

# **How certain interpretations of Sharia laws are impacting on women's rights in ASEAN countries**

## **Recommendations from the Regional Meeting held in Jakarta, 16-17 October 2009**

### **A. Preamble**

Islam in Southeast Asia has long been recognized as humane, tolerant, diverse, plural, metropolitan, progressive, and empowering of women. It is thus a matter of urgent concern that the rapid growth of Islamic extremism is now changing the landscape in Southeast Asia, with serious consequences for all living in the region, as well as for the rest of the world. Leaders of ASEAN member states are urged to be cognizant of this regressive trend, which will have serious impacts not only on women's rights, human rights, but also on the stability and development of the region as a whole. The conservative and monolithic values that underlie this trend are intolerant of the diversity that characterizes Southeast Asia. Such extremist attitudes result in acts that marginalize women and also use terrorist tactics to eliminate diversity.

### **B. Background**

1. A Regional Meeting was held in Jakarta on 16-17 October 2009 with the aims of raising awareness about certain interpretations of Sharia laws and the impact of these on Muslim women in ASEAN as part of the ASEAN community. This Meeting was also conducted to raise awareness about processes related to the ASEAN Intergovernmental Commission on Human Rights (AICHR).
2. Thirty Muslim participants, female and male, from five ASEAN countries with significant Muslim populations attended the Meeting and participated fully. These participants are from civil society organisations, religious institutions and academic institutions. There were four observers from development agencies and international NGOs.
3. The Meeting recognizes that while member states of ASEAN still have diverse records on human rights, it appreciates that ASEAN itself, as a rules-based regional organization under the ASEAN Charter obligations, has increasingly paid attention to human rights. The workshop congratulates the leaders for their diligence and welcomes the launch of the ASEAN Intergovernmental Commission on Human Rights Commission (AICHR).
4. The Meeting endorses that the ASEAN Commission on Women and Children (ACWC) must be an independent body that follows the human rights principles in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Children which provide for women and children to be protected from interpretations of religion that violate their human rights.
5. The Meeting notes that Muslims live in all ASEAN countries, numbering an estimated 231,291,000 and comprising an estimated 41.3019 per cent of ASEAN's total population.

This constitutes 14.7401 per cent of the world's total Muslim population. And, of course, women constitute half of this sizeable Muslim population in ASEAN.

Country	Est. 2009 Muslim population	Percentage of population that is Muslim	Percentage of world Muslim population (est. 1,571,198,000)	Percentage of ASEAN's population (est. 560,000,000)	Source
Indonesia	202,867,000	88.2	12.91	36.23	Census 2000
Malaysia	16,581,000	60.4	1.06	2.96	Census 2000
Philippines	4,654,000	5.1	0.30	0.83	Census 2000
Thailand	3,930,000	5.8	0.25	0.70	Consultant 2009
Myanmar	1,889,000	3.8	0.12	0.34	WRD <sup>1</sup> 2005
Singapore	706,000	14.9	0.05	0.13	Census 2000
Brunei	269,000	67.2	0.02	0.05	Census 1991
Cambodia	236,000	1.6	0.02	0.04	DHS <sup>2</sup> 2005
Vietnam	157,000	0.2	0.01	0.03	WRD 2005
Laos	2,000	0.1	0.0001	0.0004	Census 1995
<b>TOTAL</b>	<b>231,291,000</b>		<b>14.7401</b>	<b>41.302</b>	

Cited from *Mapping the global Muslim population: A report on the size and distribution of the world's Muslim population*. October 2009. Pew Research Centre: The Pew Forum on Religion and Public Life.

6. The Meeting is mindful that women's issues are not yet an integrated part of the development process in each ASEAN country as well as at the regional level. But the Meeting is deeply concerned that certain interpretations of Sharia laws are impeding Muslim women's full participation in development processes in ASEAN, as well as limiting their own development as equal citizens.
7. The Meeting would like to remind ASEAN member states that the fundamental tenets of Islam are compatible with human rights principles.
8. The Meeting recognises that there are some gender-discriminative interpretations of Sharia laws that are not aligned with human rights objectives or with fundamental tenets of Islam that emphasise women's right to practise their religion as equal believers, as well as their rights of access to education, employment, entrepreneurship and political participation.
9. The Meeting is particularly disturbed by the expanding codification and formalisation of certain interpretations of Sharia laws, which now extend beyond the domain of personal laws to criminal laws.
10. As a result of such interpretations of Sharia laws, personal accountability to God has been reduced to a matter that is for the state to control, often with certain personal acts of individuals construed as crimes against the state.

<sup>1</sup> World Religion Database

<sup>2</sup> Demographic and Health Survey

11. The Meeting is concerned that if such codes are left unchecked, these gender-discriminative interpretations of Sharia laws may increase in scope and become new norms for all Muslim women in Southeast Asian countries to abide by, as our countries are inter-connected, historically, geographically and culturally.
12. The Meeting condemns all forms of cruel, inhuman or degrading punishment, including whipping and stoning, as these contravene the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which “provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 5, UDHR).
13. The Meeting is perturbed that in some cases, such punishments are occurring even though they contravene the Constitution and national laws of the countries concerned.
14. We are concerned that women run the risk of being disproportionately vulnerable to the impacts of such punishments, as compared to men.
15. The Meeting notes that such punishments are contrary to Qur’anic teachings that emphasise repentance, forgiveness and personal transformation. Verses on punishment for theft (*Surah Al-Maa’idah* 5:38-39) and robbery (5:33-34) emphasise that an offender who repents after his/her crime and amends his/her conduct, is redeemed, as God is forgiving and merciful.
16. The Meeting strongly objects to actions undertaken by certain parties to intimidate and prevent women from speaking out in support of women’s rights and human rights, as well as from questioning gender-discriminative interpretations of Sharia laws. Such actions prevent Muslim women from fulfilling Islamic principles of love and compassion, which motivate them to care for the well-being of all human beings in general and women in particular.
17. The Meeting urges ASEAN member states to encourage vibrant *ijtihād* (independent reasoning in the exhaustive search for justice) that engages with the contemporary realities of society, especially women’s lived realities, taking into consideration the fact that leading scholars of Islamic history and Sharia laws have shown that *ijtihād* was an unceasing endeavour in all Islamic traditions, continuing to produce a rich diversity of perspectives that should be discussed and debated on the basis of reasoning, not silenced coercively.
18. The Meeting acknowledges and appreciates how far women in ASEAN have advanced in certain areas in the last 40 years. But we are gravely concerned that women’s potential will be limited by gender-discriminative interpretations and actions that are mistakenly legitimised in the name of religion.

## **C. Recommendations**

At the Meeting the participants agreed on the following recommendations.

### ***C1. General Recommendations***

19. The Meeting considers that as human rights permeate every sector of society, the human rights of Muslim women must be mainstreamed into the whole ASEAN agenda.

20. The Meeting asserts that any interpretation of the Terms of Reference of the AICHR, as also prescribed in Article 1.6 of the AICHR, needs to be aligned with the principles of the Universal Declaration of Human Rights and all international conventions on human rights.
21. The Meeting urges the representatives of the AICHR to assert on Article 4.10 of the Terms of the Reference, so as to obtain information from countries and to share such information in any thematic study concerning the position of women's equality before the law, in accordance with the Resolution of the United Nations Human Rights Council, dated 1 October 2009.
22. The Meeting hopes that ASEAN leaders, in agreeing to the United Nations Human Rights Council Resolution of 28 September 2009, will work towards organizing an ASEAN-level workshop that expresses the diversity of the region, while recognizing the positive and negative aspects of traditional and cultural practices with regards to women in general and Muslim women in particular.
23. The Meeting recommends that those ASEAN governments that have not yet done so, should consider removing all reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and ratifying the Optional Protocol.
24. In view of Muslim women's significant presence as half of 41.3 per cent of ASEAN's population, the Meeting recommends that Muslim women's equal rights in all sectors of society be promoted and protected in accordance with CEDAW.

## ***C2. Specific Recommendations***

25. The Meeting calls on ASEAN member states to ensure that certain interpretations of Sharia laws do not impede Muslim women's full participation in development processes and do not limit their development as equal citizens.
26. The Meeting urges ASEAN member states to review, reform and, if deemed appropriate, repeal gender-discriminative interpretations of Sharia laws, such as *qanun jinayat*, that are not aligned with human rights principles or with fundamental tenets of Islam that emphasise women's right to practise their religion as equal believers, as well as their right of access to education, employment, entrepreneurship and political participation.
27. The Meeting encourages ASEAN member states not to be limited by the provisions of Article 2(g) in the AICHR's TOR but instead to draw upon the body of work developed by progressive Islamic scholars that demonstrates the compatibility of the fundamental tenets of Islam with human rights principles, as well as the ongoing historical tradition of *ijtihād* (the exertion of mental energy in the exhaustive search for a just legal opinion).
28. The Meeting requests that ASEAN member states support the principles stated in articles 1.1, 1.5 and 1.6 of its Terms of Reference to the AICHR and, where contraventions with regards to Muslim women have been identified, that member states make a clear statement of position on such matters.
29. The Meeting urges ASEAN member states to review and repeal laws that impose corporal and capital punishments as these are inconsistent with human rights principles and contravene major international conventions on human rights.

30. The Meeting asks that ASEAN member states that have not yet done so, to consider signing and ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
31. The Meeting calls on ASEAN member states to be mindful in ensuring that violations of human rights principles are not excused by reference to cultural or traditional practices.
32. The Meeting wants ASEAN member states to uphold the rights of human rights defenders, including Muslim women, in speaking out in support of women's rights and human rights, as well as in questioning gender-discriminative interpretations of Sharia laws.
33. The Meeting recommends ASEAN member states to enhance resources and facilities for the human resource development of all women, including Muslim women, so that they can develop the appropriate capacity to fill leadership positions in all sectors of society, including the religious sector.
34. The Meeting calls on ASEAN member states to ensure that curricula in formal and non-formal education should utilise and develop instructional materials that highlight the compatibility of human rights principles with Islam.
35. The Meeting emphasises to ASEAN member states the need to develop facilities and capacities to train religious personnel, especially Sharia practitioners, on human rights principles, gender equality, national constitutions, and the historical diversity of Southeast Asia.
36. The Meeting calls on ASEAN member states to take concrete steps and be accountable on issues of good governance, including issues of impoverishment, social justice, and gender equality, so that these do not become causative factors that bring about violence and extremism.
37. The Meeting makes a demand on ASEAN member states to enhance consultation, transparency and accountability by ensuring that women be represented not less than 50 per cent in all law-making and decision-making processes.
38. The Meeting is clear that ASEAN member states, in compliance with the ASEAN Charter and the AICHR's Terms of Reference, need to consult with Muslim women as key stakeholders through constructive and meaningful dialogues with women's rights defenders.
39. The Meeting is aware of the concept of non-interference, but it recommends that this should not preclude member states from expressing their concern when human rights are violated in other member countries, including violations of the rights of Muslim women.
40. The Meeting wants ASEAN member states to base trade, economic and military relations between and among ASEAN member states on human rights principles which the member states have committed themselves to uphold.
41. The Meeting urges ASEAN member states to implement the recommendations made in the United Nations Security Council Resolutions No. 1325 and 1820 on reconstruction and peace-building processes, which should have consonance with the maintenance and enhancement of peace, security and stability, as articulated in Article 1.1 of the ASEAN Charter – “to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region”.

42. The Meeting urges that every effort be taken to ensure that processes of reconstruction and rehabilitation after disasters and conflicts involve women in all processes of decision-making and not marginalize them or dispossess them of their rights.
43. The Meeting asks the governments of all ASEAN member states to fulfil commitments agreed upon in the Millennium Development Goals (MDGs), especially with respect to the significance of these Goals for Muslim women in ASEAN.

## **D. Acknowledgments**

The Meeting participants thank Komnas Perempuan (Indonesian National Commission on Violence Against Women), 'Aalimaat, the Institute of Women's Empowerment and Maruah (Singapore) for convening the Regional Meeting on 16-17 October 2009 in Jakarta.

The ASEAN Progressive Muslim Movement was formed as an outcome of the Meeting by participants representing the organisations listed below. These Recommendations to ASEAN member states are submitted by the ASEAN Progressive Muslim Movement.

Indonesia:

1. 'Aalimaat
2. Aisyah
3. Fakultas Hukum Universitas Katolik Parahyangan
4. Indonesian Conference on Religion and Peace (ICRP)
5. Koalisi NGO Hak Asasi Manusia
6. Lembaga Bantuan Hukum Asosiasi Perempuan Indonesian untuk Keadilan (LBH Apik)
7. PEKKA (Indonesian Women Headed Household Programme)
8. Relawan Perempuan Untuk Kemanusiaan (RPUK)
9. Semarak Cerlang Nusa CREST
10. Solidaritas Perempuan
11. Universitas Pancasila
12. Yayasan Bunga Riau

Malaysia:

13. Sisters in Islam

Singapore:

14. Association of Women for Action and Research (AWARE)
15. Maruah (Singapore)

Thailand:

16. Working Group on Justice for Peace

The Philippines:

17. Initiatives for Peace in Mindanao
18. Nisa ul-Haqq fi Bangsamoro

Regional and international organisations:

19. Asia Pacific Forum on Women, Law Development
20. Institute for Women's Empowerment
21. Women Living Under Muslim Laws

