted one just today.

These laws forbid what they call “forcible conversion”—which police and judges have interpreted to mean anything from charity by religious groups to claiming that God would be happier if someone converted to a new religion. Most recently, the president of Hopegivers International, a widely respected faith-based aid agency that runs orphanages, hospitals, and schools, was arrested and several of Hopegivers’ institutions effectively shut down.

In India, faith plays a deeper part of the fabric of public life than anything America has seen before. President Bush even commended India for its work in religious freedom during his trip there last month. The Washington Times reported, “Mr. Bush noted that India . . . is able to bridge religious gaps.” State-sponsored aggression toward any particular religious group appears all the more egregious in contrast to this high-level national dialogue.

Like in most countries where there is serious and violent religious strife, it is ethnic and social tensions that drives much of the conflict in India. For example, the Indian constitution bans discrimination based on one’s caste; however, the governing party is squelching the rights of the Dalits, untouchables, on many local levels, most recently using anti-conversion laws that prevent Dalits from renouncing the Hindu faith and its caste system.

Unfortunately India’s anti-conversion laws have been emulated in other countries within the region. Proposed anti-conversion laws in Sri Lanka and Bangladesh, where leaders have openly stated that they would like to be the next home of the Taliban, were modeled on the Indian versions.

Sri Lanka

Sri Lanka has for years faced intense pressure from militant Sinhala Buddhists demanding an end to the growth of minority religions in this overwhelmingly Buddhist country. For the extremists, Buddhism in Sri Lanka is a political and ethnic tool to maintain power, and religious rhetoric is a way of dividing and conquering. The result has been over 200 attacks against religious minorities, including assaults and church burnings over the last two years alone. Last November, a grenade attack on a mosque killed 4 worshippers during morning prayers by unknown assailants. This past Christmas, a prominent Christian member of parliament was murdered inside a

Catholic cathedral while attending midnight Mass and, according to the State Department, the killers may have been government-linked paramilitaries. The Sri Lankan government's record on this score is clear, it has routinely failed to prevent religiously-linked violence or to prosecute the perpetrators and has directly contributed to a climate of fear and distrust of minority religions, especially Christianity.

The toleration of violence against religious minorities has encouraged radical Buddhists to expand their ambitions and they now seek to make bigotry part of Sri Lanka's official laws. The Sri Lankan constitution already guarantees Buddhism's "foremost place" in society and the Sri Lanka Supreme Court in 2003 declared that "the constitution does not recognize a fundamental right to propagate a religion," because "the propagation and spreading of Christianity . . . would impair the very existence of Buddhism."³ New anti-conversion proposals threaten to punish violators with up to seven years in prison for the crime of attempted religious conversion and would jeopardized the efforts of dozens of American faith-based organizations taking part in tsunami relief efforts in Sri Lanka. Most troubling of all is the fact that one of the competing anti-conversion bills was introduced by the government itself on June 24, 2005.

In November, violence and a boycott by ethnic Tamils propelled the Sinhala hardliner Mahinda Rajapakse to the presidency. This election has unfortunately not brought significant changes to the government's position or conduct. Mr. Rajapakse formed a governing coalition with the rising Jathika Hela Urumaya (JHU) party composed of extremist Buddhist monks who introduced their own anti-conversion bill last year and a proposal to make Buddhism the official state religion. One of Mr. Rajapakse's first acts as president was to select Ratnasiri Wickremanayake, the man who drafted the government's anti-conversion bill and who has publicly compared evangelists to terrorists, as prime minister.

The anti-conversion proposals were held back from a vote at the last moment due in part to a large international outcry. But the Sri Lankan government has not disavowed its intent to pass an anti-conversion law and such a bill may be re-introduced in Parliament at any time. It is currently in the Standing Committee of Parliament, and can pass with a simple majority. Moreover, the violence against religious minorities continues. The National Christian Evangelical Alliance of Sri Lanka estimates 25 documented, organized, incidents of violence against Christians alone since the beginning of this year. What human rights activists seek, and indeed, what we should be focusing on in every country that has proposed anti-conversion laws, is not temporary withdrawals or mere promises, but affirmative constitutional guarantees that such laws may never come to pass and that any related violence will come to an end.

The original outcry when the bill was first proposed was effective in preventing the bill's passage because a wide array of credible parties were deeply troubled by developments in Sri Lanka and joined forces to make a difference. The Becket Fund was

³ *In the Matter of the Teaching Sisters of the Holy Cross in Menzinger* S.C. No. 19/2003 (Sri Lanka Jul. 25, 2003) available at <http://www.lankaliberty.com/legal/>.

proud to cooperate with organizations like Jubilee Campaign, USCIRF and others to raise awareness to help build a diverse coalition to oppose the anti-conversion laws. Special mention must be made of Congressmen Akin, Smith and Franks for their leadership in Congress in this effort.

Key to the coalition's success was including parties that had established credibility both as principled religious freedom advocates and as accurate factfinders. Our investigations, and that of others, have revealed that fear and suspicion, not fact, lie at the root of the violence and anti-conversion hysteria. Even the most heartless regime, when faced with this truth, has a more difficult time demonizing the opposition.

Honesty of analysis on this point is critically important. The Becket Fund acknowledges that forced or unethical conversions are to be publicly condemned. Yet, we vigorously disputed the Sri Lankan government's factual claims alleging its widespread prevalence, and were able to back that contention up with data. Further, there are legal protections against assault, forced confinement, fraud, and other mechanisms that could potentially be used to force religious practice on someone. Infringing on religious choice is not an effective solution, and forcible conversion laws are virtually always selectively enforced against religious minorities.

The U.N. and the human rights community must remain vigilant and continue to press Sri Lanka for reform, but there is also a critical role for Congress. Currently Sri Lanka is being considered for millions of dollars in Millennium Challenge Account monies because of their "demonstrated commitment to just and democratic governance" including its protection of human rights and civil liberties.⁴ Yet according to the State Department, there has been a "overall deterioration in religious freedom" in Sri Lanka.⁵ The Becket Fund, on behalf of 14 religious liberty organizations, asked to meet with MCA staff to discuss these issues, but our efforts were rebuffed. It is ultimately up to Congress to determine if Sri Lanka deserves Millennium Challenge Account monies and it may condition any award on specific and concrete improvements in religious liberty.

I will submit more specific information in written form, or you can visit the Becket Fund's website devoted to this issue at www.lankaliberty.com.

American in the the Global Century

As we settle into the 21st Century, we are seeing that not only is it an interdisciplinary century, requiring us to negotiate politics and economics, language and culture; it is also the truly global century.

I want to touch on what we can do as Americans in a diverse world – a world that is getting both smaller and further beyond our control every day – to promote religious

⁴ Available at

http://www.mca.gov/about_us/congressional_reports/Report_on_the_Selection_of_FY06_Eligible_Countries.pdf.

⁵ Available at <http://www.state.gov/g/drl/rls/irf/2004/35520.htm>.

freedom abroad. When we approach religious freedom issues abroad, we must remain humble in our offerings, but be unafraid to speak the truth.

Religious freedom is not just for Americans. True freedom respects no borders, transcends every culture, and rings in every language. No country or even civilization invented – or owns – the concept of freedom of conscience. It was in us when we were born. Even those who claim that people are born into a religious tradition or culture, and thus have a duty to their societies to maintain it (such as adherents to the caste system), have the choice of whether to do so themselves.

As a human being, even more so than as an American, I speak today to claim this truth for all peoples, regardless of tradition, culture, belief, or birth.

Practical Solutions

Here are the main ways that The Becket Fund believes Americans can promote religious freedom effectively outside of America’s borders.

First: Support rule of law in countries with developing legal systems, and affirmatively promote constitutional, federal, or national protection of fundamental freedoms. Further, the nuances of religious law cannot be ignored. It is not enough to proclaim religious freedom as a principle. We must examine whether religious liberties also guard markers of religious expression, such as the freedoms to associate, to use property for worship, and of speech.

Second: Support indigenous workers who are already concerned with these issues. The Becket Fund has yet to encounter a country where there are not people within the country who are already like-minded in their desire to promote religious freedom. Indeed, most of our international cases come by way of those very people contacting us themselves. We all share the same inherent dignity, but people are best able to express it in their own vernacular.

Clearly, democracy on paper is not enough. As Daveed Gartenstein-Ross wrote in the *The Weekly Standard*, “The reason for the rise of illiberal democracy is the lack of true alternatives. The only safe way to criticize most Middle Eastern governments is from a fundamentalist directions, so citizens are forced to protest the ruling regimes by voting for the Islamist opposition.”

Train domestic activists to develop: think tanks to foster intellectual life, a fair jurisprudence, and a robust, peaceful public dialogue about controversial issues. I was very disturbed to read this week in the *Washington Post* that President Bush is seeking to reduce funding in Iraq for these very critical programs.⁶

⁶ The article reported:

We have to set the example first ourselves if we wish to encourage this diverse public square with any credibility. For that reason, The Becket Fund is nonpartisan, and has chosen to defend the freedom of people with whose worldviews and theologies we as individual lawyers sometimes personally, vehemently, disagree. But we can agree on who we are—free to search for the truth.

Third: Strengthen international law mechanisms such as those at the United Nations, which can help keep countries accountable to one another, so that the truths that cross borders will not become myopic rhetoric within borders. And utilise the global economy effectively as an incentive for protecting freedom. For what do we toil if not to flourish as human beings, to realise our dignity as free people? Tie economic incentives to improvements in religious liberties.

The Millenium Challenge attempts to do this, but it does not go far enough. It uses a means-based mechanism, and instead of holding countries up to a higher standard, it measures countries against their neighbors—who are usually no better than they are. Millenium Challenge addresses several development markers, including economic, political, and civil liberties, but it makes no explicit mention of religious liberties. In fact, the guarantee of religious liberty will be the best marker for other rights—if there are no property use, associational, travel, or speech rights, religious liberties would be restricted.

Lastly, and certainly not least: Be willing to distinguish culture, which we rightly celebrate—but temporally so, from truth, which endures and cannot die. We live in a world in which some would like to sacrifice freedom for truth, and others, truth for freedom. We should refuse to subscribe to such false dichotomies.

We at The Becket Fund stand ready to speak the truth, in love and respect, wherever it is necessary, for the inherent freedom to express religious belief that is within the power of no State to deny.

While President Bush vows to transform Iraq into a beacon of democracy in the Middle East, his administration has been scaling back funding for the main organizations trying to carry out his vision by building democratic institutions such as political parties and civil society groups.

The administration has included limited new money for traditional democracy promotion in budget requests to Congress. Some organizations face funding cutoffs this month, while others struggle to stretch resources through the summer. The shortfall threatens projects that teach Iraqis how to create and sustain political parties, think tanks, human rights groups, independent media outlets, trade unions and other elements of democratic society.

Peter Baker, *Democracy in Iraq Not a Priority in U.S. Budget*, Washington Post (April 5, 2006) (available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/04/AR2006040401626.html>).

Thank you Mr. Chairman.