



International Panel of  
Parliamentarians  
for Freedom of Religion  
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## **Submission to the UN Special Rapporteur on Freedom of Religion or Belief**

### **Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16)**

May 2020,

#### **INTRODUCTION**

This submission is prepared jointly by ASEAN Parliamentarians for Human Rights (APHR) and the International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB). IPPFoRB is a network of parliamentarians and legislators from around the world committed to combating religious persecution and advancing Freedom of Religion or Belief (FoRB).<sup>1</sup> APHR is a regional network of current and former parliamentarians who use their unique positions to advance human rights and democracy in Southeast Asia. APHR seeks to help create a region where people can express themselves without fear, live free from all forms of discrimination and violence, and where development takes place with human rights at the forefront.<sup>2</sup>

Due to word and time constraints IPPFoRB and APHR were not in a position to report on all restrictions on FoRB that are occurring in the region. This submission instead focuses on the situation of FoRB in Indonesia and Malaysia. The submission should also not be regarded as a full assessment of the right to FoRB in those countries, but a summary of some of the key concerns identified by APHR and IPPFoRB.

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<sup>1</sup> For more information about IPPFoRB please see: <https://www.ippforb.com/>.

<sup>2</sup> For more information about APHR please see: <https://aseanmp.org/>.



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The information in the submission is based on findings of a joint APHR/IPPFoRB Fact-Finding Mission to Malaysia in January 2019,<sup>3</sup> the International Commission of Jurists (ICJ) Briefing Paper on Challenges to FoRB in Malaysia, which was commissioned by IPPFoRB,<sup>4</sup> and APHR's ongoing advocacy on Indonesia's Draft Penal Code,<sup>5</sup> as well as a number of interviews and discussions with relevant stakeholders in Indonesia. APHR and IPPFoRB will also in the future look into the situation of FoRB in other ASEAN countries such as Myanmar, the Philippines, Thailand, Singapore, Cambodia, Vietnam, Brunei, and Laos.

## I. INDONESIA

Indonesia's Constitution and Pancasila ideology guarantee the right to FoRB. However, Indonesia's legal framework contains a number of laws and decrees that are in violation of international law and standards, minority religions continue to experience discrimination, and the past few years have seen an upswing in religious-based intolerance and violence.

Below APHR and IPPFoRB identified some of the key provisions within Indonesia's legal framework that curtail the right to FoRB.

### **Law No 1/PNPS/1965 related to Blasphemy and Law No 5/1969:**

The law criminalises blasphemy and has been used to target religious minorities in the country. According to Human Rights Watch more than 150 individuals, most of whom are religious minorities, have been convicted under this blasphemy law since it was passed in 1965, including former Jakarta Governor, Basuki "Ahok" Purnama, who was sentenced to two years in prison on blasphemy charges in 2017 following a politically motivated smear campaign.<sup>6</sup>

### **Joint Ministerial Decree No. 3 Year 2008**

The joint decree prohibits promulgation of Ahmadiyya teachings. Implementation of the decree has been used to discriminate, and condone acts of violence including assaults, murders, forced closure or arson of

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<sup>3</sup> APHR-IPPFoRB, *Malaysia: Vitalizing Freedom of Religion or Belief Protection under the New Pakatan Harapan Government, Report Findings, APHR-IPPFoRB Fact-Finding Mission*, January 2019, [Hereinafter: Malaysia Fact-Finding Report], available at: [https://aseanmp.org/wp-content/uploads/2019/04/APHR\\_FFM\\_Report\\_Malaysia\\_2019-04-15\\_v07\\_lowres.pdf](https://aseanmp.org/wp-content/uploads/2019/04/APHR_FFM_Report_Malaysia_2019-04-15_v07_lowres.pdf).

<sup>4</sup> ICJ, *Challenges to Freedom of Religion or Belief in Malaysia*, Briefing Paper, March 2019, [Hereinafter: ICJ Briefing Paper], available at: <https://www.icj.org/wp-content/uploads/2019/03/Malaysia-Freedom-of-religion-brief-Advocacy-Analysis-brief-2019-ENG.pdf>.

<sup>5</sup> APHR, *Indonesia: Review Draft Penal Code to Ensure Right to Freedom of Religion or Belief*, Legal Analysis, April 2020, [Hereinafter Indonesian Legal Analysis], available in English and Bahasa at: <https://aseanmp.org/publications-2/>.

<sup>6</sup> Human Rights Watch, *Indonesia to Expand Abusive Blasphemy Law*, Press Statement, 31 October 2019, available at: <https://www.hrw.org/news/2019/10/31/indonesia-expand-abusive-blasphemy-law>.



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Ahmadi mosques and forced conversion.<sup>7</sup>

### **Joint Ministerial Decree No. 9 Year 2006 regarding the construction of places of worship**

This joint ministerial decree mandates that minority religious communities obtain approval from local authorities in order to construct, renovate, or expand houses of worship. Following a Fact-Finding Mission to Yogyakarta in May 2018, APHR found that the implementation of the decree has resulted in burdensome processes and unclear requirements, which create unnecessary barriers to religious practice for many minority communities.<sup>8</sup> Further APHR found that many of Indonesia's religious minorities face official restrictions on the building and renovation of houses of worship, as well as their freedom to carry out religious activities. The difficulty is attributable, in part, to national legal frameworks, but also comes down to the actions and decisions of local officials, who can choose to support or hinder religious practices for minorities.

### **Indonesia's Draft Penal Code**

In 2019, the House of the Representative of Indonesia introduced a new Draft Penal Code, which contains a number of highly problematic provisions that, if adopted, would violate the rights of women, religious minorities, lesbian, gay, bisexual and transgender people, as well as the rights to freedom of expression and association.<sup>9</sup> APHR is concerned that, if adopted, the current draft could, instead of preventing crimes, worsen discrimination, fuel conflict, and legitimise policies of intolerance.

Particularly concerned by the restrictions on the right to FoRB, APHR produced a detailed legal analysis on the provisions in the draft penal code that need to be repealed to ensure the new legislation does not further restrict the right to FoRB and discriminate against religious minorities.

For instance, Articles 304 to 308 of the Draft Penal code expand PNPS Law 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy in Religion, and criminalise blasphemy, the disturbing of religious ceremonies, making noise near a place of worship, and public insult of a cleric. Article 306 criminalises individuals who publicly try to persuade someone to renounce a religion recognised by Indonesia with a maximum four years' imprisonment.

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<sup>7</sup> Christian Solidarity Worldwide, *Indonesia Visit Report*, 10-23 May 2017, available at: <https://www.csw.org.uk/2017/07/31/report/3648/article.htm>.

<sup>8</sup> APHR, *ASEAN parliamentarians urge Indonesia to tackle rising intolerance and protect freedom of religion or belief*, 8 May 2018, available at: <https://aseanmp.org/2018/05/08/yogyakarta-fact-finding-mission/>.

<sup>9</sup> Human Rights Watch, *Indonesia: Draft Penal Code Disastrous for Rights*, 18 September 2019, available at: <https://www.hrw.org/news/2019/09/18/indonesia-draft-criminal-code-disastrous-rights>.



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APHR and IPPFoRB therefore call for these draft provisions and others to be repealed, as well as the restrictive laws and decrees mentioned above.<sup>10</sup> APHR and IPPFoRB also urge the Parliament of Indonesia to take the time to conduct open and inclusive consultations on the Draft Penal Code with the broader public, relevant human rights organisations, and religious leaders, in order to ensure that the long-awaited revision of the Penal Code takes the opportunity to strengthen people’s human rights and freedoms rather than infringe on them and legalise discrimination.

## II. MALAYSIA

The information below is based on an APHR and IPPFoRB Fact-Finding mission to Malaysia in January 2019 to assess the new political landscape and the progress of the government’s reform agenda relating to FoRB. A delegation of MPs from the region and beyond met with a broad range of stakeholders, including government officials, civil society groups, and representatives from various religious communities. It is also based on an ICJ Briefing Paper on challenges to FoRB in Malaysia. Below is a summary of their main findings.

### Restrictive Laws and Policies

Malaysia’s Constitution establishes Islam as the *“religion of the federation,”* but states that *“all other religions may be practised in peace and harmony.”* While the designation of a particular religion as the state religion is not a violation of international human rights per se, constitutionally privileging one religion over others carries the dangers of blurring the separation of Church and State, and being interpreted by some sections of society to justify infringing the rights of religious minorities.

In addition, while Article 11 of the Constitution guarantees that *“every person has the right to profess and practice his religion,”* this is as long as this freedom does not run *“contrary to any general law relating to public order, public health or morality.”* This makes constitutional protection against discrimination legally weak and does not allow for the full guarantee of FoRB of all.

In addition, Article 153, which safeguards *“the special position of the ‘Malays’”* in the country, is a controversial provision that has been widely criticised as racially discriminatory since it, among other things, has led to the imposition of affirmative action policies benefiting the majority Muslim Bumiputra (ethnic Malays). Some segments of society have labelled the Article a so-called *“Malay rights”* provision

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<sup>10</sup> See APHR, *Indonesia: Don’t rush Penal Code Revisions, ensure it respects human rights, lawmakers say*, 9 April 2020, <https://aseanmp.org/2020/04/09/penal-code-statement/>; and Indonesia Legal Analysis.



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due to its discriminatory nature.

The constitution also allows state-level legislatures in Malaysia to legislate and enact offences against the precepts of Islam, giving rise to a dual legal system in much of the country where civil and criminal courts exist in parallel to Shari'a courts. This has at times caused jurisdictional tensions, with civil and Shari'a courts sometimes issuing conflicting rulings on similar issues, particularly in family law-related matters. Human rights groups have also raised concerns about how some of the punishments – including flogging – imposed by Shari'a courts amount to torture or other forms of ill-treatment.

On the national stage, the Sedition Act has been used to punish people – including through imprisonment - for peacefully criticising Islam. Malaysia's Penal Code also criminalises blasphemy or insults to religion, which could carry up to five years' imprisonment or a fine depending on the type of offence.

### **Increasing politicisation of Islam**

Religion is among the issues frequently used by the Barisan Nasional government for political purposes, including in a perceived effort to “*divide and rule*” between different communities. The stakeholders noted with concern that such practices continue to be used by many members of political parties to this day.

As a consequence of the weaknesses in the legal framework, the politicisation of religion, and a historical legacy of discrimination, certain religious minorities in Malaysia face a heightened risk of persecution and discrimination, including non-Muslim, as well as the Shi'a and Ahmadiyah communities.

### **State regulation over Muslims through the Malaysian Islamic Development Department (JAKIM)**

Officials from JAKIM and other Islamic state agencies have in the past been known to serve as “*morality police*,” as they have the authority to accompany police on raids of private premises and public establishments, and to enforce Shari'a, including for violations such as “*indecent*” dress, distribution of banned publications, alcohol consumption, or *khalwat* (close proximity to a non-family member of the opposite sex).

### **State management of other religions and the National Harmony Bills**

While there are dedicated state agencies and national budget resources set aside for Islam, including for places of worship, the same cannot be said for other religions. Government funding for non-Muslim groups is mainly conducted on an ad hoc basis, or on the initiatives of state governments, since there is no constitutional stipulation for such funding under the national budget.



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### **Limitations on the rights of children relating to personal matters governed by Islamic law**

According to the ICJ, child marriage is exacerbated by the dual jurisdictional structure. While the Law Reform (Marriage and Divorce) Act 1976 provides that a marriage is void if either party to the marriage is below 18, Muslim marriages are governed by state Shari'a laws, which often allows for girls under 16 to be married with the approval of a Shari'a court judge.<sup>11</sup>

### **'Apostasy' and religious conversion**

State laws criminalise acts of apostasy, often making those convicted liable to large fines and prison sentences. Making matter worse is the fact that, according to the ICJ, civil courts often confer jurisdiction to Shari'a courts to hear matters of conversion from Islam to a different religion.<sup>12</sup>

### **Criminalisation and prosecution of proselytism among Muslims**

As the ICJ noted, Shari'a law and state criminal laws penalise the propagation of religious doctrines other than the doctrines and beliefs of Islam among persons professing the Islamic faith.<sup>13</sup>

### **Prohibitions on the use of the word 'Allah' by non-Muslims**

Malaysia restricts the use of certain words by non-Muslims in their publications and practices. For instance, the ICJ refers to a 1986 government directive that prohibits the use of the words, "*Allah*", "*Kaabah*", "*Solat*" and "*Baitullah*" in non-Islamic religious publications. According to the ICJ, this directive has been unsuccessfully challenged in courts.<sup>14</sup>

### **Women's rights**

Several stakeholders APHR and IPPFORB met during their Fact-finding mission highlighted how gender discrimination in the name of religion is common across Malaysia. This is true in all religions, not just among majority Muslim populations. One particular issue is that women have little say when their children are converted to Islam by other Muslim family members. One NGO said that women's right to freedom of expression has often been suppressed by state actors who rely on draconian laws. The organisation itself has been the victim of abuse due to its work.

APHR and IPPFORB are therefore concerned by legislative and regulatory provisions that allow for discrimination and undue restrictions on FoRB to take place in Malaysia and Indonesia. Evidently these

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<sup>11</sup> ICJ Briefing paper, p.19.

<sup>12</sup> ICJ Briefing paper, p. 24.

<sup>13</sup> ICJ Briefing paper, p. 25.

<sup>14</sup> ICJ Briefing paper, p. 28.



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laws institutionalise discrimination and prevent state institutions from promoting peaceful and inclusive societies. As explained at the beginning of this submission, many other ASEAN countries, such as Myanmar and Vietnam, also present serious concerns when it comes to FoRB in relation to SDG 16. However, both organisations will undertake research on those countries in the future.