



THE ETHICS & RELIGIOUS
LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION



**NGOs IN PARTNERSHIP:
ETHICS & RELIGIOUS LIBERTY COMMISSION (ERLC)
&
THE RELIGIOUS FREEDOM INSTITUTE (RFI)**

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RELIGIOUS FREEDOM IN MALAYSIA

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Introduction

1. The Ethics & Religious Liberty Commission (ERLC) and the Religious Freedom Institute (RFI) submits this report as a joint submission for the 31st UPR Working Group Session. The ERLC is an international, non-governmental organization dedicated to promoting religious liberty and human flourishing around the world. The ERLC is an entity of the Southern Baptist Convention, a denomination representing more than fifteen million members and fifty thousand churches. The ERLC also holds Special Consultative status before the United Nations Economic and Social Council.¹ RFI is a non-governmental organization based in the United States that is committed to achieving broad acceptance of religious liberty, working to secure religious freedom for everyone, everywhere.

2. The purpose of this report is to raise concerns for the 2018 Universal Periodic Review (UPR) regarding potential policies that, if enacted, could raise serious human rights violations in Malaysia. These potential violations stem from an internal political movement within Malaysia seeking the increased rigidification of local law, specifically a push to expand the jurisdiction of Islamic Syariah Courts and to enact the Islamic penal code (in Malay, the Hudud law). The implementation of the Hudud law will affect religious liberty writ large in Malaysia, as it will further inhibit Malaysians from changing their religion from Islam and will undermine the government's credibility that it respects and protects all religions.

Enacting the Islamic Penal Code (The Hudud Law) within Malaysia threatens religious equality and will undermine religious liberty throughout the country.

3. Since the 1980s, there have been calls within Malaysia for the increased rigidification of local law. The Malaysian Constitution gives Syariah courts jurisdiction over personal matters for Muslims, including property disputes and divorce, but currently Malaysian law limits the scope of sentencing for these courts. In recent years, there is increased political momentum for the expansion of the jurisdiction of Syariah courts and the implementation of the Hudud law. The Hudud law, which governs offenses against God himself, includes extreme punishments like hand cutting and stoning. Most notably in the area of religious freedom, Hudud law governs apostasy and blasphemy, criminalizing attempts to leave the Islamic faith. The proposed legislation expands the jurisdiction of existing Syariah courts over additional types of criminal violations, authorizes Syariah courts to issue new and more stringent punishments for criminal violations, and expands the Syariah courts' role in regulating personal and family status issues.

4. Malaysia has a long and rich history of religious and ethnic pluralism and harmony. Proponents of the Hudud law argue that this proposal is a matter that only concerns the Muslim population, but non-Muslims in Malaysia have significant concerns with this proposal as well. This proposal and others like it serve as a direct threat to this history and to the millions of religious and ethnic minorities in Malaysia: Christians, Buddhists, Hindus, and other religions.

¹NGO Branch, U.N. Dep't of Econ. & Soc. Affairs, Consultative Status for the Ethics & Religious Liberty Commission (2007), <http://esango.un.org/civilsociety/> (accessed by searching "Ethics & Religious Liberty Commission" in the iCSO Database).

Implementation of the Hudud law will make conversion out of Islam much more difficult in direction violation of religious liberty.

5. The Hudud law will make conversion out of Islam much more difficult—and conversion issues are already controversial and fraught with great difficulties. This will be true whether a person converts as an adult or by operation of law through marriage or conversion of a parent. Syariah courts are Islamic courts that govern personal matters amongst the Muslim communities, including apostasy laws. Currently, many Syariah courts refuse to allow Malaysians to change religions when they are registered as Muslims because of a clerical error or by operation of law. The staff of the ERLC has conducted numerous on the ground interviews with Malaysians who have been prohibited from changing their religion by Syariah courts. Women like Aisyah, a Christian who due to a clerical error was registered as a Muslim, and who Syariah courts have repeatedly refused to allow to register as a Christian.² Women like Grace, a Christian, or Wang Shu, a Buddhist, who both married Muslim men but were prohibited from changing their religion from Islam upon their divorce.

6. The formal implementation of Hudud law will further exacerbate this problem and will restrict the religious freedom of many Malaysians. The ability to change your religion and live according to your beliefs is a fundamental aspect of religious freedom. The Hudud law punishes such actions harshly, and is thus in direct opposition to religious freedom in Malaysia.

Implementation of the Hudud law will continue to undermine the government's credibility that it respects and protects all religions.

7. Because implementation of the Hudud law will formally strengthen the relationship between Islam and the state, it will weaken the Malaysian government's credibility as a "Malaysia for all Malaysians." Although Article 3(1) of the Constitution of Malaysia establishes Islam as the national religion of Malaysia,³ Article 11 clearly protects freedom to profess and practice religion for all Malaysians.⁴ Even though Islam is the primary religion used in formal state functions, the Constitution clearly envisions a pluralistic society, respectful of all religious backgrounds.

8. ____ If Hudud law is formally enshrined within the legal schema of Malaysia, the state's preferential treatment of Islam over other religions will undermine the government's credibility that it respects and thus protects all religions.

Efforts to Implement the Islamic Penal Code (The Hudud Law) in Malaysia are incongruent with Constitutional Provisions and International Legal Norms Guaranteeing Freedom of Religion within Malaysia.

9. At its highest levels of law, Malaysia has made a commitment to protect the fundamental human right of religious liberty for all. The Federal Constitution of Malaya, also known as the

² Pseudonyms are used and certain details obscured to protect the subjects' identities.

³ Malaysian Constitution, Art. 3(1).

⁴ Malaysian Constitution, Art. 11.

Constitution of Malaysia, expressly enshrines the freedom of all of its citizens to live out their faith. Article 11(1) provides that “every person has the right to profess and practice his religion.”⁵ Article 11(2) provides that “no person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than its own.”⁶ Article 11(3) provides that “every religious group has: (a) the right to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes; and (c) to acquire and own property and hold administer it in accordance with law.”⁷

10. Additionally, the Constitution of Malaysia contains prohibitions against discrimination on religious grounds. Article 3(1) protects the right to practice and profess any religion in peace and harmony.⁸ Article 8(2) prohibits discrimination on the ground only of religion in matters relating to property, trade, business or employment.⁹ Article 12(1) protects religious freedom in public education and Article 12(2) protects every religious group’s right to create their own educational systems.¹⁰ Article 12(3) states that “no person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own.”¹¹

11. In stark contrast to the protections found in this preeminent document, the implementation of the Hudud law will inhibit religious liberty throughout Malaysia. The Hudud laws are clearly incongruent with the basic protections enumerated within the Malaysian constitution. Not only does the Hudud law forbid Muslims from changing their religion from Islam through apostasy and blasphemy statutes, it also creates an inappropriate relationship between the state and religious practice which is antithetical to religious liberty.

12. In addition to its Constitutional commitment to religious liberty, Malaysia is also voluntarily a member state of this very international body that has confidently and repeatedly upheld that the ability to practice and profess ones religion is a fundamental human right. The United Nations, through its General Assembly and its Human Rights Council, has passed many resolutions and declarations that enshrine religious liberty as a fundamental personal liberty for all people.

13. The most significant document in the UN’s history of guarding human rights is the Universal Declaration of Human Rights (UDHR). The UDHR unequivocally guarantees the right to freedom of religion. Whether the UDHR has passed into the corpus of customary international law and thus is legally binding on all nations is up for debate. What is not debatable, however, is that the UDHR has been persuasive authority in the international community since it was proclaimed by the United Nations General Assembly more than 70 years ago. As such, the protections it provides for religious liberty are of paramount concern for all its member states, including Malaysia.

⁵ Federal Constitution of Malaya, 27 August 1957, art. 11(1) [hereinafter Malaysian Constitution].

⁶ *Id.*, art. 11(2).

⁷ *Id.* art. 11(3).

⁸ *Id.* art. 3(1).

⁹ *Id.* art. 8(2).

¹⁰ *Id.* art. 12(1) & (2).

¹¹ *Id.* art. 12(3).

14. Article 18 of the UDHR states that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief.”¹² Article 2 of the UDHR provides that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind,” including religion or other opinion.¹³ Religious freedom is clearly and strongly protected in this declaration.

15. Enactment of the Hudud law would fly in the face of these official commitments to religious freedom. If implemented, Hudud law would worsen the existing culture of religious oppression.

Malaysia must follow the 2013 UPR Working Group’s recommendations and ensure that all Malaysians are able to freely exercise their religion.

16. In 2013, the UPR Working Group recommended that Malaysia “take measures to ensure that all persons, including Muslims, can freely exercise their right to freedom of religion and belief, without interference by the state and including the right to change their religion,”¹⁴ The Working group additionally advocated that Malaysia revise its legislative framework in order to ensure freedom of religion or belief for all. The implementation of the Hudud law would not only be incongruent with these recommendations, it would cause Malaysia to take steps backward.

17. This coalition of stakeholders recommends the following steps in order to establish religious freedom for all Malaysians in congruence with the country’s constitutional and international legal obligation:

- a. Reject all legislation that attempts to codify the Hudud law in Malaysia.
- b. Make provisions under the constitution and Syariah enactments that Syariah courts are subordinate courts and shall have jurisdiction only with respect to personal law matters solely with Muslims and not when either party are non-Muslims.
- c. Take measures to ensure that all persons, including Muslims, can freely exercise their right to freedom of religion and belief, without interference by the state and including the right to change their religion.
- d. Amend the current Syariah enactments or make policy provisions to allow for an administrative procedure to leave Islam freely without due encumbrance or obstacles.
- e. Amend the current Syariah enactments or make policy provisions to revoke apostasy and blasphemy as an offense.
- f. Amend the National Registration Act or make policy provisions to allow for those who leave Islam to change their religious status and change their names.
- g. Amend the National Registration Act or make policy provisions to allow for those who have been categorized wrongly to change their names and religious status in their ID.

¹² Universal Declaration of Human Rights, 10 December 1948, art 18 [hereinafter UDHR].

¹³ *Id.* Art. 2.

¹⁴ Rep. of the Working Grp. on the Universal Periodic Review, Human Rights Council, 25th Sess., 4 December 2013, ¶¶ 146.156, U.N. Doc. A/HRC/25/10 [hereinafter 2013 Working Group].

Conclusion

18. Despite commitments to freedom of religion and conscience found in Malaysia's Constitution, and in persuasive documents like the Universal Declaration on Human Rights, strong political factions continue to push for the implantation of the Hudud law in Malaysia. In 2013 The Working Group for the UPR recommended that Malaysia "take measures to ensure that all persons, including Muslims, can freely exercise their right to freedom of religion and belief, without interference by the state and including the right to change their religion."¹⁵ The implantation of the Hudud law would be antithetical to Malaysian progress on establishing religious liberty for all Malaysians. The Working Group for the 2018 UPR must encourage the Malaysian government to reject the implantation of the Hudud law and continue to restore religious freedom to all Malaysians.

¹⁵ *Id.*