



**ASEAN PARLIAMENTARIANS
FOR HUMAN RIGHTS**



International Panel of
Parliamentarians
for Freedom of Religion
or Belief

VITALIZING FREEDOM OF RELIGION OR BELIEF (FORB) PROTECTION UNDER THE NEW PAKATAN HARAPAN GOVERNMENT

Summary Report of Findings from APHR-IPPFoRB Fact-Finding
Mission to Malaysia, 9 – 11 January 2019



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ASEAN PARLIAMENTARIANS FOR HUMAN RIGHTS (APHR) is a human rights intervention force of current and former parliamentarians from Southeast Asia, who use their unique positions and innovative means to prevent discrimination, uphold political freedom, and promote democracy and human rights throughout the region. APHR supports the work of civil society and human rights defenders and encourages sustainable solutions that increase pressure on governments and multilateral bodies to ensure accountability and uphold and enforce international human rights laws.

APHR's members are current and former members of parliament (MPs) from ASEAN countries and Timor-Leste. The organization's membership has grown exponentially over the last few years and as of 1 January 2019 stands at 93 members. APHR also has associate members who are current and former MPs from non-ASEAN states who are capable of influencing policy decisions of ASEAN governments and ASEAN itself from outside the region.

INTERNATIONAL PANEL OF PARLIAMENTARIANS FOR FREEDOM OF RELIGION OR BELIEF (IPPFoRB) is a global network of parliamentarians and legislators from around the world committed to combating religious persecution and advancing freedom of religion or belief, as defined by Article 18 of the UN Universal Declaration for Human Rights. IPPFoRB focuses on growing a diverse and collaborative global network and building the capacity of parliamentarians to act as agents of change in support of freedom of religion or belief both at home and abroad

Established in November 2014 in Oslo, Norway, the IPPFoRB is centered around the Oslo Charter for Freedom of Religion or Belief that was signed by over 30 parliamentarians from around the world at the Nobel Peace Centre. With a membership of over 250 current and former parliamentarians and legislators from over 90 countries, IPPFoRB provides a range of services, including training for parliamentarians, organizing high-level events, research, fact-finding, and advocacy. The IPPFoRB is led by an informal steering committee of parliamentarians and a secretariat of policy advisors. The secretariat is located with the Norwegian Helsinki Committee in Oslo.



The delegation meets with Religious Affairs Minister Dr. Mujahid Yusuf Rawa and representatives of other state Islamic institutions.

INTRODUCTION

In January 2019, APHR, in collaboration with the IPPFoRB undertook a fact-finding mission of MPs from Southeast Asia and beyond to Malaysia to assess the situation around freedom of religion or belief (FoRB). The mission, which was identified as a key priority of the Southeast Asian parliamentary working group on FoRB – established under the APHR-NDI FoRB Project – aimed at strengthening awareness of FoRB violations in Malaysia, and educating the delegation of MPs on whether Malaysia’s responses to FoRB issues could serve to guide efforts in other countries.

The delegation consisted of three MPs from Southeast Asia and two from outside the region: Hon. Lena Maryana (MP, Indonesia), Kyaw Min San (Regional MP, Myanmar), KH Maman Imanulhaq (Former MP, Indonesia), Saranda Bogujevci (MP, Kosovo) and Halima Daud (former MP, Malawi). They spent three days meeting with government officials, parliamentarians, faith leaders, academics, and civil society organizations. The delegation also met with communities affected by human rights violations and harassment, including religious minorities and LGBTI people.

The visit was timed in order to assess the new political landscape in Malaysia, where the Pakatan Harapan coalition’s election win in May 2018 ended the Barisan Nasional’s (BN) continuous rule since the country’s independence. The Pakatan Harapan campaigned on a platform of improving human rights, including to create a Malaysia free from discrimination. The delegation sought to deepen its understanding of current FoRB issues in Malaysia, how the government’s reform efforts are proceeding, and what challenges remain to be addressed. The parliamentarians also took the opportunity to share experiences from their own countries to develop a common understanding.

The report is divided into three sections. The first section outlines the background of Malaysia's history when it comes to religious freedom, the legal framework and practices of state institutions, its complex ethnic makeup, and recent political developments. The second section looks at specific FoRB issues in Malaysia today, and includes much of the delegation's findings during the mission. The third section draws recommendations for various stakeholders, including the Malaysian government, parliamentarians, CSOs, academics, religious leaders, and ASEAN bodies.

1. Background

Malaysia is a multi-ethnic and multi-religious country, made up of 61.3% Muslims, 19.8% Buddhists, 9.2% Christians, and 6.3% Hindus, according to a census in 2010. Since Malaysia gained independence from colonial rule in 1957, the political scene has, however, largely been dominated by Malay Muslims. This group formed the bulk of support for the BN coalition, and its predecessor the Alliance, which ruled Malaysia uninterrupted from independence up to the May 2018 elections.



Although Article 11 of the constitution guarantees that “every person has the right to profess and practice his religion”, the constitution also states that this freedom must not run “contrary to any general law relating to public order, public health or morality”. Malaysia’s charter additionally establishes Islam as the “religion of the federation”, but states that “all other religions may be practised in peace and harmony”, thus not imposing any restrictions on followers of other religions’ ability to practice their faith. Article 153, which safeguards “the special position of the ‘Malays’” in the country, is a controversial provision which has been widely criticized as racially discriminatory since it, among other things, have led to the imposition of affirmative action policies benefiting the Bumiputra (ethnic Malays).¹ Some segments of society have labelled the Article a so-called “Malay rights” provision due to its discriminatory nature.

The constitution 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

¹ Federal Constitution of Malaysia, [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

jurisdictional tensions, with civil and Shari'a courts sometimes issuing conflicting rulings on similar issues, particularly in family law-related matters.²

Human rights groups have also raised concerns about how punishments – including flogging – imposed by Shari'a courts amount to torture or other forms of ill-treatment. In September 2018, two women in Terengganu state were publicly caned after allegedly trying to engage in a sexual act.³ “**Apostasy**”, or conversion from one religion to another, is a sensitive topic in Malaysia, and in particular Muslims who seek to leave Islam can face serious obstacles in doing so. In a landmark case, the Malaysian Federal Court in 2007 eventually dismissed the Muslim woman Lina Joy’s petition to have the word “Islam” removed from her identity card, after she had converted to Christianity.⁴

While religious minorities continue to face discrimination in Malaysia, Muslims are also restricted in how they practice their religion. Although restrictions vary from state to state, Muslims can face prosecution for not fasting or refusing to pray, for example, while Shi’a Islam and non-Sunni sects are banned from proselytizing or practicing in some states.

On the national stage, the Sedition Act has been used to punish people – including through imprisonment – for peacefully criticizing Islam.⁵ Malaysia’s Penal Code also criminalizes blasphemy or insults to religion, which could carry up to five years imprisonment or a fine depending on the type of offence.⁶

The 2018 election

The May 2018 election in Malaysia saw the opposition coalition Pakatan Harapan – led by the nonagenarian former Prime Minister Mahathir Mohamad – sweep to a historic victory, ending BN’s 61-year grip on power. Although the opposition’s victory has raised hopes of positive human rights change, almost one year since the vote has highlighted the many challenges remaining to the government’s reform agenda, not least when it comes to FoRB.

The Pakatan Harapan government campaigned on promises to restore hope for all citizens, “regardless of race or religion” as well as to create a Malaysia that is “inclusive, moderate and respected globally”.⁷ To this end, the new government has already taken steps



² For background, see Challenges to Freedom of Religion or Belief in Malaysia, International Commission of Jurists, March 2019, <https://static1.squarespace.com/static/5bbb229a29f2cc31b47fa99c/t/5c862a2053450a49a40c191d/1552296484138/Malaysia-Freedom-of-religion-brief-Advocacy-Analysis-brief-2019-ENG.pdf>

³ Human Rights Watch, “Malaysia: Two Women Face Caning for Same-Sex Conduct”, 21 August 2018.

⁴ Reuters, “Malaysia’s Lina Joy loses Islam conversion case”, 30 May 2017.

⁵ For background, see Amnesty International, Critical Crackdown: Freedom of expression under attack in Malaysia, 26 January 2016.

⁶ Penal Code of Malaysia, Chapter XV, available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

⁷ “Pakatan Harapan election manifesto”, https://kempen.s3.amazonaws.com/manifesto/Manifesto_text/Manifesto_PH_EN.pdf



Adam Yusof/Shutterstock.com

towards repealing and amending some of the most egregious laws limiting freedom of expression in Malaysia, including the Anti-Fake News Act and the Universities and University Colleges Act. A number of high-level government officials from minority religions and ethnic groups have also been appointed to offices previously dominated by Malay Muslims, signaling the government's intent to establish a more inclusive administration.

The new Minister in the Prime Minister's Department on National Unity and Social Wellbeing, P. Waytha Moorthy Ponnusamy, and the new government have verbally committed to, but yet to table, a set of new laws (the so-called National Harmony Bills) aimed at promoting national unity and curbing racial and religious hatred. FoRB, however, remains a socially and politically sensitive issue in Malaysia, and despite the government's best intentions, it is an area where there is arguably less political space for reform.

In meetings with civil society representatives, the delegation heard that the change in government had led to a better environment for collaboration between NGOs and authorities. In general, many of the new cabinet ministers are more open to dialogue with civil society, leading to better collaboration. Several actors, however, also raised challenges facing the new government, including the difficulties of reaching agreement within the new coalition on certain issues. These raise questions of the new government's ability to fulfill its reform agenda, in particular when it comes to the politically sensitive issues of FoRB. This is further complicated by the continued influential role played by conservative religious leaders. CSO representatives, however, stressed some positive steps already taken by the government,

including amendments to the Law Reform (Marriage and Divorce) Act, which affirms that the divorce of a civil marriage must be resolved by a civil court, even if one spouse has converted to Islam.

While NGOs stressed that interactions with the government are still largely informal and ad hoc, many hoped that the introduction of select committees in Malaysia would provide more formal opportunities for collaboration. In December 2018, the new government established six standing parliamentary committees, including one focused on human rights and gender equality.⁸

2. FoRB issues in Malaysia

Increasing politicization of Islam

The final decade of the BN government's rule was marked by the increasing politicization of religion, apparently in a bid to shore up support as its popularity was waning with the electorate. During meetings with stakeholders, the delegation learned how religion was among the issues frequently used by the former 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 by many members of political parties to this day.

Competition between some political parties to prove which one is “most religious” has had a further toxic effect on the political climate. For example, in Tawau, Sabah, certain political parties have said that Muslims should not be wishing a Christian “Merry Christmas” or be celebrating New Year. The delegation of parliamentarians heard how religious politicization had affected relationships between communities. Many nominally secular institutions – like



The Human Rights Commission of Malaysia (SUHAKAM) briefs the delegation on their FoRB work.

⁸ Malaysiakini, “Six new select committees announced, Anwar heads reforms caucus”, 4 December 2018: <https://www.malaysiakini.com/news/454684>

state-funded schools – have become increasingly segregated between religious groups, they were told.

Challenges within the dual legal system

As noted above, Malaysia practices a dual legal system where in certain states civil law works in parallel to Shari'a law. Several stakeholders told the delegation that the system creates confusion – including on jurisdictional matters between different courts – and has led to



Meeting between the delegation and P. Waytha Moorthy, Minister in charge of National Unity and Social Wellbeing.

human rights abuses. On occasion, judges in civil courts have ruled for cases under their jurisdiction to be tried under Shari'a law, potentially due to pressure from conservative religious groups.

Civil society representatives highlighted how a common problem in some states is when husbands convert children to Islam, the mother is often powerless to challenge the conversion legally. In a recent groundbreaking case, the Hindu woman Indira Gandhi challenged her husband's unilateral conversion of their children to Islam through the civil judiciary. In January 2018, the Federal Court ruled in her favor, nullifying the conversion of her children. Some stakeholders however feared that without codification, this decision could be overruled through a different case by the same court in the future.

State regulation over Muslims

In 1997, JAKIM (the Malaysian Islamic Development Department) was created as part of the Prime Minister's Office, and quickly rose to become one of the most powerful state institutions in Malaysia. JAKIM – and its state-level bodies – is tasked with overseeing the practice of Islam in Malaysia, including by training teachers in Islamic institutions, preparing Friday sermons, and streamlining Shari'a family law across states. 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). Some stakeholders raised concerns that this has made it easier for JAKIM and other officials to identify and reprimand Muslims breaking Shari'a law. In 2017, the conservative opposition party PAS (Pan-Malaysian Islamic Party) caused an outcry among civil society by proposing a law allowing Shari'a courts to set more stringent punishments, although the bill was ultimately never debated in parliament.

In one of his first acts after taking office, Prime Minister Mahathir Mohamad promised to establish a Consultative Council for People's Harmony which is tasked with reforming and putting limits on the powers of JAKIM and other state religious institutions. It is however unclear when the Council's recommendations for reforms will be finalized. Furthermore, in the new government's 2018 budget, however, JAKIM was allocated RM1.2 billion (approximately 289 million USD) in funds, marking an increase from the final BN budget.⁹ Some CSO representatives raised concerns to the delegation about abuses by JAKIM officials, including undue punishments for perceived violations of Shari'a law.

In a meeting with the delegation, Religious Affairs Minister Dr. Mujahid Yusof Rawa stressed the importance of collaboration with CSOs, as well as his government's efforts to maintain regular dialogues with members of other religions to promote communal harmony and peace. The delegation commended Dr Mujahid's commitment to lead based on the compassionate Islamic principle of Maqasid, with a vision to develop a progressive and inclusive Islamic administration. But the parliamentarians also heard several stakeholders raise concerns about restrictions on the religious freedom of Muslims, and perhaps in particular their inability to change their faith, whether they were born or converted into the religion.

One particular issue is the fact that "Islam" is only identified as a citizen's religion on identity cards for Muslims. In some cases, Muslim parents have also chosen not to register their children to avoid scrutiny from state religious agencies, meaning that they are effectively stateless and lack the rights to vote or get married.

State management of other religions and the National Harmony Bills

During a meeting with the Minister in the Prime Minister's Department on National Unity and Social Wellbeing, the delegation learned more about the minister's work to promote inter-faith harmony. This includes the JKMPKA (Committee to Promote Inter-Faith Understanding & Harmony) that consists of various religious representatives, including Muslims, who meet every few months.

The Minister has also committed to re-tabling a set of three laws collectively named the National Harmony Bill to lessen racial discrimination in the country and strengthen relations between different groups. The Minister told the delegation that the bill is currently under review with an aim to tabling it in the first quarter of 2019. The government in April indicated it is considering only moving ahead with one of the three proposed laws, since the other two overlaps with already existing legislation. Some civil society groups, however, were concerned the National Harmony Bill could be abused if not phrased in the correct way, and highlighted

⁹ Malay Mail, "Budget 2019: RM1.2b allocation for Islamic development", 2 November 2018: <https://www.malaymail.com/news/malaysia/2018/11/02/budget-2019-rm1.2b-allocation-for-islamic-development/1689377>

how, for example, non-believers had been targeted under the previous administration through the misinterpretation of laws.

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 done 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.

Issues raised by other groups

(i) Muslim religious minority sects

The delegation heard from representatives of religious minority groups that they continue to face discrimination even under the new government. Minority Muslim sects, such as Shi'a and Ahmadiyya, have on occasion been singled out for abuse, with individuals being publicly attacked as “un-Islamic” or even as threats to “national security”. The Ahmadiyya community also face a range of challenges which have affected their livelihood, including boycotts of businesses owned by the community.



Hon. Lena Maryana (MP, Indonesia) and Hon. Halima Daud (former MP, Malawi) share a light moment with a participant during a meeting with faith leaders.

Under the previous government, abusive laws were often used against non-Sunni Muslim groups. The government increasingly took legal action against those found to have criticized Islam (often using the Sedition Act), while ignoring hate-filled rhetoric against minority religions or non-Sunni forms of Islam. In September 2017, for example, the Selangor State Islamic Department (JAIS) temporarily detained 200 Shia Iraqi nationals participating in an event marking the Ashura holiday.¹⁰

(ii) Situation in Sabah State

Several stakeholders also raised concerns about the situation in Sabah State, which is home to a large indigenous population. According to a Royal Commission of Inquiry established in 2012 to investigate various issues in the region over the last few decades, Islam's rapid growth in the state has led to attempts to convert Sabah's population to Islam "en masse". The Commission documented how many of those targeted were deceived into signing documents which they were made to understand were for citizenship purposes, but unknowingly, also gave away their consent to convert to Islam.

(iii) LGBTI issues

Homosexuality continues to be criminalized in Malaysia under Section 377 of the Penal Code, while LGBTI people have lived with harassment and threats from officials for decades. LGBTI groups the delegation met raised concerns about increasing discrimination and a lack of support from the new government since the May election. The Pakatan Harapan government has pledged to continue programs from the previous administration aimed at supposedly helping LGBTI Muslims "return to the right path", including through "conversion camps" and seminars, while hateful and discriminatory anti-LGBTI rhetoric has continued in parliament, often along religious lines. While the new government has recognized that LGBTI people have certain rights, this is often framed in terms of a right to privacy, implying that LGBTI people should not publicly declare their sexualities. Most recently, in early March, rights groups criticized the Religious Affairs Minister Dr. Mujahid for his remarks against the presence of LGBTI persons in a peaceful assembly to mark International Women's Day.¹¹

(iv) Women

Several stakeholders 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 organization itself has been the victim of abuse due to its work.

¹⁰ Free Malaysia Today, "200 Iraqi Shias released in Selangor after pressure from Baghdad", 1 October 2017, <https://www.freemalaysiatoday.com/category/nation/2017/10/01/200-iraqi-shias-released-after-pressure-from-baghdad/>

¹¹ Pink News, "Malaysian minister complains of LGBT presence at women's march", 11 March 2019: <https://www.pinknews.co.uk/2019/03/11/malaysian-minister-lgbt-womens-march/>

3. Recommendations

These recommendations were developed in consultation with the delegation during the mission and targeted at key Malaysian stakeholders, including the government, political parties, parliamentarians, faith leaders, CSOs, and youth:



Hon. Lena Maryana (MP, Indonesia) and Hon. Kyaw Min San (MP, Myanmar) meet with Foreign Minister Saifuddin Abdullah.

To the Government of Malaysia:

- Ensure that all persons can freely exercise their right to FoRB without interference by the State, including the right to change one's religion;
- Repeal or substantively amend laws that restrict fundamental freedoms in the name of religion - including Section 377 of the Penal Code, the Sedition Act, and state Shari'a enactments - and cease the arrest, detention, and prosecution of individuals under the laws;
- Ratify the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED);
- Allocate resources within the national budget for the wellbeing of communities of all religions and beliefs;
- Cease discriminatory measures that expose the Muslim community to greater scrutiny and monitoring from the State as outlined in this report;
- Reform Malaysia's religious institutions, including the Department of Islamic Development (JAKIM) and its state departments, which have imposed unreasonable and unnecessary restrictions on FoRB in Malaysia;
- Take steps to end mass conversions by religious groups, including those taking place in Sabah, and provide appropriate remedies;
- Implement the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence;
- Ensure that laws introduced, aimed at curbing racial and religious hatred, are in line with the principles of equality and non-discrimination, and protect persons of all religions and beliefs; and
- End all forms of intimidation, including the arrest, detention, or forced "rehabilitation" of individuals involved in peaceful religious activities, such as members of Shi'a Muslim, and Ahmadiyya groups, and to release unconditionally those detained or imprisoned for related charges.

To Parliamentarians in Malaysia:

- Give effect or codify final court decisions that could right injustices, such as the landmark case of Indira Gandhi, which ruled out unilateral conversions and require that both parents' consent are needed to change a child's religion;
- Establish structured engagement with CSOs, among others, through various parliamentary select committees, and ensure that the new Gender and Rights Committee prioritizes FoRB issues;
- Establish parliamentarians-based initiatives to safeguard FoRB and consolidate efforts to counter extremism; and
- Promote FoRB, interfaith dialogues and principles of acceptance and mutual coexistence in the parliamentarians' constituencies.

To Political Parties in Malaysia:

- Refrain from politicizing religion as it remain as one of the key underlying drivers for religious intolerance and has perpetuated divisions amongst communities.

To CSOs, Faith Leaders, and other stakeholders:

- Promote and practice interreligious dialogues and activities with a view of promoting and protecting FoRB;
- Intensify collaboration with international or regional organizations where civic space is deemed limited domestically; and
- Refrain from spreading fundamentalist and extremist ideology through communication channels, such as television and radio programs.

To the ASEAN Intergovernmental Commission of Human Rights (AICHR) and ASEAN Institute for Peace and Reconciliation (AIPR):

- AICHR to implement article 22 of the ASEAN Human Rights Declaration in conformity with the Universal Declaration on Human Rights and the ICCPR; and
- Undertake Thematic Studies on the right to FoRB in line with the AICHR Terms of Reference.

Annex 1 - Participants

Hon. Lena Maryana, Member of Parliament of Indonesia

Hon. Saranda Bogujevci, Member of Parliament of Kosovo

Hon. Kyaw Min San, Member of the Regional Parliament of Bago, Myanmar

Hon. KH Maman Imanulhaq, former Member of Parliament of Indonesia

Hon. Halima Daud, former Member of Parliament of Malawi

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