



THE ETHICS & RELIGIOUS
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THE ST. CHARLES INSTITUTE

**NGOs IN PARTNERSHIP:
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&
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RELIGIOUS FREEDOM IN MALAYSIA

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RELIGIOUS FREEDOM IN MALAYSIA

Introduction

1. The Ethics & Religious Liberty Commission (ERLC) and the St. Charles Institute (SCI) 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 The St. Charles Institute is a Christian, non-profit human rights agency dedicated to providing information and analysis on religiously motivated violence and persecution. Its exists to advocate for religious freedom, human rights, and justice where persecution exists, and to promote religious freedom as a human right for everyone. The purpose of this report is to raise concerns regarding human rights violations in Malaysia for the 2018 Universal Periodic Review (UPR). These violations primarily stem from issues of Malaysians who wish to change their religion from Islam to another religion, and are punished or prohibited from doing so. This is a serious repression of religious freedom, especially as many of these Malaysians have never practiced Islam and have been assigned Islam as their religion through forced conversions, operation of marriage, or clerical error.

Despite Constitutional Provisions and International Legal Norms Guaranteeing Freedom of Religion, Muslim Malaysians are prohibited from changing their religion.

2. 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 Constitution of Malaysia, expressly enshrines the freedom of all of its citizens to live out their faith. Article 11(1) of provides that “every person has the right to profess and practice his religion.”² 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.”³ 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.”⁴

3. 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.⁵ Article 8(2) prohibits discrimination on the ground only of religion in matters relating to property, trade, business or employment.⁶ Article 12(1) protects religious freedom in public education and Article 12(2) protects every religious group’s right to create their own educational

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).

² Federal Constitution of Malaya, 27 August 1957, art. 11(1) [hereinafter Malaysian Constitution].

³ *Id.*, art. 11(2).

⁴ *Id.* art. 11(3).

⁵ *Id.* art. 3(1).

⁶ *Id.* art. 8(2).

systems.⁷ 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.”⁸

4. In stark contrast to the protections found in this preeminent document, many Malaysians who seek to change their religion are prohibited from doing so. Malaysian laws that punish apostasy from Islam are clearly incongruent with the basic protections enumerated within the Malaysian constitution.

5. Not only has Malaysia made a commitment to religious liberty within its own constitution, it 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.

6. The most significant document in the UN’s history of safeguarding 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.

7. 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.”⁹ Article 2 of the UDHR provides that “everyone is entitled to all the right and freedoms set forth in this Declaration, without distinction of any kind,” including religion or other opinion.¹⁰ Religious freedom is clearly and strongly protected in this declaration.

8. Despite these official commitments to religious freedom, the Malaysian government continues to allow legal regimes that are in direct opposition to religious freedom. Syariah courts continue to criminalize apostasy and forbid Muslim Malaysians from changing their religion, blatantly violating the religious liberty of these citizens.

Non-muslim Malaysians, who have been registered as a Muslim by a clerical error, have been prohibited from changing their religion on their state identification cards.

9. Staff of the ERLC conducted on the ground interviews with Malaysians who have been affected by religious liberty issues in Malaysia. One of our interviews was with Aisyah,¹¹ who was a young girl when her biological parents were no longer able to care for her. She stayed with

⁷ *Id.* art. 12(1) & (2).

⁸ *Id.* art. 12(3).

⁹ Universal Declaration of Human Rights, 10 December 1948, art 18 [hereinafter UDHR].

¹⁰ *Id.* Art. 2.

¹¹ Pseudonyms are used and certain details are obscured to protect the subjects’ identity.

and ultimately was raised by another family who protected her and provided her with a loving home. Years later, when she was applying for her ID card, she found that she was registered as a Muslim, even though she had never practiced Islam or lived in a Muslim home. She learned that her biological parents had converted to Islam when she was still a minor, and she was therefore automatically converted by operation of law. Aisyah has tried to change her religion before the civil authorities and the Syariah courts, and her request has been denied. Unfortunately, stories like Aisyah are commonplace amongst non-Muslim Malaysians.

10. The courts' refusal to allow Aisyah to change her religion is in direct violation of the Malaysian Constitution's religious liberty protections in Article 11. It has been argued that the Malaysian Constitution tolerates restriction on religious freedom such as this, through provisions in Art 3(1), establishing Islam as the national religion of Malaysia, and the allowance of Syariah courts, which hear cases related to Muslims' personal matters.¹² This argument is unpersuasive. Its application would render the religious liberty protections enshrined in Article 11 completely void. In order for Article 11 to have any meaning at all, Malaysians like Aisyah, must be allowed to change their religion if their beliefs change.

11. Additionally, refusing to allow Malaysians like Aisyah to change their religion violates the international legal norms preserved in the UDHR and other normative human rights documents.

Non-Muslim Malaysians, who converted to Islam during marriage, have been prohibited from changing their religion after they have divorced.

12. Grace and Wang Shu¹³ are two other women who the ERLC met with for first-hand interviews in Malaysia. The stories of Grace and Wang Shu are typical. Grace converted to Islam thirty years ago when she married her first husband. Grace comes from a Christian family, and she was unsure about converting to Islam, but religious officials assured her that it is easy to convert to Islam and easy to convert out of Islam. She had several children with her first husband, and she and her children took his name. During the process of her divorce, she became reconnected with her Christian faith and is raising her children to be Christians as well. Government officials are now impeding Grace from converting back to Christianity. She still has a Muslim name and is registered as a Muslim by the government. She has tried and failed to change her religion from Islam to Christianity under the government's religious registration system.

13. Wang Shu, who comes from a Buddhist family, was a teenager when she starting dating a young Muslim man in her village. She became pregnant, and the boy's family urged them to marry. Through the process of marriage, she was automatically converted to Islam, although she remained a practicing Buddhist. She gave birth to her first daughter, but the marriage did not last. She lost custody of her child through the divorce, but she remains a Muslim in the eyes of the state, even though she still faithfully practices Buddhism. She remarried and has a new young family. By virtue of her automatic conversion earlier in her life, her new family—all of whom are practicing Buddhists—are considered Muslims by the state. Wang Shu has tried to have her

¹² Malaysian Constitution, Art. 3(1).

¹³ Pseudonyms are used and certain details obscured to protect the subjects' identity.

religion changed from Islam to Buddhism, but the government has refused to allow her to change her religion from Islam.

14. The treatment of Grace and Wang Shu are clear violations of their religious freedoms. As discussed in the case of clerical error conversions, prohibiting citizens from changing their religion is antithetical to the Constitution of Malaysia, the UDHR, and international legal norms.

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

15. 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. Yet, in spite of these recommendations, Malaysians who are registered as Muslims by the state are prohibited from changing religions by the Syariah courts.

16. 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. Revise Malaysia’s legislative framework in order to ensure freedom of religion or belief for all.
- 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 name.
- 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.

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

17. Despite commitments to freedom of religion and conscience found in Malaysia’s Constitution, and in persuasive documents like the Universal Declaration on Human Rights, Malaysia continues to deny religious liberty to its citizens who attempt to convert from Islam. 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 Yet since that time, Malaysia continues to prohibit Muslims from changing their religion. The Working Group for the 2018 UPR must confront the Malaysian government’s ongoing violations of religious liberty. It must demand that Malaysia abolish the criminalization of apostasy and restore religious freedom to all Malaysians, specifically Muslim Malaysians.

¹⁵ *Id.*