



HUMAN RIGHTS
RESOURCE CENTRE



Keeping the Faith:

A Study of Freedom of Thought,
Conscience, and Religion in ASEAN



NORWEGIAN EMBASSY

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ASEAN**

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Foreword

It is with great pleasure that I present to you the Human Rights Resource Centre's fourth ASEAN-wide study, "Keeping the Faith: A Study of Freedom of Thought, Conscience and Religion in ASEAN". Taking as its inspiration Article 22 of the ASEAN Human Rights Declaration, through which ASEAN governments have committed to eliminate "all forms of intolerance, discrimination and incitement of hatred based on religion and beliefs", the study seeks to capture the legal landscape pertaining to freedom of thought, conscience and religion in ASEAN. It also hopes to assist ASEAN Member States in working toward an agreed policy response in their implementation of this provision. By providing an overview of state practice on the freedom of thought, conscience, and religion across the region, and considering serious issues of religious persecution and conflict that pose a challenge to regional peace and stability, the Centre aims to contribute to an ongoing dialogue amongst civil society organizations, academia and government about how best to diffuse tensions amongst different religious groups as well as to foster greater understanding and acceptance of different religions and belief systems amongst ASEAN peoples. Religions and beliefs are both important identity markers within ASEAN, and ones which continue to provide a wealth of ideas and ways of seeing the world to flourish within the ASEAN community. It is our hope that through this study the Centre can further contribute toward that flourishing.



This study would not have been possible without the guidance and support from our team of expert advisors and editors, Professor David Cohen of the WSD HANDA Center for Human Rights and International Justice, Professor Kevin Tan from the National University of Singapore, Professor Tore Lindholm, Professor Emeritus of the Norwegian Centre for Human Rights, and Professors Cole Durham and Brett Scharffs from the International Center for Law and Religion Studies (ICLRS) at Brigham Young University. Our highest appreciation also goes to Dr. Jaclyn Neo, Lead Researcher on the study, and the outstanding country rapporteurs and research assistants. Once again, the study gathered both established and up and coming scholars from our research network.

Last but not least, we would like to express our gratitude to the Norwegian Embassy in Jakarta for their support in this endeavour.

Jakarta, January 2015

Marzuki Darusman
Executive Director, Human Rights Resource Centre

Limitations of the Study

This descriptive study on Freedom of Thought, Conscience and Religion in ASEAN is not an attempt at a comprehensive empirical survey of the situation in ASEAN states. Such a study would have been impossible given the limitations of time and resources available to the researchers and to the Centre. Rather, it provides a compilation, categorization and analysis of the published material relevant to the subject, as well as some empirical analysis of the trends identified in those sources.

It is important to note that researchers could only work with materials that are in fact published and made widely available. While they did endeavour, in so far as was possible, to seek feedback from Member State government officials on facts reported, confidential reports and undisclosed statistics held by various government departments are obviously not included unless they were unconditionally made available to the researchers.

The object of this study is to gather, analyse and assess the depth of information available, both the causes and the impact of state regulation of freedom of thought, conscience and religion in each ASEAN country with a view to providing a comprehensive, objective assessment of the situation as revealed through the published literature. Where reports have been made available by state and quasi-state agencies to the researchers, every effort has been made to incorporate them. However, researchers were not obliged to contact such agencies in pursuit of data that is not publicly available.

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PROLOGUE

I. Scope and Methodology

This study covers all ten (10) ASEAN Member States and relies on country-specific data and analysis by selected country rapporteurs. These country rapporteurs have notable backgrounds in academia, public policy, law, and government. Their individual reports are based on secondary sources, including statements and publications by their respective governments, international and regional organizations, think-tanks, and civil society organizations. Where relevant, this study also utilizes reliable media reports and academic work.

Country rapporteurs were not required to conduct independent empirical studies. They were, however, made cognizant of the need to present their findings and analysis in as objective and fair a manner as possible. This often entailed presenting the state's perspective and its responses to critics. Where a discrepancy exists between the individual Member State's data and the data provided in other reports, this was noted - to the extent possible - in the country reports. As the country rapporteur for Vietnam emphasized in his report, there is self-awareness that an internal perspective is required, especially considering the diverse cultural, social, and political contexts in which the speaker/actor operates, hence one should try to interpret a statement and practice so as to "initially privilege possible interpretations that maximize the coherence or rationality in the subject's sayings."¹

Nonetheless, considering that domestic governments may not have access to all the perspectives on and impact of their own laws, policies, and practices, country rapporteurs had

to look beyond official sources to regional and international materials for a fuller picture. They also reviewed information gathered by civil society organizations that may, at times, have greater access to on-the-ground conditions in countries experiencing politically-challenging situations. Indeed, the participation and contribution of all sectors of civil society has been recognized as crucial to the effective implementation of a state's commitments.² In this regard, a key source of information that the country rapporteurs were asked to rely on was the United States State Department's annual International Religious Freedom Reports.³

It should here be noted that not all the country rapporteurs who contributed to this report have elected to be named in order to ensure and protect their independence.

The normative baseline for this study is Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Although only 6 of the Association of Southeast Asian Nations (ASEAN) Member States are party to the ICCPR, its normative valence is widely accepted in international law. It could also be said to be part of the legal norms accepted by ASEAN Member States by virtue of their affirmed commitment to the Universal Declaration of Human Rights (UDHR). Article 18(1) of the ICCPR has its roots in Article 18 of the UDHR. This study thus draws heavily from the norms and standards that have been developed in international law with respect to article 18 of the ICCPR. In particular, Part I of the respective country reports is organized according

¹ Michael W. Dowdle, 'Constitutional Listening,' 88 (1) *Kent-Chicago Law Review* 126 (2012).

² See United Nations, 'Beijing Declaration and Platform of Action', adopted at the Fourth World Conference on Women, 27 October 1995, at Chapter II, ¶ 27.

³ U.S. Department of State, 'International Religious Freedom'. <<http://www.state.gov/j/drl/rls/irf/>>.

to the various topics that have been highlighted for reporting and analysis by the United Nations Special Rapporteur on Freedom of Religion or Belief.⁴

II. Organization

Each Country Report is divided into three substantive parts, not including the introduction and conclusion. Part I provides an overview of the existing legislative and policy frameworks that implicate a broad range of activities relating to freedom of thought, conscience, and religion. Part II of the Country Reports identifies significant changes and trends in state law/policies, as well as activities or developments related to freedom of thought, conscience, and religion within the country. Part III considers the contributing factors to and circumstances surrounding these significant changes and events. The following subsections further elaborate on these three parts.

4 Office of the High Commission for Human Rights, United Nations Special Rapporteur on Freedom of Religion or Belief, 'Rapporteur's Digest on Freedom of Religion or Belief: Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications', 10 March 2011, at ¶ 32. <<http://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>> accessed 21 November 2014.

PART I: LEGISLATIVE AND POLICY FRAMEWORK

The legislative and policy overview takes into account both the international obligations and domestic laws/policies of each Member State. The topics under the domestic law and policy subsection draws from the framework for communications of the U.N. Special Rapporteur on freedom of religion or belief. This framework reflects the wide range of distinct and inter-related issues that fall under the right to freedom of religion or belief.⁵ It not only sets out the different types of cases or situations that have been submitted to the Special Rapporteur for attention and are within the scope of her/his mandate, it also sets out the corresponding international standards relevant to each issue.⁶ The framework is not exhaustive.⁷ Indeed, the Special Rapporteur has indicated that not all issues raised would fall neatly into one of the categories set out in the framework. This is understandable considering the wide-ranging character of the freedom of religion or belief. Country reporters are cognizant of this and where an issue falls outside one of the stated categories, the Country Report notes this under a separate heading. Nonetheless, the sub-topics identified by the framework for communication are useful baselines for identifying and assessing the state of freedom of thought, conscience, and religion in ASEAN Member States.

The framework for communication is divided into five different categories. The current study uses the first three categories in the Country Reports, with some attention to the last two categories. The first category in the framework for communication

5 *Ibid.*, at ¶ 28.

6 *Ibid.*

7 *Ibid.*, at ¶ 30.

deals with elements of the right to freedom of religion or belief, and the right to manifest one's religion or belief. The second category covers discrimination in relation to the freedom of religion or belief. The third category deals with vulnerable groups, including women, children, refugees, members of minorities and persons deprived of their liberty.

The study places more emphasis on the first three categories because of its aim to produce a focused and useful study that concentrates specifically on the domestic status, scope, and protection of the right of freedom of thought, conscience, and religion in ASEAN countries. It does not require the country reporters to include the fourth category, which covers situations where the right to freedom of religion intersects with violations of other human rights, such as the right to freedom of expression and the prohibition on torture and other cruel, inhuman or degrading treatment or punishment. It also does not cover the fifth category, which covers cross-cutting issues including international provisions on limitations and derogations.⁸

PART II: TRENDS IN FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION

Part II highlights eight areas of change for the country rapporteurs' attention. In addressing these topics, country rapporteurs were asked to review and consider developments and incidents reported by government agencies (including the prosecutor's office), national human rights institutions, international and regional organizations, civil society organizations, and the

news media. The period for consideration was between the year 2000 and 2014, although country rapporteurs were given flexibility in extending their analysis to a longer or shorter period, where appropriate. In particular, country rapporteurs were asked to periodize their reports and identify critical turning points in the country's political and legal developments. Thus, for instance, an analysis of Indonesia's state practice on freedom of thought, conscience, and religion has to take into account the Reformasi period and the demise of former President Suharto's regime in the late 1990s. On the other hand, many significant changes in Myanmar's state practice are marked by the military-backed government's decision to allow political reforms and democratization in 2011. This highlights the importance of having country rapporteurs familiar with the legal, social, and political developments of the respective country, as they are able to provide critical internal perspectives on the issues.

The eight topics are:

1. *Significant Changes in the Law*
 - This section requires country rapporteurs to identify new laws that have been promulgated, and that have significant impact or could seriously impact the exercise of freedom of thought, conscience, or religion in the country.
2. *Significant Changes in State Enforcement*
 - In this section, country rapporteurs were asked to highlight areas of law where there has been an increase in state enforcement, including prosecutions against religious actors for supposed violations of the law.

⁸ *Ibid.*, at ¶35.

3. *Significant Changes in Religious Claims (by Non-State Actors)*

- This section asks the country rapporteurs to identify changes in asserted claims by religious actors that have or will have an impact on the religious freedom of other groups.

4. *Significant Events of State Persecution of Religious Groups*

- Country rapporteurs were asked to highlight significant events where state actors have deliberately singled out or targeted religious groups on the basis of their religion. Such targeting could be part of a systemic or centralized initiative, but could also be due to localized action by certain low-level state actors. Country rapporteurs were asked to determine whether the reported incidences of religious persecution have increased in number (e.g. increase in number of conflicts, increase in the prosecution of religious persons, etc.), seriousness (e.g. number of persons affected and type of harm – from non-violent to violent), diversified in form, and/or has led to retaliations (thus leading to escalation of conflict).

5. *Significant Events of Non-State Persecution of Religious Groups*

- This section overlaps with the previous one, but is focused on the actions of non-state actors. In particular, country rapporteurs were required to highlight incidents where non-state actors directly targeted religious groups for persecution. They were also asked to note any state complicity, i.e.

where state actors deliberately did not intervene to assist the persecuted group, on the basis of their religious identity/affiliation.

6. *Significant Events of Inter-religious Conflict*

- In this section, country rapporteurs were asked to highlight significant events of outright, violent clashes between groups on the basis of differences in religion or belief.

7. *Significant Events of Terrorism and/or Terrorist Threats (Linked to Religious Claims)*

- In this section, country rapporteurs were asked to identify terrorist threats or attacks that were linked to religious ideology. Furthermore, they were to note whether certain counter or opposition movements against the state were characterized as being religious. Any secessionist or separatist movements on the basis of religious claims would also be noted in this section.

8. *Significant Cross-Border Incidents (Linked to Religious Claims)*

- In this section, country rapporteurs were required to highlight reported instances of any cross-border impact arising from religious conflict or persecution in neighbouring ASEAN states. This takes into account any reported arrivals of refugees and asylum seekers, emphasizing any increase in the number of arrivals and impact on the receiving country's resources.

Besides these eight topics for analysis, the country rapporteurs were also asked to note governmental responses to these significant changes and events. Identifying governmental responses is important for determining the extent to which the ASEAN Member States prioritize and comply with their obligations to protect the freedom of thought, conscience, and religion. Such responses could include legislative or other policy measures to address violent and non-violent religious persecution. This would include prosecuting perpetrators where applicable, and taking other measures to protect and promote religious freedom.

In addition, country rapporteurs were also asked to note other developments in advancing religious freedom, dialogue, and conflict mediation. This subsection serves to highlight the avenues for advancing freedom of thought, conscience, and religion, specifically through dialogue and mediation. This is important because while the state is usually the most well-resourced to legally and politically protect and promote religious freedom, civil society organizations and religious leaders often play extremely important roles in mediating inter-religious and intra-religious conflicts. The fact that stakeholders have channels of communication is one important aspect for the protection and promotion of the freedom of thought, conscience, and religion.

PART III: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

Part III lists the surrounding circumstances or measures taken, which have been reported by either: (i) the government in question; or (ii) non-state actors, over the period analysed, which can be characterized as contributing negatively or positively to the situation(s), or having increased the likelihood of violent conflict. This may include, but is not limited to economic or environmental conditions, socio-cultural or historical circumstances, responses of particular religious groups (including those who are allegedly, or who have been proven to actually have been, persecuted), and responses of security forces or the police, and any other governmental measures taken to remedy the situation.

I. Terminology

Before going on to analyse the broad themes of the Country Reports, a note on terminology is appropriate. This study uses the term “freedom of thought, conscience, and religion” as it is the terminology used in Article 22 of the ASEAN Human Rights Declaration (AHRD) as well as Articles 18 of the UDHR and ICCPR, respectively. Nonetheless, no substantive distinction is drawn in this study with respect to “freedom of religion and belief” versus “freedom of thought, conscience and religion.” Freedom of thought, conscience, and religion applies to both traditional and non-traditional religions, as well non-religious beliefs.

As the Human Rights Committee has highlighted, article 18 of the ICCPR is not limited to “traditional religions or to religions and beliefs with institutional characteristics or practices

analogous to those of traditional religions.”⁹ In fact, these two phrases are often used interchangeably in international jurisprudence. The Human Rights Committee has clarified that the right to freedom of thought, conscience and religion includes the freedom to hold beliefs.¹⁰ Thus, the freedom of thought, conscience, and religion under article 18 [of the ICCPR] protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.¹¹ Beliefs may take the form of convictions or values about the divine or ultimate reality or the spiritual destiny of humankind. International protection for freedom of belief would also encompass persons who belong to newly established religions, as well as religious minorities that may be the subject of hostility on the part of a predominant religious community.¹² Thus, this study should be understood as taking a broad view on freedom of thought, conscience and religion, while being constrained by the specific conditions of the region.

9 UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, at ¶12.

10 *Ibid.*, at ¶1.

11 *Ibid.*, at ¶2.

12 *Ibid.*, at ¶2. For instance, international refugee law protects persons who have been persecuted on the basis that they are considered “heretics, apostates, schismatic, pagans or superstitious.” See UN High Commissioner for Refugees (UNHCR), ‘Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees’, 28 April 2004, HCR/GIP/04/06.

**Keeping the Faith:
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Synthesis Report

Dr. Jaclyn L. Neo

I. Introduction

In 2012, the Heads of State of ASEAN Member States signed the ASEAN Human Rights Declaration (“AHRD”), uniformly affirming and committing to respecting, promoting, and protecting human rights and fundamental freedoms in the region.¹ In the Preamble to the AHRD, ASEAN governments stated their “commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties.” This pledge towards realizing the human rights and fundamental freedoms of the people of ASEAN Member States reiterates one of the fundamental purposes of ASEAN as stated in the ASEAN Charter, and further strengthens ASEAN’s political commitments as set out in the ASEAN Community Blueprints.²

1 Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012. <<http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration>> accessed 21 November 2014. It should be noted that several human rights groups have criticized the AHRD. For instance, the International Commission of Jurists issued a statement condemning the AHRD as being “fatally flawed and a radical departure from international human rights law. The primary objections are against the limitation clause (Article 8), the subjections of human rights to duties (article 6), and the subjection of the realization of human rights to the particular contexts of the country (article 7). International Commission of Jurists, ‘ICJ condemns fatally flawed ASEAN Human Rights Declaration’, 19 November 2012. <<http://www.icj.org/icj-condemns-fatally-flawed-asean-human-rights-declaration/>> accessed 21 November 2014. See also ‘Civil society rejects flawed ASEAN Human Rights Declaration’, FIDH, 15 November 2012. <<https://www.fidh.org/International-Federation-for-Human-Rights/asia/asean/Civil-society-rejects-flawed-ASEAN-12429>> accessed 21 November 2014.

2 Article 1(7) ASEAN Charter. See e.g. the ‘ASEAN Socio-Cultural Community Blueprint (ASCC)’, June 2009. <<http://www.asean.org/archive/5187-19.pdf>> accessed 21 November 2014. One of the stated primary goals of the ASCC is to realize “an ASEAN Community that is people-centred and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the peoples are enhanced.” (Section II.4).

Among the many important commitments made in the AHRD is a firm pledge guaranteeing freedom of thought, conscience, and religion as a fundamental freedom.³ Freedom of thought, conscience, and religion is an internationally-recognized human right and is one that is formally included in most constitutions in the world.⁴ It protects the freedom to profess, practice, and manifest religion or belief, and encompasses a wide range of conduct.⁵ Religion has an individual as well as a communal or group dimension. It is recognized as entailing both an internal dimension of belief (*forum internum*) as well as external manifestations of practice (*forum externum*). The latter is usually premised upon the existence of a community of believers with whom individuals can form meaningful relationships and collectively manifest their religion. The distinction between *forum internum* and *forum externum*, however, should not be exaggerated, especially in the context of ASEAN. This is because some religions do not envisage a differentiation between orthodoxy and orthopraxy. An example is Islam, as practiced by a large segment of the population in ASEAN, which emphasizes the importance of both orthodoxy and orthopraxy.

International jurisprudence provides an extremely wide-ranging definition of the freedom of thought, conscience, and religion, which should furnish strong jurisprudential guidance for interpreting the AHRD. Under international human rights law, freedom of thought, conscience, and religion is said to include both theistic views of the universe, as well

3 Note that the phrase, “freedom of thought, conscience, and religion,” is used in this study interchangeably with the phrase, “freedom of religion and belief”.

4 The proliferation of religious freedom clauses in domestic and international documents has been noted. See e.g. Natan Lerner, *Religion, Belief, and International Human Rights* 129 (New York, Orbis Books, 2000); John Witte Jr., ‘A Dickensian Era of Religious Rights: An Update on Religious Human Rights in Global Perspective’, 42 *Wm. & Mary L. Rev.* 707 (2001), at 709. Witte in particular notes that there is a corresponding increase in religious intolerance, discrimination, and conflict.

5 Natan Lerner, ‘The Nature and Minimum Standards of Freedom of Religion or Belief’, *Brigham Young University Law Review* 905 (2000), 908.

as atheistic, agnostic, rationalistic, and other views excluding religion and religious norms.⁶ This would include the right not to profess any religion or belief, with the terms “belief” and “religion” to be broadly construed.⁷ Furthermore, under international law, the reach of the freedom of thought, conscience, and religion is not limited to traditional religions or to religions and beliefs with institutional character, or that are analogous to traditional religions. This extends religious freedom protections to new religions as well as new forms of beliefs.⁸

In the AHRD, freedom of thought, conscience, and religion is guaranteed under Article 22. Again, the AHRD should be read consistently with and indeed could be argued to have incorporated international standards on religious freedom as the article repeats the basic injunction of Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights:

“Every person has the right to freedom of thought, conscience and religion.”⁹

This guarantee is further accentuated by the following commitment:

“All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.”¹⁰

This strong statement of political intent toward eradicating religious intolerance in ASEAN is highly commendable, particularly as it sets the bar high at

“incitement of hatred”. This could, among others, justify limiting hate speech. Yet understanding *how*, and *in what ways* both Member States and ASEAN as a regional grouping can begin to honour this commitment continues to be the subject of discussion, both within the region and beyond.¹¹

The present study seeks to contribute to this discussion by providing an overview of state practice on the freedom of thought, conscience, and religion across ASEAN, and highlighting serious issues of religious persecution and conflict for ASEAN’s attention. This report provides a critical analysis of recent significant events, through which ASEAN, its Member States, and civil society organizations can reflect on both the progress made and the challenges that need to be addressed to ensure that this aspiration is fulfilled.

A key objective of this study is to support the ASEAN Inter-governmental Commission on Human Rights (“AICHR”) in fulfilling its function of promoting and protecting human rights and fundamental freedoms of the peoples of ASEAN (Article 1.1 of the Terms of Reference), as well as to “enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights” (Article 1.5 of the Terms of Reference).¹² The study may also help to determine further measures that have to be taken

6 *Ibid.*

7 See UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, at ¶12.

8 *Ibid.*

9 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III); UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (hereafter ‘ICCPR’).

10 ASEAN Human Rights Declaration, *supra* note 1.

11 See for example, the work undertaken by: Setara (<http://indonesiasetara.org/>) and Human Rights Working Group (Alasyah Djafar, Herlambang Perdana Wiratman, Muhammad Hafiz, ‘Freedom of Religion and Belief in Southeast Asia: Legal Framework, Practices, and International Concerns’, *Human Rights Working Group* (2012)) in Indonesia; PROHAM (ASEAN & Protection of Religious Freedom or Belief, July 2014. <<http://proham.blogspot.de/2014/07/asean-protection-of-religious-freedom.html>> accessed 21 November 2014) in Malaysia; Religions for Peace in Myanmar; and the Thai-Interreligious Council. Notably, several development partner assistance programs also now include a component specifically pertaining to freedom of religion. See for example, the Canadian Office of Religious Freedom; the Norwegian bilateral aid fund to Indonesia; and the United States’ State Department.

12 Association of Southeast Asian Nations (ASEAN), ‘Terms of Reference of ASEAN Intergovernmental Commission on Human Rights’, July 2009 (emphasis added) (hereafter “AICHR TOR”).

to promote “capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States” as well as to encourage them to “consider acceding to and ratifying international human rights instruments.”¹³ Furthermore, this study endeavours to underscore recent empirical research which notes the positive impact freedom of religion or belief can have in furthering other development and social aims.¹⁴

It is a basic premise of this report that human rights abuses have significant domestic as well as regional impact. Consequently, in identifying trends in religious discrimination, intolerance, and persecution by state and non-state actors, this report posits that conflict that has some religious origins (which will be termed “religious conflict” for short in the rest of this report) is not a self-contained domestic issue but could have significant bearing on regional and international peace, security, and development. Indeed, ASEAN Member States have expressed a firm commitment under Article 38 of the AHRD that:

“Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.”

13 Articles 4.4 and 4.5 of the AICHR TOR.

14 See e.g. Brian J. Grim, ‘Is Religious Freedom Good for Business?: A Conceptual and Empirical Analysis’, 10 *Interdisciplinary Journal of Research on Religion* Article 4 (2014); UN Global Compact Business for Peace, ‘Business: A Powerful Force for Supporting Interfaith Understanding and Peace’, <http://religiousfreedomandbusiness.org/uploads/3/2/9/7/3297448/business_a_powerful_force_for_interfaith_understanding_and_peace.pdf> 21 November 2014.

Sustaining regional peace and security is crucial as ASEAN moves towards its aim of becoming an integrated community.¹⁵ While ASEAN has had significant success over the course of its history in ensuring that intra-State conflicts do not escalate into inter-State conflicts, states are not entirely insulated from problems arising from religious conflicts and persecution in other ASEAN states. Religious minorities fleeing their country due to religious conflicts and persecution become refugees in other ASEAN Member States. Another way in which religious conflicts and persecution pose a continuous threat to the region’s peace and security arises when radical religious ideologies spread through regional grassroots networks.

Furthermore, as members of the United Nations, ASEAN member states individually and collectively have an obligation to ensure international peace and security (as defined under Article 52(2), Chapter

15 The Preamble to the ASEAN Charter, for instance, affirms the ASEAN Member States’ “common desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress and to promote our vital interests, ideals and aspirations”: Association of Southeast Asian Nations, ‘Charter of the Association of Southeast Asian Nations’, 20 November 2007. <<http://www.asean.org/archive/publications/ASEAN-Charter.pdf>> accessed 21 November 2014.

This is also affirmed in the ASEAN Political-Security Community Blueprint, which states, inter alia, that ASEAN should strive towards promoting and supporting “gender-mainstreaming, tolerance, respect for diversity, equality and mutual understanding.” Association of Southeast Asian Nations, ‘ASEAN Political-Security Community Blueprint’, June 2009. <<http://www.asean.org/archive/5187-18.pdf>> accessed 21 November 2014. With the exception of Brunei, Malaysia, and Singapore, the respective constitutions of ASEAN Member States include express commitments to international peace.

VII of the United Nations Charter).¹⁶ Guaranteeing religious freedom and preventing religious discrimination, intolerance, and persecution which could lead to religiously-triggered conflict is key to guaranteeing peace and security in the region, trans-nationally as well as domestically.

Drawing upon the country reports, this synthesis provides a descriptive outline of significant events of religious persecution and conflict occurring across ASEAN. It offers some key observations of the factors motivating and underlying these conflicts and acts of persecution. Religious persecution is here defined as sufficiently serious violations of one's human rights to exercise one's religion, beliefs, thoughts, and conscience, including threats to life or freedom - such as bodily attacks, attacks against property, arbitrary detention, involuntary disappearances, prosecutions of converts or dissidents for 'apostasy' and 'blasphemy', and forced

conversions.¹⁷ Furthermore, the report highlights some trends across ASEAN that could improve or worsen religious persecution and conflict in the region. Lastly, it posits that religious persecution and conflict should be regarded not merely as domestic matters but as matters that could have regional impact. The research team that undertook this study is confident that the findings in this report will be of particular importance to ASEAN sectoral bodies (including AICHR) as well as ASEAN Member States.

II. Legal Commitments: Domestic and International

The discussion of religious freedom, particularly religious persecution and conflict, is here foregrounded with an examination of the legal commitments of ASEAN Member States towards the protection and promotion of the freedom of thought, conscience, and religion. Notably, in addition to their regional commitment under the AHRD, ASEAN Member States have also made strong legal commitments in this regard on the domestic and international levels.

16 Article 52(1) and Article 52(2) of the United Nations Charter states: '(1) Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations. (2) The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.' United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI. ASEAN has been accorded the status of 'regional arrangement' as per this provision.

17 Since the most comprehensive jurisprudence on the concept of 'persecution' has been developed in refugee law, guidance is taken from that jurisprudence on the definition of religious persecution. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status observes that "[t] here is no universally accepted definition of 'persecution'." That said, refugee law accepts that discrimination amounts to persecution when "in aggregate or of itself, it seriously restricts [a person's] enjoyment of fundamental human rights." There is widespread acceptance that a "threat to life or freedom ... is always persecution" and so are "serious violations of human rights." See United Nations High Commissioner for Refugees (UNHCR), 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees', December 2011, HCR/1P/4/ENG/REV. 3, at ¶51 (hereafter 'UNHCR Handbook'); Karen Musalo, 'Claims for Protection Based on Religion or Belief: Analysis and Proposed Conclusions', *UNHCR* (2002). <<http://www.unhcr.org/3e5f6ad12.html>> accessed 22 December 2014.

A. Legal Guarantees of Religious Freedom in Domestic Constitutions

Religious freedom is an important commitment for ASEAN Member States. It is legally guaranteed in all their constitutions, with the exception of Brunei Darussalam's. Brunei's constitution merely states that religions other than Islam can be practiced in peace and harmony. A significant number of states, like Malaysia, also include non-discrimination guarantees on the basis of religion, and guarantees the right for religious groups to manage their own religious affairs. The right to freedom of thought, conscience, and religion as protected in these constitutions is often qualified and subject to express limitation clauses. The most common justifications for restricting freedom of thought, conscience, and religion in ASEAN Member States are public peace/harmony, public order, and national security. These express limitation clauses however should not be taken as *carte blanche* to restrict religious freedom, but should be strictly interpreted to ensure that the right to freedom of thought, conscience, and religion are not rendered otiose. For a complete list of relevant constitutional provisions concerning state religion and religious freedom guarantees, please see Annex 1.

B. International Obligations

Besides their domestic and regional commitments, ASEAN Member States have also repeatedly reaffirmed their commitment to human rights, including the right to freedom of thought, conscience, and religion, in the international arena. Many of the international human rights instruments that have been ratified by ASEAN Member States include binding commitments to the protection of the right to freedom of thought, conscience, and religion. These are namely the International Covenant for Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of

Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 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 (ICMW), the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention relating to the Status of Refugees.¹⁸ These treaties give rise to specific legal obligations pertaining to freedom of thought, conscience and religion for ASEAN Member States that are party to them. In the country reports, where a Member State has ratified the treaty, such obligations have been taken into account when analyzing the obligations of that state toward guaranteeing this freedom. In addition, the relevant norms in these instruments that relate to freedom of thought, conscience, and religion provide important guidance for this study.

The ICCPR is the primary international instrument that this study draws upon for the substantive legal norms underpinning the right to freedom of thought, conscience, and religion. Article 18 expressly states that this right “shall include freedom to have or to adopt a religion or belief of his choice.” It further explains that “[t]his right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” This must be understood consistently with the injunction in Article 18 of the UDHR, which states that the right to freedom of thought, conscience, and religion includes “the

18 Office of the High Commission for Human Rights, United Nations Special Rapporteur on Freedom of Religion or Belief, ‘Rapporteur’s Digest on Freedom of Religion or Belief: Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications’, 10 March 2011, at ¶ 32. <<http://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>> accessed 21 November 2014.

freedom to change one's religion or belief".¹⁹ Of the ten ASEAN Member States, six are parties to the ICCPR. These are Cambodia, Indonesia, Lao PDR, the Philippines, Thailand, and Vietnam. This means that in addition to their commitment to freedom of thought, conscience, and religion as ASEAN Member States, these countries have legal obligations under the ICCPR to protect freedom of thought, conscience, and religion. Except for Lao PDR, none of these countries have made any reservations or declarations with regard to Article 18. Lao PDR made a specific declaration with respect to Article 18, which states:

The Government of the Lao People's Democratic Republic declares that Article 18 of the Covenant shall not be construed as authorizing or encouraging any activities, including economic means, by anyone which directly or indirectly coerce or compel an individual to believe or not to believe in a religion, or to convert his or her religion or belief. The Government of the Lao People's Democratic Republic considers that all acts creating division and discrimination among ethnic groups and among religions are incompatible with Article 18 of the Covenant.

As was highlighted in the Lao PDR Country Report, the Special Rapporteur on Freedom of Religion or Belief has criticized this declaration, noting that Lao PDR's domestic concept of the right is "highly subjective and could be abused by the State to prohibit religious activities that are protected under international law, such as the teaching and dissemination of religious beliefs or proselytism in general."²⁰

Only two human rights treaties have gained universal ratification/accession among ASEAN Member States: the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CRC contains specific guarantees for the freedom of thought, conscience, and religion for children, thus supplementing the protections guaranteed under Article 18 of the ICCPR.²¹ Brunei, however, invoked religion to justify reservations or declarations to the CRC, such as the following:

"[The Government of Brunei Darussalam] expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State, religion, and without prejudice to the generality of the said reservations, in particular expresses its reservation on articles 14, 20 and 21 of the Convention."²²

Singapore similarly made the following declaration when it became party to the CRC:

"The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in article 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family."

19 *Ibid*, at ¶¶ 70-80.

20 Office of the High Commission for Human Rights, 'Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir: Mission to the Lao People's Democratic Republic', 27 January 2010, A/HRC/13/40/Add.4; see also Lao PDR Country Report, at Part I.A.1.

21 See article 2 (non-discrimination on the basis of religion), article 14 (right to freedom of thought, conscience, and religion), and article 30 (rights of children of who belong to religious minority groups).

22 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

Malaysia stated its reservation to article 14 of the CRC, which guarantees a child's right to freedom of thought, conscience and religion.²³

Furthermore, although Thailand does not expressly base its reservations to articles 7, 22, and 29 of the CRC on religious grounds, religious practices could be said to be covered under this reservation which states that the application of the stated articles "shall be subject to the national laws, regulations and prevailing practices in Thailand." Notably, the reservation to article 7 was withdrawn in December 2010.²⁴

While CEDAW does not contain specific provisions guaranteeing women the right to freedom of thought, conscience, and religion, or non-discrimination on the basis of religion, its capacity to promote and protect the equal rights of women has been fettered to some extent by religious claims. Indeed, Malaysia, Brunei, and Singapore justified their reservations to CEDAW on religious or cultural grounds.²⁵ Malaysia declared that its accession to CEDAW is:

"subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia law and the Federal Constitution of Malaysia."²⁶

23 "The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 2, 7, 14, 28 paragraph 1 (a) and 37, of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia", United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-11&chapter=4&lang=en#EndDec> accessed 24 March 2014. See Malaysia Country Report, at Part I.A.

24 Bayefsky, 'Reservations and Declarations', <http://www.bayefsky.com/html/thailand_t2_crc.php> accessed 21 November 2014. See Thailand Country Report, at Part I.A.

25 United Nations Entity for Gender Equality and the Empowerment of Women, 'Declarations, Reservations and Objections to CEDAW' <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>>, accessed 26 July 2014. See further Malaysia Country Report, at Part I.A.

26 United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-8&chapter=4&lang=en> accessed 24 March 2014. See further Malaysia Country Report, at Part I.A.

The majority of Malaysia's reservations pertain to family matters in Article 16 of CEDAW, i.e. on the same right to enter into marriage (Article 16(1)(a)), same rights and responsibilities during marriage and at its dissolution (Article 16(1)(c)), equal rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children (Article 16(1)(f)), and equal rights to choose a family name, profession and occupation (Article 16(1)(g)). Furthermore, Malaysia declared that it interprets the provisions of article 11 as a reference to the prohibition of discrimination on the basis of equality between men and women only.²⁷

Similarly, Brunei made reservations with respect to:

"those provisions of the said Convention that may be contrary to the Constitution of Brunei and to the beliefs and principles of Islam, the official religion of Brunei and, without prejudice to the generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention."²⁸

Singapore also made reservations on the basis of religious grounds to CEDAW. It stated:

"In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws."

27 United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-8&chapter=4&lang=en> accessed 24 March 2014. On 6 February 1998, Malaysia withdrew its initial reservation in respect of article 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h). See further Malaysia Country Report, at Part I.A.

28 Netherlands Institute of Human Rights, 'Declarations and reservations by Brunei Darussalam made upon ratification, accession or succession of the CEDAW'. <<http://sim.law.uu.nl/SIM/Library/RATIF.nsf/f8bbb7ac2d00a38141256bfb00342a3f/3b3cdf149224eb99c12571d100368c5c?OpenDocument>> accessed 17 April 2014. See further Brunei Country Report, at Part I.A.

The two articles reserved, i.e. Articles 2 and 16, require States Parties to take all appropriate means including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women. As the Singapore Country Report points out, the Government's position is that it is necessary to maintain Singapore's reservations to Articles 2 and 16 of the CEDAW "in view of the need to respect the right of Muslim citizens to practise their personal and religious laws".²⁹

These reservations highlight how religious doctrines and practices could adversely affect the realization of women's rights as envisaged under CEDAW. This is because religions as practiced in most ASEAN member states would appear to continue to bear a patriarchal bias.³⁰

It should be noted that among the ten ASEAN Member States, the Philippines is the only country that has ratified/acceded to all nine human rights treaties identified here as relating to freedom of thought, conscience, and religion. A table detailing the status of ratifications/accessions among ASEAN Member States can be found in Annex

III. Religion in ASEAN: A Background

This section provides a brief background on the status and influence of religion in ASEAN.

²⁹ Singapore Country Report, at Part I.A.

³⁰ One should be careful, however, in asserting that patriarchy is an essential feature or ultimate concern of certain religions. While certain religions do contain patriarchal traditions, there is also evidence to show that gendered practices within religion emerged from, rather than created, patriarchal societies. See Fang-Long Shih, *Reading Gender and Religion in East Asia: Family Formations and Cultural Transformations*, in Bryan Turner & Oscar Salemink (eds.), *Routledge Handbook of Religions in Asia*, 295 (Oxford, New York, Routledge, 2014), at 311.

A. Religious Diversity

ASEAN encompasses a region marked by great religious diversity. This is in addition to significant diversity in the types of political systems³¹ as well as the ethnic/racial and cultural backgrounds of the people living within the region. In terms of the spread of religious diversity, some sub-regionalization can be identified. Islam, with the exception of parts of East Malaysia and Singapore, dominates the southern part, which used to be known as the Malay Archipelago. The northern part of ASEAN is dominated by Buddhism, Taoism, and what is known as Chinese religions or traditional religions (including Confucianist thought). Syncretism of Buddhism and Taoism as well as Confucianist thought is common, and there is a tendency to conflate them. In the Eastern part, the Philippines has a 90% Christian majority, mostly made up of Roman Catholics.

ASEAN also manifests diversity in terms of intra-state religious majority-minority dynamics. Of the ten ASEAN Member States, Indonesia, the Philippines, Thailand, and Myanmar, in particular, have significant intra-state regional diversity. This lends another layer of complexity to comprehending the role of religion in peace and security within the region. For instance, as the Indonesia Country Report points out, the country's geographical vastness means that there are different majority-minority compositions as well as differing inter-religious relations in different areas or provinces. Consequently, particular religious groups could experience significantly different treatment in different parts of the country. Thus, as an example, the Ahmadiyah have been violently persecuted in

³¹ While Malaysia, Singapore, Indonesia, the Philippines, Cambodia, and Thailand have formally adopted a democratic system of government, Vietnam and Lao PDR are single-party socialist republics. Brunei Darussalam on the other hand is an absolute monarchy, while Myanmar is at a critical stage of political transition from military rule to democratic government. These varying political systems have an impact on how the state engages with religion, and the type of influence religion has on state regulations.

Lombok and West Java, but enjoy better protection in Yogyakarta and a few other places.³²

B. Complex Factors: Race, Culture, and Religion

Within ASEAN, religion often intertwines with and reinforces other identity markers, such as race, culture, and language. Furthermore, where there is an overwhelming religious majority, as, for example, in Thailand or Cambodia, this could also lead to religion being conflated with national identity. These factors add another layer of complexity to understanding the impact of the freedom of thought, conscience, and religion on ASEAN's regional peace and security. Related racial/ethnic, cultural, and linguistic fault lines could aggravate violations of religious freedom as well as inter and intra religious conflict. Thus, an analysis of religious freedom in this region also requires an understanding that religious identity and faith are frequently intertwined with other identity markers such as nation, race/ethnicity, and culture.

C. Constitutional Arrangements

ASEAN Member States also have differing state-religion arrangements. Among them, five have constitutions that contain express or implicit confessional clauses privileging the majority religion(s) or that privilege one religion as the religion of the majority. These are Malaysia, Brunei, Cambodia, Thailand, and Myanmar. The constitutions of Malaysia, Brunei, and Cambodia contain outright confessional clauses. Malaysia's Article 3(1) of its Federal Constitution declares:

“Islam is the religion of the Federation, but other religions may be practiced in peace and harmony in any part of the Federation.”³³

Similarly, the constitution of Brunei declares that:

“The official religion of Brunei Darussalam shall be the Islamic religion.”

Cambodia is the only ASEAN Member State that has designated Buddhism as its state religion. Article 43 of the Constitution of Cambodia states:

“Buddhism shall be the state religion.”³⁴

Thailand and Myanmar privilege religion in their constitutions but stop short of declaring a state religion. Thailand has resisted declaring Buddhism as the state religion, despite pressures to do so. However, section 79 of its 2007 Constitution does privilege Buddhism as the majority religion. It states:

“The State shall patronise and protect Buddhism as the religion observed by most Thais for a long period of time and other religions, promote good understanding and harmony among followers of all religions as well as encourage the application of religious principles to create virtue and develop the quality of life.”³⁵

While Myanmar does not declare any state religion, Section 361 of its 2008 Constitution states:

“The Union recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union.”

While Indonesia's 1945 constitution does not expressly refer to any one religion, it nonetheless privileges monotheistic belief. Article 29(1) of the constitution does expressly state that:

“The State shall be based upon the belief in the One and Only God.”

32 See Indonesia Country Report, at Part II.D.

33 See Malaysia Country Report, at Introduction.

34 See Cambodia Country Report, at Introduction.

35 See Thailand Country Report, at Introduction.

The constitutions of Lao PDR, Vietnam, and Singapore do not directly address state-religion relations, leaving open the possibility that the state may control and/or privilege one or other religion.

The Philippines is the only ASEAN Member State that expressly separates religion (or specifically, the church) from the state. Article III, Section 5 of the constitution states: “No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.” However, as the Country Report highlights, as the religious institution to which most Filipinos belong, the Catholic Church has historically exercised significant influence over politics and social policies in the Philippines.³⁶

D. Post-Colonialism

With the exception of Thailand, all ASEAN countries have been colonized at some stage. Malaysia, Singapore, Brunei, and Myanmar were British colonies. Vietnam, Lao PDR, and Cambodia were under French colonization. The Dutch last colonized Indonesia and the Philippines was colonized by the Spanish, before it came under American control. Colonization brought about complex changes to the pre-existing social, political and legal order, as well as exercising a varying but definitive impact on the institutional state-religion arrangements in these countries. For instance, the British were instrumental in codifying Islamic law and instituting a dual legal system in Singapore, Malaysia, and Brunei, consisting of a civil legal

system with roots in the common law and a Syariah legal system based on Islamic law as practiced locally.³⁷ The British were also instrumental in instituting a bureaucratic and legal machinery to implement Islamic directives, and in codifying Islamic law for implementation in these countries.

Similarly, in Indonesia, certain religious institutions and agencies date back to the Dutch colonial regime. Of special significance was the establishment of courts for Islamic affairs, starting in late 19th century for Java and Madura, which were later expanded after independence to cover other areas in Indonesia. Besides the Dutch, the Japanese also had a role in shaping Indonesia’s religious bureaucracy. During Japanese colonialism between 1942 and 1945, the Office for Religious Affairs replaced the Dutch Office for Native Affairs, and was further expanded to manage other Muslim affairs previously administered in different departments. This Office served as the precedent for the current Ministry of Religious Affairs, which administers and distributes state funding to the six recognized religions (Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism).³⁸

Constitutional confessionalism in some ASEAN Member States was also instituted by the colonial regimes. For instance, Buddhism was established as the state religion (with guaranteed freedom of religion) when Cambodia was under French rule. This was included in the 1947 constitution, after the French colonials were reinstated in 1945.³⁹ Except during the Khmer Rouge regime (1975-1979), Buddhism has remained Cambodia’s state religion. Similarly in Lao PDR, while the country was under French colonial rule, Buddhism was declared the state religion in the 1947 Constitution. This contrasts with the post-independence 1991 and 2003 Constitutions, which do not designate a state

³⁶ For example, as the Country Report highlights, Philippines national laws on marriage reflect Roman Catholic doctrine concerning the sanctity and indissolubility of marriage. Accordingly, there is no law allowing for divorce in the Philippines, making it the only country in the world today other than the Holy See that does not grant divorce decrees. The Country Report also notes that opposition from the Catholic Church was a key reason the government did not manage to enact the Reproductive Health Law for more than 14 years. This was despite evidence showing that the majority of Filipinos support the law. The Catholic Church opposed the law, which requires the state to include contraceptive access and education in the state’s health programs. See Philippines Country Report, at Part I.B.4.f. and Part III.A.

³⁷ See Malaysia Country Report, at Introduction; Brunei Country Report, at Introduction; Singapore Country Report, at Part I.B.

³⁸ See Indonesia Country Report, at Introduction, and Part I.B.1.

³⁹ See Cambodia Country Report, at Introduction.

religion.⁴⁰ As the Country Report notes, it has been posited that while the French colonials initially took a stance of benign neglect towards Buddhism, this changed by the 1940s when Buddhism was utilised for French geopolitical purposes to sharpen the Lao national identity against the Thais. It was during this time that the French encouraged a renewed vitality of Buddhism, a version of Buddhism that was “scientific in character,” “completely anthropocentric, ethical at its core, and rational in its method” - a version of the religion that was quite foreign to its Lao context.⁴¹ Interestingly, the French did not establish Buddhism as a state religion in Vietnam, but did make significant efforts to import Catholicism.

The impact of colonialism in the Philippines is evident in the adoption of the separation of church and state doctrine in its constitution. This is a direct transplant from the American constitution. Interestingly, the context in which the American-inspired, separatist constitution operates is greatly influenced by the Spanish, who brought Roman Catholicism to the country. The Spanish colonials notably adopted the union of the Roman Catholic Church and State in the Philippine archipelago. Even today, the Roman Catholic Church is a highly influential institution in the country, despite the formal separation.⁴²

IV. Religious Persecution and Conflict Across ASEAN

A. Overview

Religious persecution – to varying degrees - has been documented in ASEAN Member States. In particular, significant violent religious persecution has been reported in Myanmar, Malaysia, and Indonesia. As mentioned, religious persecution is here defined as sufficiently serious violations of

one’s human right to exercise one’s religion, beliefs, thoughts, and conscience.⁴³ Persecution, including on the basis religion, is also a crime against humanity and is similarly defined.⁴⁴ For example, article 7(2)(g) of the Statute of the International Criminal Court defines persecution as “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”.⁴⁵

Threats to life or freedom would constitute violent persecution, and these include bodily attacks, attacks on property, arbitrary detention, abductions, prosecutions of converts or dissidents for ‘apostasy’ and ‘blasphemy’, and forced conversions. Other forms of non-violent persecution include serious restrictions on one’s human rights such as the denial of voting rights, denial of access to education, coercion by a religious majority in public schools, and other coercive practices. While this study takes the view that all forms of religious persecution are repugnant, it places particular emphasis on violent religious persecution as it poses the greatest threat to international and regional peace and security. This is the case whether or not it is sustained or carried out as part of state policy.

43 The most comprehensive jurisprudence on the concept of ‘persecution’ has been developed in refugee law. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status observes that “[t]here is no universally accepted definition of ‘persecution’.” That said, refugee law accepts that discrimination amounts to persecution when “in aggregate or of itself, it seriously restricts [a person’s] enjoyment of fundamental human rights.” There is widespread acceptance that a “threat to life or freedom ... is always persecution” and so are “serious violations of human rights.” See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, ¶151; Musalo, *supra* note 17.

44 A considerable body of jurisprudence on this topic has evolved in the case law of the International Criminal Tribunal for the former Yugoslavia. See e.g. Jonas Nilsson, ‘The Crime of Persecution in the ICTY Case-law’, in Bert Swart, Alexander Zahar, & Göran Sluiter (ed.), *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (Oxford, Oxford University Press, 2011).

45 Rome Statute of the International Criminal Court, Doc. A/CONF.183/9 (17 July 1998). <http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf> accessed 22 December 2014.

40 See Lao PDR Country Report, at Introduction.

41 See Lao PDR Country Report, at footnote 13.

42 See Philippines Country Report for Philippines, at Introduction.

Historically, religious persecution often took the form of state policies against religion as well as policies designed to control religious matters in the name of a political ideology. Today, religious persecution is more likely to be associated with the rise of nationalism and religious fundamentalism.⁴⁶ Where persecutory acts are carried out by non-state actors, the state may still be implicated if it fails or refuses to protect the persecuted group. While it is possible for state actors to act pursuant to an explicit state policy, often times there is no such specific state directive. What appears more pervasive in instances of violent religious persecution is complicity through inaction and a failure to protect. Furthermore, religious persecution may take several forms: inter-religious (directed against adherents or communities of different faiths), intra-religious (within the same religion, but between different sects, or among members of the same sect), secular or non-religious attacks on religion or a particular religion, or a combination of these.

It should be clarified that religious persecution constitutes persecution that one experiences on account of one's religious membership or beliefs. As guidance, under international refugee law, this nexus can be shown to exist: (i) where the persecutor had the intention of targeting the person/s because of his/her religious membership or beliefs; (ii) where the person/s would not have been targeted but for his/her religious membership or beliefs; or (iii) even where the non-state actor does not persecute the person/s for their religious membership/beliefs, a nexus may be established between the State's failure to protect and the person/s religious membership or beliefs.⁴⁷ Consequently, religious persecution should include the persecution of persons on account of their non-religious beliefs/convictions, such as those of skeptics, agnostics, and atheists.

It has been observed that there is a close connection between violent religious persecution and **conflict**,

and that they usually occur in tandem.⁴⁸ Religious persecution may lead to retaliations by groups that were initially victimized, thereby escalating into outright religious conflict. Such conflict affects more than just the religious communities themselves. While religious conflicts can occur between different religious groups as well as between religious and non-religious groups, inter-religious conflicts in ASEAN have primarily been *between* different religious groups. These tensions are often aggravated if the government sides with one group or another. While some of the conflicts take the form of outright violent clashes between opposing religious groups, resulting in physical harm, others have taken the form of attacks or vandalism against religious symbols, sites, or institutions. As discussed below, among the ASEAN states, this has been noted in Malaysia, Indonesia, and Myanmar.⁴⁹ There are also conflicts related to separatist movements with a religious overtone in the Philippines, and Thailand.⁵⁰ These incidents are sketched out below and described in greater detail in the respective country reports.

It is notable that among the ASEAN Member States, there is an **absence** of religious persecution and conflict in only two countries, namely Singapore and Brunei. The situation in Cambodia is also fairly positive; there are reports of low levels of sporadic

48 This was highlighted by Grim & Finke in their work. Note that they define violent religious persecution as "physical abuse or physical displacement due to religion". Our definition of violent religious persecution is broader as it includes physical attacks on religious symbols and places of worship. See Brian Grim & Roger Finke, *Price of Freedom Denied*, (New York, Cambridge University Press, 2010), 10.

49 See Malaysia Country Report, at Part II.F.; Indonesia Country Report, at Part II.F.; and Myanmar Country Report at Part II.F.

50 See Philippines Country Report, at Part II.F.; and Thailand Country Report, at Part II.F.

46 Musalo, *supra* note 17, at 2.

47 See Musalo, *supra* note 17, at 38.

violence between Christians and Buddhists.⁵¹ The Country Reports also note improving conditions in Vietnam and Lao PDR. In addition, while there are conflicts in Thailand and the Philippines involving Muslim minorities, there is a general absence of violent religious persecution in both these countries. Based on the reports, the most worrying instances of religious persecution and conflict are located in Malaysia, Myanmar, and Indonesia. Further monitoring of religious persecution is necessary in Brunei in light of the passing of the Syariah Penal Code Order 2013, which imposes, *inter alia*, extensive restrictions on the freedom of thought, conscience, and religion, while also prescribing draconian punishments for their violations.

B. States Where Significant Violent Religious Persecution Has Been Documented

According to the country reports, violent religious persecution has been documented in several ASEAN states, namely Myanmar, Malaysia, and Indonesia. As mentioned, violent religious persecution comprises threats to life or freedom, including bodily attacks, attacks on property, arbitrary detention, involuntary disappearances, prosecution of converts or dissidents for ‘apostasy’ and ‘blasphemy’, and forced conversions.

Myanmar: The Country Report notes a significant increase in reported instances of violent religious persecution of Muslim minorities since 2012 (after

political reforms were announced in 2011). The most extensively documented instances pertain to the persecution of Rohingya Muslims who are the numerical majority in northern Rakhine state, but are politically and socially marginalized due to their highly contentious citizenship status. The current Citizenship Law of Myanmar, enacted in 1982, does not recognise the Rohingya Muslims as one of 135 national groups eligible for citizenship by birth, and effectively renders them stateless.⁵² The Country Report notes that, as a result, they have suffered various serious violations of human rights, especially since the 1990s. Instances of such violations include, but are not limited to, the lack of the right to nationality or citizenship, restrictions on freedom of movement, obstacles to family development, confiscations of land, forced labour, arbitrary taxation, and exclusion from the local formal and informal economy.⁵³

The Myanmar government has asserted that the situation in Rakhine State (where the Rohingya Muslims reside) is not state persecution but an inter-religious or sectarian conflict where violence is perpetrated by both sides. As the Country Report points out, it is indeed sometimes difficult, if not impossible, to identify the perpetrators of the violent acts. What is clear is that the Myanmar government has failed to protect the Muslim minority from widespread violence, thereby making it potentially complicit in the persecution. For example, there are credible reports that security officials stood by in Meiktila and were even directly involved in violence in Rakhine.⁵⁴

Malaysia: As the Country Report notes, there has been a notable increase in violent persecution in Malaysia of religious minorities as well as minorities or dissenters within the majority religion, i.e. Islam. For example, Muslims have effectively been prohibited from converting out of Islam. Persons intending to renounce Islam have faced threats

51 Cambodia is at times, however, implicated in the decisions of bordering states vis-à-vis fleeing members of religious minority groups. The most recent of these incidents pertains to a group of Montagnard Christians who have sought asylum in Cambodia, having fled Vietnam and hidden in forests in the country’s north-eastern Rattanakiri province. The Interior Ministry’s refugee department was, as the time this report went to print, interviewing 13 Montagnard asylum seekers to assess their status. The Montagnards in question are claiming asylum on grounds of religious persecution. See: Aun Pheap, ‘Interior Ministry’s Refugee Dept Begins Questioning Montagnards’, 24 December 2014, <https://www.cambodiadaily.com/news/interior-ministrys-refugee-dept-begins-questioning-montagnards-74793/> accessed 24 December 2014.

52 See Myanmar Country Report, at Introduction.

53 See Myanmar Country Report at Part II.D.

54 See Myanmar Country Report at Part II.D.

of prosecution and detention. Apostasy is, thus far, a crime in only one state (Terengganu) and is punishable by death, although this law has yet to come into force as its constitutionality is suspect. However, in the majority of the other states, persons wanting to renounce Islam can be legally detained for religious rehabilitation. Syariah courts in these states have detained apostates for rehabilitation, whereby they are forced to report to the *Kadi* to repent. Such prosecutions and detentions constitute a form of violent persecution. Converts are denied the right to enjoy a range of fundamental freedoms, including the right to marry the person of their choice if that person is not a Muslim, the right to have the religion of their choice recognized, the right not to be coerced to perform religious practices, and the right to exercise ritual and ceremonial acts of one's choice. These converts remain subject to Islamic religious laws and therefore could still be subject to criminal prosecution if they contravene any of the offences in the various Syariah criminal offences enactments, such as eating in public during the fasting month, failing to perform Friday prayers, breaking fast during Ramadhan, gambling, drinking and proscribed sexual conduct.⁵⁵

There has also been an increase in intra-religious persecution of Islamic religious communities that are not aligned with Sunni Islam. As the Country Report points out, most Malaysians are Sunni Muslims. In the last decade or so, the Malaysian government has increasingly targeted all other teachings that are generally perceived to deviate from Sunni Islam as being heresy. Members of these minority religious groups have increasingly faced arrest, detention and prosecution by the

55 Malaysia Country Report, at Part II.D.1.a. Another legal problem the Country Report identifies is the unilateral conversion by one parent of their children to Islam by a converted parent without the consent of the non-converting parent. The state has so far not protected the right of the non-Muslim parent. A slew of cases concerning unilateral conversion by a Muslim parent have left the other parent without a remedy or the right to be heard in the conversion or custody of the children in question. As this usually involves the husband converting, leaving the wife without recourse, this phenomenon also seriously implicates a woman's equal parental rights. See Country Report at Part I.B.4.a.

state Syariah authorities. Groups that have been prosecuted include Shias, the Al-Arqam group, as well as a religious cult called Sky Kingdom, headed by the eccentric Ayah Pin, amongst others. Since 1997, approximately 300 Shias have been arrested by state religious authorities because of their observance of their faith in public. Followers of the Sky Kingdom have also been prosecuted. More recently, in November 2012, approximately 20 Al-Arqam followers were detained by the Selangor Religious Department.⁵⁶

Religious minorities in Malaysia have also reported increasing instances of violent religious persecution on account of their religion and/or belief. This takes the form of demolitions of places of worship. According to reports, between the years 2005 and 2014, there were six cases where local authorities demolished churches or chapels built by the indigenous community. In addition, about a dozen Hindu temples have been completely or partially demolished since 2006, including the prehistoric ruins of an approximately 1,200-year-old *candi* (tomb temple) at an archaeological site in Bujang valley. Many of these demolitions were carried out by private developers (with the government's acquiescence) or by local governments at the behest of these private developers. The government has justified these demolitions by local authorities and private developers on the grounds that the structures did not have the required government approvals, or were built without the owner's permission, or that the demolitions were necessary for development purposes. Nevertheless, such demolitions disregard the religious sensitivities of the followers of these religions, and also raise important questions of equal treatment. The fact that many of these temples predate the Malaysian state also makes the claim that they were unlawfully built more complex than is sometimes recognized. Furthermore, for the indigenous peoples, religious worship and ancestral land are closely connected, therefore security of land tenure may represent an intrinsic aspect of their freedom of thought, conscience, and religion.⁵⁷

56 See Malaysia Country Report at Part II.D.3.

57 See Malaysia Country Report at Part II.D.2.a.

Indonesia: The Country Report highlights the religious persecution of five main groups in Indonesia: the Ahmadiyah Muslims, the Shi'a Muslims, other Muslim groups, Aliran Kepercayaan, and Christians.⁵⁸ Violent religious persecution has tended to be intra-religious, particularly the targeting of the Ahmadiyah Muslims and Shi'a Muslims, though there have also been significant acts of violence against Christian communities. Persecution of the Ahmadiyah Muslims has been the most serious, and is tied to an increasingly assertive demand for the group to be declared outside of Islam and thus banned. For instance, in 2005, the Indonesian Council of Ulama renewed and strengthened its 1980 *fatwa*, declaring the Ahmadis as non-Muslims. While this could be seen as an exercise of religious freedom by mainstream Muslims, the Council also demanded that the government completely ban the group, which would violate the religious freedom of the Ahmadis. This doctrinal dispute has been linked to attacks on the mosques and other premises of the Ahmadis, as well as the disruption of their meetings. There have also been reported instances of fatal attacks on Ahmadis. Some Ahmadis have even been internally displaced, having been forced to leave their homes. While hardline Muslim groups committed many of these persecutory acts, the state has been complicit as it was unwilling or unable to protect the Ahmadis and bring the perpetrators to justice. After a group of civil society organizations known for defending the rights of the Ahmadis was attacked in Jakarta in 2008, the government did not vindicate their rights, and instead issued a Joint Decree (by the Ministers of Religious Affairs, Home Affairs and the Attorney General) severely restricting the activities of the Ahmadis. According to the government, the Joint Decree was necessary to maintain public order.⁵⁹

58 Although the Christian minorities in Indonesia by and large enjoy freedom of thought, conscience, and religion, they have faced increasing difficulties in building houses of worship and in particular regions there have been significant violent conflicts. Followers of indigenous religions, or "aliran kepercayaan" (literally translated as streams of spiritual beliefs), experience discrimination because their religions are not one of the six officially recognized religions. See Indonesia Country Report, at Part II.D.

59 See Indonesia Country Report, at Part II.D.1.

The Shi'a community has also reported instances of violent religious persecution. In one reported incident in late-December 2011, a small Shi'a community in an isolated village in Sampang, Madura (East Java), was attacked. This was followed by another coordinated attack during which a Shi'a adherent was killed and more than 30 houses burned down. The Shi'a families remain displaced from their village. The leader of that Shia community was also charged with defamation of religion laws. While this appears to be an isolated incident, there is nonetheless evidence of rising anti-Shi'a sentiment. Shi'a followers have experienced increasing restrictions on their religious activity and there have been demonstrations demanding that the government ban the group.⁶⁰

These reported instances of religious persecution have been noted by the Human Rights Committee as falling short of Indonesia's ICCPR obligations. The increasingly restrictive conditions faced by the Ahmadiyah community are, among other issues, contrary to Article 18(2) of the ICCPR, which establishes the freedom from coercion as part of the freedom of thought, conscience, and religion.⁶¹ According to the Human Rights Committee in its General Comment 22, the coercive acts prohibited under this article include "the use of threat of *physical force* or *penal sanctions* to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert."⁶²

In its concluding observations on Indonesia's periodic report, the Committee noted with concern the violent attacks against the Shia and Ahmadiyah communities. Specifically, the Committee expressed concern about the lenient penalties imposed on the perpetrators of such violent attacks that were motivated by religious hatred, and urged Indonesia to "take all measures to protect victims of religiously

60 See Indonesia Country Report, at Part II.D.2.

61 Article 18(2) of the ICCPR states that "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

62 General Comment 22, *supra* note 7, at ¶ 5.

motivated attacks; to investigate and prosecute the perpetrators of these attacks and ensure that, if the perpetrators are convicted, appropriate sanctions are imposed; and to provide victims with adequate compensation.”⁶³

The Human Rights Committee also expressed concern over the use of the defamation of religion law to persecute religious minorities. The Committee clearly expressed its view that the law is inconsistent with the Covenant and should be repealed immediately. The Committee reiterated its position as stated in paragraph 48 of General Comment No. 34, that: “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.” As stated in General Comment No. 34, “it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”⁶⁴

C. States Experiencing Significant Religious Conflict

In Myanmar, Indonesia, and Malaysia, religious conflicts have arisen between competing religious groups, but each state maintains some autonomy from opposing groups. It seems likely, however that the government in each country may at least indirectly favour one group (i.e. the majority) over the other for political reasons or as a matter of political expediency. This would mean that the state might be less willing or effective in investigating and prosecuting claims of discrimination and violence

63 Human Rights Committee, ‘Concluding observations on the initial report of Indonesia’, Doc. CCPR/C/IDN/CO/1, Aug 21, 2013, at ¶17.

64 *Ibid.*, at ¶25.

against the less politically-powerful group. It may also lead to the prosecution of victims of violence rather than the perpetrators.

Myanmar: Myanmar has experienced increasing incidents of religious conflict and persecution since embarking on political changes towards greater democracy in 2011. The Country Report highlights that noteworthy inter-religious conflicts occurred in Myanmar in 2012 and 2013, including riots in Rakhine (June and October 2012), Meiktila (March 2013), Okkan (April 2013), Lashio (May 2013) and Kanbalu (August 2013). While sporadic conflicts between the Buddhist majority and its Muslim and Christian minorities have occurred in the past, the Country Report emphasizes that the scale of the 2012 and 2013 conflicts was unprecedented. The majority of the violence occurred in Rakhine State and disproportionately affected Rohingya Muslims.⁶⁵ Other Muslims such as the Kaman⁶⁶ have also been subject to violence ignited by Buddhist nationalism. In addition, the Country Report notes the resumption of armed conflict between the Kachin Independence Organization/Kachin Independence Army (KIO/KIA) and the government since 2011. This conflict bears a religious undertone because the Kachins are predominantly Christian.

Indonesia: In Indonesia, the number of inter-religious conflicts during the transition to democracy (1998-2004) period increased relative to the New Order (1990-1998). During the transition to democracy, there were several

65 The ethnonym, ‘Rohingya’, is currently the most controversial term in Myanmar. Its use is often deemed to have been one of the most important factors behind the Rakhine riots. The use of ‘Rohingya’ was highly contested before and during the last census in late March and early April 2014. Although Myanmar authorities initially allowed the use of ‘Rohingya’ in the census, they rescinded it amidst protests by Rakhines and non-Rakhines. However, this study uses ‘Rohingya’ because it is a better-known term. See Myanmar Country Report at footnote 4.

66 The Kamans are another ethno-religious minority, most of whom live in Rakhine. Unlike the Rohingya, they are recognized as one of 135 ethnic groups. They are estimated to number around 50,000 though their exact number is not known. See Myanmar Country Report at footnote 13.

large communal conflicts between Muslims and Christians. The worst of the violent conflicts took place in Ambon and Maluku, where some 10,000 people were reportedly killed, and Poso, Central Sulawesi, which reported hundreds of fatalities. Peace agreements were signed around 2003-2004 and these communal conflicts have largely abated. Nonetheless, there have been sporadic conflicts on a smaller scale. As the Country Report highlights, these conflicts revolve around claims of defamation of religion and disputes over the building of places of worship. These conflicts are not always violent but these tense situations are easily exploited, and the disputes can be transformed into violent conflicts. In this regard, the unfolding of crucial events, such as local elections, sometimes exacerbates the situations.⁶⁷

Malaysia: Religious conflicts in Malaysia involve violence against religious symbols, sites, or institutions rather than bodily violence. The Country Report highlights that there has been an increase in inter-religious conflicts in Malaysia between 2010 and 2014. Most of these conflicts were triggered by a High Court ruling that the Catholic Church had the right to use the term “Allah” in the Malay language version of its newsletter. During this period, there were reports of attacks on places of worship belonging to Christians, Sikhs, and Muslims, with Christian churches being the primary target of such attacks. The perpetrators burned down churches, threw firebombs and Molotov cocktails, splashed churches with paint, and hurled bricks and stones at the glass windows of some churches. A Sikh *Gurdwara* Sahib was also attacked with stones. There were also reports of pig heads thrown into the compounds of two mosques. Besides property damage, no casualties were reported in any of these cases. However, these acts of symbolic violence are clearly aimed at intimidating religious groups, particularly the religious minorities. Occurring against the backdrop of increased restrictions on minorities’ right to exercise religious freedom, as evidenced by the demolition of Hindu temples and seizure of Malay-language bibles, these conflicts

not only undermine religious freedom in Malaysia, but also risk further aggravating majority-minority relations in the country.⁶⁸

Philippines and Thailand: The Muslim minorities in the Philippines and Thailand have made self-determination claims, which have resulted in violent conflicts in both countries. Religion is only one factor in the range of political, economic, and social discontent upon which the separatist claims are based. Nonetheless, it remains a factor, and has been invoked by separatists to assert a regional identity that differentiates them from the rest of the population and provides a strong source of mobilization. In both countries, the secessionists have claimed the right to establish a Muslim polity that vindicates their Islamic identity and faith, in opposition to the predominantly Catholic population in the Philippines and the predominantly Buddhist population in Thailand.⁶⁹

The role of religion in mobilizing separatist movements is highly complex since religion is used as a reference point for ethno-religious identity rather than for its religious doctrines. In many ways, religious identity serves as a proxy for long-standing political and economic grievances. At this point in time, the conflict in the Philippines has abated after a fairly protracted peace process. A peace agreement was signed in 2012 to provide the region with greater autonomy but the ultimate disposition of that agreement remains at present unresolved. In comparison, the peace process in Thailand has been less successful with sporadic incidences of violence, including bombings and killings, continuing to occur in Southern Thailand on a regular basis.⁷⁰ It should also be noted that apart from the violent conflicts arising from these separatist movements, there have been no other reported instances of religious conflicts in the Philippines or Thailand.

67 See Indonesia Country Report, at Part II.E.

68 Malaysia Country Report, at Part II.F.

69 Philippines Country Report, at Part II.F.; Thailand Country Report at Part II.F.

70 See Thailand Country Report, at Part II.F.

D. States Experiencing Trends in Religious Persecution and Conflict

In three ASEAN Member States, there have been significant improvements in the protection of the right to freedom of thought, conscience, and religion, but there remain some worrying trends. These are Cambodia, Lao PDR, and Vietnam.

Lao PDR: The Country Report notes that there has been a decrease in reported incidents of persecution over the past decade, but that there remain some reports of persecution of religious minorities in some rural areas of Lao PDR. These religious minorities have been the primary target of violent persecutory acts, which include forced renunciations of faith, harassment, arrest, detention and prosecution, confiscation of property, and forced evictions from homes and villages. There are reports that local village or district officials, along with the local police force, have coerced believers to renounce their Christian faith or to engage in animist worship, using threats of expulsion from their homes/village, arrest, denial of education for their children, or other harsh punishments. Although reports of these forced renunciations have declined in recent years, there are still reports of forced renunciations carried out by local authorities at the village or district levels. There are also reports that local officials have forced Christians to participate in animist traditions, including the drinking of animal blood, drinking “sacred water” and swearing of an oath to spirits. Other officials reportedly forced believers to drink alcohol and smoke cigarettes against their will, while others resort to threats of confiscation of identity cards, detention, and even death if they did not comply. In several cases, authorities were reported to have seized the livestock of Christians who refused to renounce their faith.⁷¹

According to the Country Report, there are also reports that Christian minorities who refuse to renounce their faith despite orders from local authorities are forcibly evicted from their villages.

⁷¹ See Lao PDR Country Report at Part II.D.2.

In some cases, they were also dispossessed of their properties. While some groups were able to move to other villages, others were forced to live on the fringes of their communities and denied basic needs. There are also reports that religious minorities have been subjected to arbitrary detention and imprisonment for holding unauthorized religious services or conducting religious activities. Some of their leaders as well as those actively engaged in proselytization have been charged and sentenced for various offenses.⁷²

The above-mentioned violent acts of persecution take place in conjunction with non-violent acts of persecution, such as the denial of educational benefits to the children of Christians because of their religious beliefs, as well as the denial of employment to Christians.⁷³ In addition, churches have also been reportedly been shut down on the basis that they failed to obtain government registration and permission to build places of worship. This is despite members asserting that they have been in operation decades before Decree No. 92 was enacted, and thus the Decree should not be applied retrospectively. The series of church closures triggered expressions of concern from groups that the province was instituting a wider crackdown on Christian congregations.⁷⁴

Notably, these instances of religious persecution would be inconsistent with Lao PDR’s obligations under the ICCPR. Thus far, Lao PDR has not submitted periodic reports to the Human Rights Committee, and as such, the Country Rapporteur was unable to note any response the state may have to these reported instances of persecutions and the allegations contained therein. For this reason due caution must be exercised in reviewing and analyzing accounts of specific acts of religious violence, including assessing the extent of state sanction.

⁷² See Lao PDR Country Report at Part II.D.2.

⁷³ See Lao PDR Country Report at Part II.D.1.

⁷⁴ See Lao PDR Country Report at Part II.D.2.

Vietnam: As the Country Report highlights, there has been notable improvements in the Vietnam government's treatment of religious groups in recent years.⁷⁵ However, some violent state persecution remains. Several religious leaders have been imprisoned, although the Vietnamese government asserts that they had been imprisoned on political grounds rather than religious ones. In addition, there are reports that the government continues to monitor, harass, and sometimes violently crack down on religious groups that operate outside of official, government-sanctioned religious institutions. Targeted groups include "unrecognized branches of the Cao Dai church, the Hoa Hao Buddhist church, independent Protestant and Catholic house churches in the central highlands and elsewhere, Khmer Krom Buddhist temples, and the Unified Buddhist Church of Vietnam."⁷⁶ The United Buddhist Church of Vietnam – a large, unrecognized Buddhist organization – has also reportedly "faced decades of harassment and repression for seeking independence from the officially-approved Buddhist Sangha of Vietnam and for appealing to the government to respect religious freedom and related human rights."⁷⁷ Furthermore, there are reports that "the Vietnamese government continues to ban and actively discourage participation in independent factions of the Hoa Hao and Cao Dai, two religious traditions unique to Vietnam that claim memberships of four and three million, respectively." In addition to violent persecution taking the form of imprisonment of individuals peacefully protesting restrictions on religious freedom, other forms of non-violent persecution includes interference with religious activities and leadership selection; loss of jobs, discrimination, and harassment of followers.⁷⁸ In addition, there have also been restrictions on the religious activities of Khmer Buddhists in the Mekong Delta, Catholics in Nghe An province, Montagnard Protestants

and Ha Mon Catholics in the Central Highlands, and Hmong Protestants in northwest provinces.⁷⁹ It is notable that the Vietnamese government's official position is that there is no state persecution of religious groups in Vietnam, only the lawful prosecution of religious actors who have misused their freedom of religion to violate Vietnamese laws.

As a party to the ICCPR, Vietnam's treatment of its religious minorities has been noted by the Human Rights Committee in its concluding observations on Vietnam's 2001 periodic report. While noting that the information provided was not sufficient for the Committee to have a clear view of the situation in Vietnam with regard to religious freedom and the treatment of minorities, the Committee nonetheless noted that there is information available to show that certain religious practices are repressed or strongly discouraged in contravention of article 18 of the Covenant.⁸⁰ The Committee also noted allegations of harassment and detention of religious leaders.⁸¹ The Committee's proviso on the insufficiency of information points to the difficulty in many cases of obtaining enough empirical data to permit definitive conclusions, especially in circumstances where a state disputes the veracity of factual basis of reports. For this reason due caution must be exercised in reviewing and analyzing accounts of specific acts of religious violence.

Cambodia: Although Buddhism is the state religion and has a very strong influence in the country, there have not been notable instances of religious persecution or conflict in the country since the 1970s. This contrasts with the situation under the Khmer Rouge regime (1975-1979) when a range of severe religious freedom violations was reported. The Country Report notes that under the Khmer Rouge regime, Buddhist pagodas were destroyed, all Buddhist monks and nuns were defrocked, and some monks were threatened with death or killed

75 See Vietnam Country Report, at Part II.B., citing for instance the US Department of State's 2012 International Religious Freedom Report.

76 See Country Report at Part II.B.

77 See Country Report at Part II.B.

78 See Vietnam Country Report at Part II.B.

79 See Vietnam Country Report at Part II.B.

80 Human Rights Committee, 'Concluding observations of the Human Rights Committee: Vietnam', Doc. CCPR/CO/75/VNM, 5 August 2002, at ¶¶16 and 19.

81 *Ibid.*, at ¶16.

if they did not comply or follow, and put their faith in, *Angkar* rather than in religion. Some testimonies attest to the Khmer Rouge prohibiting the Cham Muslims from practising their religion and having imprisoned or killed Cham religious leaders and elders.⁸² The current lack of reported instances of religious conflict or persecution in Cambodia might be attributed to the fact that the country is still in the midst of rebuilding, in the wake of the repressive Khmer Rouge regime. Regardless, the government appears to take a benign approach towards religion and does not actively restrict religious activities.

However, it should be highlighted that this situation could change. As the Country Report notes, there is an increasing number of Christian converts in the country due to the presence of a number of international religious organizations operating within Cambodia. This has caused some tension between Christians and Buddhists in Cambodia. The Country Report notes that there have been sporadic conflicts in the past between Buddhist and Christian groups. For instance, in July 2003, there was the first-ever outbreak of religious conflict between Buddhists and Christians in Svay Rieng Province. A group of 200 people demonstrated at a Christian place of worship, and around 20 protesters, some armed with hammers, took part in the destruction of the church. The villagers blamed the church for the lack of rain in that village for three years. In 2004, a church in Prey Veng province was burned down by unknown arsonists. In 2006, a Buddhist mob destroyed an unfinished church in Kandal Province, with villagers chanting ‘long live Buddhism’ and ‘down with Christianity’ as around 20 people knocked down and burned the church that was being built in their village. The attackers were supposedly angry that a second church was being built in a community that had only one pagoda. Some villagers said the tension went beyond building permits and was due to concern that the Christians were converting people and “[s]o villagers worry that Buddhism will die, and [they] have to fight against Christianity.”⁸³

82 See Cambodia Country Report, at Part II.D.

83 See Cambodia Country Report at Part II.F.

E. States with an Absence of Religious Conflict and/or Persecution

There is a notable absence of religious conflict and violent persecution in Singapore and Brunei Darussalam. Furthermore, apart from sporadic violence between Christians and Buddhists, there is no major religious conflict or violent religious persecution in Cambodia.

Singapore: As the Country Report emphasizes, there is generally no overt or outright violent or non-violent persecution of particular religious groups by the state, although there has been some state discrimination on the basis of religion. There have also not been any recent significant events of religious conflict. The last notable religious conflict in Singapore occurred in 1964. Freedom of thought, conscience, and religion is generally protected, but tends to be subordinated where the interests of a religious group conflicts with that of the state. There is one significant instance of religious persecution: the prosecution of Jehovah’s Witnesses under the law for refusing to perform compulsory military service. The Singapore government does not recognize the doctrine of conscientious objection.⁸⁴ Nonetheless, close monitoring and the strong control that the state exercises over religious activity could result in a chilling effect, even if religious groups are generally not restricted in their religious practice.

Brunei: There has been a notable paucity of reported cases of religious persecution or conflict in Brunei. This could be attributed to the state’s strong monopoly of power resulting in a general lack of political and civic space for dissent. The Country Report points out that the state’s absolute monopoly of power effectively ensures the absence of any forms of violent conflict or religious persecution perpetrated by non-state actors. Absolute rule, decades-long established “emergency” powers, and the country’s small population make it possible to maintain a highly effective system of surveillance and control without any democratic checks-and-balances. In the government’s understanding of

84 See Singapore Country Report, at Part I.B.2.k

Brunei Darussalam as an “Abode of Peace,” no space can be provided for religious violence, religious controversies, or political dissent. Accordingly Brunei has not witnessed any outbreaks of religious violence or violent religious rhetoric. The state’s absolute control of religious expression at the cost of civil liberties has led to an absence of religious persecution and conflict. It should be noted, nonetheless, that there are reports of systematic state surveillance of non-Muslim religious institutions and communities.⁸⁵

Although there is currently an absence of outright religious conflict and persecution in Brunei, there are serious concerns that there might be an increase in religious persecution as a result of its new Syariah Penal Code Order 2013, particularly in light of its harsh laws against blasphemy, apostasy, deviancy, and sexual deviance, all of which contradicts international standards on freedom of thought, conscience, and religion, as well as other aspects of human rights law.

V. Factors for Religious Persecution and Conflict: Key Observations

It has been observed that the more the government regulates religion, the higher the levels of religious persecution.⁸⁶ Notably, all governments of ASEAN Member States have regulations that impact upon religion in varying degrees. Not all of these regulations restrict the exercise of freedom of thought, conscience, and religion. However, a

⁸⁵ Since 2003, all annual reports of the U.S. Department of State on Religious Freedom in Brunei Darussalam have described surveillance of religious services at Christian churches and senior church members. See Brunei Country Report at Part II.D.

⁸⁶ The proposition is that government regulation is the strongest predictor of religious persecution, even after controlling for other possible explanations. *The Price of Freedom Denied is High Indeed*, Religious Freedom and Business Foundation. <<http://religiousfreedomandbusiness.org/price-of-freedom-denied.html>> accessed 24 December 2014. See also generally Grim & Finke, *supra* note 48.

significant number of these regulations do have the effect of restricting this right, particularly when it comes to matters of religious practice. Some of these regulations seriously violate religious freedom, such as laws that restrict the right to adopt, change or renounce a religion or belief, and intrude on the core domain of freedom of conscience, which under international law may not be subject to any state-imposed restriction or limitation at all.⁸⁷ Others infringe upon the manifestations of religious beliefs, which violate religious freedom by interfering with and thereby restricting religious practice. One example is where onerous registration laws are imposed on religious groups, either making their religious activities unlawful or subject to many bureaucratic restrictions.⁸⁸ Furthermore, some laws do not per se violate religious freedom, but could be differentially applied or even abused to constitute discrimination and in serious cases persecution. For example, land use and building code requirements, while legitimate in principle, could be used to prevent some religious groups from establishing and maintaining places of worship altogether, or otherwise interfering with their rights, such as where the government denies groups permits to

⁸⁷ As the Malaysia and Brunei country reports highlight, there are laws restricting Muslims from renouncing Islam and adopting another religion. There is also a draft law in Myanmar that seeks to regulate religious conversion. Although the law does not expressly prohibit conversions, it imposes certain regulatory requirements, which could potentially be used to deny registration of the conversion. See Malaysia Country Report at Part I.B.1.b; Brunei Country Report at Part I.B.1; Myanmar Country Report at Part I.B.1.

⁸⁸ For example, in Lao PDR, religious organizations are required to register with the government. The Country Report notes that this has restricted religious freedom for the Christian minority because the government has prohibited the registration of Christian denominations other than those already recognized by the government, i.e. the Catholic Church, the Seventh-day Adventist Church, and the Lao Evangelical Church. The government has thus required that all other Protestant groups register as part of the Lao Evangelical Church or the Seventh-day Adventist Church. The government believes that this measure will prevent “disharmony” in the religious community. This has also placed the LEC in a somewhat elevated position with the discretion to accept or deny a group who wants to be included under the umbrella of the LEC organization, and the authority over activities of its member groups. See Lao PDR Country Report at Part I.B.2.(viii).

build even after they have fulfilled all administrative criteria or where there is differential treatment for majority versus minority religious groups.⁸⁹

Some other regulations may appear to support the exercise of religious freedom, but may be discriminatory if the support is reserved only for a preferred group or groups. An example is where the state provides religious education but only for those belonging to the majority religion or for selected religions. As a practical matter, it is not possible to provide religious education that matches exactly the wishes of all parents and children, but efforts to provide access to facilities that can help religious minorities conduct religious education on a reasonably equal basis and that, at a minimum, excuses minorities from instruction to which they object on religious grounds can go far toward reducing inter-religious tensions.

While we cannot definitively establish an exact causal link in this study, the experience of ASEAN Member States suggest that there is indeed some correlation between restrictive regulations and religious persecution and conflict. This could take four forms. First, where regulations **prioritize one religion** to the exclusion or marginalization of others, there appears to be a greater likelihood of religious persecution occurring.⁹⁰ Secondly, regulation of religion could lead to persecution and conflict where there is a **conflation of state/national interest** with that of a religion for which the government has assumed responsibility to administer. In this regard, government officials may identify the protection of a state interest with the protection of a religion, such that those who

belong to a different religion could be seen as opposing the state. Third, regulations tend to lead to violent religious persecution where the state views religion as dangerous and takes a strong stance in **subordinating religion** to state interests. Such states view religion with suspicion because it provides an alternative source of normative authority and therefore could be used as a basis for political mobilization. There is also a tendency to associate one or other religion with subversive political agendas. Fourthly, regulations may result in religious persecution and conflict where the state takes an overly hostile stance against religion and seeks to **aggressively exclude** religious groups from legitimately participating in legal and political discourse. Where one or several of such restrictive types of regulations are present, it is likely that there would be increased levels of religious persecution and conflict.

In the course of this study, we found that several factors contribute to increase in one or several of such restrictive regulations which have led to religious persecution and conflict in the ASEAN region. It should be noted that factors contributing to religious persecution do not necessarily also lead to religious conflict, and vice versa. However, because religious conflict is closely related to religious persecution, there would be considerable overlap among the factors. Here, we identify some institutional, political, and social factors for restrictive regulations that have led to religious persecution and conflict across ASEAN.

A. Institutional Factors

1. *State Religions or Constitutionally Privileging the Religion of the Majority*

One key institutional factor for governments to restrictively regulate religion, and which could lead to religious persecution and conflict is constitutional arrangement of state and religion. Indeed, as has been observed, state identification with religion, both positively and negatively, correlates

⁸⁹ This has been a major source of tension between the Muslim majority and Christian minorities in Indonesia. There have been reported instances of Christian minorities being denied building licenses. While this forms the majority of disputes, there have also been a few instances where Muslims living in Christian majority areas faced difficulties in building mosques. See Indonesia Country Report for Indonesia, at Part I.B.2.b.

⁹⁰ Grim and Finke observes that, among others, attempts to regulate religion by supporting a single religion frequently lead to violent religious persecution. Grim & Finke, *supra* note 48, 2.

with low levels of religious freedom.⁹¹

As mentioned earlier, there are a variety of state-religion arrangements among ASEAN Member States. Malaysia, Brunei, and Cambodia are explicit confessional states in that they declare an official religion in their constitution. Myanmar and Thailand do not explicitly declare an official religion, but their existing constitutional order implicitly does so by privileging the majority religion. Indonesia does not declare any religion as the state religion but pronounces that the state is based on belief in the one God, and is not strictly speaking a confessional state, although the constitutional declaration does legitimate, to some extent, state administration of religion. Lao PDR, Vietnam, and Singapore do not address the status of religion in their constitution, while the Philippines is the only ASEAN Member State that adopted the separation of church and state arrangement.

The presence of state religions is one factor that accounts for restrictions on freedom of thought, conscience, and religion, which have lead to religious persecution and in some instances, conflict.⁹² Within ASEAN, states which expressly declare a state religion as well as states that expressly privilege the majority religion tend to prioritize one religion in law and policies, which could lead to the marginalization and exclusion of other religions. This can be seen in Malaysia and Brunei, and to a lesser extent, in Cambodia, Myanmar, and Thailand. In addition, in such states, there tends to be a conflation of state or national interests with that of the dominant religion.

91 W. Cole Durham, Jr. 'Patterns of Religion State Relations', in John Witte and M. Christian Green, (eds.), *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2011), at 360.

92 The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population issue was raised specifically for attention by the Human Rights Committee in their exposition on Article 18 of the ICCPR in General Comment No. 22, *supra* note 7 (see specifically ¶ 9).

Prioritization contributes to religious persecution where the adopted laws end up discriminating against religious minorities in a manner that severely violates their religious freedom and other rights. Such discrimination may take the form of explicit measures, such as restricting one's eligibility for government service to members of the predominant religion, giving economic privileges to the predominant religion, or imposing special restrictions on the practice of other faiths.⁹³ Religious minorities as well as dissenters within the majority religion may also find it discriminatory if religious majorities seek to impose their particular moral code on the rest of the population, where such a moral code contradicts their own norms or places onerous restrictions on their private conduct. Such prioritization of one religion contributing to religious persecution can be seen specifically in the context of Malaysia and Brunei, where the religious norms of the religious majority have strongly influenced laws and policies to the detriment of religious minorities. Both Malaysia and Brunei have sought to justify coercive practices against religious minorities as well as on dissenters within the majority religion on the basis of protecting the privileged position of Islam. For example, in a recent case concerning the government's prohibition of Christians using the word 'Allah' in Christian publications, the Malaysian Court of Appeal upheld the government's prohibition on the basis, *inter alia*, that the constitutional declaration – that Islam shall be the religion of the federation but that other religions could be practiced in peace and harmony – should be interpreted as requiring the state to "protect the sanctity of Islam as the religion of the country, and also to insulate against any threat faced, or any possible and probable threat to the religion of Islam." In this regard, the Court stated that "the most possible and probable threat to Islam, in the context of this country is the propagation of

93 State religions and its potential adverse impact on religious freedom was raised for specific concern by the U.N. Human Rights Committee in General Comment 22, *supra* note 7, at ¶ 9.

other religions to the followers of Islam.”⁹⁴

Furthermore, in Brunei and to a lesser extent in Malaysia, there are measures restricting eligibility for government service to members of the predominant religion. The Brunei constitution stipulates for instance that “[n]o person shall be appointed to be Prime Minister unless he is a Brunei Malay professing the Muslim religion.”⁹⁵ Governments in these countries have also sought to super-ordinate Islamic norms over all other norms, even if this discriminates against non-Muslims. In Malaysia, the secular courts have deferred jurisdiction to Syariah courts and upheld Islamic norms in matters implicating the religious freedom of Muslims.⁹⁶

In Myanmar, there is also a worrying trend of effective government legitimation of extreme Buddhist orthodoxy, which may be seen as undermining pluralistic views of the practice of Buddhism. The political and legal claims arising from such extreme views have the effect of restricting the rights of religious minorities. Among the groups that have proposed such views, the most prominent are the vocal and emotional Buddhist nationalist movement led by *Amyo Ba-tha Tha-tha-na Ka-kwaè-saung-shauk-ye Apwè* (abbreviated to *Ma-Ba-Tha*) (literally translated as Organization for Protection of Race, Religion and Sāsana although its official English translation is Patriotic Association of Myanmar (PAM)) and its constituent 969 movement. For instance, the Country Report points out that *Ma-Ba-Tha* is responsible for promoting the draft legislation against religious conversion, and canvassing support for three other bills on monogamy, interfaith marriage, and population control. These four bills together constitute a package popularly known in Myanmar as *Myo-saung Upade* (Race Protection Bills). The motivation behind

these bills is to supposedly protect Buddhism, which both *Ma-Ba-Tha* and 969 claim is under threat from Islam and Islamization.⁹⁷ Furthermore, there is concern that the implementation of these proposed laws would discriminate against religious minorities because they would be implemented by government departments that are overwhelmingly Buddhists. For example, officials interviewing applicants for conversion (as required under the proposed law) may exercise undue influence or exert pressure on applicants who wish to convert from Buddhism to another religion.⁹⁸

Furthermore, confessional states also tend to enact laws that serve to protect a certain religious orthodoxy, which could undermine freedom of thought, conscience, and religion. In extreme circumstances, the influence of religion may be so strong that religious doctrine not only informs state regulations but monopolizes the state’s laws and policies to such an extent that freedom of thought, conscience, and religion are subordinated to the requirements of the religion (as defined by the state). Blasphemy laws are one such example of laws that are clearly shaped by dominant religions, which could have adverse impact on minority religions, atheists, agnostics, and non-orthodox groups within the dominant religion. Besides blasphemy laws, apostasy laws present in some ASEAN Member States also stem from a specific religious orthodoxy and seriously restrict the right of individuals to choose their religion, which is an essential component of the freedom of thought, conscience, and religion as understood under international human rights law. Such blasphemy and apostasy laws are present in Malaysia and Brunei. In Malaysia, these laws apply to Muslims as part of the Syariah legal system.⁹⁹ Brunei’s new Syariah Penal Code extends the blasphemy laws to non-Muslims. Both Muslims and non-Muslims accused of insulting Prophet Muhammad can, under specific procedural conditions, be sentenced to death when

94 See Country Report for Malaysia, at Part I.B.iii. The case is *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 8 CLJ 890 (CA) (hereafter “Herald case”).

95 Part III, Article 4 (5) of the Constitution of Brunei Darussalam. See Brunei Country Report, at Part I.B.

96 See Malaysia Country Report, at Part III.A.4.

97 See Myanmar Country Report, at Part II.C.

98 See discussion in Myanmar Country Report, at Part II.A.

99 See Country Report for Malaysia, at Part I.B.1.b and Part I.B.2.a.iv.

these provisions come into force at a later stage of the law.¹⁰⁰ This unquestionably and severely restricts the freedom of thought, conscience, and religion of Muslims and non-Muslims.

In addition, confessionalism could contribute to religious persecution and conflict because it provides an ostensibly legitimate **constitutional platform for dominant religions** to assert privileges that could inappropriately restrict the freedom of thought, conscience, and religion of individuals. For instance, in Malaysia and Myanmar, the prioritization of Islam and Buddhism, respectively, as the religion of the majority has provided a legitimate platform for religious nationalist groups to assert greater restrictions on religious minorities.

Although Buddhism is also privileged in Thailand and is the state religion in Cambodia, there are fewer reported incidents of religious persecution or conflict, or indeed of instances where the dominant religion was used to restrict the rights of minorities or used in a discriminatory manner. This could be due to demographic contingencies since the population is overwhelmingly Buddhist in these two countries. It also demonstrates the desirable condition of having a tolerant majority. However, there is a tendency for the state/national interests to be conflated with the interests of the religious majority precisely because the government is composed of officials and politicians who are overwhelmingly from the majority religion. This close conflation of the state with Buddhism is indeed one source of discontent fueling the separatist movement in southern Thailand. As the Country Report points out, the Muslim community there is suspicious of the policies of the Thai government as they perceive them as attempts to abolish their traditional Islamic customs.¹⁰¹

2. Statist and/or Communitarian States

Statist and/or communitarian states exercise extensive control over all aspects of life, of which religion is a part. As a result, religion tends to be subordinated to state goals, specifically the overarching norms of state unity and goals attendant to the character of the state. This often means that the interests of the state, sometimes presented as the interests of the community, tend to take priority over individual rights. Furthermore, there is a tendency for the state to exert strong control over religion with the objective of ensuring that religion is always subjected to state goals, and does not become a possible source of counter-ideology.

It is when religion is viewed as being a threat to the state that religious persecution and conflict would tend to ensue in these statist and communitarian states. ASEAN Member States that adopt a statist and communitarian outlook in their political ideology are single party or dominant party states such as Vietnam, Lao PDR and, to some extent, Singapore. Religion is often viewed as a threat by these states because of its capacity to mobilize believers to counter the state ideology. Another reason for state hostility towards religion is ideological, as is commonly the case with some socialist and communist regimes. In this regard, religion is negatively identified with the state.¹⁰² Furthermore, the state/party monopoly on politics and political discourse affects the freedom of thought, conscience, and religion in that such freedom is expressly and continuously subjected to state goals. To put it simply, individuals and groups enjoy freedom of thought, conscience, and religion to the extent that the exercise of this freedom does not affect important state interests.

This hierarchy of interests is reflected in laws and policies addressing religious freedom in Vietnam. As the Country Report points out, Vietnam practices a single-party system whereby the Communist Party of Vietnam exercises exclusive leadership over the state and society in Vietnam. This means that the state/party not only has

100 See Country Report for Brunei, at Part I.B.

101 See Thailand Country Report, at Part I.B.4.f.

102 See Durham, *supra* note 91.

exclusive control over the regulation of religion in the country, it also monopolizes the discourse over religion. Consequently, as was pointed out in the Country Report, alternative perspectives on religious freedom would be considered as “wrong convictions” or having a “reactionary tone.”¹⁰³ In other words, alternative conceptions of religious freedom could be considered to be anti-party and anti-state. Thus, while the 2013 constitution guarantees the “freedom of belief and of religion” and the equality of all religions before the law, it also enjoins persons not to “take advantage of belief and religion to violate the laws”. What this means is elaborated in the National Assembly’s Standing Committee’s 21 Ordinance on Belief and Religion 2004, which prohibits the abuse of the right of belief and religious freedom:

“to undermine peace, national independence and unification; incite violence or propagate wars, conduct propagation in contravention of the State’s laws and policies; divide people, nationalities or religions; cause public disorder, infringe upon the life, health, dignity, honour and/or property of others, or impede the exercise of civic rights and performance of civic obligations; conduct superstitious activities or other acts of law violation.”¹⁰⁴

This long list of state interests marks out the boundaries limiting the freedom of thought, conscience, and religion in Vietnam. Restrictive laws that could be regarded as violating religious freedom stems from this strong stance that the government takes in subordinating religion to state interests. Furthermore, because the government tends to view religion with some suspicion, it is wary of religious activities being used as platforms for anti-communist campaigns. As the Country Report emphasizes that the party and the state in Vietnam have repeatedly maintained that the “enemy forces” both inside and outside Vietnam employ religions

as a strategy of “peaceful evolution” to peacefully replace the communist regime in Vietnam with a western-style democracy.¹⁰⁵

Consequently, persecutory acts such as the incarceration of religious leaders has been justified on the basis of political, rather than purely religious, grounds. The example provided in the Country Report of the case of Nguyễn Văn Lý, a Vietnamese Roman Catholic priest who has been repeatedly imprisoned since the 1970s is frequently justified on the basis of his political activities. Most recently, in 2007, Lý was arrested and sentenced for eight years for the crime of conducting propaganda against the Socialist Republic of Vietnam under Article 88 of the Criminal Code of Vietnam. The state justified the trial and conviction on the basis that Lý had departed from true religion, and misused his priesthood to participate in subversive activities against the state and undermine national solidarity.¹⁰⁶

Minor separatist movements that employ religion as a point of mobilization further reinforce the Vietnamese government’s characterization of religion as a counter-ideology to the communist state. One such movement calls for the creation of a so-called “Degar Republic” of the Degar people—the indigenous people of the central Highlands of Vietnam. The movement uses religion-based advocacy centred upon “Degar Protestantism” as a basis for mobilization. The party/state however claims that “Degar Protestantism” is opportunistic as it “take[s] advantage of the ethnic minority people’s low intellectual standards and their naivety to induce and incite them to argue for separatism and autonomy.” A 2001 rebellion in the central highlands by supporters for a “Degar Republic” was strongly repressed by the government.¹⁰⁷

Like Vietnam, Lao PDR is a single-party socialist republic under the exclusive guidance of the Lao People’s Revolutionary Party (“LPRP”). The LPRP is

103 See Vietnam Country Report, at Part III.A.3.

104 Vietnam Country Report, at Part I.B.1.

105 Vietnam Country Report, at Part III.A.3.

106 Vietnam Country Report, at Part III.A.3.

107 Vietnam Country Report, at Part III.A.3.

the “leading nucleus” or “axle” while the Lao Front for National Construction (“LFNC”) and other mass and social organizations are characterized as the “power” managing the State. The Lao state is not hostile to religion in general, and views Buddhism and animist traditions as a legitimate part of Laotian culture. However, some Lao authorities see Christianity, which has spread rapidly among ethnic minorities - particularly those who have long resisted or resented government control, both as imperialism and an “American import” that potentially threatens Communism, or as a cause of social and familial friction in local communities who mostly believe in animism or Buddhism. The view of Christianity as a foreign religion or a tool of deception used by “the American enemy” to infiltrate homes and break up Lao society, or to oppose the present Lao political system, has been used by local authorities to disparage the Christian faith and to force believers to recant their faith in many instances.¹⁰⁸ It should also be noted that believers in the LEC (as well as other Protestant Christian groups) comprise mostly of members of the Mon-Khmer and Hmong tribes, two groups that historically have resisted central Government control, thus contributing to the distrust of Christianity.¹⁰⁹

Unlike Vietnam and Lao PDR, Singapore is not a single-party socialist republic, but has been described as a dominant party democracy. There are two laws that reflect the subordination of religion to state goals or public interests: the Maintenance of Religious Harmony Act (MRHA) and the Sedition Act. The MRHA was enacted in 1990 with the stated objective of maintaining inter-religious peace by legislating the separation of religion and politics. The MRHA empowers the government to issue warnings and restraining orders against religious leaders and members who have committed or are attempting to “causing feelings of enmity, hatred, ill-will or hostility between different religious groups”; “carrying out activities to promote a political

cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief”; “carrying out subversive activities under the guise of propagating or practising any religious belief”; or “exciting disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief.” The Act was enacted with the stated purpose of addressing over-zealous proselytization and the supposed use of religious platforms for political purposes. The MRHA provides gradations of pre-emptive measures, thereby widening the options the government can exercise in intervening in religious matters where public order or security is implicated. As the Country Report highlights, the MRHA reflects state ideology that religious freedom must be circumscribed and subject to the overarching public interest in maintaining religious harmony, which means that there is a constant need to ensure that the exercise of religious freedom is not used to undermine public order (broadly defined) and national security. Besides the MRHA, the Sedition Act makes it an offence, *inter alia*, to “to promote feelings of ill-will and hostility between different races or classes of the population of Singapore”. This similarly subjects the exercise of religious freedom to the overarching state goal of maintaining harmonious relations among the various religious groups. Although these laws grant the state wide discretionary powers and have been the basis for some discriminatory acts, they have not been implemented in a manner that would constitute religious persecution. To a great extent, the Singapore government protects the freedom of thought, conscience, and religion, and has endeavoured to be even-handed to all religions.

Although the statist/communitarian nature of these states have led to the subordination of religion to state interests and contributed to some instances of religious persecution, there has been a notable lack of religion-related conflict in these countries. This could be attributed to the success of the state in controlling civic and political spaces of interaction, which thus suppresses disagreement and conflict, although one should also note the efforts made

108 See Lao PDR Country Report, at Part III.A.1.b.

109 See Lao PDR Country Report, at Part III.A.1.b.

in these countries to give greater recognition and protection to religious freedom in recent times.

3. *Incorporation of Religion into the Government Structure*

Another important factor to consider when determining the relationship between religion and governmental institutions, is the extent to which religion has been incorporated into the government structure. Such religious bureaucratization could result from a large religious majority and constitutional endorsement (i.e. the lack of separation between state and religion). State agencies responsible, directly or indirectly, for religious education, oversight of orthodoxy, financing, and so on, are likely to be populated by officials predominantly or exclusively from the majority religious group. This may be the case even if there is no overwhelming religious majority, but where the bureaucratic agencies of the government is, for traditional or other reasons, overwhelmingly composed of persons from the majority religion.

In this regard, whether or not as part of conscious state policy, there is a tendency for state interests to be conflated with the interests of the religious majority, and which, from the majority perspective, can appear to justify intolerance and persecution. Groups that are not part of this religious majority would feel alienated and potentially threatened. This could account for why in Lao PDR, Christian faiths are also viewed with suspicion as they do not share the high degree of incorporation into the government structure as Theravada Buddhism, which is the religion of the majority and of most Party officials. Some authorities have chosen to interpret Christian teachings of obedience to God as signifying disloyalty to the Government and Party.¹¹⁰ Similarly, in Indonesia, the defamation of religion laws has been used to protect the religious norms of orthodox Muslims could be used to restrict the freedom of thought, conscience, and religion of others, including dissenters within the majority

faith, religious minorities, as well as atheists and agnostics.¹¹¹

B. Political Factors

1. *Politicization of Religion*

Religion becomes politicized when it is invoked in political discourse for political aims. Politicization is facilitated by the fact that religion is an important identity marker for peoples within ASEAN. Politicization is one factor contributing to religious persecution and conflict. This manifests itself particularly in Malaysia, Myanmar, and Indonesia. Politicians in Malaysia have been criticized for invoking religion to augment support for themselves and to discredit political opponents. This more-Islamic-than-thou contest primarily between the United Malayan National Organization (UMNO) (part of the ruling alliance) and *Parti Islam se-Malaysia* (PAS) (an opposition party) has had adverse consequences for the freedom of thought, conscience, and religion of Muslims and non-Muslims in the country. For instance, as the Country Report illustrates, there is criticism that UMNO is using the *Herald* case¹¹² to boost their Islamic credentials amongst its Malay-Muslim voters. Furthermore, politicians have found it expedient to exploit doctrinal differences such as seeking to discredit political opponents as being Shia followers. When Shia followers were arrested and detained, the President of UMNO stated that the UMNO constitution should be amended to indicate that Islam in Malaysia is of *Sunnawal Jamaah*. UMNO politicians have also found it expedient to discredit political opponents as Shia, labelling a certain “No 2 in PAS” a “top Shia leader”.¹¹³ The Country Report astutely points out: “When religion is used as a political tool, it diverts the dialogue on religious freedom from its focus on human rights and the impact of

110 See Country Report, at Part III.A.1.b..

111 See Indonesia Country Report, particularly at Part I.B.1

112 *Herald* case, *supra* note 94.

113 See Malaysia Country Report, at Part III.A.1.

the injustices on the lives of ordinary Malaysians. It also runs the risk of creating a division between the different religious communities in Malaysia, pitting one against the other.”¹¹⁴ Politicization is also a frequent issue in Indonesia where politicians have invoked religion to augment their political support.¹¹⁵

Politicization of religion has also contributed to religious persecution and conflict in Myanmar since the political liberalization process began in 2011. The next general elections are scheduled for 2015 when a fierce contest is expected between the current ruling Union Solidarity and Development Party (USPD), and the popular democratic National League for Democracy (NLD) led by Nobel laureate Daw Aung San Suu Kyi. As the Country Report points out, previous regimes did not need to, and indeed did not, actively invoke Buddhism to mobilize political support in Myanmar. However, with the pending democratic elections, there is now a need for competing political parties to garner political support and, in doing so, they are careful not to offend the sensibilities of the Buddhist majority. It has thus become politically expedient to support the growing Buddhist nationalist sentiment in order to gain support.¹¹⁶

Politicization of religion has also been identified as a negative contributing factor for religious freedom in the Philippines. As the Country Report points out, there has been a resurgence of the influence of the Catholic clergy since the fall of the Marcos dictatorship in 1986. Unlike in Malaysia, however, the impact of this politicization has been the dominant role that the church has managed to play in influencing laws and public policies. For instance, the Catholic Bishop’s Conference of the Philippines managed to marshal the most conservative Filipino Catholics against the Reproductive Health Law. As a result, even though authoritative surveys and polls show that the majority of Filipinos support the

Reproductive Health Law (71% of the population in 2014 and 69% of Catholic Filipinos in 2010), it still took the Philippine Congress more than 14 years to pass the law because of the legislators’ fear of losing the clergy’s support.¹¹⁷

2. *Congflation of National Identity with One Religion*

In addition, religious persecution and conflict could, in certain instances, be seen to have become an unintended consequence of the *de facto* conflation of national identity with the majority religion, resulting in the marginalization and exclusion of minorities from this singular national identity. This is apart from constitutional endorsement of a specific religion. Religious or dominant majorities could try to use the political process to influence state regulations in a way that may discriminate against other religious groups.

In some instances, the conflation of religion with national identity is intentional. In Brunei, in particular, the conflation of religious identity with national identity is a consequence of the proclaimed national ideology, “Melayu Islam Beraja” (Malay Islamic Monarchy or MIB). This ideology not only reinforces the constitutional privilege of Islam, it has also been used to justify far-reaching limitations of the freedom of thought, conscience and religion of both Muslims and non-Muslims. The national ideology effectively excludes non-Muslims from full citizenship status and rights. This limits open discussion on religious doctrines and religious freedom because it could be seen as a challenge to the sultan’s political power.¹¹⁸

In extreme circumstances, religious minorities may mobilize against the state, resulting in religious conflict. This has been the case in Thailand and the Philippines. Thailand’s asserted foundational ideology, the trilogy of *Chat*, *Sat-sa-na*, and *Pra-ma-ha-ka-sat* (the Nation, the Religion, and

114 See Malaysia Country Report, at Part III.A.1.

115 See Indonesia Country Report, at Part II.A., particularly where the author discusses regional autonomy.

116 Myanmar Country Report, at Part III.A.3.

117 See Philippines Country Report, at Part III.A.

118 Brunei Country Report, at Introduction and Part III.A.

the King), has always been understood to mean Buddhism when it refers to Religion.¹¹⁹ The strong associational link between the Thai national identity and Buddhism (i.e. to be Thai is to be Buddhist) is one source of discontent among Muslims in southern Thailand who have been agitating for independence, or at least autonomy, from what they consider to be Buddhist Thailand.¹²⁰ Similarly, since most Filipinos are also Catholic, the supposed contrast between Catholic Filipinos and Muslim Moros in Southern Philippines has been an integral part of the ideological rhetoric in the Mindanao secessionist movement.¹²¹ While, in both instances, religion is but one identity marker utilized by these movements in advocating for secession, it is significant that religion and politics have become entwined in such a manner.

Besides race/ethnicity and national identity, the conflation of religious identity with cultural identity can also be seen to have contributed to religious persecution and conflict in several ASEAN states. This is manifest in Lao PDR, Cambodia as well as Myanmar. In Lao PDR, although the constitution does not designate an official state religion, the state effectively regards Theravada Buddhism, the religion practiced by two thirds of the population, as the unofficial national religion and employs Buddhist rituals in state functions. Theravada Buddhism, is widely regarded as an integral part of Lao culture

and as a way of life, with more than 4,000 Buddhist temples serving as the centre of community life in many rural areas.¹²² As the Country Report highlights, as Lao PDR is a socialist State whose population has a long history of Buddhist and animist traditions, some Lao authorities view Christianity as a foreign religion or as a tool of deception by “the American enemy” to infiltrate homes and break up Lao society or to oppose the present Lao political system.¹²³

The impact of this close association between religion and dominant culture has also become more obvious in Myanmar since political reforms began in 2011. As the religion professed by the majority of its population, Buddhism has always been an important marker of Burmese identity. Since Myanmar is predominantly Buddhist, Buddhist identity is the most important and readily available channel through which people may be mobilized. In other words, popular opinion in the case of Myanmar is Buddhist opinion.¹²⁴

Similarly in Cambodia, the close relation between Buddhism, on the one hand, and Khmer culture and identity, has led to some hostility against external religions (i.e. Christianity, Islam and other religions). Some Cambodians see these religions as a threat to their identity and to traditional Buddhism in Cambodian society and this has contributed to religious conflicts between Christians and Buddhists.¹²⁵

3. *Religion's Normative Authority*

While religion is often politicized for political gains, religious persecution and conflict could also arise when political elites seek to respond to what they perceive to be the normative demands of their religious faith. In other words, when

119 See Thailand Country Report at Introduction.

120 To be sure, their asserted differences go beyond religion; many Southern Muslims retain a strong Malay identity and speak Yavee, which is a language more similar to Standard Malay (Bahasa Malaysia) than to Thai. The region also has a history of forced assimilation and resistance. The community is suspicious of the policies of the Thai government as they perceive them as attempts to abolish their traditional Islamic customs. See Thailand Country Report, at Part I.B.4.f.

121 However, as the Country Report points out, while religious identity is commonly used to mobilize support for the secessionist movement, it would be a mistake to think of the conflict in purely religious terms. Indeed, the report opines that to some extent, religious identity serves as a proxy for long-standing political and economic grievances that, as the 2012 peace agreement shows, are best addressed through political and economic arrangements that have little to do with religion. See Country Report, at Part II.F.

122 Lao PDR Country Report, at Introduction.

123 See Lao PDR Country Report, at Part III, A.1.b.

124 Myanmar Country report, at Part III.A.3.

125 See Cambodia Country Report, at Introduction, Part II.F., and Part III.A.

political leaders become convicted that they have to implement a version of religious laws in order to fulfil their religious duties, this can lead to restrictive regulation of religion and eventually to religious persecution. Hence, the normative authority of religion should not be underestimated and partly explains the Brunei government's Islamization policies, especially its recent passing of the Syariah Penal Code Order 2013. For the government, the implementation of Islamic laws is necessitated by divine command. Even though the law has been criticized for contravening human rights, the government perceives the law as part of "God's commandments" and thereby prior and superior to "man-made laws". From this perspective, "true" religious freedom is realized, but only within the limits of Islamic law. As Brunei Sultan Hassanal Bolkiah puts it, the government merely "choose[s] Islam as a step to seek blessings from Allah the Almighty, not to persecute or oppress anyone."¹²⁶ Indeed, some Islamic organisations and politicians from neighbouring countries have praised Brunei for its supposedly God-serving "courage."¹²⁷

4. *Weak Law and Order*

A weak state with a breakdown of or weak law and order opens up space for religious majorities to gain widespread support and/or gain access to tools of violence that can be wielded against religious minorities. In the context of ASEAN, this has generally arisen in the wake of democratization following a sustained period of authoritarian rule. While democratization has generally led to a decline in state persecution of religious groups, democratization following a sustained period of authoritarian rule has led to an increase in inter-religious conflicts, where the state is complicit or not in a position to defend the persecuted group. Indonesia is one ASEAN Member State where democratization and the corresponding temporary weakening of the state has contributed to religious violence.

¹²⁶ See Brunei Country Report, at Conclusion.

¹²⁷ See Brunei Country Report, at Conclusion.

Indonesia has been in a democratization phase since the fall of the Suharto regime in 1998. Democratization has led to positive constitutional changes, including the insertion of an extensive bill of rights that strengthens the constitutional guarantee of the freedom of thought, conscience, and religion. However, it has also opened up space for the proliferation of more hardline religious movements. Groups previously repressed in the authoritarian regime now have equal rights to freedom of expression. The opening up of political space has been said to allow "extremists to exploit the democratic space for their own gains, often promoting religious intolerance and triggering communal conflicts, against democratic principles. For Indonesia, given its size and diversity, the challenges are multiplied."¹²⁸ The transition to democracy also saw an increase in inter-religious conflicts although this has abated since 2004, a year which was identified by the Country Report as the start of the new democratic phase. The weakness of the state bureaucracy in handling religious conflicts has exacerbated the situation.¹²⁹

Another country where democratization has led to a weakening of the state, which contributed to religious conflict is Myanmar. Since the Myanmar military government announced in 2011 that it would lead the country in a process of political democratization, the prospect of competitive politics has dominated the political landscape and political parties appear reluctant to criticize those involved in religious conflicts, especially the Buddhist nationalists.

5. *Decentralization of Power*

Decentralization generally limits state power because local communities are given greater scope to exercise political power and to govern themselves. Decentralization, however, can be a

¹²⁸ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – Indonesia', Doc. A/HRC/21/7, 5 July 2012, cited in the Indonesia Country Report, at Part III.

¹²⁹ Indonesia Country Report, at Part III.

double-edged sword for human rights if there is not yet a strong foundation of rights-protection or of strong inter-religious consensus (where the local community is multi-religious). Thus, majoritarian local values may be invoked to restrict the freedom of thought, conscience, and religion of minority religious groups. Where the local authorities are unable or unwilling to protect the rights of religious minorities, this can lead to persecution and outright sectarian conflict. This unfortunate outcome of decentralization has been noted to be the case in Indonesia and Lao PDR.

In Indonesia, regional autonomy has increasingly spread after the end of Suharto's authoritarian regime. As the Country Report highlights, religion is one of the areas excluded from the authority of local governments. The elucidation of the law on regional autonomy describes matters of religion as including religious public holidays, recognition of a religion, and policies on religious life. In practice, however, many local governments have legislated on matters that directly and indirectly affect the freedom of thought, conscience and religion. A significant number of regulations regulate religious life or even mention religious values as the basis of local laws. Decentralization complicates the legal analysis of the manner in which the freedom of thought, conscience, and religion is regulated, guaranteed and protected in Indonesia. As of July 2013, there were 539 autonomous regions (consisting of 34 provinces, 412 districts and 93 cities). The local laws promulgated by local authorities at the provincial, district and city level probably number in the several tens of thousands. The sheer number of these local laws makes it difficult to assess precisely the extent of the impact they have on the freedom of thought, conscience, and religion in Indonesia.¹³⁰

That said, it has been noted several of these law severely restrict the freedom of thought, conscience, and religion. These include restrictions of so-called deviant sects, including the denials of licenses to build houses of worship as well as the enactment of other religious-based local laws. Several of

these laws have been enacted on the basis of maintaining public order, including the need to maintain harmony among religious communities. Furthermore, as the Country Report notes, many of these local laws increasingly discriminate against women and religious minority on religious grounds.¹³¹ In its reports from 2010 and 2013, the National Commission on Violence against Women (*Komnas Perempuan*) listed 154 discriminative policies, of which 63 target women and 91 regulate religion with adverse results for the freedom of thought, conscience, and religion. Nine out of the 91 policies specifically restrict the freedom of religion of the Ahmadiyahs. In 2013, the numbers more than doubled with 334 discriminative policies at the local level, the majority of which are based, explicitly or implicitly, on certain religious views. The Commission points out that 31 of the policies target religious minorities, and many indirectly discriminate against women and members of minority groups, including 70 laws that regulate women's dress based on religion. These religion-based regulations seek to regulate a wide range of conduct, including requiring women to wear headscarves, restricting the sale and distribution of liquor, gambling, prostitution, characterising certain behaviors as un-Islamic, making compulsory obligations such as paying religious alms (*zakat*) or reading the Qur'an, and so forth. A prominent example raised in the Country Report is local law No. 12/2009 of the city of Tasikmalaya, West Java, titled "Development of Social Values based on Islamic and Social Norms of the City of Tasikmalaya." It regulates a range of behaviors, from corruption, adultery (heterosexual or homosexual), gambling, abortion, the use of any kind of entertainment which is "pornographic," to witchcraft (*perdukunan*) that tends to oppose religious faith, and deviant teachings (*aliran sesat*). In 2012, there was an attempt to establish "sharia police" to enforce this law, but it was abandoned due to a lack of popular support.¹³²

130 See Indonesia Country Report, at Part II.A.

131 See Indonesia Country Report, at Part II.A.

132 See Indonesia Country Report, at Part II.A.

The Country Report notes that while almost all the local laws seeking to regulate behaviour on the basis of religion have invoked Islam, there have been a few unsuccessful attempts to enact Christianity-based laws. A prominent example is the draft law proposed in 2007 to make Manokwari, a city in Papua, a “Bible City” with clearly discriminative clauses that would make building a non-Christian house of worship or wearing religious clothes (such as headscarves for Muslim women) illegal. This was very controversial, and rejected not only by Muslims but also by mainstream national Christian organizations. There have been attempts to revise the proposed law to make it less discriminatory but this has so far not been successful.¹³³

The Country Report also highlights the special case of the province of Aceh. Its status of a special province makes it different from other regions as it may enact laws dealing with religion. It has enacted Sharia-based regulations since 1999. In 2001, Aceh was granted a Special Autonomy Law, which was followed by the enactment of a few sharia regulations with criminal penalties for offenses, such as gambling, the sale and consumption of alcohol, and regulations governing Muslim women’s dress. After the signing of a peace agreement in 2005, Aceh was granted the status of ‘special autonomy’(through Law No 11 of 2006), which paved the way for the implementation of *Sharia* or Islamic law for Muslims. Article 126 of the 2006 law states that every Muslim in Aceh is obligated to obey *Sharia*, and every resident (regardless of religion) is obligated to respect *Sharia*. Aceh’s implementation of Islamic laws is more extensive compared to other regions because it includes Islamic criminal laws. Conduct such as drinking alcohol and gambling have been criminalized (*qanun jinayah*), and the Aceh Parliament is seeking to pass even more comprehensive Islamic criminal laws. Many of the existing and proposed laws contravene the national Constitution, specifically its guarantees of fundamental human rights.¹³⁴

Decentralized government also contributed to religious persecution in Lao PDR. Since the issuance of Decree No. 92 in 2002, the Religious Affairs Department of the Lao Front for National Construction (LFNC) appears to have adopted a policy of non-involvement in local religious controversies except in extreme cases. Instead, the LFNC has generally encouraged local authorities to resolve issues locally, using Decree No. 92 as a guide. This decentralization in the management of religion has resulted in inconsistent application of Decree No. 92 such that the state of freedom of thought, conscience, and religion varies from region to region in Lao PDR. While there has been greater religious tolerance and scope for the exercise of religious freedom in some areas, there has been an increase in religious intolerance and greater restrictions on religious freedom in others.¹³⁵

As the Country Report highlights, the state of religious freedom has generally improved in larger urban areas, such as Vientiane, Thakhek, Pakse, and Savannakhet Cities. However, serious concerns remain, particularly in certain rural areas where the threat of evictions, detention and other acts of persecution continue to exist. The Country Report observed that, in recent years, reports of such acts of persecution have centered on specific rural areas such as Savannakhet, Bolikhamsai and Luang Namtha. There is indication that these acts of religious persecution do not stem from a centralized Government policy but are acts of local state actors attributable to decentralization.¹³⁶

133 See Indonesia Country Report, at Part II.A.

134 See Indonesia Country Report, at Part II.A.

135 See Lao PDR Country Report, at Part II.B.

136 See Lao PDR Country Report, at Part II.K.

C. Social Factors

1. *Contestation between Religious Majority and Minority*

Since religious pluralism exists to some extent in all ASEAN countries, **majority-minority dynamics** greatly affect the social and public order of these countries. All ASEAN countries have populations with dominant religious majorities or worldviews while their co-nationals adhere to various minority religions or worldviews. The constellations of minority religions or worldviews are also very different. Greater protection of the right to freedom of religion or belief for all can help resolve tensions among these diverse groupings by giving everyone greater assurance that their personal dignity will be protected. Religious persecution is likely to increase where **dominant religious majorities** seek to assert their superiority over religious minorities, and employ state power to impose restrictions on minority groups.

An example where the dominant religion has sought to employ state power to limit the rights of minorities is Malaysia. The asserted supremacy of Islam over other religions can be identified as having contributed to, if not caused, the increase in persecutions of religious minorities and religious conflicts. After a High Court decided that the Catholic Church could use the word ‘Allah’ in their Malay language newsletter, certain Muslim groups protested. Attacks against churches also increased. One Muslim organization (PERKASA) held protests outside the Court of Appeal during the appeal of the case, holding banners reading “Allah just for Muslim, fight, no fear”. The President of PERKASA claimed that the word “Allah” could not be abused for any purpose.¹³⁷ Others argued that non-Muslim Malaysians who are not able to accept the supremacy of Islam could move to another country.¹³⁸ Similarly, Buddhists in Myanmar have also increasingly mounted claims to influence and pressure the government to restrict the rights of

religious minorities, leading to a rise in religious persecution and conflict in the country.¹³⁹

This does not mean that relatively homogenous countries are immune from persecution and conflict. Indeed, the two ASEAN Member States that have an absence of reported religious persecution and conflict have very different religious demography. While Singaporean society is religiously pluralistic, Bruneian society is almost homogeneously Muslim. Moreover, there are reported instances of religious persecution in other almost homogenous countries like Indonesia, the Philippines, Thailand, Lao PDR, Vietnam, and Cambodia. That said, hostile relations between majority and minority groups could contribute to religious persecution and conflict. This occurs where dominant religious majorities see fit to assert their superiority over religious minorities and are able to employ state power to impose restrictions on minority groups. Under such conditions, the religious freedom of minorities would be highly limited. Consequently, religious persecution and conflict is more likely to occur in countries where there is weak minority protection.

2. *Religious Nationalism*

Religious persecution and conflict can also often be attributed to contestations about national identity, or the dominance of one racial/ethnic group. Furthermore, since religion is such an integral part of local identity, it has often been invoked to support nationalist demands. Indeed, the Country Reports show a rise in religious nationalism across ASEAN. Religious nationalism can be defined as “a social movement that claims to speak in the name of the nation, and which defines the nation in terms of

¹³⁷ See Malaysia Country Report at Part II.C.

¹³⁸ See Malaysia Country Report, at Part II.C.

¹³⁹ See Myanmar Country Report, at Part II.C.

religion.”¹⁴⁰ Religious nationalism invokes religious identity to mobilize followers so as to gain political support and oppose other religious groups. Thus, it has been observed that religious nationalism has a tendency towards symbolic and physical violence because:

“religious nationalists seek to align and sharpen the boundaries of the religious and political communities. This results in a very high level of political animosity to those outside of it. A religious dissenter is also a national traitor, and vice versa. This alignment of religious and national boundaries tends to neutralize the “cross-cutting cleavages” that otherwise vitiate the centripetal tendencies of pluralistic societies.”¹⁴¹

Religious nationalism is a factor in the changes in claims by religious actors so that their preferred religion will have greater influence on, or even hegemonic power over, state regulations and government policies. It is a significant contributing factor for the on-going conflict between Buddhists and Muslims in Myanmar, and could also account for the increase in religious conflicts between Muslims and non-Muslims in Malaysia.

As the Country Report for Myanmar highlights, Buddhist nationalist hostility towards Muslims stem partly from a fear of an Islamic takeover of Myanmar. This is aggravated by the fact that countries that were perceived to be once Buddhist or Hindu (such as Indonesia, Malaysia, and Afghanistan) are now Muslim majority countries. There is a further historical dimension to this hostility, specific to the Indian Muslims who were economic migrants recruited from India during British colonization.

140 Philip S. Gorski & Gülay Türkmen-Dervişoğlu, Religion, Nationalism, and International Security: Creation Myths and Social Mechanisms, in Chris Siple, Dennis Hoover, & Pauletta Otis (eds.), *Routledge Handbook of Religion and Security* 136, at 140. They contrast this with public or politicized religions which are “political movements that claim to speak on behalf of a religious community, without defining the polity in religious terms.

141 *Ibid.*, at 141.

There was intense competition in the labour market between these migrants and the native Burmese. This was exacerbated by the fact that Indians in colonial Burma were recruited to a large number of positions within the colonial bureaucracy, causing resentment among the Burmese natives who felt that they had been doubly colonized - first by the British and then by the Indians. Indeed, Burmese nationalism was fuelled by a mix of anti-colonial as well as anti-Indian/Muslim sentiments. This resulted in waves of nationalization of Indian-owned businesses after independence in 1948, culminating in Indian emigration in the 1960s.¹⁴² This anti-Indian sentiment developed over the years into widespread religious prejudice against all Muslims. Despite the small number of Muslims in Myanmar, this siege mentality was further fanned by a widely-believed prophecy that Buddhism would experience decay and decline 5,000 years after the Lord Buddha started preaching Buddhism.¹⁴³

In Malaysia, Malay-Muslim nationalism also accounts for the increase in religious conflict and persecution. This nationalism is linked to the intertwining of religion and race in Malaysia, and the rise in Islamic conservatism. In Malaysia, the common association of Malay ethnicity with Islam has become a source of mobilization for ethno-religious nationalism. The definitional provision in the Constitution in Article 160 of a Malay as a person “who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom” has now been employed to assert the inseparability of being Malay with being Muslim. This has accentuated the divide between Malay/Muslim and non-Malay/non-Muslim, and aggravated suspicion and hostility between Malay-Muslims and the rest of the population. As the Country Report highlights, there has been an intensification of Islamic conservatism in the last few years. The Report emphasizes two factors. First, there is an increasingly widespread belief that non-Muslims and liberal ideology are threatening

142 See Myanmar Country Report, at Part III.A.2.

143 See Myanmar Country Report, at Part III.A.2.

the dominance of Islam and Malays in Malaysia. Second, the waning support for the ruling *Barisan Nasional* party has triggered politicians to place greater emphasis on policies in favour of majority ethnic Malays in order to regain support. This has seriously undermined civil debate as any questioning of the place of Malay ethnicity in Malaysian law and politics is viewed as an attack on Islam, and vice versa.¹⁴⁴

Furthermore, it should be noted that religious nationalism in Malaysia¹⁴⁵ and Myanmar is intertwined with ethnic nationalism. The close conflation of race and religion in these countries makes it difficult to extricate discussions of religious freedom from issues of racial identity. Demands by human rights activists for greater protection of the freedom of thought, conscience, and religion frequently face not only resistance on the basis of religious doctrines, but also on the basis that it would undermine racial cohesion or, more crudely, the dominance of the majority racial group.

3. *Grassroots Mobilization*

Grassroots mobilization could contribute to religious persecution and conflict where such mobilization is employed to incite and spread religious hatred. This clearly contradicts article 22 of the AHRD and should be firmly addressed by ASEAN Member States. In Myanmar, the removal of press censorship and the legalization of private daily newspapers since political liberalization in 2011 has allowed for greater dissemination of Buddhist nationalist

sentiment.¹⁴⁶ This would not have been possible under strict state censorship under the military regime. As the Country Report points out, the private media in Myanmar has largely featured anti-Rohingya/Bengali messaging, and portrayed the conflict in the Rakhine state as violence perpetrated by illegal Bengali Muslim migrants against native Rakhine Buddhists. This could be said to have fanned anti-Rohingya sentiments in Myanmar.¹⁴⁷

Consequently, movements and counter-movements that spread religious tolerance and cooperation are necessary to promote freedom of thought, conscience, and religion, thereby eradicating religious persecution and conflict. One of the major conditions for a flourishing civil society is the presence of free or alternative channels of information. Thus, where the state has dominated channels of information for a long time, the emergence of alternative media can be extremely important in breaking the monopoly of power and creating conditions for greater democratization. This, in turn, may allow for a freer exchange of ideas that could lead to stronger inter-religious understanding and civil society cooperation. The question of whether the media would be a force for the promotion of inter-religious cooperation and mutual understanding, and thereby enhancing the freedom of thought, conscience, and religion, or a force against it is one that cannot be easily determined in advance. Suffice to say that greater media freedom is key to challenging entrenched political interests, and that it is likely that this could lead to an expansion of space for exercising a wider range of fundamental freedoms, of which the freedom of thought, conscience, and religion is part.

Indeed in Myanmar, there are grassroots efforts to counter the incitement of hatred against Muslims. Recognizing that hate speech has played a major

¹⁴⁴ See Country Report, at Part III.A.3..

¹⁴⁵ That has been the rhetoric in Malaysia where Islamic faith has been closely associated with the Malay race. This is a conflation that is recognized in the constitution, and has been used in recent years to resist freedom of thought, conscience and religion for Muslims. Article 160 of the Federal Constitution defines a Malay as a person “who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom...” See Malaysia Country Report, at Part III.A.2.

¹⁴⁶ Myanmar already had private weekly journals in print even before the political changes began in 2011, but they were subject to tight censorship. Daily private newspapers are a totally new phenomenon that was absent in the 50 years since General Ne Win took power in a coup in 1962. See Myanmar Country Report, at Part III.A.3.

¹⁴⁷ Myanmar Country Report, at Part III.A.3.

role in anti-Muslim riots over the last couple of years, a number of commentators have spoken out and written against the prevalence of hate speech in present-day Myanmar. Democracy activists in April 2014 also launched a movement called *Panzagar* (Flower Speech) led by Nay Phone Latt, a well-known Myanmar blogger who was previously jailed in 2007 for 20 years under the Electronic Transactions Law.¹⁴⁸ The campaign aims to educate people about the perils of hate speech and to convince them to support efforts to oppose groups and persons using hate speech. Ultimately, the group hopes to convince extremist groups to stop spreading hate speech.¹⁴⁹

The emergence of alternative channels of information has been regarded as a positive contributing factor in Malaysia. The Country Report attributes this to the Internet, which opened up new avenues for journalists and readers and triggered the rapid proliferation of online news portals such as Malaysiakini.com and Free Malaysia Today. The public, too, have begun to express their opinions through blogs and social media forums. The Country Report points out that Malaysians have become increasingly Internet-savvy, and that Malaysia has one of the highest Internet penetration rates across all age groups at 66 per cent in 2012. As a result of greater access to information and news, the Malaysian public, especially the youth, are becoming more conscious of political issues, including issues of social justice and human rights. At the moment, the impact of this is mixed but, at the very least, there has been greater awareness of the need to protect human rights.¹⁵⁰

4. Religious Leadership

Besides civil society organizations, moderate religious leaders and organizations are key to creating the right conditions for the protection

of freedom of thought, conscience, and religion, and for reducing religious conflict. It is especially important for leaders of religious majorities to endorse moderate religious views, and to be willing to recognize and even advocate for equal rights for religious minorities. One way in which religious leaders and organizations can do this is by fostering inter-religious cooperation through interfaith dialogue.

In Indonesia, the moderation of the most well-established and largest Muslim organizations, such as Muhammadiyah and Nahdhatul Ulama (NU), has been a key factor in ensuring inter-religious harmony and ensuring freedom of thought, conscience, and religion. These two organizations are central and dominant representatives of moderate Islam. They are moderate, tolerant, and strongly anti-extremism, although one should not mistake them as liberal organizations. While Muhammadiyah and NU generally accept universal human rights, they remain focused on religious values as the source of social norms. This means that they are likely to seek a balance between religious values and universal rights in a way that may not give full recognition and realization to human rights.¹⁵¹

In contrast, the lack of strong and tolerant Muslim organizations can be seen as a reason that Malaysia in recent years has had more of a struggle with religious tolerance and pluralism as compared to Indonesia. There has been a proliferation of more nationalist organizations with extreme views on race and religion. Nonetheless, there have been repeated non-state and state attempts to improve interfaith dialogue to promote inter-religious understanding. For example, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism, and Taoism (MCCBCHST) have held several interfaith dialogues over the years. The MCCBCHST enjoys some support (non-financial) from the government and have relatively better access to high-ranking government officials.¹⁵²

148 Nay Phone Latt was released in 2012 under a mass amnesty. See Myanmar Country Report, at Part III.B.

149 See Myanmar Country Report, at Part III.B.

150 See Malaysia Country Report, at Part III.B.2.

151 See Indonesia Country Report, at Part III.

152 See Malaysia Country Report, at Part II.J.

Similarly, in Myanmar there have been efforts among religious leaders to create interfaith dialogue. The most prominent development is the creation of the Interfaith Group, which comprises persons representing Buddhism, Christianity, Islam, and Hinduism. Myanmar's President U Thein Sein awarded the group an Excellence Award on 30 April 2013.¹⁵³

In Lao PDR, the Lao Evangelical Church (LEC) adopted programs and activities in local communities to foster solidarity between people of different religions, and to educate against religious intolerance. It also provided educational materials to provincial schools and emergency supplies to flood victims in the country's southern provinces in 2011. Although it represents the religious minority, LEC's efforts are aimed at fostering understanding between local governmental officials and the local population who are Buddhist majority and Christian Protestants.¹⁵⁴

VI. Regional Impact of Religious Conflicts and Persecution

On the whole, religious conflict and persecution across ASEAN have not led to serious regional impacts, with the one exception being the Rohingyas in Myanmar, who have been fleeing religious conflict and persecution and seeking refuge in neighbouring countries, such as Thailand, Malaysia, and Indonesia. Nonetheless, deteriorating conditions for religious freedom in general should be of concern because of the potential unintended secondary effects on regional peace and security.

A. Co-Religionist Interests

It is our observation that **co-religionist interests** could affect regional relations. In each ASEAN country, adherents of the majority religion or worldview have co-religionists among minorities in other ASEAN countries. For example, while Muslims are in the majority in Malaysia, Indonesia, and Brunei, they are in the minority in other ASEAN states, specifically, the Philippines, Thailand, and Myanmar. Religious persecution and conflict in one ASEAN state could result in acts of retaliatory violence in another ASEAN state. Furthermore, ASEAN states with a dominant religious majority may exert kin-state interests when their coreligionists are persecuted in other ASEAN member states. This is not at present a common occurrence. As such, the treatment of minority faiths and groups is of fundamental importance to the effectiveness of ASEAN as a community builder.

Religious persecution and conflict within an ASEAN state not only results in domestic effects but could also have regional effects. This also means that ASEAN states could engage each other constructively to positively influence governments to improve the freedom of thought, conscience, and religion enjoyed by the peoples of ASEAN. One such engagement that has borne some results is assisting fellow ASEAN states in their negotiation of peace agreements with co-religionists. For instance, Muslim-majority Malaysia has been key in assisting the Philippines with negotiating a peace accord with the Muslim separatist movement in Southern Philippines. These are positive developments that would further strengthen the sense of community among ASEAN Member States as well as among the peoples of ASEAN.

There is a risk that extremist ideology in one country may spread to other countries. This regional networking exists among kin communities, such as Muslim communities. In addition, religious conflict in one country may have cross-border consequences as persecuted groups flee the country and become refugees in neighbouring countries. Modern

¹⁵³ See Myanmar Country Report, at Part III.B.

¹⁵⁴ See Lao PDR Country Report, at Part III.B.2.

advances in transportation and communication make it much easier for co-religionists in other countries to be aware of how members of their community are treated elsewhere.

B. Regional Networking

Since religious adherents populate different parts of the region, there is great scope for communication among them and the consequent spread of certain religious ideologies. Such religious ideologies may be moderate or more extreme.¹⁵⁵ Developments affecting religious outlooks in one country could easily spread to other countries. Nowhere is this more evident than among the Muslim groups in ASEAN countries, where there have been efforts to create a close network of cooperation and communication for exchanging ideas concerning the interpretation and implementation of Islamic laws.

The Brunei Country Report makes special mention of this regional networking. It notes the initiative of Brunei's Chief Islamic Judge to create a network of cooperation for Syariah courts in the various ASEAN Member States since September 2013.¹⁵⁶ This includes representatives of Islamic courts from Malaysia, Singapore, Indonesia, the Philippines and Thailand. This is only one manifestation of the religious networking that is taking place in the region. The impact of such networking can be gleaned from the responses of regional Islamic groups to Brunei's adoption of the Syariah Penal Code Order 2013. The Brunei government has been lauded by several Islamic organisations and politicians from neighbouring countries for its supposed God-serving "courage." In 2013, the Pan-

155 Sidney Jones has documented the links between radical and terrorist Islamic groups in Indonesia, Malaysia, and the southern Philippines. See Sidney Jones, 'Indonesia Backgrounder: How the Jemaah Islamiyyah Terrorist Network Operates', International Crisis Group Asia Report 43, 2002. See also Sidney Jones, 'Jemaah Islamiyah in South East Asia: Damaged but Still Dangerous,' International Crisis Group Report No. 63, August 26, 2003.

156 See Brunei Country Report, at Part II.H.

Malaysian Islamic Party (PAS), which has long campaigned for a more far-reaching implementation of Islamic Criminal Law in Malaysia, published an open letter to the Sultan of Hassanal Bolkiah in which its party president, Abdul Hadi Awang, conveyed his congratulations and support for Brunei's legal reforms. Several Malaysian Islamic politicians have since then referred to Brunei as a role model, and discussed the possibility of adopting and implementing a similar legal code in their country. The Sultan of the Malaysian state of Kelantan visited Brunei in December 2013, followed shortly afterwards by the Chief Minister and an eight-man delegation from the Kelantan State government. Kelantan's Sultan, State Mufti, and Chief Minister all stated their admiration for Brunei's legal reforms and expressed their intention to learn from Brunei. Brunei's decision to forge ahead with its legal Islamisation programme may therefore raise the stakes in the region, particularly vis-a-vis the "Islamisation race" of "piety-trumping" between competing political groups in Malaysia and Indonesia.¹⁵⁷ Notably, the Sultan of Brunei and his State Mufti have voiced the aspiration that the Brunei Syariah Penal Code Order 2013 would become a positive example for the rest of ASEAN.¹⁵⁸

Regional cooperation and networking can thus be used to spread ideas that can adversely impact the freedom of thought, conscience, and religion. It is also a way through which other countries with less-than-acceptable records on human rights can gain influence in the region. This possibility is magnified by the practice that Muslim-majority states have of looking to other Muslim-majority states outside the region for inspiration on the further implement of religious laws. Saudi Arabia and Pakistan have become key players in the global spread of Islamic ideologies and ideas to the ASEAN region. Brunei is said to have consulted religious scholars in both these countries in drafting the Syariah Penal Code Order 2013. In fact, the government of Brunei has lauded Saudi Arabia as a "leading" role model in

157 See Brunei Country Report, at Part II.J.

158 See Brunei Country Report, at Part II.J.

the “successful” implementation of Islamic criminal law.¹⁵⁹

C. Cross-Border Impact and Destabilization

Theoretically speaking, human rights abuses in one ASEAN Member State have the potential of destabilizing the region if left unchecked. The most recent example of such a risk emerged from the treatment of Rohingya Muslims in Myanmar. Regardless of the precise nature of the conflict, i.e. whether this is religious persecution or a sectarian conflict, the fact is that many Rohingya Muslims have fled Myanmar for neighbouring countries as a result of serious violations of their human rights, including their right to freedom of thought, conscience, and religion. They have now started to arrive in ASEAN Member States such as Thailand, Malaysia, and Indonesia. The Office of the United Nations High Commissioner for Refugees estimates that about 34,368 Rohingya are registered as refugees in Malaysia, along with 7,940 ethnic Rakhine Buddhists, while thousands of others from the country live illegally or are awaiting refugee status.¹⁶⁰ There is also reported violence stemming from the Rohingya conflict in neighbouring countries. Violent clashes erupted in Kuala Lumpur in Malaysia in June 2013, which left four dead and at least 15 injured, all of whom were Myanmar Buddhists. There was also a drive-by shooting in Kuala Lumpur in January 2014 which apparently targeted two politicians from Rakhine state.¹⁶¹ In addition, in May 2013, Indonesian police foiled a planned bomb attack against the Myanmar Embassy in Jakarta in which the suspects confessed that they were retaliating against the treatment of Muslims by

Myanmar Buddhists.¹⁶² If the situation continues to worsen in Myanmar, this could lead to even more refugees arriving in neighbouring ASEAN Member States, and perhaps even an increase in proxy attacks in those countries. To be an effective regional force, it is important to consider whether ASEAN needs a stronger mechanism for influencing domestic affairs, insofar as they may have cross-border impact.

VII. ASEAN’s Role in Promoting and Protecting Freedom of Thought, Conscience, and Religion

A. Addressing Normative and Implementation Gaps

Religious persecution, constituting serious violations of freedom of thought, conscience, and religion, clearly contradict ASEAN Member States’ commitments to religious freedom under Article 22 of the AHRD. As the reported instances across ASEAN show, religious persecution typically involves intolerance and discrimination on religious grounds. Those who advocate religious persecution also frequently engage in incitement of hatred based on religion and beliefs. Furthermore, in some instances, religious conflict arises from incitement of hatred based on religion and beliefs. Continuing instances of religious persecution and conflict demonstrate that Article 22’s injunction that “[a]ll forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated” has not been realized. This is not surprising, given it is an ambitious goal, albeit a worthy one, for a region as ethnically diverse and religiously diverse as ASEAN.

Furthermore, continuing instances of religious persecution and conflict cannot be justified on the basis of the limitation clause under the AHRD. Article 8 of the AHRD states:

¹⁵⁹ See Brunei Country Report, at Part II.H.

¹⁶⁰ Shibani Mahtani, *Myanmar Keeps Rohingya Muslims From Upstaging Summit*, May 11, 2014, Wall Street Journal, available at <http://online.wsj.com/news/articles/SB10001424052702303851804579555420352442450>.

¹⁶¹ Ibid.

¹⁶² Ibid.

“The human rights and fundamental freedoms of every person shall be exercised with due regard to the *human rights and fundamental freedoms of others*. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of *securing due recognition for the human rights and fundamental freedoms of others*, and to meet the *just requirements of national security, public order, public health, public safety, public morality*, as well as the *general welfare of the peoples in a democratic society*.”¹⁶³

This provision emphasizes two opposing interests that have to be balanced against the guaranteed rights, i.e. the rights of others and what is considered public interest. However, religious persecution, which constitutes serious violations of the freedom of thought, conscience, and religion as well as other human rights, clearly cannot be justified on any of these express bases. To persecute a religious group, especially in violent ways, cannot be considered a “just” requirement of national security, public order, public health, public safety, public morality, or the general welfare of the peoples in a democratic society. On the contrary, violence against a religious group or groups could lead to a breakdown of public order and public safety, as well as damage the general welfare of the peoples. A democratic society is premised upon the political equality of all persons; any persecution of individuals and groups on the basis of their religion violates this basic premise.

Consequently, ASEAN Member States, individually and collectively, should be careful to justify religious persecution and resulting conflicts on Article 8 or even supplement their justification on other provisions in the AHRD, namely Article 6 and 7. Indeed, Article 6, which states that “[t]he enjoyment

¹⁶³ The grounds for limiting rights under Article 8 of the AHRD is more extensive than Article 18(3) of the ICCPR, which states: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” The AHRD contains two additional grounds for limiting rights, i.e. national security and general welfare of the peoples in a democratic society.

of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives” cannot support religious persecution because persecution is itself a failure of individuals and society to perform their corresponding duties to the persecuted individual and group. Furthermore, Article 7 which states that “the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds”, may require sensitivity to particular contexts within ASEAN Member States. However, persecuting individuals and groups on account of their religious beliefs could not be and indeed would not be an acceptable part of ASEAN’s political, economic, legal, social, cultural, historical, and religious context. As mentioned earlier, ASEAN Member States have variously evinced a commitment to peace and security, not to mention to the elimination of all forms of intolerance, discrimination, and incitement of hatred based on religion and beliefs. This suggests that the states’ political, economic, legal, social, cultural, historical, and religious backgrounds are premised upon the existence of peaceful and tolerant societies.

It should be noted that Articles 6, 7, and 8 of the AHRD, and indeed the AHRD as a whole, have been heavily criticized for undermining human rights. In particular, the AHRD has been criticized for endorsing a statist view of human rights such that rights are protected only insofar as they do not transgress state goals. This could be interpreted to mean that rights are not limits on state power but are subject to state discretion.¹⁶⁴ Consequently, any

¹⁶⁴ Indeed, the existence of Articles 6, 7, and 8 has led human rights groups to denounce the AHRD. It should here be noted that following an Experts’ Consultation Meeting on this study on October 8, 2014, the International Commission of Jurists, Human Rights Watch, Amnesty International, Article 19, Civil Rights Defenders, International Gay and Lesbian Human Rights Commission, and ASEAN SOGIE Caucus issued a joint letter objecting to this study’s reliance on the AHRD which they state is “not only ineffective but also damaging for human rights proponents to apply/use the AHRD when assessing human rights performance or conduct in the region.” HRRC has noted the objections. ‘Joint Letter to HRRC’, November 28, 2014 (on file with HRRC).

prioritization of state interests over rights should be reversed if ASEAN is to be seen to be taking human rights seriously. Articles 6, 7, and 8 of the AHRD should (at least) be read restrictively so as not to vitiate the rights guaranteed under the declaration. ASEAN Member States should similarly read the respective limitation clauses in their constitutions restrictively to give the fullest protection to the freedom of thought, conscience, and religion. Substantive guidance could be taken from existing jurisprudence on freedom of thought, conscience, and religion in international law. As the Human Rights Committee pointed out in General Comment No. 22, expounding on Article 18 of the ICCPR, there is a need to ensure that state interests do not vitiate the freedom of thought, conscience, and religion. This would include **strictly interpreting limitation clauses** to ensure that restrictions are not allowed on grounds that are not specified, that any restrictions are for purposes that are directly related and not merely incidental, and that they must be proportionate to the specific need on which they are predicated.¹⁶⁵

Furthermore, ASEAN should be careful to allow for opposing conceptions of human rights that clearly controvert the freedom of thought, conscience, and religion as understood in international law. Ensuring this is necessary for ASEAN as a regional organization to demonstrate that its commitments to international human rights accords with the ordinary practice of regional organizations as established by the United Nations in its support of regional systems, and for ASEAN Member States to comply with their respective treaty obligations. Any departure from these norms would need to be clearly explained and justified, in order to maintain the integrity of the regional system. While it is culturally sensitive to allow for certain margins of appreciation in how states approach and implement human rights standards, where a Member State asserts a completely different conception of human rights, specifically one that subordinates individual rights to an asserted authoritarian culture or to a given religious orthodoxy, this undermines ASEAN's capacity to promote and protect human

rights. By accepting these contested conceptions, ASEAN weakens its position to criticize any human rights abuses in Member States. States could thus be given *carte blanche* to renege on their regional commitments to human rights. This would severely undermine ASEAN's plans to promote and protect the human rights of its peoples, and to create an integrated community.

B. Maintaining Regional Peace and Security

At the moment, the Charter of the Association of Southeast Asian Nations (ASEAN Charter) does not provide measures for intervention with regard to a threat to or breach of the region's peace and security, in the sense of Chapter VII of the Charter of the United Nations (UN Charter). ASEAN instruments and practice do not prescribe authority to intervene in disputes or conflicts between ASEAN Member States, or between Member States and an external party. ASEAN also does not have the authority to intervene in the internal affairs of a Member State even if it has the potential to escalate and threaten regional peace and security. This limitation in ASEAN's responsive capability is further constrained by the fact that ASEAN does not have any guidelines establishing *when* a situation constitutes a threat to regional peace and security.

Although human rights issues were not previously given a high priority in ASEAN meetings – having been characterized as a domestic matter¹⁶⁶ – it is now firmly part of ASEAN's agenda. There should be and indeed appears to be greater willingness among leaders of some ASEAN Member States to voice criticism against another Member State's government for human rights abuses, particularly where such abuses have led to cross-border impact. One issue that has been raised pertains to the Rohingya Muslim refugees. For instance, Indonesian Foreign Minister

¹⁶⁵ This was also raised by the U.N. Human Rights Committee in General Comment 22, *supra* note 7, at ¶18.

¹⁶⁶ For instance, despite international condemnation of the 1992 massacres in East Timor that were allegedly committed by the Indonesian military and the 2003 violence against Buddhist monks in Myanmar, these issues were not publicly raised in ASEAN forums.

Marty Natalegawa said in a magazine interview that the issue of the Rohingya “impacts all [Asean countries]” and is one which Indonesia has to be “keenly concerned” about because of the potential for terrorism within its borders.¹⁶⁷ These early steps towards engagement remain limited. With regards to the Rohingyas, efforts to raise the issue at ASEAN forums have largely been thwarted by Myanmar’s singular refusal to engage. Nonetheless, the issue has so far been referred to the Bali Process, which mainly deals with issues of migrants and trafficking in persons.

After 2010, AICHR has also been trying to encourage more open discussions on human rights situations in the respective ASEAN Member States, but again the scope and impact remains fairly limited.

However, where religious conflict and persecution could lead to cross-border impact and regional destabilisation as well as breaches of peace and security, it is questionable whether continued non-interference would be adequate and appropriate in a more integrated community. Prior practice shows that ASEAN has two general priorities when addressing conflicts or disputes that could affect regional peace and security. These are 1) the prevention of the escalation of conflict/dispute through the utilisation of preventive diplomacy; and 2) reliance upon peaceful settlement of disputes. These could be built upon to construct a more structured and effective ASEAN approach to promoting and protecting human rights. Such a structured approach could go a long way in providing greater stability and contributing to lasting peace in the region. For instance, reciprocal minorities could have a non-violent avenue for raising issues against dominant governments. Furthermore, trade and investment among ASEAN members would be enhanced when those who belong to a majority in one place are confident that they will be treated with respect as minorities in another place.

¹⁶⁷ Simon Roughneen, ‘Sectarian Violence in Burma Has Regional Impact, Says Indonesian Foreign Minister’, *The Irrawaddy*, 17 Jan 2014. <<http://www.irrawaddy.org/burma/sectarian-violence-burma-regional-impact-says-indonesian-foreign-minister.html>> accessed 21 November 2014.

VIII. Concluding Observations

There are developments of religious conflicts and persecution across ASEAN, which are, individually and collectively, cause for serious concern. This study has sought to identify some of these developments to assist ASEAN in considering areas of multilateral cooperation to improve the promotion and protection of human rights and fundamental freedoms across the region. It is in ASEAN’s individual and collective interest and it is its responsibility to address instances of religious conflict and persecution in a way that best promotes and protects freedom of thought, conscience, and religion. Religious freedom can result in less violent persecution and less conflict, as well as better overall outcomes for societies.¹⁶⁸ After all, reducing religious conflict is in the interests of peace and security of all nations.¹⁶⁹ In this regard, the AHRD is a step towards this worthy aspiration, and substantive measures should be taken to ensure that Article 22 of the AHRD is progressively realized within each ASEAN Member State.

There are nonetheless some good practices that ASEAN Member States have engaged in, which are highlighted here for consideration:

1. Government-Mediated Interfaith Dialogue

The utility of interfaith dialogue has sometimes been doubted. One formula that has worked has been to have the government mediate such interfaith dialogue, thereby including the government as a crucial stakeholder. This has been the experience in Singapore. As the Country Report points out, the Singapore government has implemented a Community Engagement Programme and initiated a community-negotiated Declaration on Religious Harmony. These initiatives proceed from a general governmental policy to play a crucial role in promoting inter-faith dialogue as a mode of conflict mediation. The thinking behind this

¹⁶⁸ Grim & Finke, *supra* note 48, xiii.

¹⁶⁹ Grim & Finke, *supra* note 48, 3.

is to provide channels of communication among key representatives of different religious groups so as to build trust and confidence among these groups. Consequently, the hope is that wherever an inter-religious dispute arises, the trust and confidence would help the various religious leaders communicate with one another directly so as to find common ground and resolution. Such dialogue and the keeping open of communication lines is also practised between the government and the individual major religious communities.

There are three factors that could be identified for Singapore's apparent success in utilizing inter-faith dialogue for conflict mediation. The first factor is that all major religious groups are included in the interfaith process and are represented by community leaders who are likely to be deemed legitimate representatives of the community. This approach ensures that the majority of the population are included and represented in the process. The second is that the government has managed to play the role of a fairly neutral arbiter. Its role is to mediate differences, and not to impose any one religious group's preferences over the others'. The government constantly affirms its commitment to treat all religions equally. The third factor follows from the second, and that is the need to have a level of trust between the religious groups and the government. In this regard, where the government has shown a track record of being fair and even-handed to all religions, it is more likely that government-mediated interfaith dialogue would be effective in preventing religious conflict.

2. Good Governance

One contributing factor for the politicization of religion for electoral gains is weakening public support. When governments lose support of the electorate, they may be inclined to invoke religion or affirm religious nationalism in order to gain more electorate support. This appears to be the case in Malaysia and Myanmar. In this regard, one might posit that a government that governs well would be able to gain electoral support without having to

resort to exploiting religion for political gains. A rational electorate would easily support clean (non-corrupt) and efficient government, with less regard for religious politics. Furthermore, where such a government is committed to protecting fundamental freedoms, including religious freedom, this is likely to lead to less religious persecution and conflict along religious lines.¹⁷⁰ The experience of Singapore as well as the results of the recent presidential elections in Indonesia attests to the persuasive power of good governance.

In conclusion, the freedom of thought, conscience, and religion is a fundamental freedom that ASEAN Member States have committed, individually and collectively, to protect and promote. Violations of religious freedom have serious effects on the lives of individuals and groups. This study has sought to provide an additional perspective by highlighting the link between religious freedom, on the one hand, and peace and security, on the other. It emphasizes that serious violations of religious freedom amount to religious persecution and could lead to conflict. The study also highlighted factors that contribute to the rise of religious persecution and conflict in the region and the trends across ASEAN that affect religious freedom. With the caveat that policy initiatives which respond to problems by increasing government control should not compound the problem, ASEAN has a responsibility to fulfil the promise of protecting freedom of thought, conscience, and religion and eliminating all forms of intolerance, discrimination and incitement of hatred based on religion and beliefs. This will further guarantee peace and security in the region.

¹⁷⁰ Indeed, Grim & Finke argues that the higher the degree to which governments and societies ensure religious freedom for all, the less violent religious persecution and conflict along religious lines there will be. Grim & Finke, *supra* note 48, at 3.

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ANNEX 1

CONSTITUTIONAL PROVISIONS RELATING TO FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION			
ASEAN Member State	Declared State-Religion Relationship	Provisions Guaranteeing Freedom of Thought, Conscience, and Religion	Equality/Non-discrimination on the Basis of Religion
Brunei	<p>"The official religion of Brunei Darussalam shall be the Islamic religion."</p> <p>- Article 3(1)</p>	<p>"... all other religions may be practiced in peace and harmony by the persons professing them."</p> <p>- Article 3(1)</p>	
Cambodia	<p>"Buddhism shall be the state religion."</p> <p>- Article 43</p>	<p>"Khmer citizens of either sex shall have the right to freedom of belief."</p> <p>Freedom of religious belief and worship shall be guaranteed by the State on the condition that such freedom does not affect other religious beliefs or violate public order and security."</p> <p>- Article 43</p>	<p>"Every Khmer citizen shall be equal before the law, enjoying the same rights, freedoms and fulfilling the same obligations regardless of ... religious belief ..."</p> <p>- Article 31</p>
Indonesia	<p>Constitution does not declare Indonesia as a secular state or based on a particular religion, but declares that:</p> <p>"The State shall be based upon the belief in the One and Only God".</p> <p>- Article 29 (1)</p>	<p>"The state guarantees all persons the freedom of worship, each according to his/her own religion or belief."</p> <p>- Article 29 (2)</p> <p>"(1)Every person shall be free to worship and to practice the religion of his/her choice...</p> <p>(2) Every person shall have the right to the freedom to believe in his/her faith (kepercayaan), and to express his/her thoughts, in accordance with his/her conscience</p> <p>(3) Every person shall have the right to the freedom to associate, to assemble, and to express opinions."</p> <p>- Article 28E</p> <p>"The rights to ... freedom of thought and conscience, freedom of religion ... are all human rights that cannot be limited under any circumstances."</p> <p>- Article 28I(1)</p>	<p>"Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever."</p> <p>- Article 28I(2)</p> <p>"The cultural identity and rights of traditional society shall be respected in harmony with the development of the age and civilization."</p> <p>- Article 28I(3)</p>

Lao PDR	No declared relationship between state and religion.	<p>"Lao citizens have the right and freedom to believe or not to believe in religions."</p> <ul style="list-style-type: none"> - Article 43 <p>"The State protects the freedom and democratic rights of the people which cannot be violated by anyone."</p> <ul style="list-style-type: none"> - Article 6 <p>"The State respects and protects all lawful activities of Buddhists and of followers of other religions, [and] mobilizes and encourages Buddhist monks and novices as well as the priests of other religions to participate in activities that are beneficial to the country and people."</p> <ul style="list-style-type: none"> - Article 9 <p>The Decree on Management and Protection of Religious Activities provides Lao citizens, aliens, stateless persons and foreigners of "the right to carry out undertakings or organize religious ceremonies".</p>	
Malaysia	<p>"Islam is the religion of the Federation, but other religions may be practiced in peace and harmony in any part of the Federation."</p> <ul style="list-style-type: none"> - Article 3(1) 	<p>"Every person has the right to profess and practice his religion, and ... to propagate it."</p> <ul style="list-style-type: none"> - Article 11(1) <p>"Every religious group has the right (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes; and (c) to acquire and own property ..."</p> <ul style="list-style-type: none"> - Article 11(3) <p>"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."</p> <ul style="list-style-type: none"> - Article 12(3) 	<p>"... there shall be no discrimination against citizens on the ground only of religion ..."</p> <ul style="list-style-type: none"> - Article 8(2) <p>"There shall be no discrimination against any citizen on the grounds only of religion ... (a) in the administration of any educational institution maintained by a public authority ... (b) in providing ... financial aid for the maintenance or education of pupils ..."</p> <ul style="list-style-type: none"> - Article 12(1)

Myanmar	<p>No state religion.</p> <p>"The Union recognizes the special position of Buddhism as the faith professed by the great majority of citizens of the Union".</p> <ul style="list-style-type: none"> - Section 361 (2008 Constitution) 	<p>"Every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution."</p> <ul style="list-style-type: none"> - Section 34 <p>"The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union."</p> <ul style="list-style-type: none"> - Section 362 <p>"Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality:</p> <p>(a) to express and publish freely their convictions and opinions;</p> <p>(c) to form associations and organizations;</p> <p>(d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths."</p> <ul style="list-style-type: none"> - Section 354 <p>"The abuse of religion for political purposes is forbidden. Moreover any act which is intended or is likely to provoke feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution."</p> <ul style="list-style-type: none"> - Section 364 	<p>"The Union shall not discriminate any citizen ... based on ... religion ..."</p> <ul style="list-style-type: none"> - Section 348
Philippines	<p>"The separation of Church and State shall be inviolable."</p> <ul style="list-style-type: none"> - Article II, Section 6 	<p>"No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."</p> <ul style="list-style-type: none"> - Article III, Section 5 	

Singapore	No declared relationship, but secularism widely used.	<p>"Every person has the right to profess and practice his religion and to propagate it."</p> <ul style="list-style-type: none"> - Article 15(1) <p>"Every religious group has the right (a) 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 and administer it in accordance with the law."</p> <ul style="list-style-type: none"> - Article 15(3) 	<p>"... there shall be no discrimination against citizens of Singapore on the ground only of religion ..."</p> <ul style="list-style-type: none"> - Article 12(2)
Thailand	<p>No state religion (2007 Constitution).</p> <p>"The State shall patronise and protect Buddhism as the religion observed by most Thais for a long period of time and other religions, promote good understanding and harmony among followers of all religions as well as encourage the application of religious principles to create virtue and develop the quality of life."</p> <ul style="list-style-type: none"> - Section 79 (2007 Constitution) 	<p>"A person shall enjoy full liberty to profess religion, religious sect and creed, and observe religious precept or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals."</p> <ul style="list-style-type: none"> - Section 37 	<p>"Unjust discrimination against a person on grounds of ... religious belief ... shall not be permitted."</p> <ul style="list-style-type: none"> - Section 30
Vietnam	The Constitution does not declare Vietnam as a secular state or based on any particular religion.	<p>"(1) Everyone has the right to freedom of belief and of religion, and has the right to follow any religion or follow no religion. All religions are equal before the law. (2) The State shall respect and protect the freedom of belief and religion. (3) No one may violate the freedom of belief and religion, nor may anyone take advantage of a belief or religion in order to violate the law." respects and protects freedom of belief and of religion.</p> <ul style="list-style-type: none"> - Article 24 	<p>"... All religions are equal before the law."</p> <ul style="list-style-type: none"> - Article 24(1)

ANNEX 2

INTERNATIONAL INSTRUMENTS RELATING TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION										
Instrument	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
1. International Covenant on Civil and Political Rights (ICCPR)		(A)	(A)	(R)			(R)		(A)	(A)
2. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		(R)	(A)	(A)			(R)		(A)	(A)
3. International Covenant on Economic, Social and Cultural Rights (ICESCR)		(A)	(A)	(R)			(R)		(A)	(A)
4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	(A)	(A)	(R)	(R)	(A)	(A)	(R)	(A)	(A)	(R)
5. Convention on the Rights of the Child (CRC)	(A)	(A)	(R)	(A)	(A)	(A)	(R)	(A)	(A)	(R)
6. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		(A)	(R)	(S)			(A)		(A)	
7. Convention on the Prevention and Punishment of the Crime of Genocide		(A)		(A)	(A)	(R)	(R)	(A)		(A)
8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		(S)	(R)				(R)			
9. Convention Relating to the Status of Refugees		(A)					(A)			

S – Signed R – Ratified A – Acceded

Country Reports



Brunei

Brunei Darussalam

Formal Name	Negara Brunei Darussalam
Capital City	Bandar Seri Begawan
Declared Relationship between State and Religion	Islam is the state's constitutional religion.
Form of Government	Brunei is a constitutional monarchy, governed by a Sultan with absolute executive powers in a unitary system.
Regulation of Religion	The state regulates religion on all levels. The Prime Minister, Sultan Hassanal Bolkiah, is the "Head of religion." ¹ Several governmental institutions are responsible for the control and administration of Islam. They include the Ministry of Religious Affairs, the State Mufti Department, the Religious Council, the Religious Council's Legal Committee (headed by the State Mufti ²), the Faith Control Section, and several sub-institutions. In its advisory role to the Sultan, the Religious Council is the "chief authority" in "all matters relating to religion." ³ Any ruling given by the Council, whether directly or issued by its Legal Committee, is "binding on all Muslims of the Shafeite sect in Brunei." ⁴
Total Population	423,000 ⁵ (est. 2014)
Religious Demography	See table
Changing Religious Demography	See table

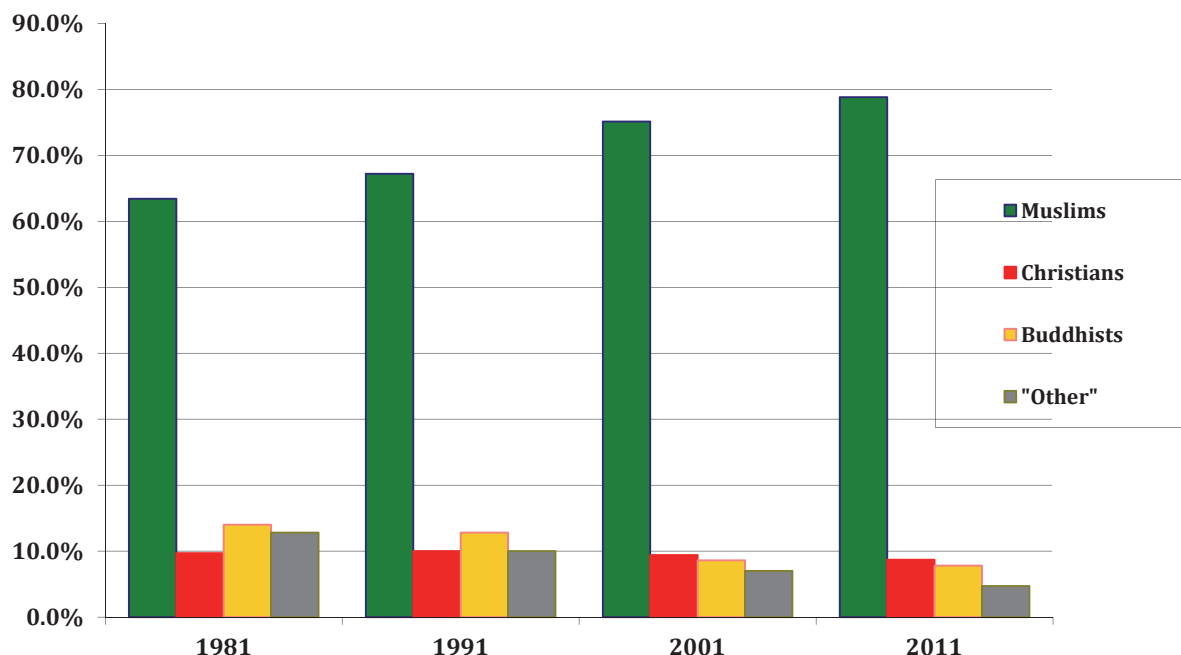
1 Part II, Article 2, The Constitution of Brunei Darussalam.

2 Section 41 (3), Religious Council and Kadis Courts Act (Chapter 77).

3 Section 38, Religious Council and Kadis Courts Act (Chapter 77).

4 Section 43 (2), Religious Council and Kadis Courts Act (Chapter 77).

5 'Brunei,' CIA Factbook <<https://www.cia.gov/library/publications/the-world-factbook/geos/bx.html>> accessed 14 Apr 2014.



	1981	1991	2001	2011
Muslims	63.4%	67.2%	75.1%	78.8%
Christians	9.7%	10.0%	9.4%	8.7%
Buddhists	14.0%	12.8%	8.6%	7.8%
"Other"⁶	12.8%	10.0%	7.0%	4.7%
Total Population	193,000	260,500	333,000	393,000

Source of data: *Brunei Statistical Yearbook 2011*, Bandar Seri Begawan:

Ministry of Finance, Economic Planning Unit, Statistic Division.

"As Muslims, we uphold human rights with the Quran as our foothold. ... We choose Islam as a step to seek blessings from Allah the Almighty, not to persecute or oppress anyone"

(His Majesty Haji Hassanal Bolkiah
Mu'izzadin Waddaulah,
Sultan of Brunei Darussalam, 2013⁷)

6 "Other" (Lain-Lain) in Brunei's Statistical Year Book, including Hindus, Taoists, Sikhs, Animists, Bahai and Atheists.

7 'Laws of Islam Seek Blessings Not Oppression,' Borneo Bulletin, 5 Nov 2013.

INTRODUCTION

The Constitution of Brunei Darussalam (henceforth Brunei) defines Islam as the state's religion, and further specifies that "Islam" exclusively refers to "the [Sunni] Shafeite sect of that religion."⁸ In his royal address (*titah*) on the occasion of the Declaration of Independence on 1 January 1984, the Prime Minister, Haji Sultan Hassanal Bolkiah, declared that Brunei "shall forever be a Malay Islamic Monarchy" (*Melayu Islam Beraja* or "MIB").⁹ The government considers "MIB" as the official "state ideology" and consistently emphasises its categorical rejection of secularism, religious pluralism and liberalism since independence.¹⁰

Brunei is the only Southeast Asian state whose constitution contains no bill of rights or provisions for the protection of fundamental liberties. Politically, it is an absolute monarchy, governed by a Sultan with absolute executive powers. Since the colonial era under British Indirect Rule, the country has had a dual legal system, with Syariah and non-Syariah courts existing side-by-side. The Syariah Law¹¹ sector has gradually been strengthened since the 1980s, fuelled by the transnational waves of Islamic revivalism and subsequent state policies

of legal Islamisation.¹² During this process, non-Syariah laws have also been reviewed to ensure that they do not contradict Islamic teachings. Syariah Law in Brunei has mainly applied to Muslims in the past, whereas non-Syariah Law—covering a range of legal fields presided by a Supreme Court, including the Penal Code—applied to both Muslims and non-Muslims. This has fundamentally changed with the newly legislated Syariah Penal Code Order 2013 (*Perintah Kanun Hukuman Jenayah Syariah 2013*), which also includes numerous provisions and punishments for non-Muslims (see "Domestic Laws and Policies"). Brunei's government is therefore now describing its previously dual legal system as "hybrid."¹³

Although Brunei's legal scholars have not yet explained the deeper conceptual meanings of a "hybrid" system vis-a-vis the previous "dual system," the new system is obviously characterised first by the intention to overcome (or "hybridise") the clear-cut separation between Syariah and non-Syariah Law, so that the entire legal system can be considered Syariah-compliant, and second, by the widening of the applicability of Islamic Law to non-Muslims in the country.

The state regulates religion on all levels. The Prime Minister, Sultan Hassanal Bolkiah, is the "Head of religion."¹⁴ Several governmental institutions are responsible for the control and administration of Islam. They include the Ministry of Religious Affairs (*Kementerian Hal Ehwal Ugama*), the State Mufti Department (*Jabatan Mufti Kerajaan*), the Religious Council (*Majlis Ugama*), the Religious Council's Legal Committee (*Jawatankuasa Undang-Undang*, headed by the State Mufti¹⁵), the Faith

8 Part II, Article 3 (1), The Constitution of Brunei Darussalam; see also Preliminary, The Constitution of Brunei Darussalam.

9 Speech of Sultan Hassanal Bolkiah, 1 Jan 1984, quoted in 'Brunei Seeks To Uphold "Correct" Islamic Teachings,' *Borneo Bulletin*, 10 Sep 2013; see also Anthony Reid, 'Understanding Melayu (Malay) as a Source of Diverse Modern Identities,' (2001) 32(3) *Journal of Southeast Asian Studies* 295–313.

10 'Don't get swayed by aberrant tenets: HM,' *The Brunei Times*, 15 Nov 2012; 2013. 'Muslims urged not to be swayed by guises of Islamic liberalism,' *The Brunei Times*, Feb 9 2013; Sharon Siddique, 'Brunei Darussalam 1991: The Non-Secular Nation,' (1992) *Southeast Asian Affairs* 91–100.

11 It cannot be emphasised enough that the terms "Syariah" and "Islamic Law," as they are used in this report, refer to a specific version of Syariah Law, namely its official interpretation by the government of Brunei. This report does *not* intend to make any statement – neither explicitly nor implicitly – on the theological 'truth' or 'error' of any of the multiple discursive traditions and legal schools of Islam.

12 Compare Iik Arifin Mansurnoor, 'Formulating and Implementing a Shari'a-Guided Legal System in Brunei Darussalam: Opportunity and Challenge,' (2009) 1(2) *Sosiohumanika* 219–48.

13 'Unique hybrid legal system mooted,' *The Brunei Times* 5 Jan 2012.

14 Part II, Article 2, The Constitution of Brunei Darussalam.

15 Section 41 (3), Religious Council and Kadis Courts Act (Chapter 77).

Control Section (*Bahagian Kawalan Akidah*), and a number of other sub-institutions. In its advisory role to the Sultan, the Religious Council is the “chief authority” in “all matters relating to religion.”¹⁶ Any ruling given by the Council, whether directly or issued by its Legal Committee, is “binding on all Muslims of the Shafeite sect resident in Brunei.”¹⁷

In 2014, Brunei became the first ASEAN-country to implement a strict form of Islamic Criminal Law, where its most drastic provisions carry maximum penalties such as stoning to death for offences like apostasy, adultery, homosexual intercourse, and blasphemy. Punishments for theft include the amputation of limbs.¹⁸ The Syariah Penal Code Order 2013 was first presented to the public in 2013, and will be implemented over three stages. The first stage took effect on 1 May 2014, and includes 55 offences that are punishable by fines or imprisonment.¹⁹ The most-controversial punishments will be enforced in the second and particularly the third period, which will start 12 and 24 months after the Syariah Courts Criminal Procedure Code (CPC) will have been published in the official gazette. The draft CPC, which supplements the Syariah Penal Code Order, is currently being finalized (as of June 2014).²⁰ Under this unprecedented legal reform, 209 amendments have been made to Brunei’s previous Islamic laws, including the Islamic Religious Council Act, the Religious Council and Kadis Courts Act, and the Syariah Courts Act.²¹

The Office of the UN High Commissioner for Human Rights and many international observers are concerned that the Syariah Penal Code Order 2013 would seriously violate international human rights law.²² Sultan Hassanal Bolkiah however argues that by implementing these legal reforms, the government of Brunei “uphold(s) human rights with the Al-Quran as our foothold.”²³ Responding to accusations from foreign observers, Brunei’s State Mufti, Hj Abdul Aziz Juned, declared in October 2013 that “Islam has its own human rights” which, unlike human rights claims “stipulated by humans,” would “never change through the times.”²⁴ From the State Mufti’s perspective, the only human rights that can be considered as truly universal are “stated in Syariah law.”²⁵ Addressing the UN Human Rights Council, the government of Brunei has argued accordingly that the Syariah Penal Code Order 2013 aims “at providing basic human rights.”²⁶

16 Section 38, Religious Council and Kadis Courts Act (Chapter 77).

17 Section 43 (2), Religious Council and Kadis Courts Act (Chapter 77).

18 Section 55 (1), Syariah Penal Code Order 2013.

19 ‘Khalwat offenders face heavy penalties,’ *The Brunei Times*, 30 Mar 2014.

20 ‘First phase of Syariah Code comes into effect on April 22’ *The Brunei Times*, 23 Mar 2014; ‘A new era for Brunei,’ *The Brunei Times*, 30 Apr 2014.

21 ‘Authorities amend three Acts related to new Syariah law,’ *The Brunei Times*, 6 Apr 2014.

22 ‘UN concerned at broad application of death penalty in Brunei’s revised penal code,’ *UN News Center*, 11 Apr 2014.

23 Sultan Hassanal Bolkiah, quoted in ‘Laws of Islam Seek Blessings Not Oppression,’ *Borneo Bulletin*, 5 Nov 2013.

24 ‘Syariah Law Not Against Human Rights,’ *Borneo Bulletin*, 24 Oct 2013.

25 ‘Syariah Law Not Against Human Rights,’ *Borneo Bulletin*, 24 Oct 2013. Speaking of the same topic In November 2013, the State Mufti argued that “Islam provides an inclusive environment of fairness and justice that does not merely take into account basic human rights, but the rights of the environment, government and of Allah.” See ‘State mufti to talk about human rights,’ *The Brunei Times*, 20 Nov 2013.

26 UN Human Rights Council (Working Group on the Universal Periodic Review), 19th session. ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 [Brunei Darussalam]’ (A/HRC/WG.6/19/BRN/1). 28 April–9 May 2014. p. 3. Apparently, however, this Brunei-specific usage of the term “human rights” does not imply precisely the same meanings and normative underpinnings that “international human rights” in the sense of the UDHR or other UN-based human rights treaties would imply. “True” human rights, as the government of Brunei understands them, are not resulting from historically rooted international agreements or declarations. They are first and foremost prescribed by *Allah*, as revealed in Islamic sources, and thus supposedly identical with the rights and duties that are expressed by the provisions of Brunei’s Syariah legislation.

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

International Document	Year of Signature	Year of Ratification / Accession	Reservations / Declarations
UN Convention on the Rights of the Child (CRC)	1995	1995	Articles 14, 20 and 21 ²⁷ Reservations to paragraphs 1 and 2 of Article 20, as well as paragraph (a) of Article 21, were withdrawn in 2014. ²⁸
UN Convention on the Elimination of All Forms of Discrimination Against women (CEDAW)	2006	2006	Article 9(2) and Article 29(1) ²⁹

Brunei has not signed the International Covenant on Civil and Political Rights (ICCPR). Furthermore, it has conditioned its ratification of the CRC and CEDAW to religious considerations. Brunei has explicitly refused to subscribe to the state's obligation under the CRC to "respect the right of the child to freedom of thought, conscience and religion,"³⁰ and generally insists on the normative superiority of its constitutional religion, Islam, over the CRC's provisions. It made the following reservation to the CRC:

27 United Nations Treaty Collection, *Convention of the Right of the Child*, 20 Nov 1989, United Nations, Treaty Series, vol. 1577, p. 3 <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> accessed 17 Apr 2014.

28 UN Human Rights Council (Working Group on the Universal Periodic Review), 19th session. 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 [Brunei Darussalam]' (A/HRC/WG.6/19/BRN/1). 28 April–9 May 2014 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/106/65/PDF/G1410665.pdf?OpenElement>> accessed 30 May 2014. p. 4.

29 Netherlands Institute of Human Rights, *Declarations and reservations by Brunei Darussalam made upon ratification, accession or succession of the CEDAW* <<http://sim.law.uu.nl/SIM/Library/RATIF.nsf/f8bbb7ac2d00a38141256bfb00342a3f/3b3cdf149224eb99c12571d100368c5c?OpenDocument>> accessed 17 Apr 2014.

30 Article 14 (1), UN General Assembly, *Convention on the Rights of the Child*, 20 Nov 1989, United Nations, Treaty Series, vol. 1577, p. 3.

"[The Government of Brunei] expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei and to the beliefs and principles of Islam, the state, religion, and without prejudice to the generality of the said reservations, in particular expresses its reservation on articles 14, 20 and 21 of the Convention."³¹

It also made a similar reservation to CEDAW:³²

"[T]he Government of Brunei expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei and to the beliefs and principles of Islam, the official religion of Brunei and, without prejudice to the

31 United Nations Treaty Collection, *Convention of the Right of the Child*, 20 Nov 1989, United Nations, Treaty Series, vol. 1577, p. 3 <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> accessed 17 Apr 2014. The reservations to paragraphs 1 and 2 of Article 20, as well as paragraph (a) of Article 21, have been withdrawn in 2014.

32 United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women* 18 Dec 1979, United Nations, Treaty Series, vol. 1249, A/34/46 p. 13 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed 17 Apr 2014.

generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention.”³³

The UN Committee on the Rights of the Child gave its Concluding Observations on Brunei in 2003,³⁴ long before the enactment of the Syariah Penal Code Order 2013. Thus, it considered the state of Brunei’s policies and practices prior to recent legal reforms. The Committee on the Elimination of Discrimination against Women however published its first Concluding Observations on Brunei very recently on 7 November 2014.³⁵ Among other recommendations, the Committee urged the government to immediately review the new Syariah Penal Code Order 2013 “with a view to repealing its direct and indirect discriminatory provisions affecting women.”³⁶ The Committee stated as follows:

“The Committee is gravely concerned about the State party’s restrictive interpretation of Syariah law and about the adverse impact on women’s human rights of the recently adopted Syariah Penal Code Order 2013, which under its third phase of implementation will impose the death penalty by stoning for several “crimes,” in particular adultery and

extra-marital relations (*zina*). While noting that the same penalties apply to women and men, the Committee is seriously concerned that women are disproportionately affected by punishment for “crimes” involving sex, and are at a higher risk of being convicted of adultery and extra-marital relations, due to discriminatory investigative policies and provisions on the weighing of evidence. In particular, it notes with concern that women will face greater difficulty in collecting the necessary evidence to prove rape, and thereby fear of being accused of *zina* is likely to prevent women from reporting rape.”³⁷

Brunei’s insistence on a divine prescription for unequal rights for men and women in certain fields of Islamic Law is in obvious tension with the CEDAW’s general aim of achieving equal rights for women. (See “Domestic Laws and Policies.”)

Brunei has asserted its commitment to human rights on various other occasions. Not only did it sign on to the ASEAN Human Rights Declaration (AHRD) in November 2012, it also hosted the 13th Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in December 2013.³⁸ The Sultan also underlined his government’s commitment to the AHRD during a speech in Indonesia in the same year.³⁹

33 Netherlands Institute of Human Rights, *Declarations and reservations by Brunei Darussalam made upon ratification, accession or succession of the CEDAW* <<http://sim.law.uu.nl/SIM/Library/RATIF.nsf/f8bbb7ac2d00a38141256bfb00342a3f/3b3cdf149224eb99c12571d100368c5c?OpenDocument>> accessed 17 Apr 2014.

34 UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Brunei Darussalam*, 27 October 2003, CRC/C/15/Add.219, <<http://www.refworld.org/docid/403a21fd4.html>> accessed 19 December 2014

35 UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations on the combined initial and second periodic reports of Brunei Darussalam*, 7 November 2014, CEDAW/C/BRN/CO/1-2, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5> accessed 19 December 2014.

36 CEDAW, *Concluding Observations*, Par. 13.

37 CEDAW, *Concluding Observations*, Par. 12.

38 ‘ASEAN to consult on human rights,’ *The Brunei Times*, 28 Dec 2013; ‘HM lauds ASEAN role in promoting democracy,’ *The Brunei Times*, 8 Nov 2013.

39 ‘HM lauds ASEAN role in promoting democracy,’ *The Brunei Times*, 12 Nov 2013. See also ‘Brunei to attend human rights meeting,’ *The Brunei Times*, 28 Apr 2014. Brunei is also involved in the following regional human rights-related mechanisms: The ASEAN Committee on Women (ACW), the ASEAN Confederation of Women Organization (ACWO), and the Senior Officials Meeting on Social Welfare Development.

B. Domestic Laws and Policies

The Constitution of Brunei states that “all other religions [besides the state religion, Shafi’i Islam] may be practiced in peace and harmony by the person professing them.”⁴⁰ However, it is nowhere specified what characterises a religious practice “in peace and harmony,” and whether “may be practiced in peace and harmony” would imply or restrict freedom of thought, conscience and religion, and, if so, whether it would have the same scope of protection as provided for under the UDHR and AHRD. The Constitution does not make any further provision that protects religious freedom in that sense, neither directly nor indirectly. On the contrary, domestic laws and policies systematically restrict the individual right to religious freedom. By stipulating that “[n]o person shall be appointed to be Prime Minister unless he is a Brunei Malay professing the Muslim religion,”⁴¹ the Constitution underlines the privileged legal status of Islam and its central political role in the country. Non-Muslim religions, by contrast, are legally and politically marginalised, and there are no laws or policies that would protect atheism or non-religion.

Numerous national laws and policies limit freedom of thought, conscience and religion, some of which will be outlined in the following sections. Many of the most serious restrictions of religious freedom in domestic laws had been codified in the Religious Council and Kadis Courts Act of 1984. With the Syariah Penal Code Order 2013, some of these provisions have been repealed⁴² and replaced by even more far-reaching restrictions on the right to freedom of thought, conscience and religion. Each of the following sub-sections will therefore first describe the law as it stood prior to the legal reform, before it presents the newly enforced provisions. As

some provisions of the Syariah Penal Code Order 2013 now also apply to non-Muslims, unlike Brunei’s previous Islamic Law, it will be noted for each case whether non-Muslims are affected. Members of the royal family are not explicitly exempted from any of the stated rules. As previously noted, the Syariah Penal Code would be implemented in three stages, and many of the provisions described here will come into force in the second phase of implementation. The third phase would see the implementation of provisions carrying the death penalty.⁴³ Rules that are not yet enforced are marked with an asterisk “*”.

It should be noted that all convictions to death (for so-called *hadd*-offences) depend on very detailed procedural conditions that are described in various sections of the Syariah Penal Code Order 2013, with reference to further specifications in the Syariah Court Evidence Order 2001. Leaving aside the complex details, it is generally necessary that the offender makes a confession voluntarily without force and imputation. This should be done in court by applying the word “*asyhadu*” (Arabic: “I swear”). If there is no confession, there must be at least two witnesses who are “*adil*” (“just”), i.e. “a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins.”⁴⁴ These witnesses must also apply the word “*asyhadu*,” thus making a religious oath. Offenders or witnesses must have reached the age of puberty (*baligh*) and be capable of knowing the nature of their offence. In some cases, it is possible to withdraw statements or to repent. If the court finds that the offence is proved by evidence other than these *hadd*-specific requirements, other regulations apply and the offender can be sentenced to alternative punishments, as specified in each section of the Code. Where such alternative

40 Part II, Article 3 (1), The Constitution of Brunei Darussalam.

41 Part III, Article 4 (5), The Constitution of Brunei Darussalam.

42 This pertains to the Sections 171, 172, 173, 174, 177, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195 and 196 of the Religious Council and Kadis Courts Act (Chapter 77), which have been repealed by the Syariah Penal Code Order 2013, as stated in Section 254.

43 With the first phase, the Syariah Penal Code order 2013’s General Offences (*ta’zir*) have been enforced (Sections 192–251, with some exceptions). The second phase will include offences liable for *hadd/hudud*, *qisas* (retribution) and *diyat* (compensation), except for those that carry the death penalty. The latter will be implemented in the third phase (‘Syariah Penal Code still warrants more, better clarifications,’ *The Brunei Times*, 6 Feb 2014.).

44 Section 31, Syariah Courts Evidence Order.

punishments are possible, this is noted in the following sections.

Blasphemy

Under the Religious Council and Kadis Courts Act, the usage of any passage from the Quran in places of public entertainment in a derisive manner, or the deriding of any act or ceremony relating to Islam, was punishable with a fine of up to BND 8,000 or one month imprisonment.⁴⁵ Insulting or bringing “into contempt the Islamic religion or ... the teaching of any authorised religious teacher” or the State Mufti’s fatwas was furthermore punishable with up to six months imprisonment or a fine of BND 4,000.⁴⁶ Contempt of members of the Religious Council, Syariah courts or mosque officials was punishable with up to one month imprisonment or BND 1,000.⁴⁷ These provisions had only applied to Muslims.

The Syariah Penal Code Order 2013 introduced heavier punishments for blasphemy:

Muslims who declare themselves as God⁴⁸ or Prophet⁴⁹ can be punished with death, or up to 30 years imprisonment and up to 40 strokes.* Muslims who deny the validity of *hadith* as an Islamic “source of authority” face the same punishments.^{*50}

Both Muslims and non-Muslims who insult the Islamic Prophet Muhammad can now, under specific procedural conditions, be sentenced to death.^{*51} Otherwise they can be punished with up to 30 years imprisonment and 40 strokes, if they do

not repent.^{*52} Furthermore, any person who insults or “makes fun of” Islamic teachings, practices, holy words, laws, or the State Mufti’s fatwas, can now be fined with BND 12,000, three years imprisonment, or both.⁵³ Contempt of members of the Religious Council, Court officials or any members of the administration of Brunei’s Syariah Law sector is now punishable with BND 8,000, two years imprisonment, or both, for Muslims and non-Muslims.⁵⁴ The public dissemination of beliefs or practices that are contrary to Islamic Law, as Brunei’s government has codified it, or exposing Muslims to ceremonies, act or doctrines that are contrary to Islamic Law, can be punished with BND 20,000, five years imprisonment, or both, irrespective of whether the offender is Muslim or non-Muslim.⁵⁵

Religious Deviance

The government of Brunei traditionally defends its officialised Islamic truth claims vis-a-vis what it considers to be “deviant” (*sesat*) Muslim teachings and practices. Before 2014, religious authorities such as the Faith Control Section justified their respective actions with reference to several provisions of the Religious Council and Kadis Courts Act of 1984. The previous law stated, for example, that Muslims who are teaching or expounding “any doctrine or perform any ceremony or act relating to the Islamic religion in any manner contrary to Muslim law” can be punished with up to three months imprisonment and a monetary fine of BND 2,000.⁵⁶ This provision, which is formally called “false doctrines,” has for example been applied to Muslim shrine (*keramat*)-worshippers (see Part I, 2b, “Places of worship”). Friday prayers are legally compulsory for male Muslims in Brunei. Those who failed to attend such prayers at a mosque had to pay a fine of BND 100, in the case of a second offence BND 200, and BND 500

45 Section 189, Religious Council and Kadis Courts Act (Chapter 77).

46 Section 191, Religious Council and Kadis Courts Act (Chapter 77).

47 Section 190, Religious Council and Kadis Courts Act (Chapter 77).

48 Section 108, Syariah Penal Code Order 2013.

49 Section 109, Syariah Penal Code Order 2013.

50 Section 111 (1, b), Syariah Penal Code Order 2013.

51 Section 221 (1), Syariah Penal Code Order 2013.

52 Sections 110 (1), 221 (2), Syariah Penal Code Order 2013.

53 Section 220, Syariah Penal Code Order 2013.

54 Section 230 (2), Syariah Penal Code Order 2013.

55 Section 207, Syariah Penal Code Order 2013.

56 Section 186, Religious Council and Kadis Courts Act (Chapter 77).

for a third or subsequent offences.⁵⁷ However, if the attendance was “prevented by rain,”⁵⁸ or the person’s place of residence was “more than three miles by the nearest route from a mosque,”⁵⁹ or the person was excused by a mosque official (e.g. because of sickness),⁶⁰ it would not have been considered an offence. The public sale of any food, drink or tobacco to or consumption by Muslims during the fasting month of Ramadhan was punishable with a fine of BND 500 for the first offence, BND 750 for the second and BND 1,000 for the third or any subsequent offence.⁶¹

The Syariah Penal Code Order 2013 introduced heavier punishments for these and other forms of what the government considers to be religious deviance:

Muslims who worship “any person, place, nature or any object, thing or animal in any manner” contrary to Islamic Law, e.g. believing that objects or animals possess certain powers, “increase wealth,” “grant wishes,” “heal diseases” or “bring good luck,” face a fine of BND 8,000, two years imprisonment, or both.⁶² They can also be forced to undergo religious “counselling” in order to “cure” them from their “deviant” beliefs.⁶³ Muslim practitioners of “deviant teachings” (*ajaran sesat*) can also be charged under several other provisions of the new law. Any Muslim person who “claims that he or any other person knows an event or a matter that is beyond human understanding or knowledge” faces up to 10 years imprisonment or 40 strokes, “and the Court

shall order him to repent.”⁶⁴ Muslims who declare themselves “Imam Mahdi” (a mythical saviour) can be punished accordingly.⁶⁵

The fines for failure to attend Friday Prayers “without any reasonable excuse” (illness, travelling, or rain) by Muslim males who have reached the age of puberty have now been increased: The first offence can be punished with up to BND 200, the second offence with BND 300, and the third and subsequent offences with up to BND 1,000.⁶⁶

Both Muslims and non-Muslims can now be punished for inciting other Muslims to neglect their “religious duties,” such as persuading a Muslim not to attend Friday prayers or Islamic teachings, or convincing a Muslim not to pay Islamic taxes (*zakat*). Offenders can be imprisoned for up to one year, and/or a monetary fine of BND 4,000.⁶⁷ The public sale of food, drinks or tobacco, or the public consumption of such products by Muslims during Ramadhan is now forbidden for both Muslims and non-Muslims, and the punishments are more drastic. Offenders can be fined with BND 4,000, one year imprisonment, or both.⁶⁸ However, government officials have declared that at some places such as schools, special rooms for non-Muslim children will be provided for eating and drinking.⁶⁹ Finally, persons who are “proven” to have conducted or advertised “black magic” (*ilmu hitam*) can be sentenced to five years imprisonment and a monetary fine of BND 20,000, irrespective of their religion.⁷⁰ They can also be forced to undergo religious “counselling.”⁷¹ Attempts to commit murder (*qatl*) by “black magic” can be punished with up to ten years imprisonment, a fine of BND

57 Section 171, Religious Council and Kadis Courts Act (Chapter 77).

58 Section 171 (1), Religious Council and Kadis Courts Act (Chapter 77).

59 Section 171 (2), Religious Council and Kadis Courts Act (Chapter 77).

60 Section 171 (3), Religious Council and Kadis Courts Act (Chapter 77).

61 Section 173, Religious Council and Kadis Courts Act (Chapter 77).

62 Section 216 (1), Syariah Penal Code Order 2013.

63 Section 216 (3), Syariah Penal Code Order 2013.

64 Section 206 (b), Syariah Penal Code Order 2013.

65 Section 206 (a), Syariah Penal Code Order 2013.

66 Section 194, Syariah Penal Code Order 2013.

67 Section 235, Syariah Penal Code Order 2013.

68 Section 195, Syariah Penal Code Order 2013.

69 ‘Eating facility for non-Muslims during Ramadhan in schools mooted,’ *The Brunei Times*, 6 Apr 2014.

70 Section 208 (1), Syariah Penal Code Order 2013.

71 Section 208 (3), Syariah Penal Code Order 2013.

40,000, or both.^{*72} The category of “black magic” had not existed in Brunei’s criminal law prior to the legal reform.

Sexual Deviance

Under the Religious Council and Kadis Courts Act, Muslims who were “found in retirement with and in suspicious proximity to any woman, whether or not professing the Islamic religion other than” their husband or wife, were punishable for the offence of “*khalwat*.” For men, the punishment was BND 1,000 or one month imprisonment, or BND 2,000 and two months imprisonment for the second or subsequent offences.⁷³ Female offenders faced BND 500 or 14 days imprisonment, or BND 1,000 and one month imprisonment.⁷⁴ An additional provision stated that Muslim women who were “found in retirement and in suspicious proximity” with non-Muslim men would be punished accordingly.⁷⁵ Sexual intercourse between persons who are forbidden by Islamic Law to marry was punishable with up to five years imprisonment for men, and one year for women.⁷⁶ Cohabitation with a divorced partner was punishable with one month imprisonment or a fine of BND 1,000 for male offenders, and with seven days imprisonment or BND 200 for female offenders.⁷⁷

The Syariah Penal Code Order 2013 repealed all of these provisions and introduced much heavier punishments for what the government considers to be sexual deviance.

Muslims can be punished under the Syariah Penal Code Order 2013 for extramarital sex⁷⁸ with “stoning to death witnessed by a group of Muslims,” whipping with hundred strokes,^{*} or, if the necessary procedural conditions are not met, with up to seven years imprisonment.^{*79} For Muslim women, pregnancy or childbirth out of wedlock is now punishable with two years imprisonment, a fine not exceeding BND 8,000, or both.^{*80} Whoever entices or causes a Muslim married woman “to leave the matrimonial home determined by her husband” faces the same punishment.⁸¹

Both Muslims and non-Muslims can be punished with the death penalty by stoning for homosexual intercourse,^{*82} and, irrespective of the offenders’ gender, also for sexual intercourse “against the order of nature that is through the anus.”^{*83} If the necessary conditions for the death penalty are not met, they can be sentenced to seven years of imprisonment or whipping.^{*84} The punishment for “living together, cohabiting, in confinement” or “isolating oneself in close proximity that can lead to suspicion” of “immoral act[s]” (*khalwat*) has been increased as well, offenders can now be sentenced to one year imprisonment, BND 4,000, or both.⁸⁵ Non-Muslims can be similarly punished for “*khalwat*” if they are found in “close proximity” with Muslims under the said circumstances. Unlike the previously stated law, the Syariah Penal Code Order 2013 does not ascribe different penalties depending on the offenders’ sex anymore. Furthermore, cross-dressing “for immoral purposes” in public is now an offence for Muslims and non-Muslims, carrying different maximum penalties for men (BND 4,000,

72 Section 153, Syariah Penal Code Order 2013.

73 Section 177 (1), Religious Council and Kadis Courts Act (Chapter 77).

74 Section 177 (2), Religious Council and Kadis Courts Act (Chapter 77).

75 Section 178 (3), Religious Council and Kadis Courts Act (Chapter 77).

76 Section 178 (3), Religious Council and Kadis Courts Act (Chapter 77).

77 Section 178 (1, 2), Religious Council and Kadis Courts Act (Chapter 77).

78 Section 68 (1), 69 (1), Syariah Penal Code Order 2013.

79 Sections 69 (1, a, b), 69 (2, a), Syariah Penal Code Order 2013.

80 Section 94 (1, a) Syariah Penal Code Order 2013.

81 Section 201, Syariah Penal Code Order 2013.

82 Section 82 (1, 2), Syariah Penal Code Order 2013.

83 Section 82 (2), Syariah Penal Code Order 2013.

84 Sections 69 (1, a, b), 69 (2, a), 82 (1), Syariah Penal Code Order 2013.

85 Section 196 (1, 2, 3a, b), Syariah Penal Code Order 2013.

one year imprisonment, or both) and women (BND 1,000, three months imprisonment, or both).⁸⁶

Indecent Behaviour and Dress-Code

Prior to the Syariah Penal Code Order 2013, Brunei's Islamic Law did not stipulate any rules regarding "indecent behaviour" (*perbuatan tidak sopan*). The new law has introduced this category, and states that behaviour is considered indecent "if it tends to tarnish the image of Islam, deprave a person, bring bad influence or cause anger to the person who is likely to have seen the act."⁸⁷

Both Muslims and non-Muslims can be punished with BND 2,000, six months, or both,⁸⁸ for "indecent behaviour" in public. According to spokespersons from the government's Islamic bureaucracy, the category of "indecent behaviour" would also include "indecent clothing." However, no guidelines have yet been published to define what constitutes indecent clothing, although it had been reported that a codification of Brunei's "Syariah dress-code" is planned for the future.⁸⁹ To the surprise of many, the Sultan openly criticised the Ministry of Religious Affairs in May 2014 for making public statements about the applicability of Section 197 ("indecent behaviour") to clothing without adequately specifying it. During a public speech, the Monarch asked: "Why was it necessary to bring up the Islamic ruling on dress code? And what is the relevance of the briefing touching on the need to cover up not yet made compulsory?"⁹⁰ He gave an example of a person walking around in underpants and a female wearing a traditional Malay dress (*baju kurung*) but without a headscarf, then

said: "Between the two, which one deserves to be called indecent behaviour. Perhaps, by responding this way, people will understand and the dress code issue will no longer be brought up."⁹¹ This statement may indicate there will be no general obligation for veiling, and that the supposed soon-to-be-announced dress-code guidelines⁹² might now be reconsidered. According to a spokesperson of the Attorney General's Chambers, a committee is also developing regulations for a "Syariah-compliant" sportswear.⁹³ Furthermore, a legal officer of the Ministry of Religious Affairs has declared that it will also be forbidden to upload images of oneself or others in "indecent clothing," or of "images of indecent acts on online platforms" under the new regulation for "indecent behaviour."⁹⁴ However, following the Sultan's intervention, it remains to be seen how Section 197 will be interpreted, and whether or not, or how precisely, it will be applied to clothing.

1. Freedom to adopt, change or renounce a religion or belief; and freedom from coercion

The government of Brunei emphasises that it does not consider the constitutional provision according to which all non-Muslim religions "may be practiced in peace and harmony" as "an absolute right."⁹⁵ Instead, the government and its religious clergy argue that "Art 3(1) empowers the government to take steps as it deems fit" to protect the "constitutional mandate to enact laws

⁸⁶ Section 198, Syariah Penal Code Order 2013.

⁸⁷ Section 197, Syariah Penal Code Order 2013.

⁸⁸ Section 197, Syariah Penal Code Order 2013.

⁸⁹ 'No guidelines yet on indecent clothing,' *The Brunei Times* 28 Mar 2014; 'Brunei set to unveil Syariah dress code,' *The Brunei Times*, 20 Apr 2014; 'Indecent clothing remains a hot topic,' *The Brunei Times*, 29 Apr 2014.

⁹⁰ 'End confusion over Syariah law,' *The Brunei Times*, 6 May 2014.

⁹¹ 'End confusion over Syariah law,' *The Brunei Times*, 6 May 2014.

⁹² 'Brunei set to unveil Syariah dress code,' *The Brunei Times*, 20 Apr 2014.

⁹³ 'Panel to look into sports dress code,' *The Brunei Times*, 22 Apr 2014.

⁹⁴ Ministry of Religious Affairs legal officer, Noor Diana Hj Awang, referring to Section 197, Syariah Penal Code Order 2013, quoted in 'Punitive action for online obscenity,' *The Brunei Times*, 6 Apr 2014.

⁹⁵ 'Religious freedom not violated in prohibition on use of Islamic words,' *The Brunei Times*, 10 Apr 2014.

which reflect preference for Muslims.”⁹⁶ Protecting the privileged position of Islam, and “curb[ing] the influences of other religions” is understood as necessary “to ensure that harmony and peace are maintained.”⁹⁷ This position has consistently been held by the government since independence in 1984, justified with reference to the “national philosophy” of “MIB” and the country’s nature as an Islamic Sultanate that dates back to the 15th century.

Accordingly, non-Muslims in Brunei are free and encouraged to adopt the Muslim faith, whereas Muslims are not allowed to change their religion.

Prior to 2014, Muslims were legally required to report in writing their intention to change their religion to the Religious Council’s Secretary.⁹⁸ In practice, permission to do so was rarely granted.⁹⁹ Muslims who sought to leave Islam also faced pressure from government authorities and their social environment. Failure to report renunciation of Islam was punishable with a monetary fine by a Magistrate’s Court.¹⁰⁰

The Syariah Penal Code Order 2013 outlaws apostasy for Muslims. Declaring oneself as non-Muslim is now considered as *Irtidad*. Persons who have committed “*Irtidad*” can, in the most drastic case, be sentenced to death by stoning.^{*101} If the earlier-mentioned procedural requirements for such a

96 Mohd Altaf Hussain Ahangar, quoted in ‘Religious freedom not violated in prohibition on use of Islamic words,’ *The Brunei Times*, 10 Apr 2014.

97 ‘Religious freedom not violated in prohibition on use of Islamic words,’ *The Brunei Times*, 10 Apr 2014.

98 Section 169, Religious Council and Kadis Courts Act (Chapter 77).

99 Freedom House, *Freedom in the World 2013: Brunei* <<http://www.freedomhouse.org/report/freedom-world/2013/brunei>> accessed 26 April 2014; *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

100 Section 180 (4), Religious Council and Kadis Courts Act (Chapter 77).

101 Section 112 (1), Syariah Penal Code Order 2013. Compare also ‘Apostasy Punishable by Death,’ *The Brunei Times*, 2 Apr 2013.

“*hadd*” punishment are not met, apostates now face up to 30 years imprisonment and whipping.* However, the Islamic Court can order the “offender” to repent, and if he/she does so, the Court shall order acquittal of the sentence.*¹⁰²

2. *Right to manifest one’s religion or belief*

a. *Freedom to worship*

There are serious restrictions on freedom of worship in Brunei, for both Muslims and non-Muslims. For Muslims, this most notably affects persons who adhere to understandings of Islam that differ from the state’s official interpretation. These are considered as “false doctrines” (see Part I, A, Religious Deviance), and the government maintains a list of Muslim groups and teachings that are considered “deviant” (see Part III, Negative Contributing Factors). Religious enforcement agencies, such as the Syariah Affairs Department’s Faith Control Section, are responsible for ensuring the “purity” of Islam, and for investigating and prosecuting transgressions.

In addition to non-Shafi’i Muslim communities, one group that is restricted in its freedom of worship are Malay shamans/healers (*bomoh*) and their customers. The practices of *bomoh* have a centuries-old history in the Malay world,¹⁰³ and have been openly present in many Bruneian villages until the late 20th century.¹⁰⁴ Despite massive governmental pressure, *bomoh* are still active in Brunei until

102 Sections 116, 117, Syariah Penal Code Order 2013.

103 Mohd Taib Osman, *Bunga Rampai: Aspects of Malay Culture* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1984), 148 ff.

104 On the traditional presence of *bomoh* in Brunei Darussalam, compare also John Funston 2006 ‘Brunei Darussalam,’ in Greg Fealy and Virginia Hooker (eds), *Voices of Islam in Southeast Asia: a contemporary sourcebook*, (Singapore: ISEAS, 9–22) p. 22.

today.¹⁰⁵ However, from the government's point of view, "Bomoh practice... is a big sin that is unforgivable."¹⁰⁶ Muslims are regularly reminded "to avoid being dragged or drifted to these devious teachings through Bomohs."¹⁰⁷ Government authorities seek to prosecute *bomoh* by various means, including calls to the public to report such individuals. In 2004, 38 cases that were assisted by citizens led to the arrest of *bomoh*; in 2005, the number increased to 55.¹⁰⁸ Since then, no further statistics have been publicised, but arrests of *bomoh* continue to be regularly reported on local news media.¹⁰⁹ In an attempt to educate the public, an exhibition was organised in 2007 that showcased confiscated materials of "deviant" shamans (*bomoh*), such as deer skins with Quranic inscriptions, trees, rubies, nails, talismans, amulets, love potions, "mystic rice" to increase business profits, needles that give beauty to the wearer, or invincible suits. According to the Head of the Faith Control Section, the exhibition aimed at providing "awareness to society."¹¹⁰ The Islamic Da'wah Center also maintains a permanent exhibition that showcases several hundreds of religious objects and materials that have been confiscated at immigration posts and during enforcement raids. They include items used by *bomoh*, objects related to pornography and gambling, as well as non-Islamic reading materials which, for example, "advocate Christianity."¹¹¹

105 Compare Narasappa Kumaraswamy 'Psychotherapy in Brunei Darussalam,' (2007) 63(8) *Journal of Clinical Psychology* 735–44, p. 743; 'Kepercayaan pada bomoh masih tebal,' *Media Permata*, 5 May 2007.

106 'Mysteries of Paranormal, Superstition,' *Brunei Direct*, 27 Jul 2007.

107 'Imams Denounce Bomoh Followers,' *Borneo Bulletin*, 5 Mar 2007.

108 'Rise in complaints on deviant activities,' *Borneo Bulletin*, 23 Mar 2007.

109 See for example 'Bomoh Nabbed Over Love Potion,' *Borneo Bulletin*, 6 Jul 2009; 'Witchcraft, sorcery may lead to "syirik",' *The Brunei Times*, 11 Feb 2012.

110 'Mysteries of Paranormal, Superstition,' *Borneo Bulletin*, 27 Jul 2007.

111 'Exhibition raises awareness on banned objects,' *The Brunei Times*, 9 Feb 2014.

Religious literature can also be seized under the Undesirable Publications Act, which empowers government authorities to seize "any publication prejudicial to public safety or public interest,"¹¹² including materials that are considered to be incompatible with the state-ideology MIB.¹¹³ Religious publications that are considered to contravene Islamic Law can also be confiscated under the Islamic Religious Council Act and Kadi Courts Act. Section 188 stipulates a maximum punishment of six months imprisonment or a fine of BND 4,000.¹¹⁴ In 2013, a spokesperson of the Islamic Da'wah Center declared that a total of 5,573 publications, notably excluding magazines, newspapers, electronic media, and items relating to calligraphy, have so far been filtered by its Filtration and Publications Control Unit (UPKT).¹¹⁵

The Syariah Penal Code Order 2013 states that "any act done or any word uttered [intentionally] by any Muslim ... which ... is contrary to the "aqidah [faith of Islam]," as Brunei's government defines it, can be considered as *Irtidad* and is thus strictly forbidden.¹¹⁶ Some varieties of *Irtidad* are punishable with death.* This applies e.g. to Muslims who declare themselves or others as prophets (*Nabi*) after Prophet Muhammad.*¹¹⁷ The Ahmadiyyah group, for example, which is banned in Brunei for spreading "deviant teachings" (*ajaran sesat*), believes that its founder, Mirza Ghulam Murtaza (1835–1908), was either a Muslim Prophet, or a mythical saviour (*Mahdi*). Members of the Ahmadiyyah can now theoretically be sentenced to death for upholding one of the core convictions of their religion, once the new law will have been fully enforced.

112 Section 13 (1), Undesirable Publications Act (Chapter 25).

113 'Exhibition raises awareness on banned objects,' *The Brunei Times*, 9 Feb 2014.

114 Section 188, Religious Council Act and Kadi Courts Act Section (Chapter 77).

115 'UPKT filtered over 5,000 publications,' *Borneo Bulletin*, 14 Mar 2013.

116 Section 107 (1), Syariah Penal Code Order 2013.

117 Section 109, Syariah Penal Code Order 2013.

The same danger applies to Brunei's small Bahai community, which is considered "deviant" because of its belief that Mirza Husain-Ali Nuri (also called Baha'ullah, 1817–1892) was a holy messenger fulfilling the prophecies of Islam and Christianity. Similarly, members of the Al-Arqam movement, which was banned in Brunei in 1991¹¹⁸ but continues to exist throughout Southeast Asia, can now be sentenced to death for their belief that a certain religious scholar, Sheikh Muhammad Abdullah Al-Suhaimi, was the *Mahdi*. Furthermore, Muslims who deny the validity of *hadith* as a "source of authority" can be sentenced to death (and other punishments) for *Irtidad*.^{*119} (See illustrative case, where the validity of *hadith* was supposedly questioned in Brunei, in "Serious Non-Violent Persecution on Account of Religion and/or Belief.") It should be noted that Islamic scholars holding a government license to teach and discuss Islam-related matters can still have debates among themselves over proper interpretations of *hadith* within an orthodox Sunni-Shafi'i discursive framework. Questioning the validity of *hadith* that are officially considered as "authentic," however, and denying their status as a source of Islamic Law is strictly forbidden.

Literature and other publications that are considered to contradict Islamic Law can now be seized under the Syariah Penal Code Order 2013, with penalties of up to two years imprisonment and a fine of BND 8,000 for printing, owning, broadcasting or distributing them.¹²⁰

Although theoretically possible, whether or not *Irtidad* as defined above will be applied to *bomoh* remains to be seen. In any case, other parts of Malay cultural traditions will now be affected as well. The State Mufti Department has warned the public in 2013 that some parts of traditional Malay weddings would contradict Islamic teachings and should therefore not be practiced anymore, including

certain dances, music and dress.¹²¹ Referring to new regulations under the Syariah Penal Code Order 2013, particularly Section 216, Islamic officials have furthermore declared that some (not clearly specified) traditional practices and beliefs can be considered as offences and are punishable with two years imprisonment and monetary fines.¹²²

Another change is that non-Muslims can now be punished for "misusing" certain "Islamic" words that are considered sacred with three years imprisonment or a monetary fine of BND 12,000.¹²³ There are 19 expressions that are forbidden "on the condition that the words are used and attributed to a religion other than Islam,"¹²⁴ including "*Allah*," which has traditionally been used by some Christian communities and bible translations in Borneo to refer to "God" in the Malay language.¹²⁵

In addition, it is compulsory for Muslims to pay religious taxes (*zakat*). Prior to 2014, non-payment was punishable with 14 days imprisonment or a fine of BND 1,000.¹²⁶

The Syariah Penal Code Order 2013 stipulates a much heavier punishment for the non-payment of religious taxes, with up to two years imprisonment, a fine of BND 8,000, or both.¹²⁷ As persons who are registered as Muslims are strictly prohibited from changing their religion, they are coerced to pay this tax even if they personally do not believe in its religious obligatoriness.

121 'Hentikan adat perkahwinan menyeleweng,' *Media Permata*, 6 Jun 2013.

122 'Local customs, beliefs may not be Syariah-compliant,' *The Brunei Times*, 17 Apr 2014.

123 Section 218, Syariah Penal Code Order 2013.

124 Section 217, Syariah Penal Code Order 2013; '19 Islamic words not allowed to be used in other religions,' *The Brunei Times*, 23 Feb 2014; 'Sacred words, phrases usage,' *The Brunei Times*, 10 May 2014.

125 Compare 'In Sabah and Sarawak, "Allah" unites,' *Free Malaysia Today*, 7 Feb 2014; '400 year-old Malaysian-Latin Dictionary: proof of use of the word Allah,' *Asianews.it*, 22 Jan 2011.

126 Section 192, Religious Council and Kadis Courts Act (Chapter 77).

127 Section 236, Syariah Penal Code Order 2013.

118 Mohamad Yusop bin Awang Damit 2004 'Political Outlook 2004–2005 / The Asean-10 / Brunei,' in Russel Heng and Denis Hew (eds), *Regional Outlook: Southeast Asia* (Singapore: ISEAS) 7–9 p. 8.

119 Section 111 (1, b), Syariah Penal Code Order 2013.

120 Section 213, Syariah Penal Code Order 2013.

b. *Places of worship*

There are several restrictions on the right to build and maintain places of worship. It is forbidden to build a mosque without written permission of the Religious Council.¹²⁸ Government permission is also necessary for using existing buildings for the purposes of a mosque,¹²⁹ or for making material alterations to the structure of any mosque.¹³⁰ There are 110 registered mosques and prayer halls in the country.¹³¹ Non-Muslim religious communities are allowed to maintain places of worship, provided that they have received a written permission from government authorities. However, some of these places and their clergy are under the surveillance of the Brunei Internal Security Department (BISD).¹³² Presently there are six churches (three Roman Catholic, two Anglican, and one Baptist), three Buddhist temples, and one Hindu temple.¹³³ It has been reported that the government also seeks to prevent the usage of private residences as places of worship for non-Muslim and non-Shafi'i Muslim communities, although several unregistered places, including a number of Christian congregations, continue to exist without governmental interference.¹³⁴

128 Section 124 (1), Religious Council and Kadis Courts Act (Chapter 77).

129 Section 124 (1), Religious Council and Kadis Courts Act (Chapter 77).

130 Section 124 (3), Section Religious Council and Kadis Courts Act (Chapter 77).

131 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

132 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

133 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

134 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

Muslims are not allowed to conduct worshipping practices at traditional spirit-shrines (*keramat*), which have long been part of Malay folk culture.¹³⁵ Islamic authorities have, for example, erected a signboard next to a shrine in the Tutong district where, according to local narration, a once famous Islamic scholar has long ago been buried. The signboard issues a “warning” (*Amaran*) that reads in both English and Malay: “Strongly prohibited to undertake any activity/ceremony against *Hukum Syara*’ (Syariah Law). If found guilty of an offence [the offender] could be sentenced under Religious Council and Kadis Court Act Chapter 77, liable on conviction of imprisonment for three months or a fine is BND 2000.”

The Syariah Penal Code Order 2013 threatens Muslim shrine-worshippers with even heavier penalties of two years imprisonment and BND 8,000.¹³⁶ The new law also supplements the previous ruling¹³⁷ that no mosque can be built without written permission of the Religious Council with a fine of BND 10,000 for violations.

c. *Religious symbols*

Non-Muslims are allowed to possess religious symbols and scriptures for personal private use. However, there are reports that government authorities regularly confiscate bibles and non-Islamic religious symbols at customs controls.¹³⁸ Islamic teaching materials can be confiscated as well if they are imported without government

135 On the historical rootedness of such shrines in the Malay world, see Walter W. Skeat, *Malay Magic: Being An Introduction To The Folklore And Popular Religion Of The Malay Peninsula* (London: Macmillan, 1900); Richard Winstedt, ‘Karamat: Sacred Sites and Persons in Malaya,’ (1924) 2(3) *JMBRAS* 264–79.

136 Section 216 (1), Syariah Penal Code Order 2013.

137 Section 240, Syariah Penal Code Order 2013; Section 124 (1), Religious Council and Kadis Courts Act (Chapter 77).

138 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

permission.¹³⁹ Government authorities regularly censor or black out depictions of Christian religious symbols such as crucifixes from magazines and newspapers that are imported to Brunei. The sale and distribution of any products and items carrying non-Muslim symbols is heavily restricted.¹⁴⁰

d. Observance of holidays and days of rest

Government authorities allow Chinese temples to celebrate religious events. However, they are required to apply annually for permission to do so.¹⁴¹ Besides Islamic events such as *Eid al-Fitr*, *Eid al-Adha*, the First Day of the fasting month of Ramadhan, the First Day of the Islamic New Year, the “Night Journey” (*Isra Me’raj*, referring to a spiritual experience of Prophet Muhammad), Prophet Muhammad’s Birthday (*Maulidur Rasul*), and the Revelation of the Quran, certain non-Muslim celebrations are observed as national holidays as well, including Christmas and Chinese New Year.

It is forbidden to sell or serve food and beverages at restaurants in daylight hours during Ramadhan. Public consumption of food and beverages is similarly forbidden at that time. Local news media call on the public to report such offences to the religious enforcement agencies.¹⁴² Forty-one persons were temporarily arrested in 2012 for these offences, and restaurants have been fined under the Religious Council and Kadis Courts

Act.¹⁴³ These violations could only be committed by Muslims and Muslim restaurants in the past. At that time, non-Muslim restaurants and non-*halal*¹⁴⁴ sections in supermarkets were still allowed to operate.¹⁴⁵ Furthermore, Muslim restaurants are obliged to operate in accordance with government regulations for *halal* food, as specified in the Halal Certificate and Halal Label Order of 2005. Religious enforcement officers can arrest without warrant any person they suspect of having committed or attempting to commit any offence against this Order.¹⁴⁶

The Syariah Penal Code Order 2013 has widened the ban for consuming, selling and offering food and beverages during Ramadhan, which now also applies to non-Muslims. Offenders can be sentenced to higher fines and even jail terms of up to one year.¹⁴⁷ The government’s Syariah Affairs Department reportedly also plans to introduce a new legal code that would include punishments for non-*halal* restaurant owners who serve food to Muslims and for Muslims who eat at non-*halal* restaurants at any time.¹⁴⁸

139 The Islamic Religious Council Act and Kadi Courts Act. Section 188, makes it a criminal offence to import any book or document that is considered to contravene ‘Muslim Law or Brunei Custom.’ Imported literature can also be seized under the Undesirable Publications Act (Chapter 25).

140 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

141 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

142 See e.g. ‘MoRA outlines fines for non-fasting Muslims,’ *The Brunei Times*, 14 Jul 2013.

143 Freedom House, *Freedom in the World 2013: Brunei* <<http://www.freedomhouse.org/report/freedom-world/2013/brunei>> accessed 26 April 2014; *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

144 Halal = permissible under Islamic Law.

145 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

146 Section 27 (1, a) Halal Certificate and Halal Label Order 2005.

147 Section 195, *Syariah Penal Code Order 2013*.

148 ‘Muslims eating at non-halal outlets may face penalty,’ *The Brunei Times*, 13 Dec 2011.

e. *Appointing clergy*

The government exclusively organize the appointment of Muslim clergy. All positions in its religious bureaucracy are systematically controlled, with clearly defined rules for the procedures of appointment and removal of Islamic officials.¹⁴⁹ The Religious Council, which is appointed by the Sultan,¹⁵⁰ maintains a register of all mosque officials (*pegawai masjid*) and imams.¹⁵¹ Mosque officials are obliged to inform the Council immediately about any vacancy or change on the particulars relating to their mosque.¹⁵² Every imam receives a government certificate carrying the Sultan's seal.¹⁵³

It is forbidden to teach any matters related to Islam without written government approval. Before 2014, Islamic teaching without permission was punishable with one month imprisonment or a fine of BND 1,000,¹⁵⁴ except for teaching in one's own residence to family members. Fatwas (legal Islamic opinions) are legally binding on Muslims in Brunei. The State Mufti (*Mufti Kerajaan*) holds the exclusive right to issue fatwas, or to appoint a person acting under his powers to issue them.¹⁵⁵ Prior to 2014, any Muslim, other than the State Mufti or a person acting under his powers, who issued or intended to issue any fatwa to be followed by the public pertaining to Islamic law or doctrine could be sentenced to a fine of BND 2,000 or three months imprisonment.

The Syariah Penal Code Order 2013 provides heavier punishments for Muslims who issue illegal fatwas,

149 Compare Sections 129–31, Religious Council and Kadis Courts Act (Chapter 77).

150 Section 13 (1), Religious Council and Kadis Courts Act (Chapter 77).

151 Section 129 (1), Religious Council and Kadis Courts Act (Chapter 77).

152 Section 129 (1), Religious Council and Kadis Courts Act (Chapter 77).

153 Section 129 (2), Religious Council and Kadis Courts Act (Chapter 77).

154 Section 185 (2), Religious Council and Kadis Courts Act (Chapter 77).

155 Section 187, Religious Council and Kadis Courts Act (Chapter 77).

with maximum penalties of BND 8,000, two years imprisonment, or both.¹⁵⁶ Public preaching and teaching without permit is now punishable with BND 8,000, two years imprisonment, or both.¹⁵⁷ Teaching Islam to one's family members in private is still allowed,¹⁵⁸ provided that the contents of teaching do not contain "heretic" illegal elements.

The government generally respects the autonomy of non-Muslim religious institutions in appointing their clergy, and the legal reform of 2013/14 does not impose any restrictions in this field. The status of the Catholic Church of Brunei was raised to an apostolic vicariate in 2005. Brunei's first Vicar Apostolic, Cornelius Sim, was ordained on 21 January 2005 at the Church of Our Lady of the Assumption in the capital, Bandar Seri Begawan.¹⁵⁹ However, it is not possible for the Catholic Church in Brunei to exercise the missionary function that apostolic vicariates traditionally practice elsewhere (see below).

f. *Teaching and disseminating materials*

Missionary activities by non-Muslim religions are forbidden if they target Muslims or "persons having no religion" (in official understanding this refers to atheists and animists).

Laws and government policies systematically limit access to non-Muslim religious materials, literature and media.

It was and continues to be similarly forbidden to advertise interpretations of Islam that "deviate" from the government's brand of Shafi'i Islam. The government is very active in propagating Islamic teachings. Such missionary activities (*dakwah / da'wah*) are conducted by several governmental institutions, such as the Ministry of Religious

156 Section 228 (1), Syariah Penal Code Order 2013.

157 Section 229 (1), Syariah Penal Code Order 2013.

158 Section 229 (2, b), Syariah Penal Code Order 2013.

159 'Historic moment for Church in Brunei as first bishop is ordained,' *AsiaNews.it* 14 Feb 2005.

Affairs and particularly the Islamic Da'wah Center (*Pusat Da'wah Islamiah*). The government also provides generous incentives for conversion to Shafi'i Islam. Some new converts have, among other forms of material support, received monthly financial donations, electric generators and water pumps, free pilgrimage travels and even new houses.¹⁶⁰ According to statistics from the Islamic Da'wah Center, there were 21,100 conversions between 1985 and 2010, with 300–500 conversions per year.¹⁶¹ Since 2010, 600 conversions per year have been registered.¹⁶² The Islamic Da'wah Center's personnel frequently makes "missionary visits" (*ziarah da'wah*) to non-Muslims, particularly in rural areas, and makes intense efforts to target urban audiences with new media channels such as *Facebook*, *Twitter* and weblogs.¹⁶³

All conversions to Islam must be reported to the Religious Council, which maintains a register of all converts. The register also includes additional information about the circumstances of each conversion.¹⁶⁴ Whoever effects a conversion to Islam is obliged to report to the Religious Council "all necessary particulars."¹⁶⁵ Intentional failure to report a conversion to the Council is an offence, for both converts and persons who have effected

conversions, and can be punished under the Religious Council Act and Kadi Courts Act with one month imprisonment or a fine of BND 1,000.¹⁶⁶

There have been many cases of conversion among Brunei's ethnic groups (*puak jati*), with several family members or entire families having collectively embraced Islam in recent years, often accompanied by laudatory media coverage. When parents convert to Islam, government authorities reportedly exert pressure for the children to do the same, although this is not legally prescribed.¹⁶⁷ According to the law, no person under the age of 14 years and 7 months can be registered as a convert.¹⁶⁸

The Syariah Penal Code Order 2013 states that the propagation of non-Islamic religions to Muslims and to "persons having no religion" shall be punished with up to BND 20,000, five years imprisonment, or both.¹⁶⁹ Anyone who influences or tries to persuade a Muslim "to become a believer or a member of a religion other than ... Islam or to become inclined to that religion,"¹⁷⁰ or to "dislike" Islam,¹⁷¹ similarly faces a maximum fine of BND 20,000 and/or five years imprisonment. The new Syariah legislation furthermore makes it possible to sentence persons who own or disseminate publications that are "contrary to Islamic Law" or relate to non-Islamic religions to up to two years imprisonment and monetary fines.¹⁷² "Publications" comprise printing, broadcasting, or any other form of public distribution.¹⁷³ This provision can be applied to any Muslim missionary activities that are perceived to "deviate" from the state's interpretation of Islam.

160 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; 'News houses for Converts,' *The Brunei Times*, 14 Aug 2007; '20 new converts receive financial aid to perform haj,' *Borneo Bulletin*, 20 Nov 2007; 'New converts receive food aid,' *The Brunei Times*, 24 May 2009; '2 converts to receive new homes,' *The Brunei Times*, 15 October 2009; '45 new converts receive financial aid,' *The Brunei Times*, 6 May 2010; 'New Converts in Brunei-Muara Received Donations,' *Borneo Bulletin*, 6 April 2014; 'Temburong Converts Received Aid,' *Borneo Bulletin*, 13 April 2014.

161 'Conversion figures prove Da'wah centre's propagation work effective,' *The Brunei Times*, 16 Dec 2010.

162 'Islamic da'wah is expanding in Brunei,' *The Brunei Times*, 29 Jul 2012.

163 'Use new media to propagate Islam,' *The Brunei Times*, 13 May 2012.

164 Section 164, Religious Council and Kadis Courts Act (Chapter 77).

165 Section 168, Religious Council and Kadis Courts Act (Chapter 77).

166 Section 181, Religious Council and Kadis Courts Act (Chapter 77).

167 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

168 Section 166, Religious Council and Kadis Courts Act (Chapter 77).

169 Section 209 (1), Syariah Penal Code Order 2013.

170 Section 211 (1), Syariah Penal Code Order 2013.

171 Section 211 (2), Syariah Penal Code Order 2013.

172 Sections 213, 214, 215, Syariah Penal Code Order 2013.

173 Section 213 (1b), Syariah Penal Code Order 2013.

g. *The right of parents to ensure the religious and moral education of their children*

The right of parents to ensure the religious and moral education of their children is protected insofar as they are free to educate them in private, provided that they do not violate any of the earlier mentioned prohibitions. However, at schools and other educational institutions, non-Muslim and non-Shafi'i Muslim children cannot receive any religious or moral education other than the government's doctrines of MIB and Shafi'i Islam. Bible studies, which have been taught at Brunei's six Christian schools in the past, are no longer permitted.¹⁷⁴ Obligatory courses in Islam and MIB are taught in all schools and at the country's universities. School textbooks present Islamic norms as exclusively true and desirable.¹⁷⁵ School and school officials can be punished for teaching non-Islamic religious contents.¹⁷⁶ Non-Muslim female students are required to wear Islamic dress at schools, including head covering (*tudung*), as part of their school uniform.¹⁷⁷ Researchers at universities are explicitly required to practice self-censorship about matters pertaining to Islam and the Monarchy.¹⁷⁸

174 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

175 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

176 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

177 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

178 The situation of academic censorship is also described in the resignation letter of Dr Maung Zarni, who left the University of Brunei Darussalam (UBD), because of various restrictions of academic freedom: Maung Zarni, 'Resignation Letter' 7 Jan 2013 <<http://www.maungzarni.net/2013/01/dr-maung-zarni-resignation-letter.html>> accessed 26 April 2014. Months before he first arrived at UBD, the Faculty's Dean ordered him in writing "to steer clear ... of two taboo subjects, namely the Sultan and Islam." Although he complied with this pre-condition for his appointment, he soon faced massive pressure for other political reasons and finally left the country.

The Compulsory Religious Education Act makes it obligatory for Muslim parents to send their children to a religious school or to a school that teaches the government's form of Shafi'i Islam for seven years, from the age of 7 to 15.¹⁷⁹ Failure to do so can be punished with up to one year imprisonment, a fine of BND 5,000, or both.¹⁸⁰ All private schools, including Christian and Chinese schools, are therefore required to offer Islamic teachings after their regular school hours for all Muslim students.¹⁸¹

The Syariah Penal Code Order 2013 states that anyone who tells a Muslim child, or a child whose parents have no religion, "to accept a religion other than ... Islam," or incites the child to participate in non-Muslim ceremonies or religious activities, can be punished with up to five years imprisonment and a fine not exceeding BND 20,000.¹⁸² This also applies to parents of Muslim children.

h. *Registration*

Under the Societies Order of 2005, all organisations must be registered. A list with the names of their members must be submitted regularly, and the Registrar of Societies (ROS) must be informed about procedural regulations for membership application. The same rule applies to non-Islamic religious groups, who must be registered in a similar manner like commercial or any other organisations. Unregistered organisations and unregistered members of registered organisations face various forms of punishment. Any person, who is a member of an unregistered organisation, who attends a meeting of such group or provides it with any form of aid can be sentenced to three years imprisonment and a monetary fine of BND

179 Section 5, Compulsory Religious Education Act (Chapter 215).

180 Sections 5 (2), 12 (1), Compulsory Religious Education Act (Chapter 215).

181 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

182 Section 212, Syariah Penal Code Order 2013.

10,000.¹⁸³ The same punishment can be applied to any person who is knowingly hosting a meeting of an “unlawful organisation,”¹⁸⁴ such as unregistered religious groups. The government has the right to interfere in the internal affairs of any registered organisation, e.g. by prescribing restrictive rules for membership. Certain foreign organisations such as Rotary, Kiwanis, and the Lions Club, are legally registered in Brunei, but Muslims are not allowed to join them.¹⁸⁵

There is no comprehensive register of all Muslim residents. However, national identity cards carry the bearer’s ethnicity. As Malays are considered to be Muslims, religious enforcement officers reportedly request ID cards when conducting raids, in order to determine whether a person is Malay (and thus Muslim) and can be held accountable for Syariah-based offenses.¹⁸⁶

Interfaith marriage between Muslims and non-Muslims is forbidden under the law.¹⁸⁷ Non-Muslim institutions are allowed to conduct religious marriages according to the rules, rites and ceremonies of their denomination, in accordance with government regulations.¹⁸⁸ All religious non-Muslim marriages must be registered.¹⁸⁹

Islamic marriages must be registered within seven days after their solemnisation.¹⁹⁰ It is allowed for Muslim men to marry up to four women, if certain

criteria are met and an Islamic (*Syar’ie*) judge has granted written permission.¹⁹¹ Polygamous marriages must be registered as well. The imam of each mosque *ex officio* holds the position as Registrar of Muslim Marriages and Divorces.¹⁹² The Sultan can also authorise any person to solemnise Islamic marriages.¹⁹³ Persons in Brunei are legally obliged to report unregistered or otherwise unlawful marriages to the responsible authorities.¹⁹⁴

i. Communicate with individuals and communities on religious matters at the national and international level

There are no laws expressly restricting members of religious groups from communicating with individuals and communities on religious matters at the national and international level. This is as long as such communication does not imply any dissemination of religious teachings other than Shafi’i, MIB-style Islam inside Brunei. However, until 2006, there were occasional reports of foreign clergy, such as certain bishops, priests or ministers, being denied entry into the country.¹⁹⁵

Both government religious groups as well as religious minorities maintain well-established contacts with foreign embassies, where questions of religious freedom and minority rights are regularly discussed. However, the government of Brunei insists on the principle of non-interference in domestic affairs and emphasises that the rights of all groups in the country are sufficiently protected.

183 Section 41, 42, Societies Order 2005.

184 Section 43, Societies Order 2005.

185 *Brunei 2013 Human Rights Report*, States Department of State, Bureau of Democracy, Human Rights and Labor.

186 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

187 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; see also Section 134, Religious Council and Kadis Courts Act (Chapter 77).

188 Sections 5 (1), 6, 9, Marriage Act (Chapter 76). See also Chinese Marriage Act (Chapter 126).

189 Section 14, Marriage Act (Chapter 76).

190 Section 143 (1), Religious Council and Kadis Courts Act (Chapter 77).

191 Section 23, Islamic Family Law Act (Chapter 217).

192 Section 135 (3), Religious Council and Kadis Courts Act (Chapter 77).

193 Section 137 (1), Religious Council and Kadis Courts Act (Chapter 77); Section 8 (1), Islamic Family Law Act (Chapter 217).

194 Section 25, Islamic Family Law Act (Chapter 217).

195 This was described in each of the International Religious Freedom Reports of the U.S. Department of State from 2000 until 2006.

J. Establish and maintain charitable and humanitarian institutions

All non-governmental organisations in Brunei, whether Muslim or non-Muslim and irrespective of their purpose, must register under the Societies Order of 2005. Any involvement in unregistered organisations is an illegal offence (see “Registration”). No sufficient information was found pertaining specifically to charitable or humanitarian organisations.

k. Conscientious objection

A source notes that military conscription does not exist in Brunei.¹⁹⁶ There are no known legal provisions concerning conscientious objection.¹⁹⁷

3. Freedom from intolerance and discrimination

The state-ideology of MIB rests on three sacrosanct pillars: “M” for Malay culture and tradition (*Melayu*), “I” for Islam and the “B” for the Monarchy (*Beraja*). Non-Muslim and non-Malay persons are by definition excluded from the core of governmentally prescribed national identity. In the government’s reading, their status is that of “protected minorities,” although some of them consider themselves rather as second-class citizens. Besides recognition as “good citizens” under MIB, Shafi’i Muslims enjoy various privileges vis-a-vis non-Muslims in Brunei. As stated earlier, the post of Prime Minister is legally reserved for Muslims only.¹⁹⁸ In practice,

most other positions in the government are given exclusively to Muslims as well. Muslims also enjoy privileged access to positions in the public service sector, which is the largest employer in the country. In village council elections, the only public elections held in Brunei, all candidates must be Muslims.¹⁹⁹ As a consequence, non-Muslims cannot exercise their basic human right to participate in political and public affairs on an equal basis. Taken together with the numerous legal provisions described earlier that restrict the rights of non-Muslims or threaten them with punishment under Islamic Law, these examples illustrate a significant level of systemic discrimination against non-Muslims. Furthermore, Muslims face various forms of intolerance and discrimination as well, especially if their personal beliefs and practices differ from the government’s legally unchallengeable interpretation of Islam.

Another field of institutionalised discrimination on religious grounds are (un)equal rights for men and women. Although the Islamic Family Law Act generally ascribes equal rights to men and women,²⁰⁰ under Brunei’s Islamic inheritance law, inheritance of Muslim women is half of that of men.²⁰¹ Under certain provisions of the Syariah Penal Code Order 2013, the testimony of two male witnesses has the same status as that of one male and two female witnesses.²⁰² At the same time, it is noteworthy that there are no other forms of discrimination against women in the public and private work sector. In 2013, 57% of positions in the civil service were held by women, as well as 28% of senior management posts.²⁰³ Women are widely

196 “Country report and updates: Brunei,” *War Resisters’ International*, <http://www.wri-irg.org/programmes/world_survey/country_report/en/Brunei> accessed 22 December 2014, citing Zulkarnen, Isaak 1995. ‘Defending Brunei Darussalam’, in: Asian Defence Journal, 5/1995, and UN Commission on Human Rights 1991. Report of the Secretary-General prepared pursuant to Commission resolution 1989/59. United Nations, Geneva.

197 “Country report and updates: Brunei,” *War Resisters’ International*.

198 Part III, Section 4 (5), The Constitution of Brunei Darussalam.

199 *Brunei 2013 Human Rights Report*, States Department of State, Bureau of Democracy, Human Rights and Labor.

200 Compare Saadiah DDW Tamit, *Wanita, Keluarga, dan Undang-Undang di Negara Brunei Darussalam* (Berakas: Dewan Bahada dan Pustaka, 2009), 4–6.

201 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

202 See for example Sections 141 (1b, c), 148 (1b, c), Syariah Penal Code Order 2013.

203 *Brunei 2013 Human Rights Report*, States Department of State, Bureau of Democracy, Human Rights and Labor.

represented in governmental positions, up to the position of Deputy Minister of Culture, Youth and Sports. There are also cases of discrimination against men: Female spouses of male citizens can apply for citizenship after 2 years, whereas male spouses of female citizens have to wait for at least 20 years.²⁰⁴

Government policies and legislation discriminate against lesbian, gay, bisexual and transgender persons (LGBT), who are perceived by the government's Islamic scholars as transgressing Islamic Law and the "order of nature." With the Syariah Penal Code Order 2013, persons found guilty of homosexual intercourse can be sentenced to death.^{*205} No member of the government or civil society has publicly argued for the basic human rights of LGBT people in the reporting period, although a small LGBT community continues to exist in the country.²⁰⁶ However, no individual cases of persecution based on sexual orientation have been published in the reporting period.

4. *Right of vulnerable groups to freedom of religion and belief*

a. *Women*

Women are in the same ways as men restricted in their choice of religion and beliefs, as well as in their right to practice their religion and beliefs. If they do not conform to the laws described in earlier sections, they face largely similar legal sanctions as men, although there are some offences for which the punishments vary depending on the sex of the offender.

204 *Brunei 2013 Human Rights Report*, States Department of State, Bureau of Democracy, Human Rights and Labor.

205 Section 82 (2), Syariah Penal Code Order 2013.

206 For a rare piece of writing on Brunei's LGBT community, written by a Singaporean student at the University of Brunei Darussalam (UBD), see Nur Azlina Yusoff, *Transvestite Culture in Bandar Seri Begawan*, unpublished B.A. thesis (Faculty of Arts and Social Sciences: University of Brunei Darussalam, 2004). In 2008, a working paper "Gay in Brunei Darussalam: An initial observation" was presented by two local scholars ('Research tackles gay community,' *The Brunei Times*, 14 Jan 2011).

Furthermore, Muslim women who "wilfully disobey" orders given by their husband "in accordance with Islamic law," as specified in the Religious Council and Kadis Courts Act (Chapter 77), can be punished with imprisonment for up to seven days or a monetary fine of BND 500; this provision does not apply to women who are victims of domestic abuse or "ill-treatment on more than one occasion during the preceding year."²⁰⁷ "Disobedient wives" can also be sentenced under the Islamic Family Law Act to a fine of up to BND 1,000.²⁰⁸

There is no sufficient protection against marital rape in Brunei, which reflects an internationally widespread perspective among conservative scholars of Islamic Law (that is rejected by Muslim women's rights organisations in other countries). The Penal Code states that "sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape."²⁰⁹ A spokesperson of the Royal Brunei Police Force admitted that the police is "unable to take any action when someone reports rape by their spouse."²¹⁰ There are no publicised statistics of such complaints. However, women are legally protected from other forms of domestic violence, and the government emphasises its commitment to the protection of women's rights under the framework of Islamic values and Syariah Law.

b. *Children*

Neither children nor their parents are free to choose or practice their religion, insofar as the earlier-mentioned restrictions apply. Non-Muslim children who are adopted by Muslim parents are considered Muslims, with all the legal consequences, including the impossibility of leaving Islam and the subjugation

207 Section 176, Religious Council and Kadis Courts Act (Chapter 77).

208 Section 130, Islamic Family Law Act (Chapter 217).

209 Section 375 (Exception), Penal Code (Chapter 22).

210 'Marital rape: Are women in Brunei protected from it?' *The Brunei Times*, 13 Aug 2010.

to Islamic Law for the rest of their life.²¹¹ However, Muslim children below the age of puberty (*baligh*) are exempt from most punishments under Brunei's Syariah Law codes.²¹²

c. *Migrant workers*

Migrant workers are subject to the same prohibitions and religious laws as Bruneian citizens. Although there are no published statistics, press reports indicate a remarkable frequency of foreign guest workers being arrested during raids of religious enforcement agencies on *khalwat*, gambling²¹³ and other "moral" offences.

In April 2014, the High Commission of Bangladesh expressed its concern that construction companies would not give their workers sufficient time to perform Friday prayers. The majority of the 10,000 mostly Muslim citizens from Bangladesh working in Brunei are employed in the construction sector. Since 25 October 2012, all shops, restaurants and other commercial premises are forced to close on Fridays between 12 pm and 2 pm; however, this ruling does not apply to the construction sector. With the Syariah Penal Code Order 2013, failure to attend Friday Prayers can be punished. The High Commission has therefore suggested giving all Muslim workers a full day off on Fridays instead of Sundays, to enable them to perform their religious duties.²¹⁴ The government of Brunei has not yet responded to this request.

C. Redress Mechanisms and Interpretation of religious freedom

The common pattern of developing and implementing policies in the absolute monarchy of Brunei is top-down. In the absence of general elections or an elected parliament, there is very little space for civic political participation. There is no room for public discourse in which civil society actors critically discuss or openly challenge government policies. Accordingly, there are no independent non-governmental organisations that can openly criticise the government in any form, and there are no independent bodies or national human rights institutions where individuals could file complaints. However, the government of Brunei argues that it promotes and protects human rights in the country through an "inter-agency"²¹⁵ consultative mechanism," in cooperation with government-approved NGOs. Nevertheless, citizens have no possibility of disputing, let alone changing, the government's religious policies and legislation via judicial means, and there have been no cases of respective attempts in the reporting period.

²¹¹ Section 10, Islamic Adoption of Children Act 2010 (Chapter 206).

²¹² Compare Section 2 (1), Syariah Penal Code Order 2013; Section 3 (1), Syariah Courts Evidence Order 2001.

²¹³ On rules and punishments pertaining to gambling, see Common Gaming Houses Act (Chapter 28).

²¹⁴ 'Adequate Friday prayer break time for workers: Bangladesh High Commissioner,' *The Brunei Times*, 18 April 2014.

²¹⁵ The Inter-agencies consist of the Prime Minister's Office, Attorney General's Chambers, Ministry of Foreign Affairs and Trade, Ministry of Education, Ministry of Religious Affairs, Ministry of Home Affairs, Ministry of Health, Ministry of Development and Ministry of Culture, Youth and Sports.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

The government of Brunei has strengthened the Syariah Law sector throughout the reporting period. These changes have been made by enacting several new laws such as the Islamic Family Law Act 2000 (amended in 2004, 2005 and 2010), the Islamic Adoption of Children Act 2001, the Compulsory Religious Education Act 2012 and the Islamic Banking Order 2008. The Syariah Courts Act was amended in 2005 and 2010. In addition, fatwas that are regularly issued by the State Mufti must be taken into consideration, as they are legally binding on all Muslims in the country.²¹⁶ However, none of these legislative measures have been as far-reaching as the Syariah Penal Code Order 2013, with its definition of various new offences and punishments, accompanied by 209 amendments to previous Islamic laws. Based on these amendments, the Attorney General's Chambers have most recently published the Syariah Courts Act (Amendment) Order 2014, the Religious Council and Kadis Courts Act (Amendment) Order 2014, and the Syariah Courts Evidence (Amendment) Order 2014.

Simultaneously, however, the government of Brunei has signed the ASEAN Human Rights Declaration in 2012, which states that “[e]very person has the right to freedom of thought, conscience and religion.” In the Declaration, Brunei agrees that “[a]ll forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.”²¹⁷ Despite this provision, numerous laws and government policies systematically restrict

the right to freedom of thought, conscience and religion. The constitutionally privileged position of Islam, as enshrined in the state ideology of a Malay Islamic Monarchy (MIB), is used by the government to justify far-reaching limitations on the freedom of thought, conscience and religion. These limitations are affecting non-Muslims, non-Shafi'i Muslims, as well as those Shafi'i Muslims who disagree with the state's interpretation of Islam. Muslims who change their religion can now even be sentenced to death. Non-Muslims and non-Shafi'i Muslims cannot express their religious beliefs in public and are banned from proselytization. Even Muslims adhering to the state-ideology are restricted insofar as only governmentally registered Islamic scholars are allowed to teach or publish about religious matters in public, while the penalties for transgressions have increased.

The legal reform of 2013/14 has introduced several highly restrictive regulations pertaining to public morality which are justified by the government on religious grounds. “Indecent behaviour” and certain forms of sexual behaviour, music and entertainment have been strictly outlawed. The non-observance of religious duties, such as not attending Friday Prayers, non-payment of Islamic taxes or ignoring the rules pertaining to Ramadhan can now be punished with even heavier fines than before. Some traditional cultural practices and beliefs have been outlawed, while new restrictions have also been imposed on public entertainment.

Many of the legal provisions and sanctions that are described in Part I, B (“Domestic Laws and Policies”) clearly contravene the individual right to freedom of thought, conscience and religion that Brunei is obliged to protect under the UDHR and AHRD. With the Syariah Penal Code Order 2013, the number of punishable religious and moral offences, as well as the seriousness of potential penalties, has increased to an unprecedented level.

While certain elements of the Islamic Criminal Law had already been part of Brunei's Syariah legislation under the Religious Council and Kadis

216 The State Mufti Department announces all of its Fatwas (*Fatwa Mufti Kerajaan*) to the public. Since its formation in 1962 under the leadership of State Mufti Hj Ismail bin Omar Abdul Aziz, the Department has published the Fatwas' original texts and additional explanations in a large number of books, journals and newsletters, as well as through its homepage (<<http://www.mufti.gov.bn>>), where a list of all publications (*Terbitan*) can be found.

217 Article 22, Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 Nov 2012.

Courts Act, the Syariah Penal Code Order 2013 now provides a much broader legal framework, which, from the government's perspective, is now "comprehensive" and "complete."²¹⁸ Not only do the maximum punishments (stoning to death, amputation of limbs, whipping, and jail sentences of up to 30 years), diversified offences, and procedural provisions represent a novelty, it is an equally new development that now subjugates non-Muslims to Syariah Law. A number of provisions of the Syariah Penal Code Order can now be used to prosecute non-Muslims for a wide range of offences pertaining to blasphemy, missionary work, sexual behaviour, public eating in Ramadhan, and for disrespect of the government's religious truth claims more generally (for a detailed overview of specific provisions that apply to non-Muslims, see Part I, B "Domestic Laws and Policies").

As mentioned above, the Brunei government now firmly characterizes its legal system as "hybrid."²¹⁹ This turn from a dual to a hybrid, now supposedly "fully Syariah-compliant" legal system reflects the country's general trend of further empowering a decidedly anti-pluralist form of political Islam, a development that has been on-going since the 1980s and was strongly intensified by the government in recent years. While the government's policies could serve to further stabilize its power and enhance its supposedly divine legitimacy, they also enable the country's authorities to denounce political opposition as heretical opposition against God. At the same time, the clergy and many average

218 'Bruneians urged to be steadfast, united in face of criticism,' *The Brunei Times*, 10 May 2014; 'False accusation maker punishable under Syariah law,' *The Brunei Times*, 26 Apr 2014; 'Brunei ready for Syariah law,' *The Brunei Times*, Apr 18, 2014.

219 'Unique hybrid legal system mooted,' *The Brunei Times* 5 Jan 2012; 'Islamic, civil law can work as one,' *The Brunei Times*, 23 Oct 2013. The term "hybrid" has also been used to with reference to earlier revisions of Brunei's Civil Law to ensure that it does not contravene Islamic teachings, a process that is ongoing since Independence. However, there has not yet been a more detailed publication by government officials or local scholars of constitutional law on the deeper conceptual dimensions of this "hybrid" system vis-a-vis the previous "dual" one.

Bruneians sincerely believe in the government's religious truth claims and firmly reject religious pluralism and relativism, not to mention equal rights and status for Muslims and non-Muslims. Taken together, these salient political and societal trends could undermine any attempt to strengthen the protection of the individual right to freedom of thought, conscious and religion in the country.

There has been increase in laws restricting the general freedoms of individuals and groups on the basis of declared Islamic-based morality. For instance, on 20 November 2012, the Ministry of Home Affairs and Ministry of Religious Affairs announced a general ban on karaoke services and live band performances at business premises. In December 2013, the government issued an additional directive to close all family entertainment outlets in shopping malls offering "karaoke-boxes" ("K-boxes"). Both measures were justified as necessary "to curb immoral activities" that would contradict Islamic values, as government authorities had to ensure that Brunei is a "nation that is blessed by Allah the Almighty."²²⁰ It was argued that karaoke-boxes might lead to "indecent behaviour," such as *khalwat* (close proximity), and thus have a "negative impact" upon society. Owners of these entertainment outlets have emphasised that their services had been "Syariah-compliant," and regular checks had been conducted.²²¹ Couples had to present their marriage certificate before entering a "K-box" without company. However, neither the premises' owners nor their customers have any possibility of legally challenging the government's policy.

220 'Karaoke boxes closed to curb immoral activities,' *Borneo Bulletin*, 1 Jan 2014; 'Arcades in k-box disposal dilemma,' *The Brunei Times*, 13 Jan 2014; 'Move aimed at curbing social ills, says Municipal Dep't,' *The Brunei Times*, 31 Dec 2013.

221 'Karaoke boxes in arcades shut down,' *The Brunei Times*, 31 Dec 2013.

B. Significant Changes in State Enforcement

The strengthening of Brunei's Syariah Law sector was accompanied by the expansion of the government's Islamic bureaucracy, which consists of numerous Islamic institutions. These institutions, most notably the Religious Council, the Ministry of Religious Affairs, and the State Mufti Department, have retained and further stabilised their position as key advisors to the Sultan's government for policy-making and legislation. In the absence of an elected parliament or independent non-governmental institutions, the Islamic bureaucracy and its clergy is perceived by many observers as the country's most-powerful political actor outside the royal family. The implementation of the Syariah Penal Code Order 2013, which was previously lobbied for and drafted by the government's Islamic clergy, demonstrates this presently nearly undisputed position.

In the prosecution of religious and moral offences, there has been a close cooperation between the Royal Brunei Police Force (RBPF), the Brunei Internal Security Department (BISD), and Islamic institutions, such as the Faith Control Section, throughout the reporting period. However, the Syariah Penal Code Order 2013 presents challenges for enforcement and will lead to structural transformations. Each case will require an initial decision to determine whether it shall be prosecuted under Civil or Syariah Law. In "duplicate" cases with offences that come under the jurisdiction of both Civil and Syariah courts, the RBPF will lead the investigations, whereas the Islamic institutions' enforcement agencies will be responsible for cases that are handled by Syariah courts. However, for Syariah offenses such as apostasy, "close proximity" (*khalwat*), failure to perform Friday prayers, disrespecting the month of Ramadhan, or the propagation of non-Muslim religions, the Religious Enforcement Unit may, if necessary, be assisted by the RBPF and other law enforcement agencies.²²²

²²² 'Islamic, civil law can work as one,' *The Brunei Times*, 23 Oct 2013,

Duplicate cases will, for example, include theft, robbery, murder, or rape, which could be prosecuted under both the Penal Code Order and the Syariah Penal Code Order 2013. Non-duplicate cases comprise religious offences such as non-Muslim missionary work, "close proximity" (*khalwat*), or not performing Friday prayers.²²³ At the time of writing, however, no cases have yet been handled under the new law, and the structural details of enforcement appear to be still in a stage of unfinished formation. Since 2013, the Syariah Affairs Department and the Islamic Judge's Prosecution Division of the Islamic Legal Unit (UPI) have been conducting training programs to prepare religious enforcement officers (such as the Religious Enforcement Section and the Faith Control Section) and the RBPF for the new law's enforcement.²²⁴ As a result of this transformation process, which will continue to unfold until the third and final stage of the Syariah Penal Code Order's implementation in 2016, the roles and responsibilities of religious enforcement agencies are expected to increase significantly.

Religious enforcement agencies have regularly conducted raids to seize alcoholic beverages and non-*halal* products.²²⁵ Only non-Muslims are allowed to possess limited amounts of alcohol for personal consumption, which they can bring from abroad, to be declared when entering the country. The sale or public consumption of alcohol is strictly forbidden also for non-Muslims. Government raids target persons who sell or import alcoholic beverages, non-Muslims who are in possession of undeclared beverages, and Muslims who possess or consume alcohol. There are regular press reports of arrests, but the government has not published annual statistics. Under the Syariah Penal Code Order 2013, the consumption of alcohol by Muslims

²²³ 'Syariah enforcement officers and RBPF to lead crime investigations,' *The Brunei Times*, 30 Apr 2014.

²²⁴ See for example 'Syariah criminal law course for 80 officers in the enforcement agencies commences,' *The Brunei Times*, 17 Jan 2014.

²²⁵ *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

can now be punished with 40 strokes, 80 strokes for the second offence, and two years imprisonment for any subsequent case.²²⁶ Non-Muslims who drink alcohol in public face a fine of up to BND 8,000, two years imprisonment, or both.²²⁷ The production, sale, advertising or serving of intoxicating drinks can be punished similarly, for both Muslim and non-Muslim offenders.²²⁸

Raids and arrests have regularly been conducted to prosecute moral offences, such as *khalwat* (“close proximity” of non-married couples), adultery (*zina*), and gambling (*judi*). In 2013, there were 106 *khalwat* cases, involving 214 individuals, 15 of which were non-Muslims.²²⁹ Due to lack of evidence, many *khalwat* cases were dropped before they went to Court.²³⁰ In most cases where Muslims were convicted, they were sentenced to monetary fines—up to BND 1,000 for males, and BND 500 for female offenders. There have also been cases of imprisonment for up to four months in recent years.²³¹ A government official declared in 2014 that the numbers were “on the rise” because penalties under the Religious Council and Kadis Courts Act were “too lenient.”²³² In previous years, however, much larger numbers of *khalwat* cases were investigated (330 cases in 2006; 691 cases in 2007; 691 cases in 2008; 205 cases in 2009; 247 cases

in 2010; and 256 cases in 2011).²³³ The extent of the implementation of the more drastic punishments for *khalwat* and other moral offences under the Syariah Penal Code Order 2013 remains to be seen.

Public entertainment events can only be held with a permit. The government is particularly restrictive in terms of music and dance, with the exception of folkloristic performances of Brunei’s ethnic groups. On New Year’s Eve 2008, for example, the Sheraton Hotel in Bandar Seri Begawan was raided by more than 50 police officers because of the hotel’s failure to apply for a permit to conduct a party with music, and one person was arrested.²³⁴ Throughout the reporting period, the government has also conducted raids and controls on the occasion of particular events such as New Year’s Eve and Valentine’s Day,²³⁵ particularly focusing on moral offenses such as *khalwat* and the consumption of alcohol. In 2010, the government banned the American movie “Valentine’s Day,” following a declaration of governmental clerics that “Valentine’s Day is not for Muslims” because it encourages “promiscuous activities.”²³⁶

233 Data collected from various sources, including: ‘Khalwat,’ *Ministry of Religious Affairs*, 31 Aug 2012 <http://www.religious-affairs.gov.bn/index.php?ch=bm_info&pg=bm_info_khutbah&ac=531 accessed 22 April 2014>; ‘Imams slam promiscuity,’ *Borneo Bulletin*, 27 Oct 2007; *Brunei 2007 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; *Brunei 2008 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; *Brunei 2009 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; *Brunei 2010 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; *Brunei 2011 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

234 ‘New Year’s eve raid at hotel leads to one arrest,’ *The Brunei Times*, 6 Jan 2008.

235 See e.g. ‘Enforcement officers go full force on NYE,’ *The Brunei Times*, 3 Jan 2013; ‘Valentine’s Day crackdown,’ *Borneo Bulletin*, 16 Feb 2007.

236 ‘Valentine’s Day’ the movie banned in cinemas,’ *The Brunei Times*, 13 Feb 2010.

226 Section 104 (1), Syariah Penal Code Order 2013.

227 Section 104 (5), Syariah Penal Code Order 2013.

228 Section 104 (4, 6), Syariah Penal Code Order 2013.

229 ‘Khalwat offenders face heavy penalties,’ *The Brunei Times*, 30 Mar 2014.

230 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

231 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

232 ‘Khalwat offenders face heavy penalties,’ *The Brunei Times*, 30 Mar 2014.

During the Muslim call for prayer (*azan*), all entertainment activities and music must be stopped.

C. Significant Changes in Religious Claims (by Non-State Actors)

In Brunei's absolute monarchy, non-state actors are not in a position to, and traditionally do not, call for the recognition or improvement of their religious rights in public discourse. Since independence, the government consistently insists that there must not be open religious debates or polemics of any kind, as this could disturb "harmony" and "public order" in the "Abode of Peace" (literal translation of "Darussalam"). Accordingly, there have not been any significant changes in religious claims by non-state actors.

D. Significant Events of State Persecution of Religious Groups

Despite strict regulations and the central importance of religion in public life, very few individual cases of violent or serious non-violent religious persecution have been publicised in recent years. However, there are consistent reports of systematic state surveillance of non-Muslim religious institutions and communities.²³⁷ Some non-Muslim religious leaders were threatened with imprisonment and/or fines, and experienced other forms of harassment by state actors.²³⁸ There have been reports of the opening of mail. In other cases, non-Muslim communities were prohibited from receiving religious texts from abroad.²³⁹ Christian churches are

legally allowed to repair or expand their buildings. However, the process of applying for permits to do so has often been made unnecessarily difficult and protracted.²⁴⁰ The Anglican Parish of St. Andrew's renovation in 2007, for example, has been "the first major construction project on a non-Muslim house of worship to be approved in Brunei in decades."²⁴¹ The permit had initially been issued by the Bandar Seri Begawan Municipal Board, but was revoked soon afterwards upon pressure of government Islamic clerics from the State Mufti Department. After several months and intense pressure from the U.S. Embassy as well as Brunei's Ministry of Foreign Affairs and Trade, the Sultan himself made the final decision to allow the Church's renovation works to proceed.²⁴² In 2008, six Muslim youths were charged for having temporary tattoos depicting a Christian cross and text. However, the case was finally dropped and the "offenders" were given a warning.²⁴³

One remarkable case of intra-religious persecution by state actors pursuant to a state policy stood out in 2013. When the Sultan declared in the same year that Brunei will implement the Syariah Penal Code Order 2013,²⁴⁴ Pg Hj Abdul Rahman Pg Hj Omar sent a letter to a local newspaper concerning stoning and flogging in Islam.²⁴⁵ The author did not question Syariah punishments as such, but claimed that for adultery (*zina*), 100 lashes—instead of death—were theologically adequate.

240 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

241 'Religious Freedom in Brunei: How St. Andrew got his church back,' *Wikileaks*, 9 Feb 2007.

242 'Religious Freedom in Brunei: How St. Andrew got his church back,' *Wikileaks*, 9 Feb 2007.

243 *Brunei 2008 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

244 'Enforcement of Islamic Law in stages,' *The Brunei Times*, 13 Mar 2013; 'Syariah Penal Code still warrants more, better clarifications,' *The Brunei Times*, 6 Feb 2014.

245 'Should We Resort To Stoning Or Flogging' (Opinion), *Borneo Bulletin*, 13 Mar 2013.

237 Since 2003, all annual reports of the U.S. Department of State on Religious Freedom in Brunei Darussalam have described surveillance of religious services at Christian churches and senior church members.

238 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

239 *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

Despite Brunei's long-established norms of media (self-) censorship, the letter was printed, and the religious authorities reacted immediately, with serious consequences for the letter's author. First, the Ministry of Religious Affairs published a one-page article in the same newspaper on the Syariah Penal Code Order's unquestionable theological foundation, and argued that institutionalising such penalties was obligatory for Muslims. The Ministry's article ended with an "invitation" to the letter's author to visit the Ministry for further "explanations."²⁴⁶ The letter's author was soon afterwards sued for heresy (questioning the validity of *hadith*), and "given an explanation by the religious authority ... with the cooperation of the Internal Security Department."²⁴⁷ His case was settled after he "confessed" and publicly repented in front of a Syariah Court Judge at the Islamic Da'wah Centre on 7 June 2013.²⁴⁸ According to news reports, the "offender" declared his "repentance for questioning and disputing the existence of stoning or flogging for adultery in Islam," "regretted his actions" and stated that he will "not repeat his mistake."²⁴⁹ The declaration of repentance was attended by two formal witnesses, the Secretary of the Islamic Religious Council and the vice chancellor of the Seri Begawan Religious Teachers University College, as well as several high ranking religious officials, including the Deputy State Mufti and members of the Religious Council. The authorities declared that "the next move would be to help" him "deepen his knowledge of Islam,"²⁵⁰ implying that he had to undergo what is officially called "religious counselling."

246 'The punishment of stoning for a Muhshan exists in Islamic Law,' *Borneo Bulletin*, 23 Mar 2013.

247 'Confession, repentance for questioning Islamic law,' *The Brunei Times* 8 Jun 2013.

248 This was the first Syariah-related 'Declaration of Repentance' in post-colonial Brunei Darussalam, see 'Understanding 'Ahli Sunnah Wal Jama'ah' *The Brunei Times*, 16 April 2014.

249 'Confession, repentance for questioning Islamic law,' *The Brunei Times* 8 Jun 2013.

250 'Confession, repentance for questioning Islamic law,' *The Brunei Times* Jun 8 2013.

This instance of non-violent persecution by government actors was justified under the Religious Council and Kadis Courts Act. Under the Syariah Penal Code Order 2013, the same offender could have been punished with death for "denying the validity of the Hadith as a source of Islamic authority" if he had refused to repent.²⁵¹ Referring to the same case, the State Mufti, Hj Abdul Aziz Juned, publicly warned of a deviationist "anti-*hadith* movement," that denied Prophetic traditions (*hadith*) and selectively referred to the Quran without theological knowledge.²⁵² During a visit to Bruneian students in New Zealand, the Sultan himself condemned the supposed "anti-hadith-movement," which, out of "ignorance," was "secretly desecrating the Islamic laws" and damaging the faith (*akidah*).²⁵³

Furthermore, in April 2014, a series of Islamic lectures was cancelled upon intervention of the Islamic Religious Council, following rumours that the Canadian-born, Saudi-Arabian-trained speaker Sheikh Daood Butt was spreading "wahabi" teachings. Although the Council's investigation concluded that the speaker was not "wahabi," it was argued that his presence could lead to "confusion" among the population. The decision for nevertheless cancelling the lectures reflects the government's policy of banning any religious event or publication that could lead to public controversies on religious matters.

E. Significant Events of Non-State Persecution of Religious Groups

There were no reports of persecution of religious groups by non-state actors in the reporting period.

251 Section 111 (1), Syariah Penal Code Order 2013.

252 'Apostasy punishable by death,' *The Brunei Times*, 1 Apr 2013.

253 'Beware of deviant groups: imams,' *The Brunei Times*, 30 Mar 2013.

F. Significant Events of Inter-Religious Conflict

There were no reports of inter-religious conflict in Brunei in the reporting period. The government and many citizens of Brunei take great pride in the fact that no violent conflict whatsoever, neither religiously nor politically motivated, has occurred in the “Abode of Peace” since the early 1960s.

G. Significant Events of Terrorism and/or Terrorist Threats

There were no reports of links to terrorist groups being made by the government or by non-governmental organisations in the reporting period, whether in their assessment of violent conflict or in any other form.

There have been no terrorist attacks or visible activities of militant groups in Brunei in the reporting period. There is no evidence that the government or any non-governmental organisations in Brunei are supporting any terrorist, militant or separatist groups in Southeast Asia, the Middle East or elsewhere. In fact, the government and its security agencies closely cooperate with regional and international partners in transnational counter-terrorism efforts. In addition to the Internal Security Act, the Anti-Terrorism Act (Financial and other Measures) provides a strong legal framework for counter-terrorism. Suspicious individuals in the country are under the tight surveillance of Brunei’s widely present intelligence agencies.

In contrast with all neighbouring countries, Brunei was long exempt from any noteworthy presence of *jihadi*-terrorist groups. In 2014, the Brunei Internal Security Department (BISD) arrested an Indonesian national accused to be a member of the militant group *Jemaah Islamiyah* (JI), which has operated elsewhere in Southeast Asia in the 2000s.²⁵⁴ The suspect had received military training

in Afghanistan in the early 1990s and was later arrested for suspected involvement in a bombing in Medan, Indonesia, in 2000. The BISD accused him of trying to assist other JI-related individuals to settle in Brunei.²⁵⁵ Following the arrest, a BISD spokesperson declared that the Sultan’s government “does not tolerate terrorism-related elements,” and warned that “the public should be wary of those who attempt to use the implementation of the Syariah Penal Code to support extremism.”²⁵⁶ In the following Friday Prayer sermons, *imams* across the country warned that Brunei had “become a target as a protective haven for terrorist groups and a source of finance to sponsor anti-peace activities,” and cautioned listeners “to be careful not to be deceived by groups who pretend to preach for Brunei’s cause.”²⁵⁷ The *imams* re-affirmed the government’s unambiguous position that “militant forces” such as JI “were against everything that Islam stands for.”²⁵⁸

H. Significant Cross-Border Incidents

There were no reports of any cross-border impact of religious conflict from or into neighbouring ASEAN-states in the reporting period. However, the government of Brunei tries to promote its understanding of Syariah Law, including Islamic Criminal Law, beyond the Sultanate’s shores. The Sultan and the State Mufti have expressed their hope that the Syariah Penal Code Order 2013 would become a positive example for the rest of the ASEAN-region (see “Analysing the Trends”). Upon the initiative of Brunei’s Chief Islamic Judge, a network of cooperation for Syariah courts of different ASEAN-countries was established in

²⁵⁴ ‘Man with terror links detained,’ *The Brunei Times*, 27 Feb 2014.

²⁵⁵ ‘Man with terror links detained,’ *The Brunei Times*, 27 Feb 2014.

²⁵⁶ ‘Man with terror links detained,’ *The Brunei Times*, 27 Feb 2014.

²⁵⁷ ‘Friday sermon warns against terror threat,’ *The Brunei Times*, 1 Mar 2014.

²⁵⁸ ‘Friday sermon warns against terror threat,’ *The Brunei Times*, 1 Mar 2014.

September 2013, a novelty in the region.²⁵⁹ Its members include representatives of Islamic courts in Malaysia, Singapore, Indonesia, the Philippines and Thailand.

In preparing the Syariah Penal Code Order 2013, Brunei's authorities have also engaged in extensive networking with governments and Islamic bodies that have experiences with practicing punishments based on Syariah law, including Saudi-Arabia, Aceh (Indonesia), Pakistan and Malaysia.²⁶⁰ Particularly Saudi-Arabia has been referred to by the government of Brunei as a "leading" role-model in the "successful" implementation of Islamic criminal law.²⁶¹ In 2013, the Pan-Malaysian Islamic Party (PAS), which has long campaigned for a more far-reaching implementation of Islamic Criminal Law in Malaysia, published an open letter to Sultan Hassanal Bolkiah, in which its party president, Abdul Hadi Awang, conveyed his congratulations and support for Brunei's legal reforms.²⁶² Several Malaysian Islamic politicians have since then referred to Brunei as a role model, and discussed possibilities to realise a similar legal code in their country.²⁶³ The Sultan of the Malaysian

state Kelantan visited Brunei in December 2013, followed shortly afterwards by the Chief Minister and an eight-man delegation from the Kelantan state government. Kelantan's Sultan, State Mufti, and Chief Minister all stated their admiration for Brunei's legal reforms and expressed their intention to learn from Brunei.²⁶⁴ Brunei's decision to forge ahead with its legal Islamisation programme may therefore raise the stakes in the region, particularly vis-a-vis the "Islamisation race"²⁶⁵ of "piety-trumping"²⁶⁶ between competing Muslim political groups in Malaysia and Indonesia's on-going "conservative turn."²⁶⁷

I. Governmental Response

In the reporting period, the government undertook no measures, legislative or otherwise, to address religious persecution. The only reported forms of non-violent religious persecution that occurred were conducted from within the state apparatus, based on the legal provisions described above (although from the government's official perspective, no persecution has taken place). No government or non-governmental actors have openly criticised such persecution, except for a number of anonymous commentators in online discussion forums. The state's absolute monopoly on political decision-making and its tight system of

259 'Asean Network of Cooperation for Syariah Courts Takes Shape,' *Borneo Bulletin*, 14 Sep 2013.

260 'Enforcement of Islamic Law in stages,' *The Brunei Times*, 13 Mar 2013.

261 'Team off to Saudi Arabia to study Syariah law enforcement,' *The Brunei Times*, 8 Feb 2014. An 18-member delegation of Brunei's Ministry of Religious Affairs visited Saudi-Arabia in February 2014 to 'learn from Saudi Arabian court officials' experiences in enforcing their Islamic criminal law,' and strengthen 'the ... mutual cooperation between the government of Brunei Darussalam and Saudi Arabia, especially on the Syariah Penal Code.' See 'Brunei delegates visit Saudi courtroom,' *The Brunei Times*, 12 Feb 2014; 'Brunei delegation discusses Syariah implementation with Saudi officials,' *The Brunei Times*, 11 Feb 2014; "'Syukran' Saudi Arabia,' *The Brunei Times*, 13 Feb 2014.

262 'Abdul Hadi Awang Tahniah dan syabas kepada Negara Brunei Darussalam,' *Harakah Daily*, 13 Nov 2013.

263 See for example 'Umno MP says party will support PAS's hudud plan in Kelantan,' *The Malaysian Insider*, 16 Nov 2013; 'Masa sesuai laksana hudud,' *Sinar Harian*, 12 Jan 2014; 'Hudud: Veteran UMNO, KMPP sokong Pas,' *Utusan Online*, 13 Apr 2014; 12 Jan 2014; 'Hudud: Bersediakah Kita?' *Sinar Harian*, 4 May 2014.

264 'Kanun syariah: MB Kelantan mengadap Sultan Brunei,' *Harakah Daily*, 24 Dec 2013; 'Kelantan to learn from Bruneian Syariah penal code,' *The Brunei Times*, 26 Dec 2013. On a similar visit by the Malaysian State of Selangor's Fatwa Council, see 'Call for all Muslims to help educate others on Syariah law,' *The Brunei Times*, 23 May 2014.

265 Farish A. Noor, *Islam embedded: the historical development of the pan-Malaysian Islamic party PAS (1951–2003)* (Kuala Lumpur: MSRI, 2004), p. 724. Joseph C. Liow, 'Political Islam in Malaysia: Problematising Discourse and Practice in the UMNO-PAS "Islamisation Race"' (2004) 42(2) *Commonwealth and Comparative Politics* 184–205.

266 Joseph C. Liow, *Piety and Politics: Islamism in Contemporary Malaysia* (New York: Oxford University Press, 2009).

267 Martin van Bruinessen, *Contemporary Developments in Indonesian Islam: Explaining the 'Conservative Turn'* (Singapore: ISEAS, 2013).

discourse control and media-censorship leaves very little space to publicly discuss religious persecution, discrimination and intolerance, and nothing indicates that the government intends to widen this space or to improve the protection of the right to freedom of thought, conscious and religion in the foreseeable future.

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

There are no government-led or non-state actor-led initiatives to promote individual and group rights to freedom of thought, conscience and religion, and there are no corresponding legislative protections. Similarly, there are no neutral education programmes raising awareness about religions, except for didactic propagation of MIB and the government's claims of truth. However, the government has sponsored delegations to participate in inter-religious dialogue events abroad, such as the Regional Youth Interfaith forum in Australia in December 2007 and several Asia-Europe Meeting (ASEM) interfaith dialogue events in the late 2000s. In October 2009, government officials and several non-Muslim religious leaders from Brunei, including Christians and Buddhists, participated in the Fifth Asia Pacific Regional Interfaith Dialogue in Perth, Australia. In February 2014, a delegation from the University of Brunei Darussalam (UBD) visited the University of Oxford to participate in a workshop on "Contemporary Challenges to Inter-Religious and Inter-Cultural Dialogue in South East Asia,"²⁶⁸ where a UBD lecturer presented Brunei as a desirable "Model of a Multi-Religious Society."

Notably, events to facilitate inter-religious dialogue rarely take place in Brunei; if they do, they are usually done behind closed doors. In 2010, it was reported that officials from the Prime Minister's

268 Compare *Brunei 2008 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

Office, the Ministry of Religious Affairs, and the Ministry of Foreign Affairs and Trade were holding regular meetings with non-Muslim religious leaders to discuss ideas on shared interests.²⁶⁹

K. Analysing the Trends

Non-violent persecution by state actors has occurred without significant tendencies of increase or decline throughout the reporting period. It is possible, however, that instances of violent persecution will occur and that non-violent religious persecution perpetrated by governmental actors will increase in qualitative and quantitative terms with the implementation of the Syariah Penal Code Order 2013.

Brunei's legal reforms have imposed numerous new restrictions on the individual right to freedom of thought, conscious and religion on Muslims and non-Muslims. Paradoxically, the Syariah Penal Code Order was announced in 2013, the same year when Brunei chaired ASEAN and shortly after Brunei signed on to the AHRD, which requires the government to protect freedom of thought, conscious and religion, and to eliminate all forms of intolerance and discrimination. However, the laws that violate religious freedom are justified by the Sultan with great emphasis as "commanded by Allah"²⁷⁰ and thus as an unquestionable divine legislation that any Muslim country is obliged to implement. When the first phase of the legal reform was announced on 30 April 2014, the Sultan

269 Compare *Brunei 2010 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor.

270 Sultan Hassanal Bolkiah, quoted in 'Syariah: law demanded by Quran,' *The Brunei Times*, 11 Apr 2014. Compare also similar statements quoted in 'His Majesty on enforcing Islamic Law: Who are we to say "wait"?', *The Brunei Times*, 13 Oct 2011, 'Jangan kata "Tidak" atau "Tunggu Dulu",' *Pelita Brunei*, 15 Oct 2011, 'Syariah: law demanded by Quran,' *The Brunei Times*, 11 April 2014; 'Brunei striving to seek divine blessings, says HM,' *The Brunei Times*, 14 Jan 2014; 'Accept Syariah laws, Muslims told,' *The Brunei Times*, 26 Oct 2013.

described it as his “personal obligation”²⁷¹ as a Muslim ruler to implement Islamic Criminal Law. The Deputy Minister of Religious Affairs similarly stated that “it is the duty of a Muslim ruler to provide laws that serve to protect the sanctity of Islam.”²⁷² At the same time, the new law is explained by government officials as a necessary instrument to “safeguard” Brunei from “threats to its social and moral fabric,”²⁷³ and to ensure “justice as well as security for everyone.”²⁷⁴ The Syariah Penal Code Order 2013 would therefore “help to reduce the number of moral lapses” and preserve “the sanctity of Islam ... in the country”²⁷⁵ vis-a-vis negative influences caused by the “rapid development of a borderless world.”²⁷⁶ The State Mufti, who is the most powerful government religious official and enjoys the Sultan’s unconditional support, has proudly declared that the Syariah Penal Code Order 2013 should be “an example for the rest of Southeast Asia.”²⁷⁷ No member of the government or the royal family has openly disagreed with this great enthusiasm for the on-going changes in Brunei’s legal landscape.

The government’s enactment of the Syariah Penal Code Order 2013 raises serious doubts about its willingness to protect freedom of thought, conscience, and religion. Brunei has not yet shown substantial efforts to embed its international obligations in national laws and policies, although it is noteworthy that the government generally supports the protection of human rights under the

AHRD’s framework.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

The government’s policies restricting religious freedom need to be understood vis-à-vis their wider political, socio-cultural and historical context. The absolute monarchy of Brunei derives its legitimacy not from elections but from a reciprocal patron-client relationship between a “Caring Sultan” and his subjects. In contrast to trends of democratisation in the region, there is no indication for such a tendency in Brunei. Instead of democracy, the country is massively empowering Islamic Law, a trend that has been on-going since the Declaration of Independence in 1984. Like any other policy in the country, Brunei’s Islamisation is implemented in a top-down, thoroughly authoritarian manner. Non-governmental actors have no opportunity, and traditionally do not, to contest government policies in any publicly visible form.

Brunei’s highly popular ruler, Sultan Hassanal Bolkiah—in office since 1967, officially crowned in 1968—is Prime Minister, Minister of Defence, Minister of Finance, and Head of Islam at the same time. His status of infallibility is, in accordance with the foundational principle of absolutistic monarchies that “the king can do no wrong” (*rex non potest peccare*), legally enshrined and politically undisputed. Hassanal Bolkiah, the 29th in a line of Muslim rulers that dates back to the 14th century, is considered as an indirect descendent of Prophet Muhammad, which, in the local perception of the Muslim Malay majority population further adds to his charismatic aura of sacred leadership. The centrality of Islam in state politics is underlined by the fact that among the MIB’s three pillars, Islam is officially considered superior.²⁷⁸ Following the

271 ‘Upon command of Allah SWT,’ *The Brunei Times*, 30 Apr 2014.

272 ‘Sacred words, phrases usage,’ *The Brunei Times*, 10 May 2014.

273 ‘Syariah code to safeguard moral and social fabric,’ *The Brunei Times*, 18 Feb 2014.

274 ‘Syariah law guarantees justice for all,’ *The Brunei Times*, 23 Oct 2013.

275 ‘Syariah code to safeguard moral and social fabric,’ *The Brunei Times*, 18 Feb 2014.

276 ‘Propagating religion other than Islam a crime under Syariah law,’ *The Brunei Times*, 14 Feb 2014.

277 ‘Syariah law critics do not understand Islam: Mufti,’ *The Brunei Times*, 4 Jan 2014.

278 Mohd Zain Serudin, *Melayu Islam Beraja: Suatu Pendekatan* (Bandar Seri Begawan: Dewan Bahasa dan Pustaka, 1996), p. xi.

infallible Sultan, MIB represents “God’s will.”²⁷⁹

Besides religious (Muslim) and ethnic (Malay) power-political legitimization, the absolute monarchy’s political stability is enhanced by a well-established social security system and exceptionally high living standards. Brunei was ranked 30th on the Human Development Index 2012—number two in Southeast Asia, number one among Muslim majority countries. Among his subjects, the Sultan is widely perceived as a “benevolent ruler” or “Caring Monarch,” terms that are also frequently used in Brunei’s largely state-controlled, didactic news media.²⁸⁰ Upon his generosity, citizens enjoy privileges that are spectacular by any standards. No personal income tax, subsidised housing, free health care and education, free pension from the age of 60 and a remarkably low crime rate are only a few of the benefits that Bruneians receive in return for their loyalty.

Brunei’s population is commonly perceived as “apathetic”²⁸¹ and “contented, even docile,”²⁸² while public discourse, or the lack of it, is shaped by a “depoliticized general population.”²⁸³ This depoliticisation has been systematically imposed by the government since the early 1960s. After the British colonial administration granted autonomy in domestic political affairs to the former Sultan, Omar Ali Saifuddien III, in 1959, the monarchy experienced a short but traumatic experiment of

holding elections and providing space for democratic expression. In 1962, a popular movement called the Brunei People’s Party (Parti Rakyat Brunei, PRB) made a landslide victory in the District Council elections and openly challenged the monarchy. As a consequence, an emergency legislation with drastic limitations on civil liberties was enacted, which is largely in place until today. Since the PRB’s defeat in the 1960s, no political movement of any kind has ever openly challenged the political status quo again. Instead, the absolute monarchy appears to enjoy an overwhelming support, especially among the Muslim-Malay majority population.

Despite the absence of general elections, there have been a handful of small and short-lived political parties during the last three decades. None had any significant impact. The demise of these political parties, which existed under tightest-possible control, is symptomatic of the government’s efficiency in minimising visible dissent, whereas the lack of popular support for these parties reflects the population’s disinterest in, or fear of, alternative political agendas. The only remaining party, the National Development Party (NDP), emphasises its unconditional support for the Sultan’s government. Despite not being known as an Islamist party, the NDP has enthusiastically lauded the establishment of the Syariah Penal Code Order 2013, adding that Muslims who do not support Allah’s legislation would become “infidel” (*kafir*).²⁸⁴

The government takes pride in Brunei’s “cultural diversity,” with ethnic groups performing traditional dances on festive occasions such as the National Day and the Sultan’s Birthday. However, this celebration of plurality should not be confused with pluralism, as the Sultan and his religious authorities constantly emphasise.²⁸⁵ In a royal address in 2012, the Sultan condemned “liberal Islam” and “religious pluralism” as “deviationism” that “will never be related to

279 Graham Saunders, *A History of Brunei* (New York: Oxford University Press, 2002), pp. 187–8.

280 See for example ‘Thankful for His Majesty’s care,’ *The Brunei Times*, 28 Aug 2011; ‘The caring monarch,’ *The Brunei Times*, 16 Jul 2012; ‘A caring monarch with vision,’ *The Brunei Times*, 15 Jul 2009; ‘Brunei-Muara residents present pesambah for benevolent ruler,’ *Borneo Bulletin*, 30 Sep 2013.

281 A.V.M. Horton, ‘Brunei National Democratic Party,’ in *Southeast Asia: A Historical Encyclopedia, From Angkor Wat to East Timor*, ed. Ooi Keat Gin (Santa Barbara: ABC-CLIO, 2004) 274–5, p. 274.

282 Mohamad Yusop bin Awang Damit, ‘Brunei Darussalam: Towards a New Era,’ in *Southeast Asian Affairs* (Singapore: ISEAS, 2007), 103–13, p. 103.

283 Andrew Tan, ‘Brunei security perspectives,’ in *ibid.* (ed.), *Security Perspectives of the Malay Archipelago*, (Cheltenham: Edward Elgar, 2004) 87–110, p. 99.

284 ‘Ucapan Dasar Presiden: Kongres Agung Tahunan Ke-8 Tahun 2013,’ *National Democratic Party*, 21 Jun 2013 <http://www.aspirasi-ndp.com/arkib/JUNE013/Draf_Ucapanpresiden.htm> accessed 6 Jul 2013.

285 ‘Muslims urged not to be swayed by guises of Islamic liberalism,’ *The Brunei Times*, 9 Feb 2013.

Brunei.”²⁸⁶ Since independence in 1984, Brunei’s Syariah Law and governmental Islamic bureaucracy have constantly expanded, fuelled by transnational Islamic resurgence, power-political considerations and an increasing piety of the Sultan in recent years. By implementing a particularly strict version of Islamic Law, the Sultan has effectively taken the wind out of a potential future Islamist opposition’s sails.

In remarkable contrast to vibrant Islam-related discourses and controversies elsewhere in the region, Brunei’s Islamic governance was never openly challenged by organised secular or religious public actors in the country. Instead, “[r]eligious innovations are discussed internally and ... introduced slowly and quietly. Open religious polemics and debates have never taken place.”²⁸⁷ In this process, Brunei’s religious bureaucracy has standardised an orthodox brand of Islam as the sole acceptable Muslim truth vis-à-vis a codified conception of illegitimate “deviant teachings.” Islam-related statements by average Muslims, on the other hand, can be dangerous. The lack of any scholarly public debate on religious interpretation outside the tight borders set by the government reflects the government’s intention of thoroughly centralising Islamic discourse.

The government’s interrelated discourse on “deviant teachings” dates back to the early 1960s. During the tenure of State Mufti Ismail Omar Abdul Aziz (1962–1993), Brunei began to codify an official list of “deviant” groups. Since Brunei’s independence, “faith control” (*kawalan akidah*) measures have been carried out to an increasing extent by religious enforcement officers, hand-in-hand with other security and surveillance agencies. Groups that are officially considered as “deviant” include,

among others, Al-Arqam, Shia Islam, Ahmadiyyah Muslim Jama’at (Qadiyyaniah), Naqsyabandiyyah, Khalidiyyah, Ilmu Pancar, Tariqat Mufarridiyyah, Silat Lintau, and the Bahai. In addition, the teachings of a number of foreign individuals are banned.²⁸⁸

Over decades, the government claims a religious duty for itself to “safeguard” the country from the “threat” that such “deviant groups” cause to the “pure faith” (*akidah*) of Islam. In the past, some members of these groups were forced to undergo lengthy religious “rehabilitation.”²⁸⁹ In September 2003, six members of the “deviant” group Al-Arqam were detained without trial under the Internal Security Act (ISA) for alleged attempts to revive the movement in Brunei, where it had been banned in 1991.²⁹⁰ Others, such as the small Bahai community are not subject to imprisonment and forced “religious counselling,” provided that they continue to practice their faith in private space only.²⁹¹ The local Bahai community dates back to the early 1960s, when Iranian guest workers in Brunei’s oil industry converted some members of indigenous groups in the Tutong district to their religion. The Bahai have been classified as “deviant” by Brunei’s religious authorities as early as 1961.²⁹²

Five decades of systematic de-politicisation of the population (once initiated as a reaction to the PRB rebellion), dependence on the “Shellfare State’s” generosity, and the sharp limitations on freedom

288 Compare *Brunei 2012 International Religious Freedom Report*, United States Department of State, Bureau of Democracy, Human Rights and Labor; ‘Bruneians urged to know and avoid deviant teachings in Islam,’ *The Brunei Times*, 17 Apr 2014.

289 Ann Black, ‘Informed by ideology: A review of the court reforms in Brunei Darussalam,’ in Andrew Harding and Penelope Nicholson (eds.), *New Courts in Asia*. (London and New York: Routledge, 2010), 327–49, p. 344.

290 Mohamad Yusop bin Awang Damit 2004 ‘Political Outlook 2004–2005 / The Asean-10 / Brunei,’ in Russel Heng and Denis Hew (eds), *Regional Outlook: Southeast Asia* (Singapore: ISEAS, 7–9) p. 8.

291 Varying sources indicate that Brunei’s Bahai community presently comprises between 30 and 100 persons.

292 ‘Deviation activities detected in Brunei,’ *Borneo Bulletin*, 3 Sep 2003.

286 Sultan Hassanah Bolkiah quoted in ‘Call to shun deviant beliefs, follow Prophet’s teachings,’ *Borneo Bulletin*, 15 Nov 2013.

287 Ilik Arifin Mansurnoor, ‘Islam in Brunei Darussalam and Global Islam: An Analysis of their Interaction,’ in Johan Meuleman (ed) *Islam in the Era of Globalization: Muslim Attitudes towards Modernity and Identity* (London: RoutledgeCurzon, 2002) 71–98, p. 88.

of speech have created the peculiar situation of a nearly complete absence of open political dissent. Incentives for loyalty, the iron fist of a powerful security and surveillance apparatus and the danger of sanctions continue to minimise the potential for open public debates on any political or religious matters. Islamic discourse, which in other Muslim societies provides a salient resource for political contestation, is widely controlled and serves as a key stabilising force for the ruling system, while political power and religious “authenticity” are inseparably intertwined. The Syariah Penal Code Order 2013, with its far-reaching restrictions of fundamental human rights, can be used as a powerful instrument to suppress critical discourse about the absolute monarchy’s religious legitimisation and would thus serve to foreclose religio-political opposition in the future. At the same time, its implementation reflects tendencies of increasing orthodox piety in the state apparatus and among the Muslim majority population. Many Muslim citizens in Brunei passionately agree with the legal reform’s official justification of submitting to God’s will.

These interrelated factors, and absence of any civil society actors that would argue for religious freedom, contribute negatively to the situation of the freedom of thought, conscience and religion in Brunei. However, there is no indication of any likelihood of violent conflict or religious persecution by non-state actors in the foreseeable future.

B. Positive Contributing Factors

The state’s absolute monopoly of violence effectively ensures the absence of any forms of violent conflict or religious persecution perpetrated by non-state actors. Police and security services with far-reaching powers are widely present. Absolute rule, decades-long established “emergency” powers and the country’s small population make it possible to maintain a highly effective system of surveillance and control, albeit without any democratic checks-and-balances. In the government’s understanding of

Brunei Darussalam being an “Abode of Peace,” no space can be provided for religious violence, religious controversies, or political dissent. Accordingly, Brunei has not witnessed any outbreaks of religious violence, or violent religious rhetoric, as they have to varying degrees occurred in most neighbouring countries in the reporting period. Whether the state’s absolute control of religious expression at the cost of civil liberties should be listed as a positive contributing factor is however doubtful, although this has remarkably contributed to the absence of violent religious conflict or violent persecution by non-state actors.

Government officials have in recent years attended cultural events of non-Muslim groups in Brunei, such as Chinese New Year. In 2008, government representatives attended the ethnic Iban’s “Gaway,” a thanks-giving ritual dedicated to the Iban’s God of Paddy, for the first time. This is particularly noteworthy also because the Iban do not belong to the seven ethnic groups that are officially acknowledged as “indigenous” (*puak jati*), and are therefore particularly marginalised. In 2013, an officer from the Ministry of Culture, Youth and Sports stressed during a UNESCO workshop that the cultural heritage of Brunei’s smaller ethnic groups, including the mostly non-Muslim Dusun and Bisaya, needs to be preserved.²⁹³

In the absence of possibilities for democratic participation, it is remarkable that the Legislative Council, which operated without *pro forma* powers since 1965 and became fully suspended in 1983, was re-opened in 2004.²⁹⁴ This may indicate a gradual opening of the political system for civic participation. For the time being, however, the Council does not have legislative power. Most of its 36 members are directly appointed by the Sultan, except for a smaller number of village heads, who are elected

293 ‘Call for research to document traditional practices of local ethnic minorities,’ *The Brunei Times*, 29 Nov 2013.

294 Mohamad Yusop bin Awang Damit, ‘Brunei Darussalam: Towards a New Era,’ in *Southeast Asian Affairs* (Singapore: ISEAS, 2007), 103–13.

at the village-level, where they can only become candidates with governmental approval. Although the Council's re-opening can be considered as a positive step, one of the most distinguished foreign observers of Brunei, A.V.M. Horton, has argued that this step is merely an attempt "to wrap the kingdom in some of the clothes of a liberal democracy without actually being one."²⁹⁵

Nevertheless, average citizens are now able bring up their concerns to the Council's members and thereby participate in a new form of institutionalised political discourse. So far, religious freedom has not been discussed at the Legislative Council. Instead, in one instance, a member of the Council spoke of civic concerns about a Sunni Islamic missionary group, Jama'at al-Tabligh, which was suspected by average citizens of spreading "deviant teachings." The group, which has a small presence in Brunei since the 1980s, is the only transnational Islamic movement that is allowed to proselytise. Due to its uncontroversial and apolitical adherence to MIB-conforming Sunni teachings, the former State Mufti did not list the group "deviant."²⁹⁶ At a Legislative Council meeting in 2013, the delegate cited complaints about the Tabligh's possibly "deviant" missionary work, adding that its presence at mosques was "not welcomed" by some parts of the population.²⁹⁷ The Minister of Religious Affairs responded at the same meeting that although the group is not banned for deviant teachings, "these people should not mix politics with Islamic preaching," and warned that "the ministry does keep a close watch on them."²⁹⁸

295 A.V.M. Horton, 'Window-dressing in Islamizing Sultanate' (2004) 45(1) *Asian Survey* 180–5 181.

296 "'Tabligh' should not cause inconvenience to people,' *The Brunei Times*, 20 Mar 2013. Despite not being listed as 'deviant,' the group has been under surveillance by the Internal Security Department in the past ('Brunei Monitors Jama'at Al-Tabligh,' *Wikileaks* 14 Dec 2006).

297 "'Tabligh' should not cause inconvenience to people,' *The Brunei Times*, 20 Mar 2013.

298 "'Tabligh' should not cause inconvenience to people,' *The Brunei Times*, 20 Mar 2013.

In sum, there are very few positive contributing factors that would be conducive for the protection of religious freedom in Brunei. However, the AHRD might potentially provide a regional framework for protecting human rights more effectively in the future, which could then have a positive impact on the situation in Brunei.

PART FOUR: CONCLUSION

Throughout the reporting period, there was no substantial protection of the individual right to freedom of thought, conscious and religion in Brunei, particularly for persons whose convictions differ from those of the government. Reflecting its self-understanding as a non-secular Malay Islamic Monarchy, the country's legal and political system unambiguously rejects pluralism and privileges Muslim citizens over non-Muslims, except for those "deviant" Muslims who disagree with the state's interpretation of Islam. The government of Brunei argues that its policies of restricting the individual right to religious freedom, and its sanction-based enforcement of religious duties, are required by divine legislative commandments. The government's equation of its religious policies with God's unquestionable will de-legitimises criticism that calls for an improved protection of individual religious freedom as ignorance and heresy.

From the government's official perspective, its submission to God's will is furthermore necessary for safeguarding the more than 600 year-old Sultanate's status as an "Abode of Peace," as reflected in the remarkable absence of violent conflict or social unrest ("national harmony"), an exceptionally low crime rate, and economic wealth. At the same time, there are no visible actors in the country, neither from the government nor from civil society, who would openly advocate in public discourse for the improvement of freedom of thought, conscious and religion. It is difficult to determine, however, to what extent this absence is caused by an overwhelming popular support for the

government, by a general lack of interest, or by fear of drastic sanctions. As the government's domestic policies are one-directional, and there is very little space for political participation or unrestricted public debates, particularly on matters pertaining to religion, it is unlikely that the state of religious freedom in Brunei will improve in the foreseeable future.

Restrictions of religious freedom have reached an unprecedented level with the announcement of the Syariah Penal Code Order 2013, which, besides numerous other violations of the right to religious freedom, includes the death penalty by stoning for religious offences such as extramarital sex, apostasy, heresy and blasphemy. Given the high burden of proof and procedural requirements, such as a voluntary confession or at least two witnesses of "just character," among others, it is possible that the Syariah Penal Code Order's most drastic penalties will not, or only in very few cases, be applied. Nevertheless, it has been argued by human rights groups that they would constitute torture and thus violate international law. The Office of the UN High Commissioner for Human Rights has communicated this assessment toward the government of Brunei in no uncertain terms, which is well-aware of this perspective. Nevertheless, it has so far ignored any criticism. Instead, the government has been lauded by several Islamic organisations and politicians from neighbouring countries for its God-serving "courage."

The Sultan's administration affirms its commitment to the protection of human rights in the ASEAN region, but simultaneously insists on restrictions of human rights in the name of "God's commandments" (as they are interpreted by the country's Islamic clergy in *de jure* unquestionable terms) vis-a-vis "man-made laws" and "foreign interventions." Accordingly, the government of Brunei does not reject the notion of "religious freedom" in principle, but ascribes meanings to this term that substantially differ from those held within a secular pluralistic or UDHR-based normative framework. From this perspective, "true" religious freedom is

ultimately expressed and protected by Islamic Law, albeit with sharp boundaries. As Sultan Hassanal Bolkiah summarises his government's perspective, it "choose[s] Islam as a step to seek blessings from Allah the Almighty, not to persecute or oppress anyone."²⁹⁹

299 'Laws of Islam Seek Blessings Not Oppression,' *Borneo Bulletin*, 5 Nov 2013.

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Cambodia

Cambodia

Formal Name	Kingdom of Cambodia
Capital City	Phnom Penh
Declared Relationship with Religion	Buddhism is the state religion. ¹
Form of Government	Cambodia has a unitary system of government. It is a constitutional monarchy, with a Prime Minister who is head of government and a King who is head of state. Legislative power is vested in two Chambers of Parliament, the National Assembly (Lower House) and the Senate (Upper House).
Regulation of Religion	<p>Citizens are free to choose their religion and belief, with the Constitution declaring as follows:</p> <p>“Khmer² citizens of either sex shall have the right to freedom of belief.</p> <p>Freedom of belief and religious worship shall be guaranteed by the State on the condition that such freedom does not affect other beliefs and religions or violate public order and security.</p> <p>Buddhism is the religion of the State.”³</p> <p>Acts of religious groups are however overseen by the Ministry of Cults and Religions.</p>
Total Population	15,458,332 (July 2014 est.) ⁴
Religious Demography	<p>Buddhists 96%</p> <p>Muslims 3.5%</p> <p>Bahai, Jewish, Vietnamese Cao Dai, and Christians 0.5%⁵</p>
Changing Religious Demography	See table below.

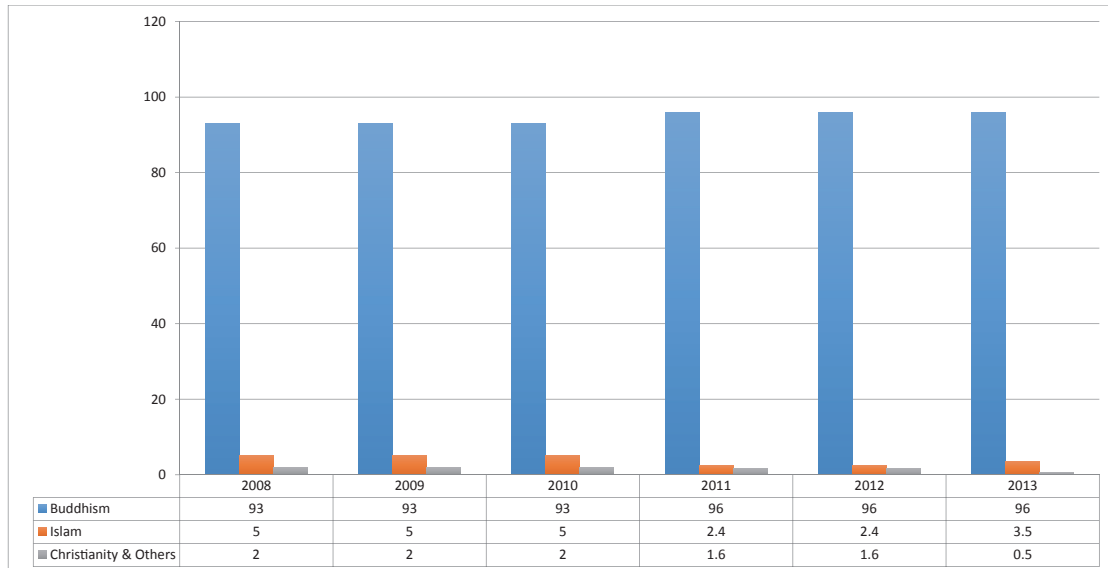
1 Art. 43, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia). English translation in Konrad-Adenauer-Stiftung, *Constitutionalism in Southeast Asia*, (Singapore: Konrad-Adenauer-Stiftung, 2010).

2 The Khmer word “Khmer” can refer to the Khmer ethnic group or to Cambodian citizens. “Cambodian” might be the more accurate interpretation in this context. It should be noted that only the Khmer version of the Constitution is the “authentic” one and translations into English and French do not have an official character. See Oum Sarit, Secretary General, “Foreword” to English translation of the Constitution of the Kingdom of Cambodia, available at <<http://www.crrt-cambodia.org/wp-content/uploads/2011/01/Constitution-of-the-kingdom-of-Cambodia-EN.pdf>> accessed 1 October 2014.

3 Art. 43, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

4 Central Intelligence Agency, *The World Factbook*. n.d. Webpage. <<https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>> accessed 14 September 2014.

5 Bureau of Human Rights, Democracy, and Labor, U.S. Department of State, “Cambodia 2013 International Religious Freedom Report,” (28 July 2014), *U.S. Department of State*. <<http://www.state.gov/j/drl/rls/irf/2013/eap/222121.htm>> accessed 14 September 2014. No official statistics from the Ministry of Cults and Religions was found

Table 1: Statistics of Religions from 2008-2013 (in per cent)

Source: US Department of State International Religious Freedom Reports (2008-2013)

As seen in the chart above, the most recent US Department of State Reports show a decrease in numbers of the Bahai, Jewish, Vietnamese Cao Dai, and Christians from two per cent in 2008 to half a per cent in 2013. There is, however, no indication in the report that this decrease is due to suppression of religious freedom, and, in fact, the 2013 report notes that “the government generally respected religious freedom.”⁶

INTRODUCTION

The Cambodian Constitution explicitly guarantees freedom of belief, with its practice to be limited only when it affects other beliefs and religions, or violates public order and security.⁷ While observers note the low representation of religious minorities, particularly of the Cham Muslims, in business and the government and “their perceived institutional

and cultural barriers to full integration in society,”⁸ reports are overall positive. They generally note that respect for freedom of religion and worship is observed in practice.⁹ Sun Kim Hun, Secretary of State at the Ministry of Cults and Religions, attributed Cambodia’s success in protecting and promoting freedom of worship to the tolerant character of Buddhism, Cambodia’s state religion. “The enduring goal of Buddhism is peaceful and ‘Buddha says conquer anger with love.’”¹⁰

The government, nonetheless, openly favours Buddhism, the declared official religion of Cambodia, and promotes it through observance of holidays, training and education of monks and others, and support for research and publication of

8 Bureau of Human Rights, Democracy, and Labor, U.S. Department of State. “Cambodia 2012 International Religious Freedom Report,” (n.d.), *U.S. Department of State*. <<http://www.state.gov/documents/organization/208432.pdf>> accessed 14 September 2014.

9 U.S. Department of State, “Cambodia 2013 International Religious Freedom Report.”

10 Ibid.

6 Ibid.

7 Ibid.

materials on Khmer culture and Buddhist traditions.¹¹ Religion is one of three elements of the national motto identified in the Cambodian Constitution, “Nation, Religion, King.”¹² Thus, appreciation of and respect for Buddhism (along with Nation and King) is also included in the National Anthem of the Kingdom of Cambodia.

According to the Ministry of Cults and Religions, there are three major religions in Cambodia: Buddhism, Islam and Christianity. However, the vast majority of Cambodians are Buddhists,¹³ and there is “a close association between Buddhism and Khmer cultural traditions, identity, and daily life.”¹⁴ In fact, the US Department of State International Religious Freedom Reports indicate that the number of Buddhists in Cambodia increased from 93% to 96% in the last six years (2008-2013).

The following data from Cambodia’s Ministry of Cults and Religions, published in 2013, shows the number of places of worship, followers, schools, and associations of the different religions in the country.¹⁵ The available statistics from the Ministry appear to be incomplete, for instance there are no statistics on the number of citizens who have changed religions, nor the total number of followers of Theravada Buddhism. This may be due to the fact that there is no requirement for individuals to register their individual belief or religion.

Table 2: Statistics of Religions Being Practised in Cambodia, 2013

Religions	Places of Worship	Followers	Schools	Associations and NGOS, Offices
Theravada Buddhism	- 4,688 pagodas - 270 ashrams	- 54,103 monks (Data did not include lay followers.)	- 775 Buddhist primary schools - 35 Buddhist junior high schools - 17 Buddhist high schools, - 3 Buddhist universities	
Islam	- 439 mosques - 475 suravs ¹⁵	- 342,970	- 304	- 39

¹¹ Ibid.

¹² Art. 4, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia). See also Constitutional Council, Decision No. 107/003/2009 CC.D Of December 23, 2009, 2.

¹³ Mekong, “Cambodia has three major religion,” *Ministry of Cults and Religions*. <<http://www.mocar.gov.kh/index.php/2011-02-16-02-24-50/2011-02-16-02-25-36/254-2014-03-27-08-13-32>> accessed 14 September 2014.

¹⁴ U.S. Department of State, “Cambodia 2013 International Religious Freedom Report.”

¹⁵ H.E. Min Khin, Minister of Cults and Religion, “Compilation of Statistics of Pagodas, Temples, Schools and Religious Students,” 2013.

¹⁶ Suravs are meeting places that have congregations of up to 40 persons and do not have a minbar (pulpit) from which Friday sermons are given. Bureau of Human Rights, Democracy, and Labor, U.S. Department of State. “Cambodia 2010 International Religious Freedom Report,” (17 November 2010), U.S. Department of State. <<http://www.state.gov/j/drl/rls/irf/2010/148861.htm>> accessed 14 September 2014.

Christianity	- 55 Catholic churches - 504 Protestant churches	- 82,717	- 43 Catholic schools - 504 Protestant schools	- 30 Catholic offices - 947 Protestant offices - 95 Associations & NGOs
Mahayana	- 160 temples - 16 places of worships	- 24,353	- 10	
Bahai	- 25	- 6,168	- 1	
Cao Dai	- 3	- 1,777	- 1	- 1

Source: Ministry of Cults and Religions, 7 February 2013

Historical Influences on Religious Practice

As indicated, a vast majority of Cambodian citizens are followers of Buddhism, specifically of the Theravada school. Historians trace the presence of Buddhism in Cambodia, with strong influences of Hinduism, to the time the Funan, the first significant polity in the Mekong region, was established.¹⁷ Two images of Buddha, dating from the fifth to sixth centuries were found in Oc Eo and the other in Angkor Borei.¹⁸ In the 13th century, Theravada Buddhism, as reintroduced from Sri Lanka, had spread throughout Cambodia, causing Hinduism and Mahayana Buddhism to disappear.¹⁹

Theravada Buddhism continued to thrive during Cambodia's French colonization (1863-1941) and Japanese occupation (1941-1945). A form of Thai-based and reformed monastic fraternity, the Dhammayutika Nikàya or Thammayute kaknikay, meaning "the group who hold to the teachings [of the Buddha]," however emerged in the country.²⁰

¹⁷ Ian Harris, *Cambodian Buddhism: History and Practice* (Honolulu: University of Hawai'i Press, 2005), 4-7.

¹⁸ Ibid, 4.

¹⁹ Asian Studies Center, Michigan State University, "Cambodia - Religion," *Windows on Asia*, (n.d.). <http://asia.isp.msu.edu/wbwoa/southeast_asia/cambodia/religion.htm> accessed 14 September 2014.

²⁰ Ian Harris, *Cambodian Buddhism: History and Practice*, 84.

In 1854, on King Ang Duong's invitation, monks from Thailand brought some 80 bundles of sacred Thammayute kaknikay writings to Udong in Cambodia and the Thammayute kaknikay was established under royal patronage. The unreformed majority became known as the Mahànikàya (also referred to as Mohanikay) or "order of long-standing habit."²¹

After the re-imposition of French rule in 1945, a new Constitution was promulgated in 1947. For the first time, Buddhism was established as the state religion and freedom of religion was guaranteed, provided that this freedom did not adversely affect public order.²²

Buddhism has since remained the state religion, except for the period when Cambodia was under the control of the Khmer Rouge (1975-1979). The Constitution issued in 1976 terminated Buddhism's status as the religion of the state, although it maintained that Cambodians had freedom of religion and belief.²³

²¹ Ibid, xii and 84-85.

²² Ibid, 142-143, citing Preschez (1961).

²³ Ibid, 174.

Every citizen of Kampuchea has the right to worship according to any religion and the right not to worship according to any religion.

Reactionary religion, which is detrimental to Democratic Kampuchea and Kampuchean people, is absolutely forbidden.”²⁴

Despite this proclamation, religious practice suffered severely during this period. Accounts narrate the execution of senior Buddhist monks, defrocking and evacuation of monks from their home monasteries to be put on hard labour along with the rest of the population, and execution of some of the country’s highest Muslim dignitaries.²⁵

Today, Theravada Buddhism in Cambodia is subdivided into the Orders of Theravada Buddhism Mohanikay and Theravada Buddhism Thammayute kaknikay. The Mohanikay continues to have more adherents than the Thammayute kaknikay. Because Buddhism is the state religion, the Chief Monks of the two Orders of Theravada Buddhism (Mohanikay and Thammayute kaknikay) are members of the Throne Council that is mandated to select the King.²⁶ The Constitution does not require the King to be Buddhist. However, traditionally, all members of the Royal Family have been Buddhist and there are no reports of any conversion from Buddhism of any member of the Royal Family.

The Muslims in Cambodia, who are predominantly ethnic Chams, typically follow any of the following four branches of Islam: the Malay-influenced Shafi’i branch, practiced by as many as 90% of Muslims; the Saudi-Kuwaiti-influenced Salafi (Wahhabi) branch; the indigenous Iman-San branch; and the Kadiani branch.²⁷ Islam is said to have arrived in the old

kingdom of Champa in as early as the 9th century. Beginning in the 14th century, Islam became a part of the beliefs and religions of the Champa people.²⁸ Presently, Islamic religious institutions, from mosques to Islamic schools, are found in practically all the provinces in Cambodia.²⁹

Even though Christianity came late to Cambodia, a number of Cambodians have in the past years converted to Christianity.³⁰ According to the Phnom Penh Post, the first Protestant missionary arrived in 1923, translated the New Testament into Khmer by 1933 and published the whole Bible in 1953. By the 1970s, there were about 20,000 Christians in the country.³¹ Based on the statistics of the Ministry of Cults and Religions, there were 82,717 Christians in Cambodia in 2013.

²⁴ Article 20, Democratic Kampuchea (DK) Constitution, 1976, (Cambodia).

²⁵ Ian Harris, *Cambodian Buddhism: History and Practice*, 174-181.

²⁶ Article 13-new (As amended March 1999), Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

²⁷ U.S. Department of State, “Cambodia 2013 International Religious Freedom Report.”

²⁸ Mohamad Zain Bin Musa, “Dynamics of Faith: Imam Musa in the Revival of Islamic Teaching in Cambodia,” in Omar Farouk and Hiroyuki Yamamoto (ed), *CIAS Discussion Paper No. 3: Islam at the Margins: The Muslims of Indochina*, (Kyoto: Center for Integrated Area Studies, Kyoto University, 2008), 59-60.

²⁹ Omar Farouk, “The Re-organization of Islam in Cambodia and Laos,” in Omar Farouk and Hiroyuki Yamamoto (ed), *CIAS Discussion Paper No. 3: Islam at the Margins: The Muslims of Indochina*, (Kyoto: Center for Integrated Area Studies, Kyoto University, 2008), 72.

³⁰ Sivuthin Chum and Sok Chan, “Christ in Cambodia,” *The Phnom Penh Post*, 5 May 2010. <<http://www.phnompenhpost.com/life/christ-cambodia>> accessed 30 September 2014.

³¹ Ibid.

Administration of Religious Activities

Administratively, the King is the head of state for life, who shall rule according to the Constitution and the principles of liberal democracy and pluralism.³² The Prime Minister is the head of the Royal Government of Cambodia (also known as the Council of Ministers). The Ministry of Cults and Religions³³ was established to direct and manage religious matters at all levels.³⁴ Ministers and Secretaries of State, including the Minister of Cults and Religions, have a five-year mandate, similar to members of the National Assembly.

The territory of the Kingdom of Cambodia is administratively divided into the Capital, Provinces, Municipalities, Districts (Srok or khan), and Communes (Khum or Sangkat).³⁵ The local units of the Ministry of Cults and Religions in the Capital and Provinces are called Departments of Cults and Religions. Those located in the Municipalities, Districts (Srok or Khan) and Communes (Khum or Sangkat) are called Offices of Cults and Religions.³⁶ The Departments and Offices of Cults and Religions direct and manage religious matters at their respective areas on behalf of the Ministry of Cults and Religions.

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

Article 31 of the Constitution states that,

The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women's rights and children's rights.

Cambodia has ratified the following international human rights treaties, which have relevance to the freedom of thought, conscience, and religion:³⁷

As mentioned above, the Constitution recognizes "covenants and conventions related to human rights."³⁸ Additionally, according to a 2007 decision of the Constitutional Council, international law is considered a source of Cambodian Law.³⁹ However, the Constitution also provides that "[t]he National Assembly shall approve or repeal international treaties and conventions."⁴⁰ Further, it says that "the King shall sign and ratify international treaties and conventions after they have been approved by the National Assembly and the Senate."⁴¹

32 Articles 1 and 7, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

33 Royal Kram NS/RKM/0156/15 on the Promulgation of Law on the Establishment of Ministry of Cults and Religions, 24 January 1996 (Cambodia).

34 Article 4, Sub-decree No 154 ANKr/BK, 11 July 2011 (Cambodia).

35 Article 145- New (as amended in January 2008), Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

36 Article 23, Sub-decree No 154 ANKr/BK, 11 July 2011 (Cambodia).

37 United Nations, *United Nations Treaty Collection*, n.d., Website, <<https://treaties.un.org/>> accessed 14 September 2014.

38 Article 31, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

39 Constitutional Council, CASE N°131/003/2007 of June 26, 2007, Decision N° 092/003/2007 CC.D of July 10, 2007.

40 Article 90 - New (Two) (As amended March 2006), Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

41 Ibid, Article 26 - New (As amended March 1999).

International Document	Year of Signature	Year of Ratification or Accession (a)	Reservations / Declarations
Convention on the Prevention and Punishment of the Crimes of Genocide		1950 (a)	
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1966	1983	None
International Covenant on Civil and Political Rights (ICCPR)	1980	1992	None
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1980	1992	None
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1980	1992	None
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		1992 (a)	None
Convention on the Rights of the Child (CRC)		1992 (a)	None
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	2004		None
International Convention for the Protection of All Persons from Enforced Disappearance (CPED)		2013 (a)	None
Convention on the Rights of Persons with Disabilities (CRPD)	2007	2012	None
Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC)	2000	2004	None
Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC)	2000	2002	None
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)	2005	2007	None

The Constitution does not declare whether Cambodia follows a monist or dualist approach. In practice, in the absence of enabling legislation, courts are said to refuse to entertain claims that are directly based on international laws.⁴² This is consistent with the government's preference for dualism, as expressed in its 1997 Report to the Committee on the Elimination of Racial Discrimination: "These covenants and conventions may not be directly invoked before the courts or administrative authorities. However, they provide a basis for the development of national legislation..."⁴³

B. Domestic Laws and Policies

Policies on religion and belief are derived from the various sources of law in Cambodia.⁴⁴ The following

42 Suzannah Linton, "Putting Cambodia's Extraordinary Chambers into Context," (2007) 11 *SYBIL*, 195–25, at 203.

43 Ibid, 204, citing UN Doc. CERD/C/292/Add.2, 5 May 1997. See UN Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Racial Discrimination: State Party Report, Cambodia, 5 May 1997, CERD/C/292/Add.2, Paragraph 19. Available at: <<http://www.refworld.org/docid/3ae6af468.html>> accessed 1 October 2014.

44 These sources include the **Constitution; Laws (Chbab)** adopted by the National Assembly and the Senate, and promulgated by the King or the acting Head of State; **Royal Decrees (Preah Reach Kret)** proposed by the Council of Ministers and signed by the King or the acting Head of State; **Sub-Decrees (Anu-Kret)** or executive regulations prepared by relevant ministries, adopted by the Council of Ministers and signed by the Prime Minister; **Proclamations (Prakas)** or executive regulation issued at the ministerial levels and signed by the relevant ministers; **Decisions (Sech Kdei Samrach)** or executive regulations made by the Prime Minister and relevant ministers; **Circulars (Sarachor)** or administrative instructions used to clarify works and affairs of the ministries which are signed by the Prime Minister and relevant ministers; and **Bylaws (Deika)** which are legal rules approved by the Councils of Sub-National Levels (Capital Council, Provincial Councils, Municipal Councils, Districts Councils, Khans Councils, Sangkat Councils and Commune Councils).

are examples of laws and policies related to freedom of religion:

Constitution

The Constitution guarantees its citizens equal rights, regardless of religious belief, saying that:

Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.⁴⁵

It further states that Cambodian citizens of either sex shall have the right to freedom of belief. "Freedom of belief and religious worship shall be guaranteed by the State on the condition that such freedom does not affect other beliefs and religions or violate public order and security."⁴⁶

Law on the Establishment of the Ministry of Cults and Religions

The Ministry of Cults and Religions was established by Royal Kram No. NS/RKM/0196/19, promulgating the Law on the Establishment of Ministry of Cults and Religions, dated 24 January 1996. The Minister, a Secretary of State, and several Undersecretaries of State as necessary head the ministry.⁴⁷ The Ministry of Cults and Religions is under the Royal Government of Cambodia and is tasked with directing and managing all cults and

45 Article 31, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

46 Ibid, Article 43.

47 Article 3, Law on the Establishment of the Ministry of Cults and Religions (Cambodia).

religions in Cambodia.⁴⁸

Sub-decree No 154 ANKr.BK on the Organization and Functioning of the Ministry of Cults and Religions

This sub-decree, dated 11 July 2011, provides a framework of administration of religious practice in Cambodia. The Ministry of Cults and Religions is structured according to three main units: Central Unit, Local Unit, and General Inspectorate of National Buddhist Studies.⁴⁹

Within the Central Unit is the General Department of Religious Affairs (GDRA),⁵⁰ which in turn is sub-divided into the Department of Buddhist Affairs, Department of External Religions, Department of Research and Dissemination of Buddhism and Society, Department of Receiving Complaint and Settlement of Religious Disputes, and Buddhist Institute. The GDRA is mandated to perform a wide range of roles and duties, as follows:

- i) Administer cults and matters related to Buddhism and External Religions,
- ii) Manage, check and follow up activities of units under GDRA,
- iii) Seek reasonable approaches to disseminate morals and prevent negative acts towards religions,
- iv) Prepare policies for organization and functioning of all religions in Cambodia,
- v) Organize, prepare and cooperate to research, education, and dissemination of Buddhism and preaches,
- vi) Receive complaints and settlement of disputes related to religions,

- vii) Prepare and implement action plans and programs on religions,
- viii) Prepare and organize dissemination of Buddhism program related to society and bulletins of the ministry,
- ix) Direct the Khmer Tradition Working Group,
- x) Research and compare religious theories and religious linguistics,
- xi) Strengthen and expand library, publish previous works, disseminate via journals and website,
- xii) Encourage all religions to participate in social and economic development,
- xiii) Promote the use of pagodas, temples, churches and mosques of all religions to become the centres for education of minds, morals, culture and society,
- xiv) Maintain harmonization and freedom of all religions,
- xv) Prepare a study and promote understanding of religions,
- xvi) Prepare meetings of all national and international religions and promote interreligious network,
- xvii) Coordinate aids and supports from national and international religious organizations,
- xviii) Initiate laws and regulations related to management of religions by cooperation with relevant units and institutions,
- xix) Make reports as required and technical reports to the management of the ministry, and
- xx) Implement other tasks required by the ministry.⁵¹

⁴⁸ Ibid, Articles 1 and 2.

⁴⁹ Article 6, Sub-decree No 154 ANKr.BK on the Organization and Functioning of the Ministry of Cults and Religions, 11 July 2011 (Cambodia).

⁵⁰ Ibid, Article 6(1).

The Local Unit is sub-divided according to the administrative divisions in Cambodia as described

⁵¹ Ibid, Article 8.

above. It performs the roles and duties of the Ministry of Cults and Religions at the capital, provincial, municipal, district, and khan levels.⁵²

The General Inspectorate of Buddhist Studies has a separate resource from the national budget pursuant to an annual budget plan of the Ministry. It is sub-divided into a Unit on Buddhist Studies and Dhamma Primary School, a Unit on Buddhist High School, a Unit on Higher and Post-Higher Buddhist Education, and an Administrative and Accounting Unit.⁵³

National Strategic Development Plan 2014-2018

According to the National Strategic Development Plan 2014-2018 (NSDP 2014-2018), the Ministry of Cults and Religions will continue to actively promote the role of the family and adherence to the traditional religious values of the Kingdom.⁵⁴

The NSDP 2014-2018 says that the Ministry has established a programme, “Buddhism and Society,” which invites religious scholars to give sermons every Buddhist-saint day (four times a month) with the purpose of mainstreaming Buddhism to raise the “awareness of morality value” and “avoiding the use of drug, domestic violence, pornography, sexual trafficking, and teenager violence.” Such programmes have been aired on 22 state-run and private radio and television stations. At the same time, the Ministry also encouraged other religions to provide morality education through their own religious services so as to contribute to the development of the nation.

Section 4.34 of the NSDP 2014-2018 states that, in the Fifth Legislature, the Ministry of Cults and

52 Ibid, Article 23.

53 Ibid, Article 24.

54 Section 4.33 National Strategic Development Plan 2014-2018 (Cambodia). Available at <<http://www.mop.gov.kh/Home/NSDP/NSDP20142018/tabid/216/Default.aspx>> accessed 16 December 2014. See also Sec 354, National Strategic Development Plan 2009-2013 (NSDP 2009-2013) (Cambodia).

Religions will “[r]espect the freedom of holding other beliefs and practicing other religions and will improve Buddhism which is a State religion.” This will be done through “renewal of strengthening and expanding all levels of Buddhist schools, publication of religious texts, annotated texts, rules, and Dhamma discipline practice.”

Equally, the Strategic Plan aims to impart a culture of peace and states that the Ministry of Cults and Religions “[s]upports other religions’ activities in the society, strengthens the harmonization amongst all religious holders of all religion, fight against any discrimination or split amongst the people arising from their different religious views.”

1997 Labour Law

The 1997 Labour Law prohibits discrimination on the basis of creed or religion in making decisions on hiring, defining and assigning work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of the employment contract.⁵⁵

2011 Criminal Code

The 2011 Criminal Code prohibits and penalises acts that constitute “Infringement on State Religion.”⁵⁶ This includes provisions penalising:

1. *Offences against Buddhism* - This offence includes celebration of Buddhist ceremony without authorization, theft of object dedicated to Buddhism, and damaging religious premises or dedicated objects.⁵⁷
2. *Offences against Buddhist monks and nuns and or laymen* – This provision penalises intentional violence or insults inflicted on monks and nuns

55 Article 12, Labour Law (Cambodia).

56 Chapter 5 (Offense against State Religion: Article 508-515), Criminal Code (Cambodia).

57 Ibid, Articles 508-512.

and or laymen.⁵⁸

The Criminal Code also criminalises discrimination on the basis of a “person’s belonging to or not belonging to a specified religion” committed through:

1. Acts of Refusing to Supply Goods or Service,⁵⁹
2. Conditional Provision of Goods or Service,⁶⁰
3. Acts of Refusing to Hire a Person,⁶¹
4. Acts of Refusing Employment of a Person,⁶²
5. Dismissal or Discharge based on Discrimination,⁶³
6. Discrimination and Denial of Rights by Civil Servants.⁶⁴

Legal entities may be held criminally responsible for the offences of Acts of Refusing to Supply Goods or Service, and Dismissal or Discharge based on Discrimination.⁶⁵

The Code of Criminal Procedures

The Code of Criminal Procedures states that “Criminal actions apply to all natural persons or legal entities regardless of race, nationality, colour, sex, language, creed, religion, political tendency, national origin, social status, resources or other status.”⁶⁶ The Code of Criminal Procedures allows witnesses and parties concerned with the criminal

case to take an oath according to their own religion and belief. For example, translators/interpreters of written records of complaints received by judicial police officers swear according to his/her belief or religion that he/she will translate the written record accurately.⁶⁷

Similar provisions indicating respect of the concerned person’s freedom of religion and belief are also made in other steps of the proceeding, such as during a scientific or technological examination,⁶⁸ record of interrogation (Preliminary Inquiry),⁶⁹ assistance of interpreter or translator,⁷⁰ oath of witnesses,⁷¹ assistance by experts listed in the national list of experts,⁷² rules for interrogation by Judicial Police Officer,⁷³ and use of translators to assist deaf and mute persons.⁷⁴

The Religious Freedom and Harmony Policy and Practice

The Cambodian government, as can be seen in its Constitution, has adopted a policy of religious freedom and harmony. Consequently, people are able to practice a number of religions in addition to the traditional Theravada Buddhism. Despite the various religions and beliefs, only three main religions have played crucial roles in Cambodian society, namely Buddhism, Islam, and Christianity. At the time of writing this report, there is no on-going religious dispute in Cambodia.

An author has commented that the constitutional guarantee of freedom of religion and parliamentary democracy, as well as the electoral strength of the Muslims, has “enabled the re-organization of Islam

58 Ibid, Articles 513-516.

59 Ibid, Article 265.

60 Ibid, Article 266.

61 Ibid, Article 267.

62 Ibid, Article 268.

63 Ibid, Article 269.

64 Ibid, Article 270.

65 Ibid, Article 273.

66 Article 3, Code of Criminal Procedures (Cambodia).

67 Ibid, Article 72 (Police Record).

68 Ibid, Article 95.

69 Ibid, Article 115.

70 Ibid, Articles 144 and 330.

71 Ibid, Articles 154 and 328.

72 Ibid, Article 163.

73 Ibid, Article 179.

74 Ibid, Article 331.

to take place to give it a more tangible, public and positive role within the new Cambodia.⁷⁵ There are no reports to indicate the overall impact of Cambodian Christians and their potential to shape the direction of Cambodian society. Nonetheless, a senior pastor of the Presbyterian Church in Phnom Penh said “Christianity has played an important role in changing people by educating their minds and changing their attitudes to live their lives in a better way.”⁷⁶

There are no laws defining or penalising atheism, non-religion, blasphemy, deviant behaviour or heresy. Literature is largely silent regarding the acceptance of persons with atheist or agnostic views in Cambodian society.

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

The Constitution guarantees the right to freedom of belief, and, in practice, persons are free to adopt, change or renounce their religion or belief without any coercion. There is no requirement for individuals to register their belief or religion, or any conversions or changes in their religion or belief. At the time of writing this report, there are no cases reported about Cambodian citizens who have been forced to convert their beliefs, whether to Buddhism or to any of the “External Religions.” In fact, the Pew Research Center’s latest report on religious restrictions around the world during calendar year 2012 scored Cambodia a 0.00 for a specific indicator,⁷⁷ which signified that “National laws and policies provide for religious freedom, and the national government respects religious freedom in practice.”⁷⁸

75 Omar Farouk, “The Re-organization of Islam in Cambodia and Laos.”

76 “Cambodians Turning to Christianity,” *The Phnom Penh Post*, 23 March 2011. <<http://www.phnompenhpost.com/life/cambodians-turning-christianity>> accessed 15 September 2014.

77 Said indicator, GRI.Q.3, asks the question, “Taken together, how do the constitution/basic law and other national laws and policies affect religious freedom?”

78 Pew Research Center, *Religious Hostilities Reach Six-Year High*, (January 2014), “Appendix 6: Results by Country,” 4.

2. *Right to manifest one’s religion or belief*

a. *Freedom to worship*

There is no restriction on freedom of worship in Cambodia for both Buddhism and External Religions. A 2014 report indicated that the government does not interfere with worship or other religious practices.⁷⁹

People have freedom to worship and they can decide where to worship, either at home or at any sacred place based on their tradition, culture and ethnicity. Belief and religious worship is protected by the Constitution, provided that this freedom does “not affect other beliefs and religions or violate public order and security.”⁸⁰ The Constitutional Council said this means that:

[T]he State shall guarantee the freedom of belief and religious practice to be able to proceed as usual, but this freedom and worship shall also have limitation. The exercise of freedom and the practise of belief and religion must not impinge on other beliefs or religions, and must respect the freedom and the practice of beliefs or religions of other people as well. Furthermore, the exercise of freedom and the practise of belief and religion must not impinge on public order and security at all cost.⁸¹

The Ministry of Cults and Religions lists five “External Religions,” particularly Islam, Christianity, Mahayana Buddhism, Bahai and Cao Dai. Islam and Christianity are ranked first and second respectively in terms of population of followers among the External Religions. (See charts below.)

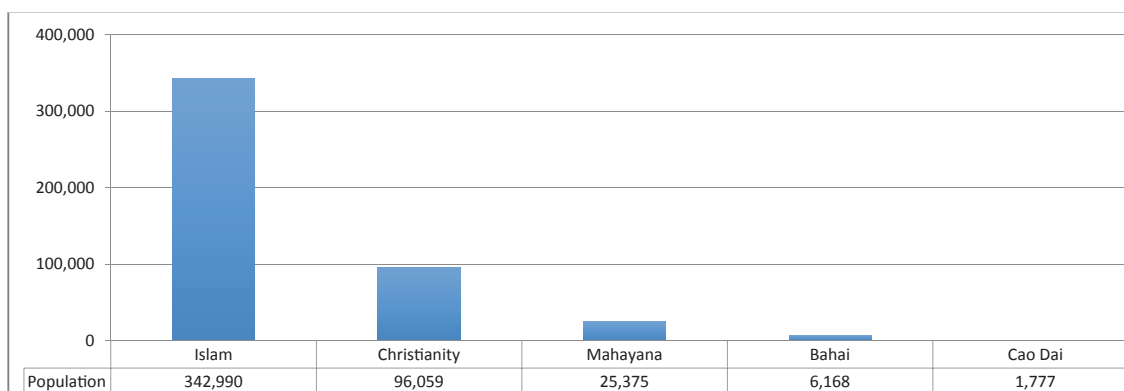
79 Ibid, “Appendix 6: Results by Country,” 5.

80 Art. 43, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

81 Constitutional Council, Decision No. 107/003/2009 CC.D of December 23, 2009, 2.

Table 3: Statistics of External Religions in 2012-2013

External Religions	Total Population	Male	Female
Islam	342,990 ⁸²	164,672	178,318
Christianity	96,059	40,625	55,434
Mahayana	25,375	12,288	13,087
Bahai	6,168	2,742	3,426
Cao Dai	1,777	1,021	756

Table 4: Population of Followers of “External Religions” in 2012-2013

Source: Ministry of Cults and Religions, 7 February 2013

b. Places of worship

Currently, there is no restriction on the right to build, renovate and maintain places of worship for both Buddhism and External Religions. However, permission from the government agencies, in particular the Ministry of Cults and Religions, is required.

The government distinguishes between “places of worship” and “offices of prayer.”⁸³ The establishment of a place of worship requires that the founders own the building and the land on which it is located. The facility must have a minimum capacity of

200 persons, and the permit application requires the support of at least 100 congregants. An office of prayer, in contrast, can be located in rented facilities or on rented property and does not require a minimum capacity. The permit application for an office of prayer requires the support of only 20 congregants.⁸⁴

Places of worship must be located at least two kilometres (1.2 miles) from each other and may not be used for political purposes or to house criminals or fugitives.⁸⁵ The distance requirement applies only to the construction of new places of worship and not to offices of religious organizations or prayer. The US Department of State notes that “There are

⁸² Includes only Muslims above 15 years old.

⁸³ U.S. Department of State, “Cambodia 2013 International Religious Freedom Report.”

⁸⁴ Ibid.

⁸⁵ Ibid.

no documented cases in which the directive was used to bar a church or mosque from constructing a new facility.”⁸⁶

Specifically with regard to Buddhists, permission to build a new pagoda⁸⁷ or renovate a pagoda⁸⁸ is made by a decision of the Ministry of Cults and Religions. According to the current practice, the process to build or renovate a new pagoda comprises of the following steps: i) A Request from the Management Committee of the Pagoda or communities where a pagoda is built or renovated, ii) Approval of the request by the District Governor, iii) Approval from Director of Provincial Department of Cults and Religions, iv) Approval from Governor of Province and v) Decision of the Minister of Cults and Religion.⁸⁹

Cambodian Land Law 2001 provides a concept of collective ownership of Buddhist monasteries. Immovable properties of land and structures existing within the premises of Buddhist monasteries are a patrimony allocated in perpetuity to the Buddhist religion and are available to its followers, under the care of the Pagoda Committee. Procedures to select the Pagoda Committee and its representatives to protect the pagoda’s interest shall be determined by a Prakas (regulation) of the Ministry of Cults and Religions. According to the Land Law, immovable property of religious monasteries cannot be sold, exchanged or donated and is not subject to prescription. However, immovable property of monasteries may be rented or sharecropped on condition that the income from such rental or sharecropping shall be used only for religious affairs.⁹⁰

As regards non-Buddhists, the Land Law stipulates that their religious places and properties shall be managed by an association of persons of these religions created under the provisions of law and they are not subject to the regime of collective ownership of the Land Law like Buddhist monasteries.⁹¹

The following figures from the Ministry of Cults and Religions give the number of religious places in Cambodia:

Religions	Religious Places
Theravada Buddhism	- 4,688 pagodas - 207 ashram
Islam	- 439 mosques - 475 suravs - 914 places of worship
Christianity	- 55 Catholic Churches - 430 Jehovah’s witnesses churches (Yehova) - 1514 Christian places of worship

⁸⁶ Ibid.

⁸⁷ Decision No 157-KTS-SR on Construction of a New Pagoda in Prey Veng Province, May 27, 2002.

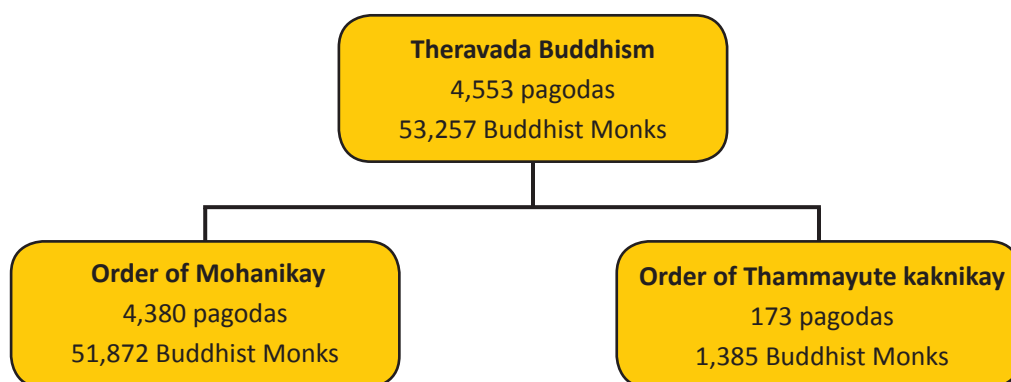
⁸⁸ Decision No 154-KTS-SR Renovation of a New Pagoda in Svay Reang Province, May 27, 2002.

⁸⁹ See Decision No 157-KTS-SR, May 27, 2002, and Decision No 154-KTS-SR, May 27, 2002.

⁹⁰ Article 20-21, Land Law, 2001 (Cambodia).

⁹¹ Article 22, Land Law (2001) (Cambodia).

Mahayana Buddhism	<ul style="list-style-type: none"> - 30 Miloe temples - 2 Khong Moeng temples - 28 Kong Syim temples - 18 Chinese Neak Ta places - 1 Japanese temple - 25 Vietnamese temples - 56 Y Kvantav temples
Bahai	<ul style="list-style-type: none"> - 25 Bahai temples - 25 places of worship
Cao Dai	<ul style="list-style-type: none"> - 3 Cao Dai temples - 4 places of worship



Source: Ministry of Cults and Religions, 7 February 2013

c. Religious symbols

Each religion can have and use religious symbols. The wearing of religious symbols, such as head coverings for women, is not regulated by law or by any level of the government.⁹² Buddhists can place their religious symbols at homes, pagodas, places of work, and at other places appropriate for their worship. Followers of External Religions can exercise the same rights.

In 2008, Prime Minister Hun Sen made a public speech allowing Cambodian Muslim students to wear Islamic attire in class. Education regulations

require male students to wear blue pants and a white shirt, and females to wear a blue skirt and white shirt. Despite contradiction with education regulations, civil society and opposition politicians supported this move because it enables more Islamic people to have access to education.⁹³

⁹² Pew Research Center, *Religious Hostilities Reach Six-Year High*, "Appendix 6: Results by Country," 11.

⁹³ Nguon Sovan and Khouth Sophak Chakrya, "Muslims allowed to wear traditional clothes at school," *The Phnom Penh Post*, 15 May 2008. <<http://www.phnompenhpost.com/national/muslims-allowed-wear-traditional-clothes-school>> accessed 30 September 2014.

d. Observance of holidays and days of rest

Religious public holidays in Cambodia are Visak Bochea Day (Buddha's Birthday), Meak Bochea or Māgha Pūjā Day (commemorating a meeting where Buddha ordained 1,250 disciples and announced his passing away), Chaul Chnam Thmey (Khmer New Year), Phchum Ben Day (Ancestors' Day), Water Festival, and Ploughing Festival. These official religious public holidays can be found in the Sub-decree on Annual Public Holiday of Civil Servants and Workers.⁹⁴

Even though festivals of other religions are not official public holidays, the recent trend in Cambodia has shown that some employers and employees of public and private entities have practised those holidays without facing any punishment from the government. The Labour Law allows employees to use their annual leave during the Khmer New Year and permits both workers and employers to agree on the usage of their annual leave.

Article 170. In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement.

In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days off at another time of the year, except for the leave for children and apprentices less than eighteen years of age.⁹⁵

As a result, employers and workers have the flexibility to decide when to use an annual leave. For example, some private universities and companies allow their workers to take a leave during the Chinese New Year and Christmas holiday.

⁹⁴ See Sub-decree No 487 ANKr.BK on Annual Public Holiday for Civil Servants and Workers in 2014, October 16, 2013 (Cambodia).

⁹⁵ Article 170, Labour Law (Cambodia).

e. Appointing clergy

Since Buddhism is the state religion, appointment of Buddhist monk leaders is made by the Ministry of Cults and Religions. However, for the External Religions, each religious group can appoint its respective leaders and then notify the Ministry of Cults and Religions. After receiving a letter of appointment, the Ministry of Cults and Religions issues a decision on the approval of the nomination of the religious leaders. There are no reports of objections by the Ministry to the nomination submitted by religious organizations. For instance, in 2003, the Ministry of Cults and Religions issued a decision to approve the nomination of four Vietnamese religious leaders of the Mahayana and the decision was made following a request from the Vietnamese Mahayana Monk Committee.⁹⁶ There are no reports about appointment of religious leaders of other External Religions.

As mentioned above, Theravada Buddhism in Cambodia is divided into two orders, Mohanikay and Thammayute kaknikay. Each Order is led by a Samdech Preh Moha Sanghareach, who is appointed by Royal Decree of the King.⁹⁷ The Chief of Monks (Preh Mekun) at the Capital and Provinces; Chief of Monks (Preh Anukun) at Municipalities, Districts and Khans; and Chief of Pagoda (Chao Athika) are respectively appointed by Preh Sangha Prakas of the Samdech Preh Moha Sanghareach of each order of Theravada Buddhism (Mohanikay and Thammayute kaknikay) and co-signed by the Minister of Cults and Religions.⁹⁸

⁹⁶ Decision No 342-KTS-SR on the Approval of Vietnamese Mahayana Monks Leaders, September 23, 2003.

⁹⁷ Royal Decree No. PS/RKT/0406/200 on the Appointment of Samdech Preh Moha Sanghareach of Order of Mohanikay of the Kingdom of Cambodia, April 29, 2006 (Cambodia); King's nomination letter of Samdech Preh Moha Sanghareach of Order of Thammayute kaknikay, December 7, 1991; Royal Decree No. NS/RKT/0506/207 on the Establishment of Kehnak Sangkha Neayok of the Kingdom of Cambodia and Appointment of Composition of Kehnak Sangkha Neayok of the Kingdom of Cambodia, May 4, 2006 (Cambodia).

⁹⁸ Khot Thida, "Buddhism and Pearhira Sasana in Khmer Society after 1979 Liberation (1979-present)," 2012, 121-126.

f. Teaching and disseminating materials (including missionary activity)

The Constitution requires the state to establish a comprehensive and standardized educational system that guarantees the freedom to operate educational institutions and equal access to education to ensure that all citizens have an equal opportunity to earn a living.⁹⁹ In relation to religious education, Cambodia favours Buddhist teachings and the Constitution states that “The State shall help promote and develop Pali schools and Buddhist institutes.”¹⁰⁰ In fact, the General Department of Religious Affairs of the Ministry of Cults and Religions is mandated to “Organize, prepare and cooperate to research, education, and dissemination of Buddhism and preaches.”¹⁰¹

The standard curriculum on civic education, although focusing more on Buddhism, contains lessons on various faiths and includes a lesson on “Harmony of Religious.” All students in public schools attend the lessons. Below is a summary of the religious teachings found in public school curriculums for Grades 7 to 12:

Grades	Contents of teaching
7	Chapter 6: Religions ¹⁰² Lesson 1: Birth of Buddhism Lesson 2: Some main Teachings of Buddhism Lesson 3: Birth of Hinduism Lesson 4: Some main Teachings of Hinduism

⁹⁹ Article 66, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

¹⁰⁰ Ibid, Article 68.

¹⁰¹ Article 8, Sub-decree No 154 ANKr.BK on the Organization and Functioning of the Ministry of Cults and Religions, 11 July 2011 (Cambodia).

¹⁰² Ministry of Education, Youth and Sport, *Civic Education Grade 7* (Publishing and Distribution House: Phnom Penh, 2009).

8	Chapter 4: Beliefs ¹⁰³ Lesson 1: Christianity Lesson 2: Islam
9	Chapter 1: Inter-relation with others Lesson 3: Beliefs and Rituals in Khmer Culture ¹⁰⁴
10	(No religious teachings are indicated for Grade 10.)
11	Chapter 2: Culture of Peace ¹⁰⁵ Lesson 1: History of Religions Lesson 2: Buddhist Monks and the State Lesson 3: Pagodas and Monks in Cambodia Lesson 4: Monkhhood in Theravada Buddhism Lesson 5: Mahayana Buddhism Lesson 6: Priesthood in Christianity Lesson 7: Priesthood in Islam Lesson 8: Priesthood in Tao Lesson 9: Practice of religions in Cambodia
12	Chapter 2: Culture of Peace ¹⁰⁶ Lesson 1: 38 Happiness of Buddhism Lesson 2: Harmony of Religions Lesson 8: Human Rights in the View of Buddhism

Private institutions may provide non-Buddhist religious instruction. As can be seen in the chart below, a number of religious schools operate in Cambodia.

¹⁰³ Ministry of Education, Youth and Sport, *Civic Education Grade 8* (Publishing and Distribution House: Phnom Penh, 2013).

¹⁰⁴ Ministry of Education, Youth and Sport, *Civic Education Grade 9* (Publishing and Distribution House: Phnom Penh, 2012), 178-189.

¹⁰⁵ Ministry of Education, Youth and Sport, *Morality Education Grade 11* (Publishing and Distribution House: Phnom Penh, 2013).

¹⁰⁶ Ministry of Education, Youth and Sport, *Morality Education Grade 12* (Publishing and Distribution House: Phnom Penh, 2014).

Religious Schools in Cambodia¹⁰⁷

Religion	Schools
Theravada Buddhism	<ul style="list-style-type: none"> - 775 Buddhist primary schools - 35 Buddhist junior high schools - 17 Buddhist high schools, - 3 Buddhist universities
Islam	- 304
Christianity	<ul style="list-style-type: none"> - 43 Catholic schools - 504 Protestant schools
Mahayana Buddhism	<ul style="list-style-type: none"> - 3 Miloe schools - 1 Khong Moeng school - 1 Kong Syim school - 1 Vietnamese religious school - 4 Y Kvantav schools
Bahai	- 1
Cao Dai	- 1

The Pew report indicated that the government does not limit proselytization,¹⁰⁸ and that public preaching is also not limited by the government.¹⁰⁹ The report however indicated that religious literature or broadcasting are limited by the government.¹¹⁰ This is possibly because, in June 2007, the Ministry of Cults and Religions had issued a directive banning people from door-to-door proselytizing because “it disturbs people’s daily lives and affects security in society,” limiting the distribution of religious literature to within religious institutions.¹¹¹

107 H.E Min Khin, Minister of Cult and Religions, “Statistics of Pagodas and Buddhist Monks from Both Orders of Theravada Buddhism 2012-2013,” 3-4.

108 Pew Research Center, *Religious Hostilities Reach Six-Year High*, “Appendix 6: Results by Country,” 7.

109 Ibid, 6.

110 Ibid, 9.

111 Emily Lodish and Yun Samean, “Gov’t Moves To Limit Activities of Christian Groups,” *The Cambodia Daily*, 17 July 2007. <<http://www.cambodiadaily.com/archives/govt-moves-to-limit-activities-of-christian-groups-61265/>> accessed 15 September 2014.

A ministry official said the directive was written in response to reports of Christians “tricking children and turning them against Buddhism” in some provinces. “If a religion forces people to convert through money or material goods or knocking on doors, it is wrong. It is disturbing the people and abusing people’s privacy,” Sun Kim Hun, Secretary of State at the Ministry of Cults and Religions, reportedly said.¹¹²

g. *The right of parents to ensure the religious and moral education of their children*

The Constitution states that “Parents shall have the duty to take care of and educate their children to become good citizens.”¹¹³ Cambodian parents are able to oversee the religious and moral education of their children and, during religious festivals, children generally go to pagodas with their parents. Families whose religion is among the External Religions teach their children according to their respective beliefs. No reports of children being forced by their parents to follow any religion, nor of parents being prohibited from overseeing the religious education of their children, were found.

h. *Registration*

Administration of religions is the mandate of the Ministry of Cults and Religions. The Sub-decree on the Organization and Functioning of the Ministry of Cults and Religions provides that Buddhism is under the supervision of the Department of Buddhist Affairs,¹¹⁴ whereas other religions are under the supervision of Department of External Religions Affairs.¹¹⁵ Each department is in charge of all registration of religious organization, inventory

112 Ibid.

113 Article 47, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

114 Article 9, Sub-decree No 154 ANKr/BK, 11 July 2011, (Cambodia).

115 Ibid, Article 10.

of properties, religious schools, statistics of disciples, etc. Individuals, however, are not required to register his or her religion at the Ministry of Cults and Religions.

i. Communicate with individuals and communities on religious matters at the national and international level

So long as acts of believers do not fall within the limitation set by the Constitution, they are not restricted from communicating with individuals and communities on religious matters. Each religious group can exercise their right to establish international cooperation with religious groups or organizations in other countries as long as they comply with the national laws.

j. Establish and maintain charitable and humanitarian institutions/solicit and receive funding

The Cambodian Constitution states that Khmer citizens have the right to establish an association and this right is determined by law.¹¹⁶ At the time of writing this report, the Law on NGOs and Association is still at the drafting stage. Therefore, requirements for establishing a charitable or a humanitarian organization are not yet clearly determined. In practice, charitable or humanitarian organizations are freely established and operate in the Kingdom of Cambodia. Based on the current practice, three ministries are in charge of religious organizations. The Ministry of Cults and Religions is the main ministry in charge of religious affairs. The Ministry of Interior is in charge of local religious non-governmental organizations or associations,¹¹⁷ while the Ministry of Foreign Affairs and International Cooperation is in charge

¹¹⁶ Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

¹¹⁷ Article 7, Draft Law on NGOs and Association (Cambodia), available at: http://www.sithi.org/admin/upload/law/Draft%20NGO%20Law%2028%20July%2011%20EN%20_3rd%20Draft_.pdf

of international non-governmental organizations.¹¹⁸

k. Conscientious objection

The Law on the General Statute of Military Personnel of the Royal Cambodian Armed Forces provides that all military personnel shall enjoy freedom of philosophical and religious belief as well as political conviction; but they shall not express publicly their ideas. The law says that this restriction shall not forbid the free practice of religion within the military premises and the vessels of the Navy.¹¹⁹ There is currently no report related to conscientious objection in Cambodia that would demonstrate how this law is put into practice. The Law on Police in Cambodia is still in the drafting stage and it is too early to make a judgement on conscientious objection in the police services.

3. Freedom from intolerance and discrimination

The Cambodian Labour Law prohibits discrimination on the basis of religion.¹²⁰ It forbids employers from taking into account the religious beliefs of individuals in making decisions on hiring, defining and assigning work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.¹²¹ An author notes that Cambodia is successful in protecting and promoting freedom of worship, in line with the tolerant character of Buddhism as “the enduring goal of Buddhism is peaceful” and “Buddha says conquer anger with love.”¹²²

¹¹⁸ Ibid, *see also* Article 28.

¹¹⁹ Article 10, Law on the General Statute of Military Personnel of the Royal Cambodian Armed Forces, 1997, (Cambodia).

¹²⁰ Article 12, Labour Law (Cambodia).

¹²¹ Ibid, Article 12.

¹²² Douglas Gillison, “Cambodians Have Freedom of Religion: Report,” *Cambodia Daily*, 18 September 2006. <<http://www.cambodiadaily.com/archives/cambodians-have-freedom-of-religion-report-54657/>> accessed 30 September 2014.

A policy of the Cambodian government is to accommodate all religions, and for them to work together and live peacefully with each other in society. The Cambodian Press Law requires all associations of journalists to develop their own codes of conducts and comply with 10 Basic Principles, which includes religious principles. The Cambodian Press Law instructs journalists to avoid any publication that incites discrimination against race, colours, gender, language, beliefs, opinions or political tendency, birth, social status, wealth or other status.¹²³

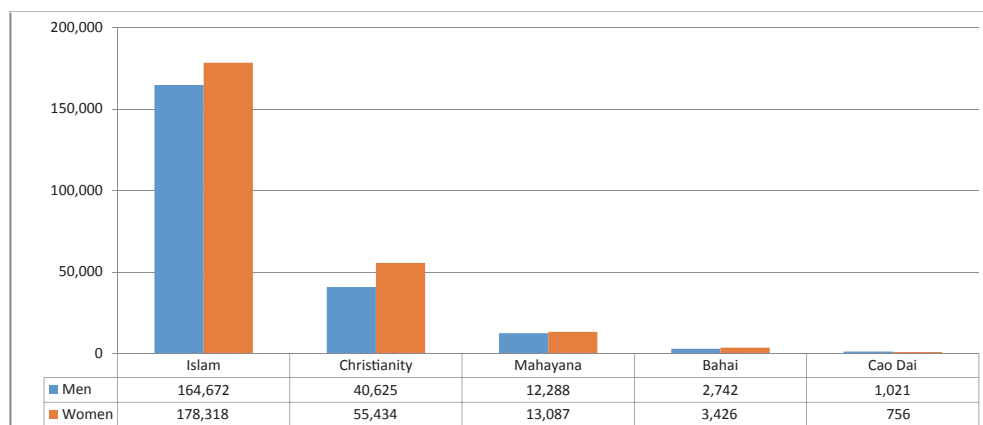
4. *Right of vulnerable groups to freedom of religion and belief*

There is no law restricting the freedom of religion and belief of vulnerable groups in Cambodia. Women, children, migrant workers, persons deprived of their liberty, and minorities are free to choose their religion and their choices are respected.

a. *Women*

The Constitution of the Kingdom of Cambodia enshrines equal rights for women and men in all aspects of life, including the right to freedom of belief.¹²⁴ Consequently, the rights of women have been integrated into a number of national policies and legislations.¹²⁵ However, these policies and legislations are not specifically related to the exercise of religion or belief. At present, there are no statistics showing the ratio of female Buddhists to male Buddhists, but such information concerning followers of External Religions is available and can be seen in the chart below.

Table 5: Statistics of Female and Male Followers of External Religions, 2012-2013



Source: Ministry of Cults and Religions, 7 February 2013

¹²³ Article 7, Law on Press, 1995 (Cambodia).

¹²⁴ Article 43, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

¹²⁵ See *e.g.*, the Cambodian Millennium Development Goals (2000-2015); Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase II (2009-2013); National Strategic Development Plan (2006-2010) and updated National Strategic Development Plan (2009-2013); Strategic Framework for Decentralization and De-concentration Reforms (2005); the National Program for Sub-National Democratic Development (2010-2019); Neary Rattanak III - Five Year Strategic Plan (2009-2013); Prakas on the Establishment and the Functioning of the Women's and Children's Consultative Committees at Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils (2009); Guideline on the Organization and Establishment of the Committee for Women and Children Commune/Sangkat (2007); Law on Commune/Sangkat Administrative Management (2001); and Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans (2008).

b. Children

Cambodia is a party to the Convention of the Rights of the Child and the Constitution requires parents to take care of and educate their children to be good citizens.¹²⁶ There is no specific law related to children's freedom of religion. Generally, children practise the same religion as their parents. There are no reported cases relating to the practice of religious freedom of children.

c. Migrant workers

The Cambodian Immigration Law states that non-Khmer persons shall not be discriminated on the basis of nationality, belief, religion and or origin of birth.¹²⁷ Foreigners who legally enter and work in Cambodia as migrant workers enjoy freedom of religion like Cambodian citizens, as long the practice does not violate Article 43 of the Constitution.

d. Persons deprived of their liberty

For persons deprived of their liberty, Article 29 of Law on Prison (2011) states that detainees have rights to practise their religion and belief, and they shall not be forced to practise any religion. "Detainee" refers to an accused person, a guilty person, or a prisoner who was sent to be detained in the prison by the court.¹²⁸

According to the Phnom Penh Post, in January 2014, detainees at Banteay Meanchey Provincial Prison joined forces with prison officials to pay for the construction of the first Buddhist worship hall in a Cambodian penitentiary. Buddhist monks are allowed to visit the prison to preach the dharma and teach the prisoners about discipline in order for them to psychologically mature and to attempt to make peace with the crimes they had committed. This kind of initiative is supported by NGOs, who

¹²⁶ Article 47, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

¹²⁷ Article 2, Law on Immigration, 1994, (Cambodia).

¹²⁸ Article 4, Law on Prison, 2011, (Cambodia).

urge that the right to worship not be restricted to privileged groups of prisoners alone and that "measures should be put in place to ensure everyone has the opportunity to worship, this should include pre-trial detainees."¹²⁹

e. Refugees

There is no specific law regulating the rights of refugees in Cambodia, despite the country's ratification of the Convention relating to the Status of Refugees. Currently, there is no refugee camp in Cambodia. However, the Phnom Penh Post reported that the Cambodian government has "agreed in principle" to a controversial refugee resettlement scheme with Australia.¹³⁰

f. Minorities

Indigenous peoples in Cambodia enjoy the same guarantee of freedom of religion and belief stipulated in the 1993 Constitution. There are no particular legal provisions specifically protecting the freedom of religion of indigenous peoples. The Cambodian Land Law defines an indigenous community as a group of people who reside in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and practise a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Prior to the determination of their legal status under a law on communities, the groups currently existing shall continue to manage their community and immovable properties according to their traditional customs.¹³¹

¹²⁹ Khouth Sophak Chakrya, "Prison, prisoners join to build worship area," *The Phnom Penh Post*, 3 January 2014. <<http://www.phnompenhpost.com/national/prison-prisoners-join-build-worship-area>> accessed 30 September 2014.

¹³⁰ Cheang Sokha, "Gov't agrees 'in principle' to Refugee Scheme with Oz," *The Phnom Penh Post*, April 29, 2014. <<http://www.phnompenhpost.com/national/govt-agrees-principle-refugee-scheme-oz>> accessed 30 September 2014.

¹³¹ Article 23, Land Law, 2001 (Cambodia).

As described above, Cham Muslims, Vietnamese, Chinese and Japanese in Cambodia are free to choose and practise their own religions and beliefs. While reports consistently indicate that minorities are not prevented from practicing their religion or belief, some commenters have nonetheless noted that the number of Cham Muslims who hold prominent positions in business and the government is proportionately low compared with those for other religious groups in the country.¹³²

C. Redress Mechanisms and Interpretation of Religious Freedom

1. Judiciary

At present, the Cambodian judiciary consists of the Supreme Court, the Appellate Court,¹³³ the Capital Court, Provincial Courts, and the Military Court¹³⁴ as well as the hybrid court, which is known as the Extraordinary Chambers in the Courts of Cambodia (ECCC).¹³⁵ At the time of writing this article, three laws relating to the judiciary (Law on Court Organization, Law on Statute of Judges and Prosecutors and Law on Supreme Council of Magistracy) are tabled at the National Assembly.

In addition to these courts, there is a Constitutional Council (CC),¹³⁶ which has

the duty to safeguard and show respect for the Constitution, interpret the Constitution and laws adopted by the National Assembly (and reviewed completely by the Senate), and receive and decide on disputes concerning the election of members of the National Assembly and election of members of the Senate.¹³⁷ As mentioned above, the Constitutional Council decides cases related to freedom of religion and Buddhism as a state religion.

2. Administrative Bodies

Religious matters are under the supervision of the Ministry of Cults and Religions. Receipt of complaints and dispute resolution related to religion are under the Department of Receiving Complaint and Settlement of Religious Disputes within the Ministry of Cults and Religions.¹³⁸ This department is responsible for:

- i) Receiving complaints and resolving disputes concerning other religions (see the discussion below on the Therak Saphea of Buddhism for resolution of disputes involving Buddhism);
- ii) Examining, coordinating and solving disputes within the framework of the Buddhist sector at the request of Theravada Sangha Assembly (Saphea Sangha) of the Kingdom of Cambodia;
- iii) Conducting examinations, investigations, monitoring and taking measures to prevent people from taking advantage of religion for their personal or group

132 U.S. Department of State, "Cambodia 2013 International Religious Freedom Report."

133 Article 3, § 1, Law on the Organization and Activities of the Tribunal of the State of Cambodia (LOAT), 1993, (Cambodia).

134 Ibid, Article 2, § 1.

135 Law on the Establishment of the Extra Ordinary Chambers within the Court of Cambodia, 2004, (Cambodia).

136 *Constitutional Council of Cambodia*, Website, at <http://www.ccc.gov.kh>.

137 Articles 136, 137, and 141, Constitution of the Kingdom of Cambodia (As Amended), (Cambodia).

138 Article 12, Sub-Decree No 154 ANKr.BK on the Organization and Functioning of the Ministry of Cults and Religions, 11 July 2011, (Cambodia).

benefits or for any terrorist activities affecting the pure value of religions and society;

- iv) Conducting investigations and monitoring any conflict involving pagodas' immovable properties occurring inside or outside the temple, and to submit a report to the Ministry's leadership for appropriate legal actions;
- v) Preventing illegal grabbing of immovable properties, misappropriation of funds and other properties of pagoda for personal possession; and
- vi) Performing other tasks as may from time to time be assigned by the General Department of Religious Affairs.

At the time of writing this report, no written record of resolved cases was readily available to use as basis to analyse how this department functions.

3. *Independent Bodies*

National Human Rights Institution

The term "National Human Rights Institution" in Cambodia is comprised of the National Assembly Commission on Human Rights (NACHR), the Senate Commission on Human Rights (SCHR), and Cambodian Human Rights Committee (CHRC). Until now, no cases relating to religion have been handled by NACHR, SCHR, or CHRC, since the administration and management of religion is under the mandate of the Ministry of Cults and Religions.

Therak Saphea of Buddhism

The Therak Saphea of Buddhism of the Kingdom of Cambodia is the highest body created by sub-decree to solve all disputes relating to Buddhism in the country.¹³⁹ The Therak Saphea of Buddhism of the Kingdom of Cambodia is composed of nine members: a chairman, three vice chairmen, a secretary and four members. The Therak Saphea of Buddhism is comprised of appointed Buddhist monks who hold high-ranking positions in the Buddhist Monk Cadre. There are Therak Saphea of Buddhism in the capital and provinces, as well as in the municipalities, districts and khans.¹⁴⁰

Comparing this structure to that of the ordinary courts, the Therak Saphea of Buddhism of the Kingdom of Cambodia is equivalent to the Supreme Court; the Therak Saphea of Buddhism in the Capital and Provinces is equivalent to the Appeal Court; and the Therak Saphea of Buddhism in the Municipalities, Districts and Khans is equivalent to the Courts of First Instance. There is, additionally, a body called Kenak Sangha Neayok of the Kingdom of Cambodia, with a rank lower than the Therak Saphea of Buddhism of the Kingdom of Cambodia but higher than the Therak Saphea of Buddhism in the Capital and Provinces.

The Therak Saphea of Buddhism of the Kingdom of Cambodia has jurisdiction throughout the country. It resolves disputes between Buddhist Monks, and also disputes between Buddhist Monks and laymen. It can mediate and make decisions based on Dharma Vinaya and the Laws of the Kingdom of Cambodia.¹⁴¹ It settles cases received from the Kenak Sangha Neayok of the Kingdom of Cambodia (which in turn receives cases from the Therak

139 Article 1, Sub-Decree No 576 ANKr.BK on the Creation of Therak Saphea of Buddhism of the Kingdom of Cambodia, 26 August 2006, (Cambodia).

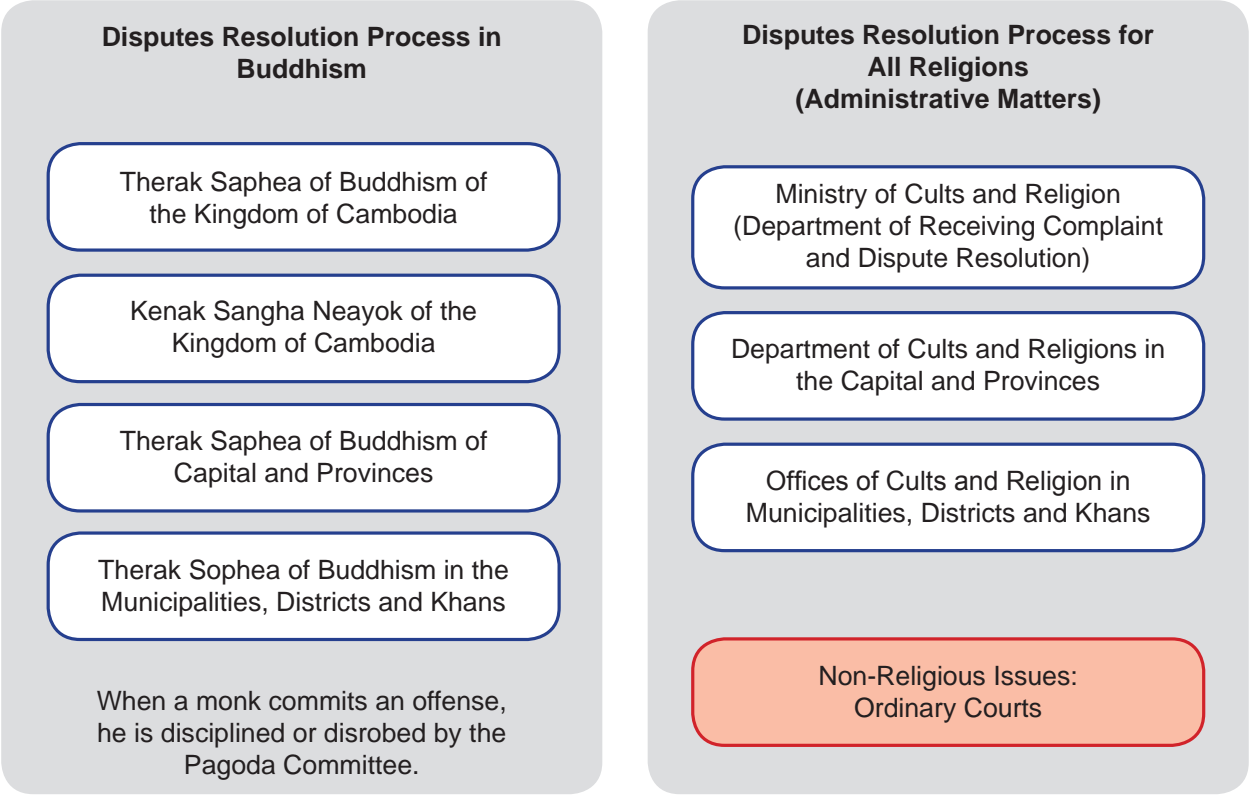
140 Sub-Decree No 34 ANKr.BK on the Creation of Therak Saphea of the Capital, Provinces, Municipalities, Districts and Khans, 6 February 2009, (Cambodia).

141 Article 2, Sub-decree No 576 ANKr.BK on the Creation of Therak Saphea of Buddhism of the Kingdom of Cambodia, 26 August 2006, (Cambodia).

Saphea below it) and performs other duties assigned by Samdech Preh Moha Sangha Reach.¹⁴²

Decisions of the Therak Saphea of Buddhism of the Kingdom of Cambodia are final and binding.¹⁴³ No timeframe is provided for the resolution of disputes before the Therak Saphea. Written records of cases settled by the Therak Saphea were not readily accessible at the time of writing of this report and, thus, no comprehensive assessment of the process could be made.

Table 6: Hierarchy of Dispute Resolution Processes



¹⁴² Ibid.

¹⁴³ Article 2, Sub-decree No 34 ANKr.BK on the Creation of Therak Saphea of the Capital, Provinces, Municipalities, Districts and Khans, dated 6 February 2009, (Cambodia).

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

Literature indicates that the Royal Government of Cambodia has strengthened the Buddhist institution and promotes healthy relations between Buddhism and External Religions. Recent changes in the law include the inclusion of offences against the state religion under the 2011 Criminal Code (see *Part 1, B. Domestic Laws and Policies*), the creation of the Therak Saphea of Buddhism to settle disputes between Buddhist Monks, as well as those between Buddhist Monks and laymen, and the recent decision of the Constitution Council expounding on Buddhism as the state religion. The decision of the Constitutional Council clarifies the limits on freedom of religion, in that the exercise of the right to freedom of religion shall not affect other people's rights, national security and public order.¹⁴⁴

As previously discussed, the Cambodian Criminal Code provides two types of offences against the state religion, namely 1) Offences against Buddhism¹⁴⁵ and 2) Offences against Buddhist Monks, nuns and laymen.¹⁴⁶ No records of actual cases involving these offenses were found during the course of research at the time of writing of this report.

B. Significant Changes in State Enforcement

In general, there have been no significant recent changes in the enforcement of laws and policies related to religion and belief in the country. The US Department of State International Religious Freedom Reports from 2008 to 2009 consistently said that the Constitution and other laws and policies protect

religious freedom and the government generally respected religious freedom. The recent Pew report showed fairly steady Government Restriction Index (GRI), listing Cambodia as having a “moderate” GRI of 2.4 (with the range of 6.6-10.00 representing “Very High” levels of restrictions):

Pew Government Restriction Index¹⁴⁷

Baseline year, ending June 2007	Previous year, ending December 2011	Latest year, ending December 2012
2.9	2.4	2.4

H.E. Min Khin, Cambodia's Minister of Cults and Religions, said that the government has made great efforts to respect the religious beliefs of all of its inhabitants, including the Cham Muslim minority. “For students who respect Islam, we offer the right for them to wear either their school uniform or their religious clothes.” Furthermore, the government allowed Cham Muslims to broadcast religious programmes on radio and television in their own language. During an interview by the Phnom Penh Post, Sos Kamry, grand mufti of the High Commission of Islamic Affairs of Cambodia, said he had never experienced any pressure from the government to curb Islamic practices and contrasted the country's stance with that of Singapore, which forbids mosques from using loudspeakers to broadcast the daily calls to prayer.¹⁴⁸

In relation to the application of the law by the courts, in 2004, the Cambodian court sentenced Jemaah Islamiyah operative Riduan Isamuddin, or Hambali, and five others to life in prison for planning to bomb the US and British embassies in Phnom Penh. Three of the accused, including Riduan Isamuddin, were tried in absentia. The court's verdict was welcomed by officials of the US and British embassies, who

¹⁴⁴ Constitutional Council, Decision No. 107/003/2009 CC.D of December 23, 2009.

¹⁴⁵ This offence includes celebration of Buddhist ceremony without authorization, theft of object dedicated to Buddhism, and damaging religious premises or dedicated objects.

¹⁴⁶ This provision penalises intentional violence or insults inflicted on monks and nuns and or laymen.

¹⁴⁷ Pew Research Center, Religious Hostilities Reach Six-Year High, 62.

¹⁴⁸ Sam Rith and Sebastian Strangio, “US hails respect for faith,” *The Phnom Penh Post*, November 10, 2009. <<http://www.phnompenhpost.com/national/us-hails-respect-faith/>> accessed 30 September 2014.

praised the Cambodian government's effort to participate in the international fight against terrorist groups.¹⁴⁹

Aside from this trial, the government also puts an effort to punish Buddhist monks who violate Buddhist rules. For instance, a monk was arrested, defrocked and sent to Banteay Meanchey Court for brutally torturing a nine year old pagoda boy under his tutelage over a period of several months.¹⁵⁰ Authorities also raided the pagoda of Thean Vuthy, a man who reportedly claimed to be the fifth reincarnation of Buddha. The Ministry of Cults and Religions seized religious items that were on sale, including photographs and videos, and explained that Thean Vuthy used religion to cheat people and broke the religious code when he sat on the throne and allowed people to pay him their respects.¹⁵¹

C. Significant Changes in Religious Claims

There are no significant religious claims being made by non-state actors. However, there was a controversial discussion on whether Buddhist monks shall be neutral or participate in activities to support political parties. Does the participation in demonstrations organised by a political party violate Buddhism?

The Cambodian Law on Political Parties allows religious followers to be members of any political party, but they cannot perform activities in support of or against any political party.¹⁵² The result of the

149 Lee Berthiaume, "Three Life Sentences Given in Terrorism Trial," *The Cambodia Daily*, 30 December 2004. <<http://www.cambodiadaily.com/archives/three-life-sentences-given-in-terrorism-trial-45044/>> accessed 30 September 2014.

150 Ouch Sony and Hay Pisey, "Monk Is Defrocked for Torture of Pagoda Boy," *The Cambodia Daily*, July 3, 2014. <<http://www.cambodiadaily.com/news/monk-is-defrocked-for-torture-of-pagoda-boy-63079/>> accessed 30 September 2014.

151 Sek Odom, "Man Claiming to Be Buddha Under Pressure to Explain Himself," *The Cambodia Daily*, 2 August 2014. <<http://www.cambodiadaily.com/news/man-claiming-to-be-buddha-under-pressure-to-explain-himself-65573/>> accessed 15 September 2014.

152 Article 15, Law on Political Parties, 1998 (Cambodia).

2013 National Election has led to the division of Buddhist monks into two groups, one that supports the ruling party and the other that supports the opposition. Each group alleged the other of violating rules of Buddhism and Cambodian laws. This situation highlights an area that could produce religious disputes among Buddhists.

Most recently, the Great Supreme Patriarch of Cambodia's Mohanikay Buddhist sect, Venerable Tep Vong, called for monks not to vote or otherwise take part in the country's elections.¹⁵³ He also said that legislation is necessary to protect the religion's image and urged the government to put the restrictions into law. Venerable Bour Kry, Supreme Patriarch of the Thammayute kaknikay, shared the same view and reportedly endorsed the call for a voting ban. A Member of Parliament has however noted that the Cambodian Constitution currently gives all persons 18 years old and above the right to vote; such calls to legally ban monks from voting will not only require revising election laws, but will need a constitutional amendment.¹⁵⁴

D. Significant Events of State Persecution of Religious Groups

Reports currently note that the present government generally respected religious freedom. However, there are allegations that crimes against religious freedom were committed during the Khmer Rouge regime from 1975-1979. Accounts say that pagodas were destroyed, Buddhist monks and nuns were disrobed, and some monks were threatened or killed if they did not follow and put their faith in *Angkar*

153 Ouch Sony and Zsombor Peter, "Clergy Seeks Law to Ban Monks From Voting," *The Cambodia Daily*, 18 December 2014. <<https://www.cambodiadaily.com/news/clergy-seeks-law-to-ban-monks-from-voting-74417/>> accessed 1 January 2015; and Pech Sotheary, "Cambodia's Buddhist patriarchs say monks should be forbidden from voting," *ucanews*, 18 December 2014. <<http://www.ucanews.com/news/cambodias-buddhist-patriarchs-say-monks-should-be-forbidden-from-voting/72655>> accessed 1 January 2015.

154 Ibid.

rather than in religion.¹⁵⁵ With respect to the Cham Muslims, some testimonies attest that the Khmer Rouge prohibited the Cham from practising their religion and imprisoned or killed Cham religious leaders and elders.¹⁵⁶

In recent years, some Buddhist monks have become involved in political activities and/or human rights advocacy, and there have been instances when the government restricted their rights. In 2009, the Khmer Kampuchea Krom Human Rights Association indicated in a stakeholders' submission to the Universal Periodic Review process that the authorities "crack[ed] down on Khmer Krom Buddhist monks whenever they demonstrated to promote human rights for the Khmer Kampuchea Krom people."¹⁵⁷

Related to this, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders had written a communication to the government after they received information that, on 8 June 2007, the Ministry of Cults and Religion and the Buddhist patriarch Non Nget issued a directive forbidding all monks living in Cambodia from organizing or participating in any demonstration or strike or carrying out Buddhist marches that affect public order.¹⁵⁸ The directive also bars monks from

providing false information which may affect Buddhist religion. The directive states that monks who do not respect the instructions strictly will be punished in accordance with Buddhist norms and national law. The directive was reportedly adopted after Khmer Kampuchea Krom monks carried out a series of peaceful demonstrations in Phnom Penh in February and April 2007 to advocate for the protection of the rights of the Khmer Krom, particularly in Vietnam, following the alleged defrocking and arrest of five Kampuchea Krom monks in that country. The government did not respond to the communication.¹⁵⁹

A more current example concerns Venerable Loun Sovath, the "multi-media monk" who documented the struggle of land rights activists and ordinary citizens evicted from their homes in Cambodia.

He has been detained several times, threatened by the authorities to be defrocked, and expelled from his monastery. He has received threatening phone calls, including death threats. On May 24th this year, he was arrested in front of Phnom Penh courthouse for demonstrating in support of the 13 women activists tried in the Boeung Kak Lake case. Authorities tried to force him to sign a document stating that he would no longer continue his advocacy efforts. He refused and was later released.¹⁶⁰

While it is important to note that motivation for such government actions appear to be political rather than religious, the Cambodian Center for Human Rights has said that the government should not restrict religious freedom, "including when such actions stem from a wish to restrict political or

155 Office of the Co-Investigating Judges, Case File No.: 002/19-09-2007-ECCC-OCIJ, *Closing Order*, Paragraph 210.

156 Ibid, Paragraphs 211-212.

157 UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Cambodia, 9 September 2009, A/HRC/WG.6/6/KHM/3, Paragraph 35. <<http://www.refworld.org/docid/4acc63f80.html>>, accessed 23 October 2014.

158 UN Human Rights Council, Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir: addendum: Summary of cases transmitted to Governments and replies received, 28 February 2008, A/HRC/7/10/Add.1, Paragraphs 11-12. <<http://www.igfm.de/fileadmin/igfm.de/pdf/UNO/UN-SBE-Religionsfreiheit-2008-1.pdf>> accessed 23 October 2014.

159 Ibid.

160 International Federation for Human Rights (FIDH), "Venerable Loun Sovath Awarded the 2012 Martin Ennals Award," *FIDH*, 4 October 2012. <<http://www.fidh.org/en/asia/cambodia/Venerable-Loun-Sovath-Awarded-the-12249>> accessed 15 September 2014.

civil rather than religious rights.”¹⁶¹

E. Significant Events of Non-State Persecution of Religious Groups

The 2013 US Department of State report says that that “there are no reports of societal abuses or discrimination based on religious affiliation, belief, or practice.”

The recent Pew report cites Cambodia as one of seven countries that registered a marked decrease in social hostilities, saying that, “In Cambodia, for instance, violent conflict over land surrounding the ancient Hindu temple of Preah Vihear occurred during the first half of 2011, but no violence was reported in 2012.” Thus, Cambodia moved positively from an index of 1.5, which is classified as “moderate,” to 0.6, a “low” index.

Pew Social Hostilities Index¹⁶²

Baseline year, ending June 2007	Previous year, ending December 2011	Latest year, ending December 2012
0.8	1.5	0.6

F. Significant Events of Inter-Religious persecution

While there are no reports of current interreligious disputes, some conflicts have occurred between Buddhist and Christian followers in the past. In July 2003, there was the first-ever outbreak of religious

161 Cambodian Center for Human Rights, “Factsheet: Fundamental Freedoms Series: Freedom of Religion in Cambodia,” *CCHR Fundamental Freedoms Series*, February 2012, 2. <[http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_02_10_CCHR_Fundamental_Freedoms_Fact_Sheet%20-%20Freedom%20of_Religion\(ENG\).pdf](http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_02_10_CCHR_Fundamental_Freedoms_Fact_Sheet%20-%20Freedom%20of_Religion(ENG).pdf)> accessed 15 September 2014.

162 Pew Research Center, Religious Hostilities Reach Six-Year High, 62.

conflict between Buddhists and Christians in Svay Rieng Province. A mob of 200 persons demonstrated on a Christian place of worship, and around 20 protesters, some armed with hammers, took part in the destruction of the church. “The villagers were very angry over the drought. The villagers blamed the church on the lack of rain in that village for three years.”¹⁶³ In 2004, a church in Prey Veng province was burned down by unknown arsonists.¹⁶⁴

In 2006, a Buddhist mob destroyed an unfinished church in Kandal Province. “Hundreds of villagers chanted ‘long live Buddhism’ and ‘down with Christianity’ as around 20 people knocked down and burned an unfinished Christian church being built in their village on Friday.”¹⁶⁵ Villagers had supposedly become angry that the Christian community was building a second church in a commune that had only one pagoda. Some villagers said the tension went beyond building permits and the concern was that Christians were converting people and “[s]o villagers worry that Buddhism will die, and [they] have to fight against Christianity.”¹⁶⁶

No reports of conflict between Buddhist followers with those of other External Religions were found. Particularly with regard to the relations between Buddhists and Muslims, the Phnom Penh Post reported that, until now, relations have generally been harmonious, with Muslims and Buddhists

163 Thet Sambath and Kevin Doyle, “Christian Church Ransacked in Svay Rieng Province,” *The Cambodia Daily*, July 15, 2003.

164 Ethan Plaut and Pin Sisovann, “Some Buddhists See Danger in Christianity,” *The Cambodia Daily*, 5 May 2006. <<http://www.cambodiadaily.com/archives/some-buddhists-see-danger-in-christianity-53992/>> accessed 15 September 2014.

165 Pin Sisovann and Ethan Plaut, “Buddhist Mob Razes Unfinished Christian Church,” *The Cambodia Daily*, 2 May 2006. <<http://www.cambodiadaily.com/archives/buddhist-mob-razes-unfinished-christian-church-53905/>> accessed 15 September 2014.

166 Ethan Plaut and Pin Sisovann, “No Arrests Planned in Attack on Christian Building,” *The Cambodia Daily*, 3 May 2006. <<http://www.cambodiadaily.com/archives/no-arrests-planned-in-attack-on-christian-building-53924/>> accessed 15 September 2014.

living side by side in villages.¹⁶⁷

G. Significant Events of Terrorism and/or Terrorist Threats

Neither the government nor non-governmental organisations have linked domestic disputes to terrorist groups. However, in 2003, there were arrests and deportations of foreign Muslim teachers of Om Al Qura's schools, which highlighted the potential terrorist threat in Cambodia.¹⁶⁸ These events culminated in the conviction of Riduan Isamuddin, or Hambali, and five others, who were suspected of planning to bomb the US and British embassies in Phnom Penh.¹⁶⁹ Additionally, in 2011, the court sentenced two Bangladeshi men and a Nepalese man under the anti-terrorism law.¹⁷⁰ The accused were suspected of sending letters to the US, British and Australian embassies which claimed that al-Qaida-linked terrorists in Phnom Penh intended to bomb the embassies.¹⁷¹

Muslim leaders in Cambodia nonetheless agree that there are no extremist movements in Cambodia. Responding to a 2014 video, "There's No Life Without Jihad," in which fighters affiliated with the Islamic State of Iraq and the Levant (ISIL) claimed that they have "brothers" from Cambodia, Kamaruddin

167 Bjørn Blengsl, "Trends in the Islamic Community," *The Phnom Penh Post*, June 6, 2003. <<http://www.phnompenhpost.com/national/trends-islamic-community>> accessed 15 September 2014.

168 Ibid.

169 Lee Berthiaume, "Three Life Sentences Given in Terrorism Trial," *The Cambodia Daily*, 30 December 2004. <<http://www.cambodiadaily.com/archives/three-life-sentences-given-in-terrorism-trial-45044/>> accessed 30 September 2014.

170 Alma Mistry, "Cambodia terror trial sentences criticised," *ABC News*, 18 February 2011. <<http://www.abc.net.au/news/2011-02-18/cambodia-terror-trial-sentences-criticised/1949024>> accessed 30 September 2014.

171 Khy Sovuthy, "Terrorism Trial of Nepalese Man And Two Bangladeshis Begins," *The Cambodia Daily*, 12 January 2011. <<http://www.cambodiadaily.com/archives/terrorism-trial-of-nepalese-man-and-two-bangladeshis-begins-65018/>> accessed 30 September 2014.

Yusof (also referred to as Sos Kamry), the grand mufti of Cambodia commented that "There is no relationship between Cambodian Muslims and those in the Middle East. In Cambodia, we don't have extremists." Ahmad Yahya, president of the Cambodian Muslim Community Development Organisation said "This is strange information for me. In the past, our people were never involved with any fighting. We know ourselves; we don't do that."¹⁷²

H. Significant Cross-Border Incidents

There currently is no cross-border religious dispute between Cambodia and its neighbouring countries, Laos, Thailand and Vietnam.

Parenthetically, Cambodia recently was in a territorial conflict with Thailand over an area that contained a Hindu temple. In April 2011, Cambodia had requested the International Court of Justice to interpret a 1962 ICJ Judgment. Cambodia argued that while Thailand recognised Cambodia's sovereignty over the temple itself, it did not appear to recognize the sovereignty of Cambodia over the vicinity of the temple. On 11 November 2013, the ICJ ruled that Cambodia has sovereignty over the whole territory of the Preah Vihear temple, and that Thailand is obligated to withdraw its military personnel from the area.¹⁷³

172 Alice Cuddy, "Cambodian jihadists among us: ISIS video," *The Phnom Penh Post*, 23 June 2014. <<http://www.phnompenhpost.com/national/cambodian-jihadists-among-us-isis-video>> accessed 30 September 2014.

173 "UN court rules for Cambodia in Preah Vihear temple dispute with Thailand," *UN News Centre*, 11 November 2013. <<http://www.un.org/apps/news/story.asp?NewsID=46461&Cr=court+of+justice&Cr1=#.Vct9hSmSw01>> accessed 1 October 2014.

I. Governmental Response

The Cambodian government has adopted a harmonious religious policy to promote peaceful relations among religious groups. Under Phase III of the Rectangular Strategy, the Cambodian government is set to promote the role of religion in education, especially Buddhism which is the state religion, to contribute to inculcating ethical, moral and behavioural values in students and ensuring harmony in Cambodian society.¹⁷⁴

In his public speeches from 2000 till 2014, Prime Minister Hun Sen has addressed the issue of religious harmony and encouraged all religious believers to love each other and work together despite their different beliefs.¹⁷⁵ Muslims have been appointed as high-ranking officers in the Ministry of Cults and Religions and some sit in the National Assembly. Aside from the Constitution and relevant laws adopted and put into practice, the Ministry of Cults and Religions has encouraged all religious groups to work with the state to promote awareness on HIV/AIDS¹⁷⁶ and to protect the rights of the child.

According to Prime Minister Hun Sen, the political platform of the ruling party covers all religions. He called religion the drug of the believer.¹⁷⁷ In 2004, Prime Minister Hun Sen made a public speech during the inauguration of the Buddhist Assembly Building in Kampong Cham Province and said,

[F]or us religion cannot be a barrier to solidarity between people and people at all. Religions—Buddhism, Christianity or Islam—instruct people to believe and to act in good faith. It is in this sense that we will not let the different beliefs be a hindrance to our march for development.¹⁷⁸

174 Royal Government of Cambodia, Rectangular Strategy Phase III, September 2013, Paragraph 119.6.

175 *Cambodia New Vision* from 2000-2014 (Issues 25-193), available at: <http://www.cnv.org.kh/>.

176 Article 10, Law on HIV/AIDs, 2002, (Cambodia).

177 *Cambodia New Vision*, Issue 182, April 2013, 1.

178 *Cambodia New Vision*, Issue 82, November 2004, 8.

In conclusion, the Cambodian government has consistently and publicly affirmed its respect for religious freedom in the country.

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

As described above, religious freedom in Cambodia has developed positively. Religious groups can work and live together under a harmonious religious policy of the government. Religious disputes are mediated and settled by the Ministry of Cults and Religions and the Therak Saphea.

There are also some organizations that advocate understanding and non-violence among persons of different faiths, such as the Cambodian Inter-Religious Council, which was formed in October 2002 with the aim of addressing issues related to Cambodia's development, including education, democracy and human rights. The Council is comprised of leaders of Buddhist, Muslim and Christian communities.¹⁷⁹

K. Analysing the Trends

Although Buddhism is the state religion and has a very strong influence in the country, the Constitution guarantees freedom of religion and belief, and the Cambodian government adopts a harmonious religious policy. Christian followers are gradually increasing. The growing influence of Christianity in Cambodia has resulted from international religious organisations that operate in Cambodia in various sectors and in different parts of the country. In addition to Christianity, the number of followers of other religions could in the future increase as well, considering the various humanitarian services and investments coming into the country. Thus, a long-term strategy and

179 Kuch Naren, "Religious Leaders Call for Peaceful Elections," *The Cambodia Daily*, 9 July 2003. < <http://www.cambodiadaily.com/archives/religious-leaders-call-for-peaceful-elections-38691/> > accessed 30 September 2014.

approach for managing the various religions and beliefs within the framework of the international human rights instruments Cambodia is a party to may become necessary to maintain the identity of Cambodia and prevent religious conflicts.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

Despite the government policy on religious harmony, there are a few negative factors that may contribute to religious conflicts and violence in the future. One contributing factor is how some Buddhist followers see the presence of External Religions (Christianity, Islam and other religions) as a threat to their identity and to traditional Buddhism in Cambodian society. For instance, as mentioned earlier, there were attacks on Christian churches in 2003, 2004, and 2006.

The second negative factor affecting the practice of freedom religion is the tendency for politics to at times be intertwined with religion, such as when politicians use religion as a tool to gain votes from religious groups and consequently dividing society and prompting disputes.

Additionally, in the past few years, more monks have become involved in politics. Currently, monks also play an active role in demonstrations to demand for higher wages for workers in the garment industries.¹⁸⁰ Most of the demonstrations have turned violent. An example is the riot that took place on the day of the Cambodian general election in 2013, when concerns over ballot fraud and names being left off the vote list arose.¹⁸¹ The riot took

180 May Titthara & Sean Teehan, "Strike violence erupts," *The Phnom Penh Post*, 3 January 2014. <<http://www.phnompenhpost.com/national/strike-violence-erupts>> accessed 22 May 2014.

181 Daniel de Carteret, "Angry voters riot in Stung Meanchey," *The Phnom Penh Post*, 28 July 2013. <<http://www.phnompenhpost.com/national/angry-voters-riot-stung-meanchey>> accessed 22 May 2014

place at the polling station next to Stung Meanchey pagoda and the scene descended into anarchy when a man allegedly attacked a monk who was among the protesters.¹⁸² The teachings of Buddha prohibit lay people from getting involved in politics and in power-seeking.¹⁸³ The relation between Buddhism and politics, as well as the position for the state to take in this regard in order to balance the interests of public order, national security and freedom of religion and belief, would thus be a good subject for further study.

B. Positive Contributing Factors

Cambodia explicitly acknowledges the role of religion in nation-building, thus it has incorporated religion in its motto, "Nation, Religion, King."¹⁸⁴ Prime Minister Hun Sen has said that religion contributes to development and peace of the whole society because, for instance, it teaches honesty, justice, and good deeds. For this reason, the Prime Minister said that the Royal Government has put efforts to encourage and support all religious followers in Cambodia to continue their practices, following the rule of their respective religious bibles "with mutual understanding and tolerance."¹⁸⁵

As mentioned earlier, another factor that has been attributed to contribute to the peaceful relations among religions is that the teachings of the dominant religion, Buddhism, endorse tolerance.

182 Hul Reaksmeay & Dene-Hern Chen, "Phnom Penh Chief Monk Visits Scene of Election Violence," *The Cambodia Daily*, 31 July 2013. <<http://www.cambodiadaily.com/elections/phnom-penh-chief-monk-visits-scene-of-election-violence-37661/>> accessed 22 May 2014.

183 Monychenda Heng, "Buddhism and the Making of Democracy in Cambodia," *Cambosastra*, October 9, 2010. <<http://www.cambosastra.org/buddhism-and-the-making-of-democracy-in-cambodia/>> accessed 20 May 2014.

184 "Keynote Address at the Opening of International Conference on '2008 Dialogue in Inter-Religious Cooperation for Peace and Harmony in Phnom Penh,'" *Cambodia New Vision*, 03 April 2018. <<http://cnv.org.kh/en/?p=3238>> accessed 22 May 2014.

185 Ibid.

PART FOUR: CONCLUSION

In conclusion, freedom of religion is largely protected in Cambodia. People are free to adopt, change, and practice their belief, as well as form religious organizations or charitable or humanitarian foundations under the harmonious religious policy of the Cambodian government. Nonetheless, there have been occasions of disputes and/or acts of violence among religious followers.

To date, the Cambodian government and political parties have not exacerbated religious conflicts or tensions. Instead, the government protects religious freedom and redresses religious issues to maintain public order. However, this does not guarantee that Cambodia will not face any major religious tensions or violence in the future. Current religious transnational movements and trends, such as the recent Islamic State of Iraq and Levant video clip, illustrate a possible concern. Additionally, the reaction of some Cambodian people to Christian missionaries could indicate potential tensions. Thus, a review of the strategies in administering and managing the different groups, as well as responses to future disputes that may arise, might prove beneficial.

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Indonesia

Indonesia

Formal Name:	Republic of Indonesia
Capital City:	Jakarta
Declared Relationship between State and Religion in Constitutional/Foundational Documents: (e.g., whether or not a state religion is declared in the constitution)	The Constitution does not declare Indonesia as a secular state nor a state based on a particular religion, but that “State shall be based upon the belief in the One and Only God” (Art. 29 (1))
Form of Government (e.g. Federal or Unitary system)	Unitary state; a republic with a presidential system
Whether the regulation of religion (if any) is part of the State’s functions, and if so which government (federal or state) and which institution of government:	Religion is regulated by the central government; the main institution is the Ministry of Religious Affairs. By law local governments (at the provincial and district levels) do not have the authority to regulate religion.
Total Population:	237,641,326 (2010 Census)
Religious Demography in 2014:	Muslims (87.18%), Christians (9.87) ¹ , Hindus (1.69%), Buddhists (0.72%), Confucians (0.05%), Others (0.13%)
Changing Religious Demography (in <u>10 year</u> intervals):	(See below)

Changing Religious Demography:²

	2010	2000	1990	1971
Total population (in million)	237.64	201.24	179.25	118.37
Muslims (%)	87.18	88.22	87.20	87.51
Protestants (%)	6.96	5.87	6.04	5.11
Catholics (%)	2.91	3.05	3.57/8	2.27
Hindus (%)	1.69	1.81	1.84	1.94
Buddhists (%)	0.72	0.84	1.03	0.92
Confucians (%)	0.05	-	-	0,82
Others	0.13	0.20	0.31	1,42

1 The Census presents different categories for Catholics (2.91%) and Protestants (6.96%); further discussion on the categories of religion is discussed below.

2 A more detailed explanation about the Census and the changing categories of religion is provided in the Introduction below.

INTRODUCTION

Indonesia is an archipelago consisting of more than 13,000 islands, with more than 300 ethnic groups, the largest being the Javanese, who are concentrated in the most populous island of Java.³ It was the home of powerful Hindu and Buddhist kingdoms from the 7th century until around 1500, followed by Muslim kingdoms in many parts of Indonesia from the 13th century. European presence in the region began in the early 16th century; in 1602 the Netherlands established the United East India Company (*Verenigde Oostindische Compagnie*) that lasted until 1800 when it went bankrupt. The establishment of the Dutch East Indies as a colony followed this. Dutch control over what today is known as Indonesia was gradual, and only in the early 20th century was it nearly complete. Indonesia itself was then not a united entity; an awareness of a shared Indonesian identity emerged only in the 20th century.⁴ The last foreign power to rule the country was Japan, from 1942-1945.

Indonesia gained its independence on 17 August 1945. Between then and 1998 there were only two presidents, Soekarno (1945-1967), representing the regime that was later called the Old Order, and Soeharto (1967-1998) of the New Order. An important recent turning point in Indonesian history is the *Reformasi* protest movement in 1998 that heralded the start of the democratization process following the fall of Soeharto. Direct presidential elections have been held every five years since 2004. Joko Widodo began his time in office in October of 2014 as the seventh Indonesian president, after winning the nation's third presidential election. Previously highly centralized, the decentralization

process that followed democratization has provided local governments with significantly more political and economic power, and divided the country into more provinces and districts/cities. As at December 2013, there were 539 autonomous regions (consisting of 34 provinces, 412 districts and 93 cities).⁵

Decentralisation becomes particularly important when considering the religious minority-majority composition of different regions in Indonesia. While the majority of Indonesians are Muslim (87%), parts of Indonesia have quite different majority-minority compositions. Aceh, for example, is overwhelmingly Muslim (98%); Bali is a majority Hindu region (80%, compared with only 1.69% in the national average); Catholics in the small province of Nusa Tenggara Timur constitute 36% of the population (compared with 2.91% in the national average); and in North Sumatra, Protestants make up 27% of the population.

The 1945 Constitution does not explicitly identify Indonesia as either a secular or a confessional state. However, the Preamble and Article 29(1) of the Constitution says that the Indonesian state is based on the belief in one and only God. In the introduction, religion is mentioned as the first of the five pillars of the state known as *Pancasila*.⁶ In principle, Article 29(2) says that the state shall guarantee the freedom to embrace religions and to worship according to the religions. However the State privileges certain religions by formally acknowledging them. The extent to which the State acknowledges and privileges a certain religion crucially depends on whether the religion in question is monotheistic, following the principle of the first pillar. This is an important issue that will be further discussed in this report. The Ministry of Religious Affairs ("MORA") institutionally recognizes the following major world religions, being Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism. From the

3 The most recent and detailed discussion on Indonesian ethnic groupings is by Aris Ananta, et.al., *A New Classification of Indonesia's Ethnic Groups (Based on the 2010 Population Census)*, ISEAS Working Paper #1, 2014, available at http://www.iseas.edu.sg/documents/publication/ISEAS_Working%20Paper_%20No%201.pdf.

4 M. C. Ricklefs, *A History of Modern Indonesia Since C. 1200* (3rd Ed), 2001, Basingstoke : Palgrave Macmillan, 189.

5 http://otda.kemendagri.go.id/images/file/data2014/file_konten/jumlah_daerah_otonom_ri.pdf.

6 The other four are: just and civilized humanity; the unity of Indonesia; democracy guided by wisdom and deliberation; and social justice for all people.

constitutional, legal, and institutional standpoints, therefore, the State's view of how it should regulate religion is heavily informed by a monotheistic view of religion, as well as its acknowledgment of specific faiths as being religions (and others not). The practical and legal consequences of this in a number of areas of life will be discussed further below.

Some important features of the relationship between religion and the state date back to the colonial period. The Dutch colonial regime administered religion under several departments. Religious courts were under the Department of Justice, while the Department of Home Affairs handled Islamic education and *hajj*. Of special significance was the establishment of courts for Islamic affairs starting in the late 19th century for Java and Madura. These were the seeds for nation-wide Islamic religious courts after Independence. Under Japanese rule from 1942-1945, the Office for Religious Affairs was designed to replace the Dutch Office for Native Affairs, and further expanded to manage other Muslim affairs previously administered in different departments. This served as the precedent for the post-Independence Ministry of Religious Affairs.⁷

The Ministry was established in the newly independent Indonesia in January 1946. The proposal to establish such a Ministry emerged around the time of Independence in August 1945. It was established amidst a fierce debate about what kind of state-religion relation the new Indonesian state should institutionalize. At the time, some pro-Islamic political camps aspired to make Islamic law (*shari'a*) the foundation of the Indonesian state on the grounds that Muslims were in the majority. In this regard, they were advocating not for a fully Islamic state, but one that would acknowledge a Muslim's obligation to abide by *shari'a* law. In fact, the original draft of the Constitution contained a clause pertaining to this obligation but it was dropped by the time it was adopted on August 18, 1945.

⁷ B.J. Boland, *The Struggle of Islam in Modern Indonesia* (The Hague: Nijhoff, 1982), 9-11, 105-111.

The establishment of the Ministry a few months later was thus perceived as a concession to the nation's Muslims. The Ministry, however, was to administer other religions as well, with divisions being established for the Protestant and Catholic religions early in the same year. In 1960, Hinduism also found its home in the Ministry, followed by Buddhism in 1966 (first under the Hindu division and in 1980 under a separate division). Each of the five religions now has a General Directorate in the Ministry, with the exception of Islam, which has two additional Directorates, one specifically for the management of pilgrimage to Mecca known as *hajj* and *umrah*, and the other for Islamic education. The Directorates are supposed to represent particular religious communities.

The sixth institutionally recognized religion Confucianism (or *Khonghucu* as it is known in Indonesia) has a more complicated history. Until the 1960s, the government acknowledged Confucianism, but following the purge of the Indonesian Communist Party it was practically banned for more than thirty years, along with any expressions of Chinese tradition and beliefs. President Abdurrahman Wahid revoked the 1967 presidential instruction that was the basis for the ban in 2000. In 2014, the President promised that Confucianism would have its own General Directorate. At this time, it is represented within the Center for Inter-religious Harmony, under MORA's General Secretary.⁸

While the concept of "recognized/acknowledged religion" does not have any legal basis, in practice religions other than the six listed above are referred to as faiths that have "not yet been recognized" as official religions, as in the 2003 Law on Civil Administration. This differentiation has several implications in the state's funding of religious institutions, the way religion is recorded, and the

⁸ <http://www.merdeka.com/peristiwa/ini-kata-sby-soal-usulan-dirjen-khongucu-di-kemenag.html>. See also http://103.7.12.80/laporan/pejabat_lihat.aspx?id=150236269.

fulfilment of citizens' civil and political rights. Religion is registered on the national ID card.

MORA is one of five state Ministries that receive the largest share of the national budget. In 2013, the Ministry received USD 4.2 billion, or 2.7% of the total state budget. State funding for religious communities is distributed through the General Directorates, and is typically given for "religious affairs" (such as salaries for preachers, religious outreach, and maintenance of places of worship) and formal religious education (schools, colleges and universities, including funding for religious teachers' salaries).⁹ It appears that the Ministry has a convention of providing funding to each General Directorate, which is directly proportional to the percentage of the population that identifies as belonging to that religious community, although it is difficult to assess whether this is merely a coincidence.¹⁰

How religious affiliations are recorded by the State partially reflects their administration. As seen in the case of Confucianism (and also Christianity), because of the changing situations related to acknowledgment of religions throughout Indonesia's history, the census has inconsistently recorded citizens' affiliations to these religions. As such, the religious demography presented

9 The data is compiled from several sources issued by the Ministry of Finance. Main source of annual state budget from 2007 to 2013 is available at <http://www.anggaran.depkeu.go.id/dja/acontent/Data%20Pokok%20APBN%202013.pdf>; General information on annual state budget is available at <http://www.kemenkeu.go.id/uuapbn>. On MORA as one of the five state ministries receiving the largest share, see <http://bisnis.news.viva.co.id/news/read/345812-5-anggaran-kementerian-paling-tebal-di-2013>.

10 For example, in 2013, out of the total budget of USD 4.2 billion, the Catholic Directorate received approximately USD 50 million; the Protestant Directorate USD 85 million; the Hindu Directorate 53 million (normally it is around 38 million, but in 2012 there was a budgetary shortfall); the Buddhist Directorate almost 20 million. ((http://www.dpr.go.id/complorgans/commission/commission8/risalah/K8_risalah_RDP_Komisi_VIII_DPR_RI_dengan_Dirjen_Bimas_Kristen_Dirjen_Bimas_Katholik_Dirjen_Bimas_Hindu_dan_Dirjen_Bimas_Buddha_Kementerian_Agama_R.I..pdf)

above requires some further explanation. Since Indonesia's independence in 1945, there have been six population censuses: in 1961, 1971, 1980, 1990, 2000 and 2010. Religion was recorded in all of these censuses; however, the data regarding religion from the 1961 and 1980 censuses has not been released to the public. There have also been changes in the way religions are registered, which makes a straightforward comparison between decades problematic. Specific changes in how religions have been categorized are outlined as follows:

(i) *Categories of Christianity*: In 1971, there were three categories of Christianity with the following numbers: Catholicism (2.27%), Protestantism (4.35%) and "other Christianity" (0.76%). It is not entirely clear what "other Christianity" means in this case. The 1985 inter-census survey (which is not included in the above table), and 1990 census both grouped "Protestantism and other Christianity" together in the same category. For this reason, Protestantism and other Christianity are grouped under Protestantism in the table above (making up a total of 5.11%). Only two categories were used in both the 2000 and 2010 censuses, although employing different terminology; the 2000 census called the two categories Protestantism and Catholicism, and the 2010 census used the categories Christianity and Catholicism.

(ii) *Confucianism (Khonghucu)*: In 1990 and 2000 Confucianism was not registered, because it disappeared from official discourse regarding recognized religions and was only recognized again in 2000.¹¹ Presumably the Confucians in those two censuses were grouped under the "Other" category, though some might well have chosen to identify themselves under Buddhism, Christianity, or other religions.

11 The President Abdurrahman Wahid issued Presidential Decision No. 6/2000 on the revocation of Presidential Instruction No. 14/1967 on Chinese Religion, Belief and Custom. But the Census in that year still did not include Confucianism as one of the options in the category of religion..

(iii) “Others”: The 2010 census is the most detailed, registering all six recognized religions, “others”, plus two new categories: “unstated” (0.06%), and “not asked” (0.32%), which are quite statistically significant as these numbers are higher than those for Confucians and “others”. As discussed below, the 2006 Law on Civil Administration acknowledges six recognized religions, and reserves the category of “others” (in the national ID card as well as the census) for those whose religions are not one of the six. This may include different religious groups, like indigenous religions, *aliran kepercayaan* (“streams of belief” referring to syncretic beliefs or local religions), other forms of religion, or those who do not have any religious affiliation.¹²

The most recent historical benchmark in Indonesia in terms of protection of freedom of thought, conscience and religion is the events that were triggered by the popular mass protests during the *Reformasi* in 1998. After 1998, the legal foundation of human rights was strengthened through Constitutional amendments and the enactment of a number of laws on human rights. Article 29 of the Constitution (which protects all religions) remained unchanged, but was supplemented by additional, wide-ranging new articles that were part of a new chapter specifically focusing on human rights. While the amendments are widely considered to change the character of the Indonesian state,¹³ in general there was no significant change in regard to the state-religion relation. There was a proposal to provide more explicit acknowledgment of Islamic law (*shari’a*) repeating the constitutional debate in 1945, but it was not passed. Defining laws, such as the Law for the Prevention of the Defamation

of Religion in which the state is responsible for protecting religion, were not changed.¹⁴

In the report to the Human Rights Council during the second Universal Periodic Review (2012), Indonesia acknowledged that frictions between religious communities still constitute a challenge.¹⁵ The challenge, from the standpoint of the Indonesian government is to protect the rights of these communities while maintaining public order (in a context where there is both a powerful and dominant religious majority and no constitutional separation of church and state) Two issues that were specifically acknowledged concern non-mainstream religious groups that have in recent years become the target of accusations related to “defamation of religion” (such as the Ahmadiyah) and the building of places of worship (the case of the Taman Yasmin Church was mentioned).

Related to the first issue, Indonesia defended the problematic defamation of religion law, deeming it essential for protecting the right to practice religion and necessary to maintain public order. More generally, the law was alleged not to interfere with the rights of religious practitioners. The suggestion from a number of countries to repeal the religious defamation law was one of the 30 (out of 180) recommendations that were not accepted by Indonesia. Two avenues that the government promised to pursue in rectifying the situation were (1) enhancing interfaith dialogues to peacefully resolve inter-religious issues and empower moderates; (2) at the policy level, formulating a draft law on religious harmony, which has been shelved since 2012 after several hearings in the parliament.

¹² The census data is taken from official publications by the National Statistics Bureau. A recent work by Agus Indiyanto, *Agama Indonesia dalam Angka (Indonesian Religions in Number*, Center for Religious and Cross-cultural Studies, Gadjah Mada University, 2013), which compares the 2000 and 2010 censuses, pays special attention to the category of “Others”. An earlier work on religious demography is Leo Suryadinata, Evi N. Arifin and Aris Ananta, *Indonesia’s Population: Ethnicity and Religion in a Changing Political Landscape*, ISEAS, 2003.

¹³ See the discussion in Part Two.

¹⁴ For further discussion of this law, see *infra* ss I.B.1. and I.B.2., respectively.

¹⁵ Human Rights Council, A/HRC/WG.6/13/IDN/1: National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Indonesia (7 March 2012) . See also the statement by the Minister of Foreign Affairs, available at <http://kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?Name1=Pidato&Name2=Menteri&IDP=769&I=en>.

Despite the problematic intertwining of religion and the state described above and the incidents related to religious freedom that will be discussed in Part Two, Indonesia has in general been regarded as a free country. One indicator of this is Freedom House's rating that ranked Indonesia as "free" from 2006 until 2013; in 2014 this designation was demoted to "partly free" due to the adoption of the law on societal organisation in 2013.¹⁶

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations¹⁷

International Document	Year of Signature	Year of Ratification / Accession	Reservations / Declarations (based on religion)
CEDAW	1980	1984 (Law No. 7/1984)	None
CRC	1990	1990 (Presidential Regulation No. 39/1990)	None
CAT	1985	1998 (Law No. 5/1998)	None
CERD		1999 (Law No. 29/1999)	None
ICESCR		2005 (Law No. 11/2005)	None
CCPR		2005 (Law No. 12/2005)	None
CED	2010	(The law on the ratification of this convention has been discussed by the Parliament)	
CRPD	2007	2011 (Law No. 19/2011)	None
CMW	2004	2012 (Law No. 6/2012)	None

In all of the treaties listed above, Indonesia has made no reservations based on religion. However, as discussed below, qualifications or restrictions based on religion are present in the Constitution and several of Indonesia's laws that may be regarded as incompatible with Indonesia's obligations under the ICCPR.

¹⁶ <http://www.freedomhouse.org/report/freedom-world/2014/indonesia-0>. The reason for the demotion in rank is 'due to the adoption of a law that restricts the activities of nongovernmental organisations, increases bureaucratic oversight of such groups, and requires them to support the national ideology of Pancasila—including its explicitly monotheist component.' It should be noted, however, that the last requirement (support of Pancasila) is not a new feature of the regulation, but actually a weakening of the stronger wording in the earlier 1985 law, which says that Pancasila should be the only basis of such organisations, while the new law (2013) says that it may have basis other than Pancasila but should not contradict it.

¹⁷ Main reference for this table is <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>. Last accessed: March 19, 2014.

It is not entirely clear whether Indonesia adopts a monist or a dualist system: it appears that the issue is as yet unsettled in the jurisprudence and academic commentary on the same.¹⁸ That being said, according to Articles 9 and 10 of Law No. 24/2000 on International Treaties, a human rights treaty must be adopted by the Parliament in order to form part of Indonesian law. All the conventions listed above have been enacted into national laws, except the CRC (by Presidential Regulation, since it was passed before the 2000 Law) and the CED, which has been discussed by Parliament and is expected to pass before the end of the 2014 term.¹⁹

B. Domestic Laws and Policies

Before discussing specific laws and policies pertaining to freedom of thought, conscience and religion (“FOTCR”), an introductory explanation about Indonesia’s legal system seems appropriate. *First*, FOTCR is subject to a hierarchy of laws that comprises the Constitution at its apex, followed

18 Sari Aziz and Ranyta Yusran, *Indonesia’s Country Report*, Centre for International Law (CIL Research Project on International Maritime Crimes), National University of Singapore, 2011, 9-13 <<http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Country-Report-Indonesia.pdf>> This report discusses the academic debate about whether Indonesia adopts a monist or dualist system (pp. 9-13). The practice is actually not consistent. There was an instance where a court refused to use the CAT, which was already ratified at that time, on the grounds that the Penal Code does not have articles on torture. However, there was also an example where the Constitutional Court took a monist position, using the ICCPR in 2003 grounds to dispute a law that takes away the political rights of ex-Communist party members (in the Decision No. 011-017/PUU-I/2003), even though the ICCPR was only ratified in 2005. Thanks to Asfinawati for providing these examples.

19 Until end of 2013, the parliament invited parties for hearings on the law of ratification of the convention. But as of June 2014, the law has not been passed, though it is deemed to hold a special significance due to it, among other things, the unresolved kidnapping case of pro-democracy activists in 1998. See for example two hearings with NGO (Elsam) and the government (Ministry of Foreign Affairs at:

http://www.elsam.or.id/downloads/518735_Masukan_Elsam_RDPU_Penghilangan_Paksa.pdf and <http://kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?IDP=812&l=id>.

by the 1998 Decree of the People’s Consultative Assembly on Human Rights (No. XVII/MPR/1998 signed in November 1998) (“MPR Law”), national laws, governmental regulations, Presidential decrees, and local bylaws (at the provincial and district/city levels).²⁰ However, freedom of thought, conscience and religion is both regulated and guaranteed by this hierarchy of laws in a manner that is not entirely consistent, as will be discussed in detail below.

Second, the Indonesian legal system, derived mostly from the colonial Dutch legal system, relies on codes and statutes, while court decisions are regarded as references and not as a source of law.²¹ *Third*, in terms of their content, we may group the kinds of laws and policies on FOTCR-related issues into three categories. Some laws and policies are explicitly about FOTCR; another group of laws and policies relate to the implications this first group has on the administration of citizens’ lives (such as laws pertaining to civil administration, the police, and the office of prosecutor); and the third group consists of laws and policies on other issues (such as laws on information technology, film, or child protection) which have clauses that may affect FOTCR directly, although the law itself has not been enacted with a view to regulating FOTCR.

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

Ch. XI, Article 29 of Indonesia’s 1945 Constitution contains these two short verses:

20 Law No, 12/2011. The MPR decree was taken out from the hierarchy in 2004, but was put back in 2011. There was a debate about the Ministerial Decree which is not mentioned in the current hierarchy. As shown in the discussion below, despite the fact that the Ministerial Decrees are not part of the hierarchy, a few of them are central on issues related to FOTCR.

21 Bivitri Susanti, “Indonesia”, in *Rule of Law for Human Rights in the Asean Region: A Base-line Study*, Human Rights Resource Centre, 2011, 90-91.

- (1) The state shall be based on the belief in the One and only God,²²
- (2) The state guarantees all persons the freedom to embrace a religion and worship according to their religion and belief.

As a result of the 1998 democratization movement, the guarantee of FOTCR has become much stronger. The Constitution was amended and new laws enacted to ensure greater safeguards in order to protect this freedom.²³ In particular, Article 28E(1) guarantees freedom of worship and Article 28E(2) explicitly guarantees freedom of thought, conscience and belief.²⁴ Article 28I(1) appears to make this right absolute, hence suggesting that there are no exceptions to FOTCR based on the government's use of emergency powers or limitations based on public order, morality or security, or any grounds

whatsoever.²⁵

Besides the Constitution, the most important law is the one specifically on human rights (Law No 39/1999). Article 4 states that freedom of thought, conscience and religion is amongst several non-derogable human rights guaranteed under that law. Article 22 further states that every person has freedom of religion and the right to worship according to his/her religion, and that the state guarantees this right. In most cases, the state's responsibility is to guarantee everyone's rights, not only its citizens, with special mention of women and children.²⁶

Yet despite this seemingly strong foundation for FOTCR, qualifications tend to emerge in the interpretation of this guarantee. For example, despite the non-derogable status of the rights associated with freedom of religion and belief, some clauses

22 *"Negara berdasar atas Ketuhanan Yang Maha Esa."* There are many English translations of the phrase; the one used here seems best to convey the monotheistic connotation intended here.

23 The Constitution was amended four times between 1999 and 2002. While Chapter 29 was retained without any change, the second amendment (2000) inserted an extensive bill of rights (Arts. 28A-J, under the general title "Chapter XA Human Rights").

24 Article 28E states that:

"(1) Every person is free to embrace a religion and to worship according to his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person has the right to freedom of belief, and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person has the right to the freedom to associate, to assemble and to express opinions."

25 Article 28I states that:

(1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

(3) The cultural identity and rights of traditional society shall be respected in harmony with the development of the age and civilization.

(4) The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government.

(5) For the purpose of upholding and protection of human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

26 In addition, this law provides a renewed legal foundation for the National Committee on Human Rights. The Committee was established in 1993, and the law also ordered the establishment of a human rights court. In 2000, Law No 26 of 2000 on the Human Rights Court was passed by the Parliament. As a follow up to the law, a governmental regulation (No. 3) was issued in 2002 on the compensation, restitution, and rehabilitation of victims of serious human rights violations.

in the Constitution have been interpreted to carry significant restrictions on FOTCR. In particular, the way religion is defined in the Constitution is interpreted to further limit the scope of protection of FOTCR. As will be discussed in further detail below, there are also particular laws that directly affect FOTCR.

a. Conversion

Conversion from one religion to another is not illegal. A more extensive attempt to prevent religious conversion exists with regard to children, mentioned in the 2002 Law on Child Protection, discussed in further detail in the sections on teaching and dissemination, and children, below.

b. Limitation of FOTCR: “religious values”

Article 28J mentions the limits of human rights in general, which includes “religious values”:

(1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.

(2) In exercising his/her rights and freedoms, every person shall observe the limitations as are prescribed by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

While Article 28J(2) mentions “religious values”, the first and highest official support for human rights was the MPR Law. Article 36 of the MPR Law mentions ‘moral consideration, security and public order in a democratic society’ as factors that may limit individual rights and freedom. The limitation clause of Article 18(3) in the ICCPR, which was ratified with no reservation, mentions that permissible limitations are those necessary to protect “public safety, order, health, or morals or

the fundamental rights and freedoms of others”. In the 1999 Law on Human Rights, the chapter on limitations and prohibitions mentions morals (or moral decency, Ind. *kesusilaan*), public order and national interest (Art. 73), but Article 23 adds “religious values” as another kind of limit.

The limitation on the basis of “religious values” is significant as it has been used to limit FOTCR. This was evident in the role the limitation played in the 2010 Decision of the Constitutional Court to keep the Law on Prevention of Defamation of Religion (henceforth referred to as the “Defamation Law”)²⁷. The Court concedes that the law constitutes a limitation of FOTCR but holds that this restriction of freedom of religion and belief allowed by the Constitution. One of the grounds used by the Court to support this restriction is the phrase “religious values” in Article 28J(2) of the Constitution.²⁸ In this regard, the Court categorically accepts that the limitation clause in the Indonesian Constitution is different from Article 18 of CCPR.²⁹ “Religious values” is here understood not only as moral, but apparently also as (correct) theology (orthodoxy). Thus, religious beliefs deemed “deviant” or incorrect may be prohibited and prosecuted without violating the constitutional guarantees of freedom of religion and belief.

c. Limitation by the way that religion is defined

Another cause of the limitation on FOTCR derives from the way that religion is defined. The scope of what is regarded as religion determines the range

27 An alternative translation of the title of the law is “blasphemy”. However, the intended meaning is broader than blasphemy. As the text of the law says (quoted below), the main criteria is *deviancy* from “mainstream” teachings and practices. See Bagir (2013, 4-8) for a discussion of the term and the characteristics of “defamation”.

28 This does not mean that the phrase is the Court’s only or most important ground. The review will be discussed in a separate section of this paper. Constitutional Court Decision No.140/PUU-VII/2009, 274-275.

29 Constitutional Court Decision No.140/PUU-VII/2009, 276.

of religious groups protected under the FOTCR clauses in the Constitution and laws. Consequently, groups with beliefs that are held not to fall within the category of “religion” are not protected and may be the object of discrimination. In Indonesia, it is actually not entirely clear how religion is defined, as there is no specific law that unambiguously defines it. The operational definition is drawn from at least three sources. The *first* source is the Constitutional stipulation that the state is based on the belief in one and only God. This is generally understood as immediately excluding non-monotheistic religions and atheism.³⁰ *Second*, there remain some lower level regulations and ministerial circulars from the 1950s up until the 1970s that attempted to put forward an explicit definition. The *third* source is the Elucidation of the Defamation of Religion Law (No. 1/PNPS/1965 on Prevention of Misuse and/or Defamation of Religion) – (“Elucidation”) which names particular religions.

This last source is rich in the sense that the Elucidation names several religions and implicitly portrays a hierarchy of religions when explaining what is meant by a religion that is protected from defamation. Six world religions (Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism) are named first as religions that have historically been embraced by Indonesians, and as such have to be protected and receive assistance. Next there are other (world) religions (the examples are Judaism, Zoroastrianism, Shintoism and Taoism) that are not outlawed and could exist as they are, as long as they

do not go against the decree or other laws. Then there is another group, which consists of streams of spiritual beliefs (*aliran kebatinan*) and are implicitly not regarded as “religion”—the government’s task here is to guide them to become “healthy beliefs in one and only God”. What is also telling is that the Elucidation does *not* mention indigenous religions, and as such they are not recognized as religion. The notion of religious orthodoxy is implicit in these classifications.

Finally, atheism is not even mentioned, since it is assumed that it does not (or could not) exist in Indonesia. As a matter of fact, any act to persuade people to embrace atheism is punishable by law both as an act of defamation and of hostility toward religions. The Constitutional Court’s 2010 decision to uphold the anti-defamation law touches on this issue and asserts that basically there is no place for atheism in Indonesia. Belief in God is an obligation, not a right: “Every citizen, as an individual or collectively as part of the nation has to accept the belief in one and only God”.³¹

The decision goes on to state that, “Indonesia is a nation that believes in God, not an atheistic nation.”³² Atheism is put on par with insult or defamation of religion: the Constitution “does not open the possibility for campaigning for the freedom not to embrace any religion, freedom to promote anti-religion, or insulting religious values and scriptures as the source of religious beliefs, or degrading the name of God.”³³ The Constitutional Court’s decision would therefore seem to interpret the Constitution in a manner that provides the state with a wide ambit of discretionary powers when regulating or limiting the practice of heterodox religions and beliefs: taken to its most extreme, the interpretation adopted by the Constitutional Court would seem to permit state repression of any religion or beliefs

30 Two notes are due here: first, as discussed in the literature on the history and politics of religion in Indonesia, while Islam and Christianity would be the model of monotheistic religions, Hinduism, Buddhism, and Confucianism in Indonesia might be—and were—construed as monotheistic. Second, even with regard to atheism, there is an alternative interpretation that would make atheists the subject of protection under the FoRB clause in the Constitution. A famous example comes from H. Agus Salim, one of the founding fathers of Indonesia, who wrote in 1950s that non-monotheistic and atheistic beliefs should not be excluded from state recognition. (From *Agenda Kementerian Agama, 1951/1952*; the archive can be available for download at <https://app.box.com/s/f1oo2bqtp08v1b08gdxib>; also <http://pancasilaislam.blogspot.co.nz/2013/05/h-agus-salim-tentang-kemerdekaan-agama.html>).

31 Constitutional Court Decision No.140/PUU-VII/2009, 272.

32 Constitutional Court Decision No.140/PUU-VII/2009, 273.

33 Constitutional Court Decision No.140/PUU-VII/2009, 275.

other than monotheistic religions, on the grounds that belief in the one and only God is an obligation of any person who is a part of Indonesian society.

The prohibition of atheism is more recently expressed in the 2013 Law on Societal Organisations (No. 17/2013). It prohibits an organisation to hold, develop, and disseminate atheism or communism/Marxism-Leninism because they are regarded as against *Pancasila* (Art. 59 (4) and its explanation).

In conclusion, the Elucidation thus asserts the recognition of world religions and divides them into two categories: the six religions embraced by most Indonesians and those outside of the six that are labelled as “other”. Indonesian law does not recognize “non-standard” religions (the *aliran kepercayaan* and indigenous or local religions) and atheism. This differentiation between expressions of religion and beliefs may be compared with the General Comment No 22 on Article 18 of the ICCPR, which prohibits such differentiation.³⁴

Ultimately, this view on the recognition of, and, at the same time, differentiation between, religions is partly reflected in how religious communities are administered by the state. As discussed in the Introduction, the Ministry of Religious Affairs administers and distributes state funding to the six recognized religions (though Confucianism has a more complicated history). The streams of belief (*aliran kepercayaan*), which were an important target of the defamation of religion law when it was enacted, are now recognized but less privileged. The *Aliran* is administered by the Ministry of Education and Culture, since it is regarded as a class of culture

rather than religion (previously this category was administered for several years under the Ministry of Tourism and Culture). However, this classification is actually not entirely consistent if we examine it in relation to the 2006 Civil Administration Law. (To be discussed in a separate section).

2. Right to manifest one's religion or belief

In general, the right to manifest one's religion or belief is guaranteed by Article 28E(2) of the Constitution: “Every person shall have the right to the freedom to believe his/her faith, and to manifest his/her views and thoughts, in accordance with his/her conscience.”

The Defamation Law, and relevant articles in the Penal Code, prescribe an important limitation on the right to manifest one's religion or belief.³⁵ The Code contains in Section V (“Crimes against Public Order”), five articles of which specifically relate to religion, i.e. Articles 156, 156a, 157, 175, 176 and 177. All of these articles prohibit insult or expression of hostility toward religious persons or groups in different situations. The most controversial and significant of these articles is Article 156a. As will be discussed in Part II, this law has recently been revitalized and has provoked much concern and controversy amongst FOTCR scholars and activists in Indonesia.

The main target initially of the Defamation Law was the then sprawling syncretic spiritual movements (*kebatinan*) that did not fall under the category of any established official religion. The core of the 1965 Decree lies in a single sentence of the first article:

Every individual is prohibited from intentionally, in public, conveying, endorsing [advising], or soliciting public support for an interpretation of a certain religion embraced by Indonesian people or undertaking religious activities that resemble the religious activities

³⁴ General Comment on ICCPR No. 22 (2): “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

³⁵ Law No 1/PNPS/1965 on Prevention of Misuse and/or Defamation of Religion (initially a Presidential Decree issued in 1965).

of the religion, where such interpretation and activities deviate from the basic tenets of the religion.

Article 156(a) of the Penal Code says that “any individual who, intentionally and in public, expresses the feeling or engages in actions (a) that are hostile in nature and considered an abuse or defamation of a religion embraced in Indonesia, (b) with the intent that the people will not embrace any religion which is founded on the ‘belief of the One God’” could face up to five years of imprisonment.

The Elucidation says that “the basic tenets of a religion” are known by the MORA and that the Ministry has instruments or means for determining deviation. In practice, it seems to be assumed that the state would consult the acknowledged representatives of the relevant religion (such as the Indonesian Council of Ulama for Muslims, the Council of Churches for the Protestants, and the Bishop’s Conference of Indonesia for the Catholics, etc.). Hence, similar to the Constitutional Council’s decisions pertaining to atheism, this provision and the government’s interpretation of it would tend to enable conservative, rather than pluralistic, understandings of religions to prevail. It does so by providing for a mechanism through which officially recognized religious bodies are able to define the contents of religious orthodoxy insofar as they are publicly expressed, hence giving them extensive leeway to determine deviant practices of religion or forms of worship.

Another important point in the Elucidation is the qualification of what constitutes a criminal act of defamation. i.e. those that are in principle aimed to insult or take a hostile action against religion. Spoken or written statements which are regarded as objective and scientific about a religion, and “with efforts to avoid hostility or insult to a religion”, do not qualify as hostile or as an insult.

When the Defamation Law was brought to the

Constitutional Court for a review in 2010, the main argument put forward by those against it was that it contradicted the amended Constitution, which contains explicit references to FOTCR, the Law on Human Rights, as well as the international human rights conventions Indonesia has ratified. The Court admitted that the Defamation Law restricts FOTCR, but asserted that such restrictions were within the allowed limits of both international human rights law and Indonesia’s Constitution. However, as noted above, the Court also held that the limitation clause in the Indonesian Constitution, which mentions “religious values”, is different from Article 18 of the ICCPR.³⁶ In any case, the HRC General Comment No. 34 on Article 19 of the ICCPR, which was released in July 2011,³⁷ addressed this kind of interpretation more explicitly.

For religious communities that are affected or targeted by the Defamation Law (such as Ahmadiyah, Shi’a, or Baha’i), this law has restricted their freedom to manifest their beliefs, to worship, to teach, and to disseminate religious materials. Ahmadiyah and Shi’a will be specifically discussed under Part D (Persecution) below.

An example of how the law restricts the right to manifest one’s belief is the 2012 case of Tajul Muluk, a Shi’a leader of a village in Sampang, Madura, East Java. He was found guilty of defamation of religion in accordance with Article 156A of the Penal Code.

36 Constitutional Court Decision No.140/PUU-VII/2009, 276.

37 *General Comment No. 34 on Article 19: Freedoms of opinion and expression* (Human Rights Committee 102nd session, Geneva, 11-29 July 2011), released a year after the Constitutional Court’s decision, addresses some of the issues brought up in the Review. Among other things, it explicitly says that “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Thus for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

The judges found that he had taught his students unorthodox interpretations of Islamic teachings. Ultimately, however, he was charged and convicted for degrading Islam due to allegations that he was teaching students that the present day Qur'an is inauthentic.³⁸ On appeal, the higher court increased the sentence to four years.

The attacks against his relatives and followers which took place after his sentence was handed down at trial and while he was already in prison were considered proof that his act was disruptive of public order, and was the consideration for increasing the sentence. He appealed to the Supreme Court, which was in agreement with the lower courts. One sees here how the reference to "public order" provides the justification for repressing beliefs deemed to be non-orthodox and appears to condone acts of vigilante violence. It is the "disruption" of "unorthodox" belief that is responsible for attacks on such religious minorities not the intolerance and vigilantism of the attackers.

a. Freedom to worship

As has already been discussed in detail, the Constitution and the Law on Human Rights guarantee freedom to worship. Article 29(2) of the Constitution read together with Art. 28E(1) and Art. 22 of the Law on Human Rights clearly state that the state guarantees all persons the freedom to embrace a religion and worship according to their religion and belief. However, the extent to which this freedom can be exercised in practice appears to be subject to significant state discretion, as is further discussed in relation to section (b), which follows.

b. Places of worship

While the state's guarantee of freedom to worship appears to be unequivocal and absolute, a major issue in religious life in Indonesia today in fact relates to the building of places of worship. A 2006

Joint Ministerial Decree (signed by the Ministers of Religious Affairs and Domestic Affairs) ("2006 Decree") that revised and replaced the 1969 regulation pertaining to places of worship (the "1969 Regulation") would appear to be of particular concern.³⁹ As discussed earlier, ministerial decrees actually do not constitute a binding source of legal authority. As such, there is a debate as to whether the 2006 Decree is valid at all; nevertheless, it has been given effect and has been used in a number of court cases to limit the right to practice religion.

The 1969 Regulation delegates the authority to decide on a proposal to build a house of worship to district government officials. The 2006 Decree, which was discussed with the main representatives of religious organisations, continues this mandate, but provides for much more onerous requirements in order for parties to obtain approval, including reliance on recommendations from locally constituted interreligious organizations as to whether/not to grant such approval. Specifically, the 2006 Decree states that the head of a district/city has the authority to issue a licence, based upon the recommendation of the Forum for Interreligious Harmony (*Forum Kerukunan Umat Beragama* or "FKUB") at the district/city level.⁴⁰ At present, all provinces and districts/cities have FKUBs, which now number more than 500 across Indonesia. The Decree specifies how to select members of the FKUB as representatives of religions. The establishment of the FKUB is to be facilitated and partially funded by the government, to help the government maintain religious harmony. It acts as a consultative body, bridging society and government.⁴¹

The 2006 Decree also specifies the requirements for a house of worship. It should be built based on the real need of the users and the composition of the religious community in the area, which in turn

38 Decision of Sampang Court No. 69/Pid.B/2012/PN.Spg.

39 No. 01/Ber/MDN-MAG/1969 on "The duties of state apparatus in guaranteeing order in the performance of religious worships".

40 An FKUB is to be established at both the provincial and district/city levels across Indonesia, as ordered by the Decree.

41 See Articles 8 and 9, 2006 Decree.

is determined by showing that there are at least 90 people who would use it, and that it is supported by at least 60 other people in the neighbourhood. In addition to the FKUB, a recommendation from the local office of MORA is also necessary. If a house of worship fulfils the 90-user requirement but does not get support from at least 60 neighbours, then the application may be rejected and it falls to the local government to make sure that the community can find a place for its house of worship⁴². Part of the considerations for the regulation concerns the need to maintain public order and the government's obligation to make sure that religious communities have places to worship in one location or another. In practice, this arrangement has yielded mixed results. There are examples of functional FKUBs and cases where a religious group's difficulty to build a house of worship have been solved, but there are also many cases where all the requirements were fulfilled yet the building of houses of worship was not approved.

The majority of cases pertaining to the implementation of the 2006 Decree relate to difficulties in building houses of worship for Christian communities, two of which are discussed below. However, it is also worth noting that there are cases with regard to the building of mosques in areas where Muslims are the minority.

Two prominent examples with regard to churches are the Taman Yasmin Church in Bogor and the Filadelfia Church in Bekasi, West Java. The case of the Taman Yasmin Church has been brought to all levels of policy making and advocacy, including being discussed in international forums such as the UN Human Rights Council, yet until today the case remains unresolved. The court case started a letter from the Head of the city's Planning Department revoked a permit to build the church which had been issued by the mayor of Bogor in 2006. The letter appeared to have been issued in response to sustained protests over a two-year period from a group of people objecting to the church being built. The church then brought the case in the

administrative court, which decided to invalidate the letter; this decision was backed up by the higher administrative court and finally by the Supreme Court in December 2010. The Bogor mayor revoked the letter by the head of the city planning department, but then followed it by issuing a new letter which revoked again the permit.

The case of the Filadelfia Church is similar. However, the church has never received a permit, despite fulfilling the administrative requirements according to the 2006 Decree. What was brought to the court (the same administrative court in Bandung, West Java, which dealt with the case of the Taman Yasmin Church) was a letter that instructs the church not to do any construction work nor use the land as a temporary place of worship. The court accepted the church's lawsuit, instructing the head of the district to revoke the letter and process the church's requests to get a building permit. This decision was brought to the higher administrative court and then to the Supreme Court, and all reviews produced the same decision. Yet, similar to the case with the Taman Yasmin Church, until now the court's decision has not been executed by the head of the district, and the problem remains.

With regard to mosques, there are two examples of cases, neither of which was brought to court.⁴³ The first is the Nur Musafir Mosque in Batuplat, Kupang, the capital of West Nusa Tenggara Province. The conflict started in 2003 when there were attempts to build a mosque in the Christian majority area. In 2008, the location was moved and the mosque obtained a licence, but the conflict heightened in 2011-2012. Another case concerns the Abdurrahman Mosque in the village of Wololi, Ende, in 2011. In the beginning there was no problem when the minority Muslim community started to build a mosque without attempting to get a licence; their Christian neighbours even helped. The problem emerged when the head of the village asked the local Muslim leader to fulfil the official

42 See Article 14(3), 2006 Decree.

43 Both examples are taken from Ihsan Ali-Fauzi et.al, *Pemolisian Konflik Beragama* (Jakarta: Pusad Paramadina, 2013).

administrative requirement as stipulated by the 2006 regulation; the Muslim leader apparently thought that the cultural relation he had with the people was more important than an official approval. In any case, this triggered tension within the community. In 2013, after some compromises, the mosque was operational but tensions remained.

c. Religious symbols

Based on the research conducted for this report, the extent to which religious communities in Indonesia are able to display and utilise religious symbols does not, in general, appear to be the subject of controversy, nor does there appear to be extensive case law dealing with this issue. At the national level, there does not appear to be a specific regulation for the use of religious symbols, and such symbols are abundant in public spaces. However, particular concerns have arisen with regards to the use of the headscarf or 'hijab' by Muslim women. In some provinces, such as in Aceh and Padang, with majority Muslim populations, local regulations stipulate the use of headscarves for female Muslim students. Conversely, there are a few cases of Muslim students who were not allowed to wear headscarves in public schools, such as has recently taken place in Bali, which is an area with a Hindu majority.⁴⁴ Another recent issue that has emerged relates to Muslim women wearing the hijab in the police force. While there is no specific regulation prohibiting the use of the headscarf by policewomen, the general regulation on police uniform does not clearly articulate how Muslim women should incorporate wearing it. This regulation is subject to the authority of the head of the national police and the National Police Commission has received complaints about this issue.⁴⁵

44 "Jilbab Untuk Bali", *Tempo Magazine*, May 2014, <http://majalah.tempo.co/konten/2014/04/28/PDK/145235/jilbab-untuk-Bali/09/43>.

45 See Head of Police Decision No. Pol:Skep/702/IX/2005 on the official uniform of police.

d. Observance of holidays and days of rest

Typically there is the same number of holidays every year, but for the specific dates the decision is jointly undertaken by the Ministers of Religious Affairs, of Labour, and of State Apparatus. In 2014 Indonesia will celebrate 15 national holidays comprising 6 Islamic holidays; 3 Christian holidays (Good Friday, Ascension Day, Christmas Day); Hindus and Buddhists each one day (Nyepi and Waisak, respectively); and finally the Chinese New Year. In addition, Indonesia celebrates two secular holidays (New Year, January 1 and Labour Day, May 1). Provincial governments may choose to celebrate additional holidays based on the particular beliefs of that province: for example, Balinese new year is celebrated every year in Bali.

e. Appointing clergy

Based on the research conducted for this report, there is no specific regulation pertaining to the appointment of clergy in Indonesia. Each religious community is able to assess, on its own terms, how and in what manner a person becomes part of the religious clergy.

f. Teaching and disseminating materials (including missionary activity)

Apparently to discourage conversion, which has long been a source of suspicion between religious communities, proselytization and foreign aid for religious organisations or individuals is restricted in Indonesia. This restriction manifests in a number of regulations. The primary regulation prohibiting proselytization and foreign aid for religious groups is the 1979 Joint Decree of the Ministers of Religious Affairs and Domestic Affairs (No. 1/1/1979) (the "1979 Decree"). The 1979 Decree prohibits proselytization to people who have embraced a religion, more specifically by means of enticing them by giving them money, clothes, food, and medicine with the intention that the recipients

convert to the religion of the proselytizers.⁴⁶ It also prohibits distribution of publications or visiting houses for the purpose of proselytization. This leaves the people “who have not embraced a religion” as the only group open for proselytization, i.e. people whose religions are not yet recognized (see the above discussion on how religion is defined). The Defamation Law discussed in detail above may also, by implication, have the effect of restricting unorthodox groups within a religion from teaching and disseminating their religious materials.

In addition, the 2007 Disaster Management Law (No. 24/2007) prohibits proselytization in distributing aid for victims of disaster⁴⁷.

g. *The right of parents to ensure the religious and moral education of their children*

Article 55 of the Law on Human Rights guarantees that every child shall be granted freedom of thought, conscience and religion in accordance with his/her intellectual capacity and age and under the guidance of his/her parent/guardian. Article 6 of the Law on Child Protection (No. 23/2002) repeats this clause. More specifically, Article 12 of the Law on National Education (No. 20.2003)(“NE Law”) says that every child is entitled to a religious education provided by teachers that share his/her religion. This clause was the subject of controversy during parliamentary debates because it was seen as obliging schools run by particular religious organisations to have to provide religious instruction for students of other religions by teachers who shared those students’ religious background. This especially impacts upon Christian schools that have many Muslim students, but also Islamic schools, especially in non-Muslim majority areas, which have non-Muslim students. In general, Article 7 of the NE Law states that parents have the right to choose an education for their children.

h. *Registration*

The 2013 Law on Societal Organisations (No. 17/2013) (“2013 Law”) requires all such organisations, including religious organisations, to be registered with the government. The Law prohibits an organisation from holding, developing and disseminating atheism.⁴⁸ This part of the 2013 Law was considered especially controversial as registration was seen as providing the state with a basis for restricting religious freedom.

The 2006 Law on Civil Administration, as discussed above, provides administrative/bureaucratic acknowledgment of people other than the followers of the six “official religions”, but only to those organisations that are registered. For example, marriage done in accordance with a particular *kepercayaan* is recognized but, as mentioned in the explanation of Art. 81 of the implementation regulation (PP No. 37/2007), only if the community of *kepercayaan* followers is formally registered with the government. Articles 81-83 on the procedure to register the marriage of believers in *kepercayaan* in the implementation regulation of the law (PP No. 37/2007), recognize marriage done in accordance with a particular *kepercayaan* way, in front of its leaders.⁴⁹ However, as mentioned in the explanation of Article 81, it is on the condition that those communities of *kepercayaan* are (formally) organized and registered to the relevant governmental office. The registration requirement may be a problem for some groups that deliberately refuse formal association with a particular organisation.

⁴⁶ See also Section (j) below.

⁴⁷ Art. 3 (2)l, Disaster Management Law.

⁴⁸ See Article 59(4) of the 2013 Law and its Elucidation.

⁴⁹ In the years after the Law was passed, some local or ‘indigenous’ groups have managed to register their marriages in their own ways, without following the rituals of the six official religions. See CRCS, 2011: 58-59; CRCS, 2010: 18).

i. *Communicate with individuals and communities on religious matters at the national and international level*

Based on the review of the materials conducted for this report, there is no particular provision pertaining to this issue under Indonesian law.

j. *Establish and maintain charitable and humanitarian institutions/solicit and receive funding*

As is noted in Section (f) above, the 1979 Decree requires that foreign aid for religious purposes is channelled through, as well as be approved by, a government body that monitors foreign aid, based on a recommendation by the MORA. It also demands that religious organisations train Indonesians to replace foreign missionaries. Though this regulation is old, it is still valid and effective. For example, in the 2008 regulation on foreign aid issued by the Minister of Domestic Affairs (No. 38/2008), while religious aid is not singled out, one of the considerations is the 1979 Joint Decree.

k. *Conscientious objection*

Based on the literature review and searches conducted for this report, cases pertaining to conscientious objection do not appear significant. Additionally, the Indonesian government does not appear to regulate this issue under national law.

3. *Freedom from intolerance and discrimination*

Art. 28 I (2) of the Constitution asserts explicitly that “Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.” The Non-discrimination clause occurs in other laws as well, such as the Law on Education (No. 20/2003). Another law that seems remotely relevant to FOTCR on Management of Disaster (No. 24/2007) mentions

non-discrimination based on sex, ethnicity, race, and religion as one of the principles of disaster management (Art. 3). The Law on Management of Social Conflict (No.7/2012) creates a link between FOTCR and the principle of non-discrimination with prevention and resolution of conflict.⁵⁰

Despite non-discrimination being referred to in many laws, as has already been discussed at length in Section 1 above, the way religion is defined may in itself provide a source of discrimination. Significant in this regard is the definition of religion and the grounds for citizen registration contained in the 2006 Civil Administration Law (the “2006 CA Law”). While the term “official religion” or “recognized religion” as utilized in the 2006 CA Law never refers explicitly to Indonesia’s six official religions, the Law defines religions other than those six as “religions that are not recognized yet”. This differentiation buttresses the assumption that certain religions continue to hold a privileged status within the state, as discussed above.

Additionally the 2006 CA Law speaks about the way citizens are registered (in the identity card or the census), and it is here that we see the most important consequence of the definition of religion. This law marks a measure of progress from the previous law, since it stipulates that for those whose religion “has not been recognized yet”, or for those who embrace *aliran kepercayaan*, the religion column on their identity card or in the census is to be left empty.⁵¹ As will be discussed in the section of this report, which considers persecution, in practice there are two issues. *First*, despite having been enacted almost a decade ago, cases persist of people being asked to declare one of the six religions as their religion on their ID card. *Second*, leaving the religion column blank still arouses suspicion for employers or government officers; as such, the differential treatment of people not belonging to the six religions may result in discrimination in practice. The law has another limitation because, as discussed in the section on registration above,

⁵⁰ See *infra* Part

⁵¹ See Art. 61 (2) and 64 (2), 2006 CA Law.

recognition of one's religion (and the ensuing guarantees pertaining to FOTCR being granted to that religion) to some extent hinges on the religion being able to be registered.

4. *Right of vulnerable groups to freedom of religion and belief*

a. *Women*

In general, women's rights are well protected in law, and women's empowerment and gender equality is well grounded in governmental policies that predated *Reformasi*. Among the human rights conventions ratified by Indonesia, CEDAW was the first (1984). Since 1983, there has been a special ministry on empowerment of women (the name has changed several times; in 1983 it was the Ministry of Women's Role; in 1999 it became the Ministry of Empowerment of Women, and since 2009 the name is the Ministry of Empowerment of Women and Protection of Children). An illustration of policy on women's empowerment concerns the regulation that stipulates that at least 30% of political parties' candidates for members of parliament must be women.

In the Law on Human Rights, there are seven articles pertaining specifically to women's rights, ensuring women's equality in education, employment and representation in politics and all sectors of government. However, one article (Art. 50) states that an adult woman has the right to legal actions, 'except determined otherwise by the law of her religion.' As explained in the Elucidation, this means that Muslim women need a guardian (*wali*) in marriage. This is in line with the 1974 Law on Marriage (No. 1/1974), which provides for such

guardianship.⁵²

Women may be impacted differently by some FOTCR-related policies, as shown by Komnas Perempuan in its evaluation of the impact on women of the Defamation Law. Their 2010 submission to the Constitutional Court argued that the implementation of the law has resulted in violations of FOTCR for Indonesian citizens, especially women.⁵³ Further, in the case of violence against the Ahmadiyah, a Muslim group that has been deemed deviant under the Defamation Law, Ahmadi women have suffered further loss of rights, such as the right to be free from gender-based violence, and rights to livelihood and reproductive health.

52 The Law on Marriage, while applies equally to men and women, impact Muslims differently. Marriage is defined in the law as 'physical and spiritual bond between a man and a woman as husband and wife with the objective of forming a happy and lasting family based on the belief in one and only God.' (Art. 1). Religion is very central here as Art. 2 stipulates that a marriage is valid if it is conducted following the persons' religions and beliefs. The court has the function to deal with all issues around marriage; for Muslim men and women this means specifically the Religious (Islamic) Court, in which the judges make decision based on Islamic law, which is validated by the general court. In the case of Muslim citizens, evaluation about the implications of the law on marriage on FOTCR, therefore, hinges on the religious court. One vexed issue in this regard is interfaith marriage. Because the way the validity of a marriage is defined here, by referring to different kinds of courts for Muslims and non-Muslims, marriage between a Muslim and non-Muslim is impossible. Nevertheless, such interfaith marriage, through one way or another, has become a reality, and one that does not seem to be very rare. See Suhadi Cholil, 'The Politico-religious Contestation: Hardening of the Islamic Law on Muslim-Non-Muslim Marriage in Indonesia', in Gavin W Jones, Chee Heng Leng, Maznah Mohamad (eds), *Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia* (Singapore, ISEAS 2009), 139-159.

53 Danielle Samsoeri, "Pentingnya Keterlibatan Komnas Perempuan dalam Judicial Review UU Penodaan Agama" (submission to the Constitutional Court for the review of defamation of religion law), 2010. A slightly different English version of the submission is available at <http://www.komnasperempuan.or.id/en/2010/03/the-importance-of-the-national-commission-on-violence-against-women%E2%80%99s-involvement-in-the-judicial-review-of-the-heresy-law/>

Women may also suffer discrimination based on religion due to local laws. Below are some illustrations of how women are noticeably often the objects of regulation in local laws. In combating perceived social ills such as prostitution, for example, or more generally in attempts to develop a society that is grounded in Islamic norms, such as in the case of local law in Tasikmalaya (to be discussed later), women's appearance and mobility is controlled. A prominent example is a local law pertaining to prostitution that was issued in Tangerang, a city in the Province of Banten bordering Jakarta. Law No. 8/2005, prohibits anyone suspected or appearing to be a prostitute from being on a road, in a hotel, or in other places in the city. This law received attention from the international mass media when in February 2006, a woman who was on her way home from work in the evening was detained because she was suspected of being a prostitute and subsequently spent three nights in prison. As documented by Komnas Perempuan, more than a quarter of the discriminative local policies they identified target women.⁵⁴

This trend of controlling and restricting of women's rights is also apparent in many laws in Aceh, the only province that can implement broader and more comprehensive shari'a laws.⁵⁵ The main argument given in support of enacting such laws

concerns the obligation of the state to ensure that shari'a obligations are obeyed by individuals. The argument is considered a permissible derogation from the state's human rights obligations (as manifested through local governance) because they maintain public morality. Another important justification that has been evinced is that such laws are needed to prevent vigilante or village-level violence against women. A 2010 report by Human Rights Watch shows the centrality of this argument. In its assessment, instead of preventing private citizens taking law into their own hands, the laws may have exacerbated the trend.⁵⁶ An anomalous development within this trend is the enactment of the Law on Empowerment and Protection of Women in Aceh (Qanun No. 6/2009).⁵⁷ One of its objectives is to create gender justice and equality, and to protect women from violence. It lists women's rights (comprised of economic, educational, health, and political rights) as well as the government's duty to fulfil those rights and to protect women from violence. There may be tensions between this particular *qanun* and other criminal *qanun* (*jinayah*) regulating women, which seem to be given priority and possess its own instruments for enforcement.

While it is noted above that many of the local laws in Aceh attempt to restrict women's rights through, for example, requiring women to dress in a certain way, there are also cases concerning what women *cannot* wear. For example, there are questions as to whether a Muslim policewoman, based on her religious belief, can wear a headscarf and be excused from fully complying with the 2005 police regulation on uniforms. There is also a draft law prohibiting women from wearing clothes that are too tight. The policewoman hijab case is still undecided, pending

54 Komnas Perempuan, "Lembar Fakta Kebijakan Nasional dan Daerah Untuk Pemenuhan HAM dan Hak Konstitusional Warga Negara Jakarta, 20 Agustus 2014" (available at : <http://www.komnasperempuan.or.id/wp-content/uploads/2014/08/Draft-Lembar-Fakta-20-Agustus-2014.pdf>); Komnas Perempuan, "Lembar Fakta Kebijakan Daerah terkait Pemenuhan Hak-hak Konstitusional Perempuan 15 Agustus 2013" (available at <http://www.komnasperempuan.or.id/wp-content/uploads/2013/08/Lembar-Fakta-Peringatan-Hari-Kemerdekaan-RI-dan-Hari-Konstitusi.pdf>). The older but more comprehensive report is: Komnas Perempuan, *Atas Nama Otonomi Daerah: Pelembagaan Diskriminasi dalam Tatahan Negara-Bangsa Indonesia – Laporan Pemantauan Kondisi Pemenuhan Hak-Hak Konstitusional Perempuan di 16 Kabupaten/Kota pada 7 Provinsi*, 2010.

55 Many such laws regulate women, such as how they dress, or people's morality, such as the one on seclusion (*khalwat*). For further discussion of the situation in Aceh, see in particular Section II.A.1 at 'Regional Autonomy and the Emergence of Local Laws', below.

56 Human Rights Watch, *Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia*, New York: Human Rights Watch, 2010). Available at <http://www.hrw.org/sites/default/files/reports/indonesia1210WebVersionToPost.pdf>

57 This law was enacted after women's activists strongly advocated for it.

decision from the head of police.⁵⁸ As mentioned earlier, there are also similar cases in a few schools regarding Muslim girls who wear the headscarf.

b. Children

The Law on Human Rights has 15 articles that specifically pertain to children's rights, one of which (Art. 55) is related to FOTCR. It says that every child has the right to worship according to his/her religion, to thoughts and expressions in accordance with the child's intellectual capacity and age under the guidance of his/her parent or guardian.

An interesting issue concerning children is related to conversion. As noted above, while conversion is not illegal, it is discouraged, and the most extensive prevention of religious conversion exists with regard to children. Art. 6 of the 2002 law on child protection (No.23/2002) repeats the clause in the 1999 human rights law on the right to worship according to the child's religion, but goes further. It does not mention only the rights, but also children's obligations, one of which is to worship according to his/her religion (Art. 19(d)). The law also has several clauses that are clearly aimed at making sure children are not converted from the religion of their parents. For example, in the case of children whose parents are not legally competent or their whereabouts unknown, a child can be assigned a guardian by a court's decree. One of the requirements to be a guardian is that the individual's religion is the same as the child's (Arts. 1(11), 31 (4) and 33(3)). In the case of a religious institution caring for the child, the religious affiliation of the institution should be the same as the child's (Art. 37(3)); otherwise, the institution has to take into account the child's religion. This requirement applies also to adoption—adoptive parents have to have the same religion as the child (Art. 39(3)). Furthermore, Art. 39 (5) says, 'In the case the child's background is unknown, the child's religion is to be adjusted with the religion of

the majority in the area.'

Other than those articles, the law has a special section (Arts. 42 and 43) on religion under the part on child protection. Children shall be protected to worship according to their religion; before they can make their own choice, their religion follows their parents'; the state, family, parents, guardians, and society have to guarantee protection of a child with regard to his/her own religion. Art. 65 states that 'special protection' for children of minority groups covers their culture, religion and language. To fulfil the protection, an independent Commission on Protection of Children is established, which should include religious figures among its members. Lastly, there is a penal article (Art. 86) in the law which says that 'everyone who deliberately deceives, lies to or coaxes a child to choose a different religion not on the child's own wish' is penalized with imprisonment of up to five years and/or fined a maximum of IDR 100 million (approximately US\$ 10,000). The above articles make this law the most explicit and the highest in the hierarchy of laws dealing with conversion.

In 2005 this particular article was petitioned to the Constitutional Court, after a court case in which three Sunday school teachers were sentenced to three years in prison on charges related to the article. The petitioner argued that it is contrary to Article 28E of the Constitution. The Court rejected the application, arguing that if an act does not fulfil the criminal elements mentioned in Article 86 ("deliberately deceives, lies to or coaxes a child to choose a different religion not on the child's own wish"), there should be no fear in doing missionary works as part of one's freedom of religion.⁵⁹

59 The court case and the Constitutional review are discussed in Nicole Colbran, 'Realities and challenges in realising freedom of religion or belief in Indonesia', *The International Journal of Human Rights*, 14:5, 678-704, 2010 and Melissa Crouch, 'Proselytization, Religious Diversity and the State in Indonesia: The Offense of Deceiving a Child to Change Religion', in Juliana Finucane and R. Michael Feener, eds., *Proselytizing and the Limits of Religious Pluralism in Contemporary Asia*, Springer Singapore-Heidelberg-New York-Dordrecht-London, 2014, 17-40.

58 Anita Rachman, "Indonesia's Headscarf Debate", *Wall Street Journal* (December 15, 2013), <http://blogs.wsj.com/searealtime/2013/12/15/viewpoint-indonesias-headscarf-debate/>.

c. *Migrant workers*

The Law on Labour (No. 13/2003) guarantees that all workers are protected, treated with dignity, and should not be discriminated against based on religion. Article 93(2e) says that workers who cannot fulfil their job duties because they have to perform worship activities as mandated by their religion are still entitled to their wages. Article 153 says that an employer shall not terminate a work contract based on religious differences or because the workers perform worship activities sanctioned by their religion.

With regard to migrant workers, more attention is given to Indonesians who work abroad. The Law on Indonesian Migrant Workers Abroad (No. 39/2004) mentions the rights of workers to religion and belief (Art. 8d). In the event of a worker's death, the company that handles the worker's overseas employment is obligated to repatriate and bury the worker in accordance with his/her religion (Art. 73(2) c).

d. *Persons deprived of their liberty*

The Law on Correctional Centres (No. 12/1995) states that inmates have the right to worship in accordance with their religions or beliefs. However, Article 3 of the Minister of Law and Human Rights Regulation No. 6/2013 states that inmates are *obliged* to worship in accordance with their religions or beliefs and to maintain inter-religious harmony. Presumably because of that, a monitoring research by the Center for Detention Studies on detention centres in Jakarta reports that fulfilment of the right to worship/religion is very high, with all respondents (100%) answered positively to the question on worship.⁶⁰

60 Quoted from "Alternative Report of Indonesia's ICCPR State Report 2013" prepared by Human Rights Working Group, December 2012

(http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IDN/INT_CCPR_NGO_IDN_14708_E.pdf)

The new Law on Mental Health (July 2014)⁶¹ mentions that efforts to achieve mental health are based on several principles, one of which is non-discrimination (Art. 2(h)), which is explained as discrimination against people with mental health issues based on sex, ethnicity, religion, race, social status and political preference.

e. *Refugees*

There is no specific regulation on refugees. The situation regarding refugees and inter-religious relations is discussed in the section on cross-border impacts in Part II.

f. *Minorities*

Officially the category of "minority" is not used in Indonesian laws. The situation with minority groups is discussed in Part II.

C. Redress Mechanisms and Interpretation of Religious Freedom

1. *Judiciary:*

a. *Constitutional Court*

The 2003 establishment of the Constitutional Court ("the Court" or "CC") was mandated by the amended Constitution. The Court has the authority to review the highest national laws (*undang-undang*). Article 50 of Law No. 24/2003 on the Constitutional Court originally stated that only laws passed after 1999 can be reviewed, but the CC determined to strike out

61 The law was only very recently passed by the parliament (8 July 2014), and had not been signed by the President at the time of this writing, so it has not had a specified number. The discussion here is based on the final draft of the law, available at <http://www.hukumonline.com/pusatdata/detail/lt53c4dc6fda23c/nprt/481/rancangan-uu-tahun-2014-kesehatan-jiwa>.

Article 50, hence enabling it to review all laws.⁶² The CC works on the basis of petitions by submitted to it by applicants who allege that their constitutional rights have been violated by a law.⁶³

In so far as FOTCR is concerned, there have been six cases reviewed by the Court. *First*, Article 86 of the 2002 Law on Child Protection, which penalizes a person who deceives and coaxes a child to change his/her religion, was petitioned for its contradiction with Article 28E of the 1945 Constitution on the right to freedom of religion or belief, and freedom to organise, to assemble, and to express opinions. The petition was prompted by the case of three Sunday school teachers who were imprisoned for violating this law (discussed in Part I. C.1a). The Court rejected the application, arguing that what is prohibited is the criminal elements mentioned in the law, not the attempt to change the child's religion.⁶⁴

Second, in 2007 a Muslim petitioner requested a review of the clauses that restrict polygamy in the 1974 Law on Marriage.⁶⁵ The petitioner claimed that the clauses restricted his religious rights. The Court rejected the application mainly for the argument that polygamy is not a form of worship, and no freedom of worship is restricted here. The requirements mentioned in the law as they relate to polygamy are to protect the rights of others, in this case the rights of a wife.⁶⁶

Third, in 2008 a petitioner claimed that the 1989 Law on the (Islamic) Religious Court denied Muslims' religious freedom since by this law the state imposes

a limitation on the jurisdiction of Islamic religious courts.⁶⁷ That is, it is limited to civil matters. Therefore, Muslims' constitutional right to freedom to manifest their religion—that is as fully practising Muslims who, she claimed, are required to abide by Islamic law, including in criminal matters—is limited. The Court unanimously rejected the petitioner's arguments, arguing that it could not add anything to an existing law. Another argument, though not very central, is important in asserting the character of state-religion relation in Indonesia. The Court maintains that Islamic law is one but not the only source of law in a multi-religious Indonesia, where the 1945 Constitution, not any religious law, is regarded as the highest law.

Fourth, in 2013 a coalition of Islamic organisations concerned with the collection and distribution of *zakat* (obligatory alms giving) asked the Court to review Law No. 23/2011 on the Management of *Zakat*. The key issue determined in the case did not relate to religious freedom, but to the limitations imposed by the law on which organisations may collect and distribute charitable donations. The law tends to centralize these activities in a national organisation endorsed by the government, and as such, was regarded by the petitioners to deny the right of traditional Muslim organisations to undertake this role, even though they had administered such activities long before the law was enacted. Furthermore, the law could be interpreted so as to criminalize those organisations. The petitioners saw the existence of a variety of organisations which can collect and distribute *zakat* as one of the realizations of religious freedom as guaranteed in the Constitution; arguing that individual Muslims should have the freedom to choose an organisation through which they want their *zakat* to be distributed. The Court partially accepted the petition. In its decision, it asserts that the state may regulate *zakat* as a religious issue since it is part of the *forum externum*, not *forum internum*, which belongs personally only to individual believers.⁶⁸ While the Court defended the constitutionality

62 The decision to disregard Article 50 in actual fact predated the CC's decision to amend the law. However, Law No. 8/2011 on revisions of Law No. 24/2003 formally mentions that Art. 50 is struck out.

63 Due to the limitations of its mandate (to review only national laws) the Constitutional Court has not reviewed the constitutionality of local laws and decrees. For further discussion of this point, see sections (b) and (c) below.

64 Constitutional Court Decision No. 018/PUU-III/2005.

65 See in particular Arts. 3(1) and (2), 4(1) and (2), 5(1), 9, 15 and 24 of the Law on Marriage.

66 Constitutional Court Decision No.12/PUU-V/2007.

67 Constitutional Court Decision No. 19/PUU-VI/2008.

68 Constitutional Court Decision No. 86/PUU-X/2012, 90.

of the law, it provided an interpretation of that law which does not deny the role of other Muslim organizations to collect and distribute *zakat*

Fifth, in the 2009-2010 first review of the Defamation Law, which was partly discussed above, the legal basis of the petition is that the 1965 law contradicts the (amended) Constitution, as well as new laws on human rights.⁶⁹ The government (represented by the Ministries of Religion and Domestic Affairs (together, the “Ministries”) defended the law on the basis that it protects each religious community from defamation of religion. The Ministries argued that religious freedom in the amended Constitution, the law on human rights and the ICCPR can be legitimately restricted, and that the law maintains public order (harmony). After several months of intensive review, which drew many expert testimonies and attracted wide coverage in the media, the Constitutional Court decided to uphold the law, with one out of the nine judges issuing a dissenting opinion. In the decision, the Court put forward a number of arguments that attempt to display the contemporary relevance of the 1965 law for contemporary religious life in Indonesia. The ruling also considered the law in light of the post-1998 legal developments in Indonesia and the ensuing strengthened guarantee of FOTCR. The Court did mention the need for revision, to make sure that the law does not go against Indonesian pluralism and become discriminatory, but to date neither the parliament nor the Ministries have endeavoured to review the law.⁷⁰

Sixth, the CC reviewed Article 156A of the Penal Code (derived from Art. 4 of the Defamation Law), upon receipt of a petition from two individuals who were prosecuted under the law and a few others. The Court was willing to do the review again because it viewed the second petition as pertaining to a different issue from the first. While the first petition concerned the law in general, the second was only focused on a particular procedural issue, namely how a decision on deviancy or defamation is made under

Article 4 of the law. The petitioners argued that the law required a Joint Ministerial Decree (Ministers of Religious Affairs, Home Affairs and Supreme Court) for that kind of decision, while in practice judges had been seen to make such decisions, based on several types of evidence, including testimony or letters from sources such as local branches of the Majelis Ulama Indonesia.⁷¹ The Court also rejected this much more limited petition, repeating many of the arguments it made during the first review.⁷²

On September 2014, the Constitutional Court started to review another case on the Law on Marriage, this time related to inter-religious marriage. In general, through these reviews, the Court has provided important, though not always progressive,⁷³ interpretations of state-religion relations and FOTCR in Indonesia.

b. Supreme Court

The Supreme Court functions as the highest court of appeal in Indonesia. With regard to FOTCR, the Court has reviewed cases relating to the licence to build houses of worship and defamation of religion. Among the prominent examples related to houses of worship that were brought to the Supreme Court are the cases of the two churches discussed previously, the Taman Yasmin Church in Bogor and the Filadelfia Church in Bekasi, both in West Java. Both

⁷¹ The semi-governmental Council of Ulama (*Majelis Ulama Indonesia* or “MUI”) was established by the New Order government in 1975. MUI was designed to function as the moderate, pro-government representation of Islam. However, since 1998, it has repositioned itself to be more independent from the state, aligning its stance closer to factions of Muslims who want to assert a more visible Islamic identity, yet at the same time pressures the state to enforce its *fatwa*, which in many cases represent conservative Islam. See *infra* Part III below.

⁷² Constitutional Court Decision No. 84/PUU-X/2012.

⁷³ This is Rumadi’s view, specifically with regard to the review of the defamation of religion law. See <http://nasional.kompas.com/read/2010/10/28/21170733/Putusan.MK.Cenderung.Pertahankan.UU.Penodaan.Agama>. Further discussion is available in Margiyono, et.al., *Bukan Jalan Tengah*, Indonesian Legal Resource Center, 2010.

⁶⁹ See *infra*, ss I.B.1 and I.B.2.

⁷⁰ Constitutional Court Decision No.140/PUU-VII/2009.

churches won their cases in disputes over the licence to build against the local governments at all levels: the administrative court, the higher administrative court of West Java and finally the Supreme Court. However, in both cases the local governments defied failed to implement the decisions. In the case of Taman Yasmin, the church used two kinds of arguments to bolster its case: an administrative argument (that the head of city planning's letter was not valid) and one based on human rights. However, the courts mainly regarded this as an administrative issue, so there is no interpretation of FOTCR here.⁷⁴

Another recent case concerns Tajul Muluk, a Shi'i leader of a village in Sampang, Madura, East Java, who was found guilty of a charge under Article 156A of the Penal Code and sentenced to two years. The court of appeals raised his sentence to four years, and the Supreme Court kept the higher court's decision. In this case, the first court made an interpretation based on what is regarded as insulting or defaming religion, while the higher courts simply supported the decision of the lower courts.

The other function of the Supreme Court relates to its review of local laws. As is discussed in Part II.A below, many local laws are regarded as discriminative on account of religion. Local laws can be reviewed in two ways: through administrative review by the Minister of Home Affairs, and judicial review, conducted by the Supreme Court. The administrative review by the central government

is triggered using two criteria, which are (i) public interest; and (ii) consistency with higher laws. If a local law is deemed to violate these criteria could it may be declared invalid by Presidential Regulation. In that case, the local lawmaker can challenge the central government's decision through an appeal to the Supreme Court. Besides handling such local lawmaker's appeals, another important task of the Supreme Court is to undertake judicial reviews of local laws based on citizen's complaints.

In practice, considering the sheer number of local laws produced, and time limits on the review process, these two mechanisms are in general not effective. Moreover, the Supreme Court rarely considers the substance of the law, especially when dealing with religion-based regulations.⁷⁵ According to Butt, most local regulations escape the review except if they impose fees or seek to raise revenue for local governments. "By late 2006, the central government had received over 12,000 regional laws for review, and from 1999–2007, 1,406 local laws were annulled. By 2008, the Finance Ministry alone had received 7,200 *Perda* and recommended the revocation of around 2000, most of which sought to impose an illegal tax or user charge."⁷⁶

In conclusion, in these two functions—as the highest court of appeal and part of the mechanism to review local laws—the Supreme Court tends to steer clear of making pronouncements pertaining to religious freedom or to consider Indonesia's obligations (both domestic and international) as they pertain to freedom of thought, conscience

⁷⁴ The court process was final with the SC decision in December 2010. However, the problem was far from being solved. The mayor seemed to comply with the decision of the SC by revoking the head of city planning's letter on 8 March 2011, but three days later, on 11 March 2011, the mayor issued another decision which revoked the permit issued by the mayor in 2006. The next process involved an Ombudsman. There was another process involving the Supreme Court when the church asked for the Court's opinion on the latest development. The Court answered that with regard to the 2008 letter by the head of city planning, the Court's decision is final and has to be executed; with regard to the mayor's new decision (11 March 2011), the church may bring the case to the relevant court (it was not explicitly mentioned, but seems to refer to the administrative court), which the church did not do, since it sees that the legal avenues had been exhausted, which culminated in the final decision by the Supreme Court in 2010.

⁷⁵ Simon Butt, 'Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia', (2010) 32 *Sydney Law Review*, 185. Butt provides the example of the Tangerang law discussed in the next section. In this case, while several female victims of the law who lodged the appeal to the Supreme Court used the arguments about discrimination of women and the exclusion of religion from *Perda*, the Court did not consider any of these arguments and rejected the appeal because it sees that Tangerang city has the authority to produce such a law and that the subject matter of the law fell outside the court's jurisdiction (188–189).

⁷⁶ Simon Butt, 'Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia', (2010) 32 *Sydney Law Review*, 183.

and religion. This is at least in part due to the fact that there are ongoing debates as to whether regulations of religion present in local laws violate the Second Regional Governance Law (No. 32/2004), which excludes matters of religion from regional lawmakers' jurisdiction; the Court tends to regard that such regulations do not regulate religion *per se* and as such are still within the regional lawmakers' jurisdiction.⁷⁷ This, combined with the Court's general reluctance to undertake judicial review of Indonesia's laws (bearing in mind the Constitutional Court's distinct, yet complimentary role in the same) mean that the Supreme Court is not, at present, an effective redress mechanism on matters related to FOTCR.⁷⁸ The combined result of the inaction of the Supreme Court and limitations of the jurisdiction of the Constitutional Court is that hundreds of local laws and regulations of dubious constitutionality and of discriminatory effect remain in force.

2. *Administrative Bodies: Ombudsman Indonesia*

Ombudsman Indonesia was established initially in 1999 based on a Presidential Decree, but in 2007 it received a significantly new shape and structure with the enactment of Law No. 37/2008 on Ombudsman of the Republic of Indonesia. Its existence was further strengthened by Law No. 25/2009 on Public Service, in which it plays a significant role to oversee public service by offices of the central and local governments. The President proposes the names of the members of office of the Ombudsman through open recruitment, but the selection is done by the Parliament.

⁷⁷ See discussions further below, in Part Two. A.4. See also Lindsey (2012, 373-375) on the debate.

⁷⁸ Another limitation of the Court, especially related to this second function, is that it can review regulations that are below national laws against the laws, but not review against the Constitution. The task of reviewing laws against the Constitution, as discussed above, belongs to the Constitutional Court, which reviews only national laws, not the lower-level regulations. In other words, there is no mechanism to review local laws against the Constitution. See also Lindsey, at 379.

The Ombudsman receives complaints on maladministration in public service and investigates them, and attempts to prevent maladministration. Upon finishing the investigation, the Ombudsman concludes with recommendations that must be carried out by the offices or individuals concerned within 60 days. If the recommendation is ignored wholly or partly without acceptable reasons, the Ombudsman can publicize the supervisor and report to the Parliament and the President. The parties who are regarded to have performed maladministration and their supervisors may receive administrative sanctions.

Annual Reports by the Ombudsman do not have a special category related to FOTCR, but one on "discrimination", under which cases related to FOTCR may fall. According to a recent report by the Ombudsman, from 2008 to 2013 it has received 47 complaints related to discrimination. A few of them are related to religious issues, all of which concern permits for houses of worship.

One prominent case on houses of worship handled by the Ombudsman concerns complaints against the mayor of Bogor, in the case of the Taman Yasmin Church discussed above.⁷⁹ In this case, the mayor was instructed by the Supreme Court to revoke a letter by the head of city planning which negated the licence to build the church. The mayor seemed to comply with the decision by revoking the letter, but three days later issued a new decree revoking the licence. The Ombudsman received a complaint from the church, invited the mayor of Bogor, the Governor of West Java and a representative of MOHA to meet and concluded that the revocation of the licence is a legal disobedience. It recommended that the Governor of West Java and MOHA supervise the mayor to revoke the March 11, 2011 revocation letter. Until today there has been no follow up on the recommendation, and no sanctions applied to the mayor.⁸⁰ Today the church is still denied a building licence, despite statements

⁷⁹ CRCS 2011 Annual Report, 49-51.

⁸⁰ The mayor recently (April 2014) finished his second term and was replaced by a new mayor.

of concern from many human rights organisations, including international ones, up to the UN Human Rights Council (during the UPR process).

Other than licensing for houses of worship, the office of the Ombudsman seems to be the appropriate place to bring forward complaints related to administration (including registration of marriage) for citizens who are not affiliated with one of the six official religions. There are reports that the enforcement of the law is not uniform across Indonesia, and it seems that even at the level of the Ministry of Religious Affairs not everything is clear in this regard. In 2014 the Ombudsman planned to hold a limited discussion forum with representatives of the government on this issue.⁸¹

3. *Independent Bodies:*

a. *National Human Rights Commission (NHRC/ Komnas HAM)*

The National Human Rights Commission was initially established in 1993 and was regarded as a respectable institution. The personnel were regarded as independent, and on many human rights issues it frequently took positions opposed to the government. One of the eleven chapters of the 1999 law on human rights is specifically on the Commission (Ch. VII, Art. 75 -99). The law strengthened the existence of the Commission and expanded its authority.

According to the law, the NHRC has four main functions (research, education, mediation, and monitoring and investigation) that are reflected in the sub-commissions. Law No. 26/2000 on the Human Rights Court (Art. 18-20 and 25) mentions the authority of the Commission to investigate severe violations of human rights through an *ad-hoc* team. Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination mentions a more specific task

of the NHRC, which is to monitor and investigate racial and ethnic discrimination and potential discrimination and to make recommendations to the government. It also monitors the works of central and local governments. If the governments do not follow the recommendations, it may bring the case to the parliament. In its investigations, NHRC may summon the victims and perpetrators of human rights violations, as well as witnesses. If they do not fulfil the NHCR request, it may ask the court to bring them by force.

In practice the NHRC has indeed been very active, responding to incidents of violation of FOTCR. It works not only based on complaints, but its own initiatives to respond to emerging events, issuing press statements or releases, especially for situations that garner public attention. On larger issues, they formed *ad-hoc* teams. In 2005, for example, the NHCR investigated attacks on the Ahmadiyah community. It did not investigate a specific event but looked at the patterns of repeated attacks in different places and issued its report in 2007.⁸² In some cases, such as the recent case of the Shi'a community in Sampang, East Java, it worked together with the National Commission against Violence on Women (as well as the Commission on

⁸² The main conclusions are summarized in *Comments' of the Indonesian National Human Rights Commission on Indonesian Compliance with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, April 2008, p. 16., available online: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IDN/INT_CAT_NGO_IDN_40_9013_E.pdf. Among the conclusions is that the attacks against the Ahmadiyah community took place without attempts at prevention; especially in the Lombok case, the perpetrators were not prosecuted. It sees the state as unwilling and unable to guarantee the rights of its citizen to freedom of religion and worship. The Commission recommended that the Government should actively provide protection guarantees to the victims; firm actions to anarchic behaviours; and a guarantee of protection for all Indonesian citizens without any exception.

⁸¹ "Ombudsman Terima Pengaduan Pelayanan Adminduk", <http://www.hukumonline.com/berita/baca/lt53202f5e1df8f/ombudsman-terima-pengaduan-layanan-adminduk>.

Protection of Children) to issue a common report.⁸³

With all its authority, which is more extensive than the National Commission on Violence against Women and National Police Commission, the NHCR actually has a very strong position from which to deal with violations of human rights and to support law enforcement effectively. Nevertheless, ultimately it has to depend on the compliance and support of formal offices such as the courts, the government and the parliament to make it effective. Without them, the recommendations, through their publications in the mass media, only act as a kind of pressure on the authorities. In reality, NHCR found that their support is very weak.⁸⁴ In some cases, the NHCR even found it challenging to summon suspected perpetrators or government officials, despite the fact that the law says that they can be summoned by force if necessary. When it comes to recommendations, for example on the issues of Ahmadiyah in Lombok and Shi'a in Sampang mentioned above, the government and law enforcement agencies did not follow them up wholly; both communities still suffer from on-going persecution while past violence towards them was not dealt with at all.

⁸³ In this particular case, they issued team issues five recommendations: 1) the President should take over the handling of the case and order the relevant ministries and local governments to immediately take steps to respond to the problem; 2) the Head of Police should ensure that police take a neutral position and firmly enforce law; 3) National and local governments should work together to approach the issue by cultural means and attempt to create tolerance; 4) the national and local parliaments should supervise the performance of the president; 5) the Parliament should revoke laws that could be used to criminalize non-conformist religious believers. The team's report is available at: <http://www.komnasperempuan.or.id/wp-content/uploads/2013/09/LAPORAN-PUBLIK-TIM-TEMUAN-DAN-REKOMENDASI-TTR-SYIAH-SAMPANG.pdf>.

⁸⁴ <http://sejuk.org/2014/03/24/giliran-para-korban-kekerasan-atas-nama-agama-dicurhati-komnas-ham/>.

b. National Commission on Violence Against Women (NCVAW)

The National Commission on Violence Against Women (Ind. Komnas Perempuan) was established in October 1998 based on a Presidential Decree (No. 181/1998). The initial trigger for this establishment was sexual violence, especially against women of Chinese ethnicity during the 1998 riots around the fall of the President Soeharto's regime. Its standing was strengthened by Presidential Regulation No. 65/2005.

The tasks of the Commission are fivefold. *First*, it is to disseminate awareness about all forms of violence against women and ways to prevent them; *second*, to perform studies on relevant national regulations and international instruments; *third*, to monitor and do fact-finding on all forms of violence against women, and publicize the findings; *fourth*, to recommend ways to handle the violence and develop the necessary legal framework for the government, legislative and judicative institutions as well as societal organisations; and *fifth*, to develop regional and international cooperation to better prevent violence against women and protect women's rights. In terms of topics, one of the 11 crucial issues central to the NCVAW in its 2010-2014 agenda is violence against women that is based on morality and religion. One area where the NCVAW is especially active is indeed in monitoring local laws that discriminate against women, including those on account of religion and belief.

Just by looking at the circumstances of its establishment, the NCVAW is a progressive independent body, responsive to issues of women's rights and human rights in general. As a young organisation, it has published quite a few important reports as well as books and articles on a variety of issues. As mentioned above, it frequently cooperates with the NHRC, the National Commission for Child Protection and other organisations to monitor and investigate incidents of violence or violation of rights, especially those of large magnitude (such as in the Sampang Shi'a case). In such cooperative

efforts, the Commission often contributes a particular perspective on the impact of incidents involving women.

In its 2012 report to the UN Human Rights Council on the implementation of ICCPR in 2005-2012, the NCVAW included its observations on the impact of violations of FOTCR and several governmental policies (such as the one on the national identity card) on women of religious minority groups. In addition to the joint report on the Shi'a community discussed above, in 2008 the NCVAW issued a specific report on Ahmadi women and children, referred to as victims of multiple discrimination, focusing on the series of attacks against the community in West Java and West Nusa Tenggara.⁸⁵ During the Constitutional review of defamation of religion, it argued against the law by looking more specifically at its impacts on female victims. As noted above, however, the NCVAW lacks the scope of quasi-judicial investigative authority enjoyed by the NHRC.

c. *National Police Commission (NPC)*

MPR Decree No. VII /2000, which established the separation of the military and the police, mentions the establishment of an institution which was later called the National Police Commission. In Law No. 2/2002 on Indonesian police, there is one chapter on the NPC, which was strengthened by Presidential Regulation (17/2005), and later revised by another Presidential Regulation (17/2011) to make it more professional, accountable and independent. Unlike the other two commissions discussed above, which are clearly mentioned as independent, the head of the NPC is the Coordinating Minister of Politics, Law and Security, with members who include the Minister of Home Affairs and Minister of Justice and Human Rights, academics, lawyers, and former police officers. Its main objective is to assess the performance of the police force and to help develop

its professionalism.

The authority of the NPC includes receiving complaints about the performance of the police and collecting and analysing relevant data to be the basis of advice for the President. At this stage, there does not seem to be much that the NPC does related to FOTCR, however, it has the potential to be a mechanism to ensure the police force's attention to FOTCR incidents and compliance with FOTCR-related regulations. The Commission, for example, recommends that the head of police fulfils the request of Muslim policewoman for a police uniform, which accommodates their needs. A larger issue that the NPC has started to work on, in cooperation with civil society organisations, is the police force's response to the hate speech and intolerance that has preceded many incidents of violation of FOTCR. In this regard, it is considering the need to create a law on hate speech.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

As has already been discussed in some detail in Part One of this report, the most significant and progressive changes in the laws pertaining to FOTCR undoubtedly occurred as a result of the democratization process that began in Indonesia in 1998. However, this period also saw both the emergence of new, and the affirmation of pre-existing laws that have tended to reaffirm the state's capacity to regulate religion in accordance with orthodox understandings of the same. In so doing, lawmakers appear to have further enabled any gains made through the national commitment to human rights to be rolled back at the provincial and district level. Two main trends in this regard concern the use of the Defamation Law, and the enactment of local laws related (directly or indirectly) to religious issues. Another major trend concerns the building of places of worship affected by a revision of a 1969 regulation and the emergence of incidents of

85 Laporan Pemantauan HAM Komnas Perempuan, *Perempuan dan Anak Ahmadiyah: Korban Diskriminasi Berlapis* Jakarta, 22 Mei 2008.

conflict, some of which have been brought to court.⁸⁶ In the past few years, while communal conflicts and terrorist cases appear to have receded in Indonesia, issues pertaining to defamation of religion and to the construction of places of worship have become the main source of smaller, more localized conflicts. This has in turn provided avenues for expression of intolerant religious claims by certain non-state actors. Incidents of persecution are also mainly related to these two issues.

A. Significant Changes in the Law

1. *Progressive changes in post-1998 laws*

As has already been discussed in some detail in the introduction to this report, Indonesia's parliament enacted several important reform-oriented laws in the immediate post-1998 *Reformasi* period. Only a few months after the regime change in 1998, a new law was enacted on freedom of expression in public (Law No. 9, signed on October 1998). However, the more significant move, which initializes a series of further legal developments, including on FOTCR, was the enactment of the MPR Decree. The MPR Decree, whose position is right below the Constitution in the hierarchy of laws, committed President and the parliament to ratifying UN human rights instruments, "insofar as they are not contrary to the *Pancasila* and the 1945 Constitution." The decree includes a text on what is called the Indonesian nation's views on human rights and a "Human Rights Charter", which was derived from the UDHR. Only two years after this, the decree was followed up by fundamental changes that include the enactment of specific laws on human rights (No 39/1999); the Human Rights Court (No. 26 of 2000); and, quite significantly, the second Constitutional amendments (2000) which among other fundamental changes insert a whole new chapter specifically titled "Human Rights".

This series of sweeping changes was momentous in terms of Indonesia's own history, as well as in comparison with other countries. As discussed by Tim Lindsey, the original 1945 Constitution conceptualises Indonesia as an "integralist state" in which citizens are imagined as inseparable from the state, having very few guarantees of civil and political rights but more duties to the state. There was an attempt to change this in 1950s, but it failed. The series of post-1998 amendments that includes the introduction of wide-ranging protection of citizens' rights, especially the addition of the bills of rights (Articles 28A-28J) constitutes "the most radical change to the original philosophy of the Constitution. Chapter XA is a lengthy and impressive passage, granting a full range of protections extending well beyond those guaranteed in most developed states".⁸⁷ In general, this achievement in the span of only a few years, combined with the enactment of the specific laws related to human rights and the ratification of many human rights conventions, provides a strong and unprecedented foundation for FOTCR.

2. *Legal mainstreaming of FOTCR*

The next move was to mainstream human rights, including FOTCR, in other laws or lower level regulations on a variety of issues. This mainstreaming was achieved in part by incorporating relevant clauses in a number of laws, as well as by inserting within a heterogeneous set of regulations provisions, which related to guaranteeing freedom of religion. For example, the Law on the Management of Social Conflict (No.7/2012) discussed briefly in Section II.A above, encourages tolerance and respect for freedom of religion and belief in order to maintain peace. Furthermore it mentions the principle of non-discrimination in conflict resolution, and acknowledges of equality without

⁸⁶ See also Part I.3 above.

⁸⁷ Tim Lindsey, 'Indonesian Constitutional Reform: Muddling Towards Democracy', (2002) 6 *Singapore Journal of International and Comparative Law*, 254.

discrimination based on religion and belief.⁸⁸ The Law on Disaster Management (No. 24/2007, Art. 3 and its explanation) prohibits discrimination based on religion in the distribution of aid for disaster victims. The Law on Indonesian Migrant Workers abroad (No. 39/2004) mentions the rights of the workers to religion and belief (Art. 8d). A regulation issued by the Head of Police (No. 8/2009) deals with the implementation of the principles and standards of human rights in fulfilling the tasks of Indonesian police; it is based on the bill of rights in the Constitution and the 1999 law on human rights.

3. *Restrictions to FOTCR*

Paradoxically, however, despite all of this progress, the complete and more ambivalent picture has only become apparent in more recent years. Some restrictive clauses in the Constitution and in certain laws have been interpreted to have significant implications. As a result, existing (pre-1998) policies on religion have not shown, in certain instances, to change. As the result there remain tensions, if not blatant contradictions, in the manner in which laws have been enacted and interpreted since that time.⁸⁹

The restrictions appear to centre on a few issues. First, the significance of “religious values” in Article 28J of the Constitution does not seem to have been clear when it was inserted during the amendment process.⁹⁰ However, as discussed in detail in Part I, during the 2010 constitutional review of the Law on Defamation, it became part of the key argument to restrict freedom and discipline non-conformist religious beliefs.

88 See Articles 2(n) and 7, respectively, of the Law on the Management of Social Conflict (No.7/2012). Hereafter, “Law on the Management of Social Conflict”.

89 The issue is not only with existing laws, but also new laws that create different kinds of restrictions on FOTCR. In many respects these laws tend to reflect a pre-*Reformasi* understanding of religion and display new forms of restrictions based on “old school” politics.

90 See Hosen (2005, 191ff) and especially Salim (2008, 108-111) specifically discussing this limitation.

Utilizing arguments that espouse “religious values” to restrict the freedom of expression, as well as the freedom of thought, conscience and religion of certain groups appear to be widely accepted among certain officials as well as judges as legitimate grounds for maintaining such restrictions. These arguments tend to be couched in the language of Indonesian particularism. It is noteworthy that the limiting phrase “religious values” appeared again during the fourth amendment of the Constitution two years later (2002), i.e. in Article 31 (5) on education (“The Government shall advance science and technology by respecting religious values and national unity...”). The addition of this phrase may be related to another development that took place during the fourth amendment. During the process, there was a failed attempt at inserting a clause about the obligation to follow Islamic *shari’a* for Muslims (which was dropped from the Constitution in August 1945) in Article 29(1)), before the next clause that speaks about the State’s guarantee of religious freedom.

This series of developments shows how far-reaching the post-1998 progressive trend is being held back by qualifications or restrictions, some of which originated in pre-1998 policies on religion. Perhaps a final important indication of this trend is evident in the enactment of the 2006 Civil Administration Law. While as noted above this law marks progress in promising a larger space of freedom for citizens who do not profess one of the six official religions, it is then qualified by further requirements that narrow that space. First of all, the law still makes a distinction between citizens whose religion is one of the six and ones that “have not been recognized yet”, with implications for their civil rights, such as in registration of marriage and religious education for children. This is despite the fact that one of the objectives of the law, as stated in its Elucidation, is to overcome the discriminative grouping of people inherited from Dutch colonial rule. Indeed, among other laws considered to be grounds for the enactment of the law are the articles on human rights in the Constitution (Art. 28B, D, E and 29) and the 1999 Law on Human Rights and the ratification of the CERD.

4. *Regional autonomy and the emergence of local laws that affect FOTCR*

As discussed in Part I, an important part of Indonesia's legal landscape today concerns local laws, which are a direct consequence of decentralization. The policy on decentralization or regional autonomy that was initiated in 1999 changed Indonesia's legal landscape fundamentally and affects FOTCR significantly. Regional autonomy "set in motion a process that, in little over one year, took Indonesia from being one of the world's most authoritarian and centralised states to one of its most decentralised and democratic."⁹¹ At the same time, it has made the legal situation even more complex and at times confusing. Whether on issues related to localization of the Defamation Law or in the enactment of religious-based laws, local regulations tend to restrict the freedom granted at the national level. Further complicating matters is the fact that many local laws are poorly drafted, making them difficult to understand and interpret.

The first Law on Regional Governance was issued in 1999 (No 22/1999) ("First Regional Governance Law"), providing districts and cities with a law-making authority. This was followed in 2000 by Articles 18 and 18A of the amended Constitution (second amendment). A second law on regional governance - Law No. 32/2004 - then replaced the 1999 law ("Second Regional Governance Law"). Under the Second Regional Governance Law, law-making authority now extends to the provinces, districts and cities. There are several types of regional regulations, i.e. laws passed by local legislatures at the levels of the province or the district/city, and laws passed by the heads of local governments (e.g. governor of a province, regent of a district or mayor of a city). As of July 2013, there were 539 autonomous regions (consisting of 34 provinces, 412 districts and 93 cities).⁹² With so many lawmakers, local laws in Indonesia now likely

number in the tens of thousands.⁹³

In so far as FOTCR is concerned, an important limitation posed by the Second Regional Governance Law is the exclusion of matters of religion from regional lawmakers' jurisdiction (the others are foreign affairs, national defence, national security, judicial affairs, and national monetary and fiscal matters). Art 10(3) of the elucidation of the Second Regional Governance Law describes matters of religion as including religious public holidays, and recognition of a religion and policy on religious life, although the central government may delegate part of its authority to the local government for the purpose of nurturing religious life. However, this exclusion seems to have been breached in many cases. Quite a number of regulations in fact *do* regulate religious life or even mention 'religious values' as the basis of the law.

The sheer number of existing local bylaws and regulations makes it impossible to discuss even a fraction of them. Only a general pattern and few examples are discussed below. In its reports from 2010 and 2013, the National Commission on Violence against Woman has documented a pattern of increasing discriminative local bylaws and regulations, a number of which relate to FOTCR. In 2009, it listed 154 discriminative local bylaws and regulations: 63 targeting women, and 91 regulating religion with negative impacts on FOTCR, out of which nine specifically restrict the Ahmadiyah group. In 2013, the numbers had more than doubled, with 334 local bylaws and regulations, the majority of which are based, explicitly or implicitly, on certain religious views. Thirty-one of the local bylaws and regulations target religious minorities and indirectly discriminate against female members of the minority groups. Seventy of the 334 local bylaws and regulations regulate women's dress

91 Simon Butt, 'Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia', (2010) 32 *Sydney Law Review*, 177.

92 http://otda.kemendagri.go.id/images/file/data2014/file_konten/jumlah_daerah_otonom_ri.pdf.

93 It is always difficult to know exactly how many local regulations have passed. Lawmakers are required to send laws passed at the local level to the central government, but this does not seem to be obeyed; in addition, there is also no centralized system to document the laws. Several recent additions to the literature (Butt 2010, Lindsey 2012) mention 12,000 regulations from a 2006 source. By now that number may have doubled.

based on religion. In general, the literature agrees that such laws are concentrated in four areas: West Sumatra, West Java, South Sulawesi and Aceh.⁹⁴

The regulations based on aspects of Islamic law concern a wide variety of issues ranging from whether the headscarf is to be worn by women, restrictions on the sale and distribution of liquor, the criminalization of gambling, prostitution and certain other behaviours regarded as ‘un-Islamic’, as well as regulations obligating activities such as paying religious alms (zakat) or reading the Qur’an. While there have been different attempts to group the laws in terms of their contents,⁹⁵ what is consequential is to determine which laws do, by definition, “regulate religion”.⁹⁶ Many of the laws are presented as addressing public order or combating social ills, not pertaining to religion.

A prominent example, and one which is the most comprehensive, is local law No. 12/2009 of the city of Tasikmalaya, West Java, titled “Development of Social Values based on Islamic and Social Norms of the City of Tasikmalaya”. It regulates a range of behaviours, from corruption, adultery (heterosexual or homosexual), gambling, abortion, the use of any kind of entertainment that is “pornographic”, to witchcraft (*perdukunan*), which tends to oppose religious faith, and deviant teachings. In 2012 there was an attempt to establish a “*shari’a* police” to enforce this law, but it was controversial, and stalled when it didn’t receive support from the Minister of Home Affairs. To date, the mayor has yet to issue a more operational regulation about how to enforce the law. In practice, this law is very difficult to enforce because of the many ambiguities it contains.

94 Tim Lindsey, *Islam, Law and the State in Southeast Asia, Vol. I: Indonesia* (London: I.B. Tauris, 2012), 367-368.

95 See Tim Lindsey, *Islam, Law and the State in Southeast Asia, Vol. I: Indonesia* (London: I.B. Tauris, 2012), 368-374.

96 The other issue is whether the local laws contradict the higher laws which reflect Indonesia’s commitment to FOTCR, as discussed in the previous section on the Supreme Court as part of redress mechanism.

While almost all religiously based local laws pertain to Islam, there have been a few unsuccessful attempts to enact local laws, which entrench Christian beliefs. A prominent example is the draft law proposed in 2007 to make Manokwari, a city in Papua, a “Bible City”, with clearly discriminative clauses that would make building a non-Christian house of worship or wearing religious clothes (such as the headscarf worn by Muslim women) illegal. This was also very controversial, and rejected not only by Muslims but also by mainstream national Christian organisations. There have been attempts to revise it to make it less discriminative. Still, the proposal could not reach the stage of local parliamentary debate.

5. Aceh Province

Other than local laws enacted at the district/city level, there is a special case concerning the province of Aceh, which has been affected by insurgencies and military interventions for many years. Aceh has the status of a special province, making it different from other regions in that it may enact laws that deal with religion. Aceh has enacted *shari’a*-based regulations since 1999 based on Law No. 44/1999. In 2001, the region was granted a Special Autonomy Law, which was followed by the enactment of a few *shari’a* regulations with criminal penalties for offenses such as gambling, the sale and consumption of alcohol, and violations of Islamic dress codes for women. After the signing of the peace agreement in 2005, Aceh was granted the status of having ‘special autonomy’ (through Law No 11 of 2006).

Special autonomy means that, among other things, Aceh implements *shari’a* or Islamic law for Muslims. Article 126 states that every Muslim in Aceh is obligated to obey *shari’a*, and every resident is obligated to respect *shari’a*. Other than Islamic law, the special autonomy designation extends to the election of local officials and the exploitation of natural resources. Just as in the case of the local (district/city) laws, quite a number of these regulations are considered discriminatory. The

Islamic local laws in Aceh are different than in other places in several aspects, one of which concerns criminal laws. Some criminal laws (*qanun jinayah*) on particular issues such as drinking alcohol, gambling, and *khalwat* (seclusion or close proximity) are already in place; to date, the Aceh Parliament is still trying to pass a larger, more comprehensive *Qanun Jinayah* which would be comprised of more issues. There have been discussions about the contradictions between aspects of the *Qanun* and national laws or the Constitution, especially articles related to human rights. For this, there is a review mechanism that has been ineffective thus far, as discussed above.

6. Revitalization of defamation of religion law

An important trend in the past few years concerns the revitalization of the Defamation of Religion Law. Besides its more frequent use in court cases, which will be discussed in the next section (II. B), the revitalization is indicated by three other recent developments: the decision by the Constitutional Court to retain the Law in 2010, the reference to the Law in several new national laws on a variety of issues, and its increasingly frequent use as the foundation of new local laws. Furthermore, in its implementation, the Law has been utilized to target a wider spectrum of groups considered “deviant”.

The *first* development, the review of the law by the Constitutional Court, has already been discussed in Part I of this report. As has already been noted, the Court held that the law is constitutional, even after considering the significant changes post-1998. Having been determined to accord with Indonesia’s Constitution, the law’s standing was strengthened. In the 13th session of the Universal Periodic Review at the UN Human Rights Council, there were recommendations to revoke the law, but these recommendations were not accepted by the government for the reason that it was reviewed through the new democratic mechanism of the Constitutional Court, and therefore was not regarded as violating human rights and considered to fall within the limits of allowable restrictions.

There may be an opportunity for revising the law when (and if) the government or the parliament takes up the planned draft law on religious harmony, which is part of the 2011-2014 legislative agenda, although it is no longer prioritized.⁹⁷

The *second* indicator of the revitalization can be seen in the fact that it has become the basis or reference for many other laws. Besides the establishment of a particular article in the Penal Code, a number of the post-1998 laws incorporate the notion of deviancy, defamation, or beliefs deemed dangerous. The laws pertaining to two institutions that function to enforce the Defamation of Religion Law, namely, the office of the state prosecutor and police, have clauses that relate directly to defamation. The 2004 Law on State Prosecutors describes the authority of the office in criminal and civil matters and public order (Article 30). Included in the last area are monitoring of beliefs (*kepercayaan*) that may pose a danger to society and state (d), and the prevention of abuse and/or defamation of religion (e), in which case, as explained in the elucidation of the law, the attorney’s task is preventive and educational.

The 2002 Law on Indonesian Police includes, in Article 15 (1.d), monitoring of *aliran* that could threaten the unity of the state, and that, as explained in its elucidation, includes *aliran kepercayaan* that is in opposition with the founding philosophy of the state. As noted above, however, concern for human rights is also present in the regulation issued by the Head of Police (No. 8/2009) on the implementation of the principles and standards of human rights in fulfilling the tasks of Indonesian police. In that regulation, FOTCR as mentioned in the Constitution and the law is asserted. This clearly shows two forces simultaneously at work: the commitment to uphold human rights and the need to restrict those rights in order to “protect” religion from attempts at defaming it, particularly through beliefs or practices designated as unorthodox or deviant.

97 The annual list of priority in the national legislative program is available at <http://www.dpr.go.id/id/Badan-Legislati/prolegnas>.

The Law on Societal Organisations (No. 17/2013) states that such organisations shall preserve the values of religions and beliefs (Art. 5(c); Art. 21 (c)). More significantly, Article 59(2) prohibits such organisations from engaging in hostility towards ethnic, racial, religious or other social groups, and from committing misuse, insult or defamation of a religion in Indonesia. Another prohibition mentioned in Art. 59(4) is the prohibition against holding, developing and disseminating a teaching that is against Pancasila. The explanation of the law refers specifically to the teachings of atheism and communism/Marxism-Leninism.

The 2008 Law on Electronic Information and Transactions (No. 11/2008) has as one of its considerations the prevention of the misuse of information technology by “considering the religious, social and cultural values of Indonesian society”. Article 28(2) forbids the distribution of information intended to incite hate or hostility toward individuals or groups based on ethnicity, religion or race. Article 45(2) says that the violator is penalised with imprisonment up to 6 years and/or one billion rupiah (approximately US\$ 100,000).

The 2009 Law on Film (No. 33/2009) regards that while there is freedom of creative expression, the nation’s religious values, ethics, morality and culture should be upheld (Article 5). The next article prohibits incitement to hostility between groups, ethnicities, races, and defamation of religion. The governmental regulation (PP No. 18/2004) on the film censorship body requires that there should be a representation of religion in the body to operationalize the objective of upholding religious values and preventing religious defamation. Article 30(6) of the regulation says that a film can be censored if it has the potential to disturb harmonious religious life, or vilify religious symbols.

It should also be noted that the Defamation of Religion law has become the basis of a lower level regulation, which is the 2008 Joint Decree issued by the Minister of Religious Affairs, the Attorney General and the Minister of Domestic Affairs to

restrict the activities of the Jemaat Ahmadiyah Indonesia. In this regard, Ahmadiyah is rather special in the sense that its followers have not been brought to the court *qua* their teachings that are regarded as deviating from the basic tenets of Islam. Instead, their activities are severely restricted.

Furthermore, the 2008 Decree has triggered a new trend of the enactment of stricter local by-laws or regulations targeting the Ahmadiyah, to the point of banning the organisation—this is another indicator of the revitalization of the defamation of religion law. This is the *third* indicator of the revitalization.

Ahmadiyah is not the only non-mainstream group targeted by the local laws that are ultimately grounded on the defamation of religion law. Whether in Tasikmalaya or Aceh, “deviancy” is more strictly prohibited and constitutes a criminal offence. In general, there is a trend to target larger non-mainstream groups. Until recently, Ahmadiyah was the largest community targeted, and the number of local regulations that restrict its activities or even bans it is growing. In 2012, a larger group, the Shi’a, was targeted, following an attack on a small Shi’a community in a village in Sampang, Madura, East Java. In 2012, the Governor of East Java issued a decree on “deviant sects” targeting the Shi’a in response to the case in Sampang as well as to a few others. However, other than in East Java, the Shi’a have not been a subject of local regulations. In Aceh, the government is quite active in this area, and the list of deviant groups is growing to include *sufistic* (mystical) groups within Islam. The mayor of Banda Aceh, for example, formed a commission to prevent deviancy, in the name of strengthening Muslims’ faith (CRCS 2013, 15-17).

These recent trends that in one way or another relate to the Defamation of Religion Law indicate that the Law has found new life in the democratic era. Moreover, as will be discussed in the next section, a dominant part of the recent pattern of religious conflicts in Indonesia is also related to this law and the discourse on defamation of religion.

B. Significant Changes in State Enforcement

The most marked change recently in state enforcement concerns the Defamation of Religion Law. In the past decade it has been implemented much more extensively, in terms of the frequency, the targets, and the regions of the cases. While in the 35 years since 1965 the law was used in courts in only 10 cases,⁹⁸ since 2000 the number of prosecutions has grown to more than 40 cases. In terms of the target, while initially it was clearly addressed to the syncretic spiritual movements (*aliran kebatinan/kepercayaan*), it has now increasingly criminalized larger unorthodox (non-mainstream) groups within some of the acknowledged religions, especially, but not exclusively, in Islam. Another trend is a change in which regions the majority of cases were concentrated. For many years, cases seemed to be concentrated in only a few regions, mostly West Java, Jakarta, and Central Java.

Interestingly, in most cases the decision to charge a person with defamation appears to be triggered by protests or demonstrations from local communities, after an extensive period of attempted mediation by the police and community members. The case of Tajul Muluk, the leader of the Shi'a community in Sampang, is an example of this. For years before the December 2011 attack on his small community, the police together with community leaders in the area and representatives of the local government tried to mediate the case and broker agreements to ease tensions. However, in 2012 Tajul Muluk was charged with Article 156A of the Penal Code due to pressure applied by community leaders and the regent (who, later in the year, would compete in the local elections for his second term).

A prominent case that attracted the attention of both the national and international media was that of Alexander Aan. Aan was a civil servant who

was imprisoned for two years and three months and fined 100 million rupiahs (approximately US\$10,000). Aan was a member of a Facebook group called Ateis Minang that posted hyperlinks to articles, some of which were regarded as defaming the Prophet Muhammad and the Qur'an. His atheism, expressed in his Facebook account, was also considered to have the potential to persuade others not to believe in God. Aan himself said that he is an atheist, which is regarded as violating the first principle of *Pancasila* (Belief in One and Only God). The latter could be penalised using Article 156a of the Penal Code (pertaining to defamation of religion). The judges, however, chose to try him using the defamation clause in the Information Technology Law and found him guilty. Responding to the *amicus curiae* brief from the Asian Human Rights Commission, the judges maintained that the decision did not go against international laws such as Article 29(2) of the UDHR nor Article 19(3) of the CCPR.⁹⁹

The defamation clause in the Law on Film (No. 33/2009) was referred to in the banning of the Hollywood film "Noah" because its story is regarded to not be in accordance with the belief of the religion of Islam in Indonesia.¹⁰⁰ This is an example of enforcement outside of the courts. A number of recent Indonesian films with religious themes have become controversial and there were demands that the film censorship body (*Lembaga Sensor Film*), whose establishment is based on the law, ban them.

With regard to places of worship, another important trend related to enforcement is how local governmental leaders/institutions defied the state, thus rendering law enforcement ineffective. Two prominent cases in this regard concern the Taman Yasmin Church and the Filadelfia Church, both in West Java. As discussed above, both churches won their court cases up to the Supreme Court, but

98 The numbers provided here are approximations, since there is no accessible central repository of court cases. Only recently, since 2007, has the Supreme Court created a web page "Direktori Putusan" (<http://putusan.mahkamahagung.go.id/>). The number mentioned in the text refers to Crouch (2012) and CRCS Annual Reports which have document cases since 2008.

99 Decision of Muaro Court No. 45 /PID.B/2012/PN.MR, 9.

100 "Indonesia Bans Noah", *Time*, March 25, 2014 (<http://time.com/36564/noah-russell-crowe-movie-banned-by-indonesia>); see also <http://www.republika.co.id/berita/senggang/film/14/03/25/n2z9r5-tak-sesuai-ajaran-islam-film-noah-dilarang-tayang/>

the decisions were not executed by local leaders (mayor/head of district). Even after the case was brought to the Ombudsman and the president was asked to intervene, both churches still were unable to obtain permits. This phenomenon of local leaders/institutions defying higher court decisions at the national level emerges not only in the case of houses of worship, but also in other cases such as local elections.¹⁰¹

C. Significant Changes in Religious Claims (by Non-State Actors)

The three main trends identified in the beginning of this Part are also further reflected in the religious claims of non-state actors. Significant changes in religious claims made by non-state actors are best reflected by the phenomenon discussed earlier, namely the revitalization of defamation of religion. The Defamation Law has, among other things, drawn a line between mainstream religion (orthodoxy) and deviant or non-conformist groups. That a significant increase in the number of cases prosecuted using Article 156A of the Penal Code (on defamation of religion) was seen in the post-1998 period indicates the pressure exerted by certain religious (mostly Muslim) groups to restrict the rights of other, non-orthodox religious groups. Usually these orthodox groups start with demonstrating against groups regarded as non-orthodox, and in some cases even violently attack them; this is then considered evidence of disruption caused by the existence of deviant groups. As discussed above, non-orthodox groups can then be targeted in the interest of maintaining public order. Ahmadiyah and Shi'a groups are the most recent and the largest targets of wide-ranging anti-defamation campaigns. In general, the law targets non-conformist believers within a religion, rather than across religious lines, though there are a few

inter-religious defamation cases.¹⁰²

Another trend in this direction is the increase in cases of local government's refusal to give permits to build houses of worship, in most cases based on the objections of certain religious groups. While most cases concern rejection of churches in Muslim neighbourhoods, recently there are also cases of rejection of mosques in Christian neighbourhoods as well as houses of worship belonging to other religions.

The increasing number of religiously inspired (Islamic) local laws, in many cases based on a more conservative Islamic outlook mostly affect Muslims' rights, but in some cases also affect non-Muslims. Explicit local laws based on certain interpretations of Islamic law, on the other hand, are usually enforced against Muslims.

D. Significant Events of Persecution of Religious Groups

Religious persecution is understood, following the UNHCR definition, as serious restrictions of the enjoyment of fundamental human rights. This chapter does not separate the discussion of persecution and conflicts by state and non-state actors. In most cases, as will be noted below, the state is complicit by not doing what it should be doing, not only during and after but also before particular events, as most conflicts are not spontaneous and usually are preceded by threats and mobilization where the state could intervene.

For the purpose of this section, only a few out of the hundreds of cases that have occurred since the year 2000 are selected. The selection considers representative cases of targets of persecution, and is not based on geographical areas. Four main targets of persecution will be discussed here: the

101 Cf. International Crisis Group, *Defying the State* (Jakarta/Brussel: 2012): "Local institutions in Indonesia, empowered by decentralisation, are defying the country's highest courts with impunity, undermining judicial authority and allowing local conflicts to fester."

102 Melissa Crouch, *Law and Religion in Indonesia Conflict and the Courts in West Java* (London: Routledge, 2014) discusses a case in West Java in which a Christian convert (from Islam) was prosecuted using this law.

Ahmadiyah Muslims, the Shi'a Muslims, followers of "non recognized religions" (esp. the *aliran kepercayaan*), and Christians. It is important to note that the fate of particular religious groups can be significantly different from one province to another due to Indonesia's geographical magnitude, different inter-religious relations (as well as majority-minority composition) in different areas or provinces, and differences in the characteristics of local governance. The Ahmadiyah, for example, were violently persecuted in Lombok and West Java, but enjoy better protection in Yogyakarta and a few other places. Even within one province, East Java in this case, Shi'a communities in different districts do not all experience persecution, and not of the same magnitude.¹⁰³

1. *Jemaat Ahmadiyah Indonesia*

Ahmadiyah¹⁰⁴ is a group that originated among Indian Muslims in the 1880s. The group has always been controversial because the founder, Mirza Ghulam Ahmad, claimed that the revelation continued after the death of the Prophet Muhammad, and that he himself received the revelation. While there has been pluralism within Islam, claims that may imply that Muhammad was not the last Prophet are highly unorthodox, since Muhammad's position as the last prophet is quite central in Islamic theology, second to the oneness of God. Mainstream Islamic

103 The sources used for this Part are mainly three regular annual reports published in Indonesia since around the year 2008. The three national reports are published by the civil society organisations the Setara Institute and the Wahid Institute, and by an academic program based at Gadjah Mada University's Center for Religious and Cross-cultural Studies (CRCS). All these organisations started publishing their reports in 2008. Although these reports use different methodologies, in so far as identifying the main problems they are generally in agreement. For cases before this year, the author uses mainly journal articles that discuss specific issues. Another source used for this Part are occasional reports issued by the Indonesian Legal Aid Foundation, the NHRC and the NCVAW International Crisis Group and Institute for Policy Analysis of Conflict on more particular issues.

104 The most common spelling in English of the group is Ahmadiyya. The spelling used here follows the spelling more common in Indonesia.

organisations in many countries declared that Ahmadiyah is not part of Islam. After the founder's death in 1908, the movement split into two groups, Ahmadiyah Lahore and Qadiani. The first is more moderate, not claiming its leader as a prophet but as a reformer.

Both factions have had a presence in Indonesia since early 20th century. The Lahore Ahmadiyah faction organized itself into Gerakan Ahmadiyah Indonesia (Indonesian Ahmadiyah Movement), and the Qadiani into Jemaat Ahmadiyah Indonesia—they have been legally registered as religious organisations since the 1950s. The Ahmadiyah have always been controversial in Indonesia. They have been involved in disputes with leaders of other major Islamic organisations, yet these were mostly debates and for some time in fact they cooperated with other organisations, especially to resist Christian proselytization.

Despite the fact that major Muslim organisations see Ahmadiyah as deviant, they have been able to carry on their social services for decades, including building schools in some cities, publishing books and missionary work. Estimates about the number of Ahmadis in Indonesia range from 300,000 to 500,000. A very significant change in the way religious leaders and people in Indonesia react to the Ahmadiyah occurred after the year 2000, with physical violence escalating in some areas, especially West Java and Lombok. In 2005, the Indonesian Council of Ulama renewed and strengthened its 1980 *fatwa* that declares the Ahmadiyah as not part of Islam. At that time, the Council asked the government to completely ban the organisation. Attacks on the Ahmadiyah around this time intensified, targeting their headquarters and mosques, and disrupting their meetings.¹⁰⁵

105 To understand the turn of events around this time, see Martin van Bruinessen, ed., *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn"* (Singapore: ISEAS, 2013); with regard to MUI and the Ahmadiyah, see Moch. Nur Ichwan's chapter in the book: "Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy".

The perpetrators of the attacks were hard-line Muslim groups, including some vigilante groups, many of which came into existence only after the *Reformasi* of 1998. The two largest and oldest Indonesian Muslim organisations, Muhammadiyah and Nahdhatul Ulama, disagreed with the Ahmadiyah teachings but in general were involved in more civil debates. Even if there were tensions here and there, they never became sustained attempts to attack the group and destroy their properties. Weak law enforcement, even in cases where physical violence has taken place, is another factor that has contributed to an increase in conflicts and violence against the Ahmadiyah. It is difficult to deny that in the majority of attacks the perpetrators were given space by the police in name of getting rid of defamation of Islam.¹⁰⁶ Such conduct, when systematic, can reflect a policy of acquiescence and encouragement of persecution by governmental institutions.

In June 2008 in the capital city Jakarta there was an attack not on the Ahmadiyah themselves but on a group of civil society organisations known for defending the rights of Ahmadis. Following the attack, the government issued a Joint Decree (by the Ministers of Religious Affairs, Home Affairs and the Attorney General), which restricts the activities of the Ahmadiyah severely. The Joint Decree was issued allegedly to maintain public order. The fact that police allowed the attacks to occur, however, encouraged the violation of public order and encouraged further such events. Attacks on the group, in fact, continued. While the attacks took place sporadically and generally did not claim any lives, properties were destroyed (including houses and mosques) and victims were injured. Police were often present but did not intervene. The incident in Cikeusik village, West Java, in February 2011 was the most brutal, resulting in three deaths (one other death reported was in 2001, in Lombok, West Nusa Tenggara.)

In the case in Lombok, attackers murdered three Ahmadis in front of the police when they defended their house against a mob. National and international human rights organisations as well as foreign countries reacted to this incident very strongly. The attackers were tried and received light sentences of 1 – 6 months in prison, while an Ahmadi involved in the incident was also sentenced to prison because he was regarded as guilty for attacking the attackers in self-defence. His actions were regarded as contributing to provocation for the attack when he refused to leave the scene on the recommendation of the police before the attack started. In the aftermaths of the Cikeusik incident, further regulations were issued at the local level to restrict the Ahmadiyah activity, including in the district where the incident took place. The incident apparently was taken as a proof that Ahmadiyah, due to it's being a deviant sect, disturbs public order. Justice institutions in such cases, rather than protecting the victims of violence, appear to regard the victims as the “perpetrators”, prosecuting them and blaming them for the violence perpetrated against them.

Another form of persecution of the Ahmadis is that some groups have been forcibly relocated from their homes and are unable to return. Since 2006 there are more than 100 Ahmadi refugees living in Mataram, West Nusa Tenggara. They were forced to leave their homes from different villages in the area and ultimately ended up in an unused government building. With no regular supply of basic needs and a shortage of clean water and electricity, they have lost not only their right to practice their religious beliefs but also basic rights to property and physical security from violence. Their civil and political rights are also being eroded, such as access to education for their children and the right to vote in general elections. In other places, some face discrimination in civil administration, such as in registering marriage. With all of these incidents, the Ahmadis can be considered as the group suffering the worst persecution in Indonesia today.

106 This was also the conclusion of the NCHR report on the Ahmadiyah. See footnote #40.

2. *Shi'a community*

The Shi'a have also had a very long history in Indonesia, although they were not always considered to be separate from the mainstream Islam of the archipelago. There is evidence that, to some extent, Shi'a practices have permeated some local cultures and are not considered specifically Shi'a anymore. A rise in attention to Shi'a in Indonesia (as well as other Muslim countries) occurred after the 1979 Islamic revolution in Iran, which is a country of Shi'a majority. More books on Shi'a were published, and more people were attracted, which in turn also attracted controversies. Unlike the Ahmadiyah, although Shi'a Islam has different theological teachings and practices, international Muslim leaders and organisations generally accept it as part of Islam.¹⁰⁷ An estimate puts the number of Shi'a followers in Indonesia to be between two to five million.

There were debates about the presence of the Shi'a, but as a group they are in general less visible as they have not, until recently, organized themselves formally and do not usually have their own mosques. Verbal campaigns against Shi'a have seemingly existed for some time, but even after increased attacks on the Ahmadiyah around in 2005 the Shi'a community was not specifically targeted. As analysed by Sidney Jones, the recent anti-Shi'a movement consists of several strands: anti-Shi'a discourse promoted mostly by the pro-Saudi salafi groups; the local incidence of violence in Sampang, Madura (East Java); and most recently, anti-Shi'a sentiments among hard-line Muslim groups triggered by the Syrian conflict.¹⁰⁸

107 In 2005 the Jordanian King convened an international Islamic conference in which more than one hundred Muslim leaders, many of whom are regarded as authoritative leading scholars internationally, from tens of Islamic countries signed the *Amman Message*. Among other things, the Message mentions groups considered as within Islam. Mainstream Shi'a is one of them. The number of signatories has now reached more than 500. See <http://www.ammmessage.com/>.

108 Sidney Jones, "Sisi Gelap Reformasi Indonesia: Munculnya Kelompok Masyarakat Madani Intoleran", presented in Nurcholish Madjid Memorial Lecture, Paramadina University, December 19, 2013.

The second strand was initially marked by an incident in late December 2011, when a small Shi'a community in an isolated village in Sampang was attacked. Tensions had been building in the area for several years involving a complex relation between the local head of district, the religious leaders who saw Tajul Muluk, the young leader of the Shi'a community, as their rival, and an internal conflict within Muluk's family. Ultimately the issue that was used to mobilize people was the heresy of the community. Just like in the Ahmadiyah case, the issue of heresy can be directly related to the crime of defaming religion. In December 2011, the Shi'a community was forced to flee their homes. The community returned to their village in January 2012, but the public debate about the heresy of the Shi'a continued. Eventually Tajul Muluk was charged under Article 156A of the Penal Code with defamation of religion.

On the 26th of August 2012, with their leader already in prison, a more coordinated attack took place on the Shi'a in the same area. This time one Shi'a follower was killed and more than 30 houses were burned down. The families fled their homes again, but now they could not come back. More than 100 persons were initially housed in the Sampang Stadium and were then relocated to Sidoarjo, outside the island, approximately a two-hour journey from their village. They are still there today. The central government has given conflicting signs as to whether they are committed to returning the people to their village. The local (province and district) governments, on the other hand, seem to regard that the issue is settled and that relocation to Sidoarjo is the solution. The people themselves refuse permanent relocation and still demand that the government helps to return them to their village and to guarantee their safety. Local officials used the defamation of religion law to prosecute victims of persecution and denied them basic protection from violence, thus acquiescing in and encouraging the persecution.

So far the case with the Shi'a community in Sampang is isolated. Even other Shi'a communities in nearby villages have been safe. However while they can still organize their programs and public rituals in many places, a very recent development, which may not be directly related to what happened in Sampang, is the rise of nation-wide anti-Shi'a campaigns. In 2013 threats were made to disband the yearly Shi'a Ashura rituals that have normally been held in several cities, and others were cancelled. On March 2014, a large anti-Shi'a declaration was held in Bandung where protestors demanded that the government ban the group, among other things. There were concerns that similar to what occurred when the wide anti-Ahmadiyah movement was consolidated in 2005, this kind of gathering would be replete with anti-Shi'a hate-speech. The Ashura rituals in November 2014, however, did not repeat the incidents in the previous year; in general the rituals in many places ran smoothly.

3. "Unofficial religions"

While the term "official religion(s)" is not used, the Law on Civil Administration mentions "religions which are not recognized yet". As has already been explained in some detail in the Introduction to this report, religious traditions other than the six so-called "world religions" (including, in fact, other generally recognized "world religions", such as Judaism) are not regarded as "religion" *per se* in Indonesia. These are *Aliran Kepercayaan* (lit. stream of spiritual belief) and what scholars term as "indigenous religions". Due to the way religious affiliation is administered, followers of these religious traditions tend to be discriminated against.

Firstly, the difficulty in registering their religions for the purpose of obtaining a national identity card has many implications. These groups, whose religious affiliation remains largely unrecognised by the state, were associated with the Communist Party in the 1960s and therefore seen as the political rival of religious communities. There are reports about the difficulties stemming from the religion column

on the ID card. The Law on Civil Administration provides a way out, by allowing citizens the opportunity to leave the religion column blank (or to fill it in with the term "Others"). However, this still retains the distinction between these groups and the communities of world religions, which could still be the basis for discrimination. Furthermore, this half-hearted improvement has not been implemented uniformly across local government offices throughout Indonesia.

Additionally, however this form of non-recognition on a person's national ID card carries serious ongoing consequences in terms of the fulfilment of his/her rights. This includes: difficulties in registering the marriage of couples belonging to a group with no clear religious designation; obtaining birth certificates for children born out of such marriages; registering these children in public schools; and determining what religious education the children can get in school since religious education is a compulsory subject. Later in life, these issues can reduce access to employment, both in terms of recruitment for employment and job promotion.¹⁰⁹ In this way, administrative discrimination that starts from the ID card may amount to serious restrictions on the enjoyment of people's fundamental rights. There are not many violent conflicts surrounding this group, but violence can occur when certain hard-line groups assume that these individuals practice a deviant religion.

4. Christian communities

Similar to the Ahmadiyah and Shi'a cases, the experience of Christians with regard to enjoyment of fundamental rights varies across geographical locations, partly reflecting demographic differences. At the national level, Protestantism and Catholicism are regarded as two separate religions and both have been acknowledged as such by the Ministry of Religious Affairs since the first year

¹⁰⁹ Many such stories are recounted in Indonesia's Human Rights Working Group position paper, *Menuntut Pemenuhan Hak-hak Konstitusional Penghayat Kepercayaan terhadap Tuhan Yang Maha Esa*, 2011.

of its establishment. In this regard, the Protestant and Catholic Directorates in the MORA receive some funding for religious education (schools and religious tertiary education as well as informal education) and religious facilities. To some extent, Christian holidays are also acknowledged as national holidays.¹¹⁰

On the one hand, Indonesian Christians, who account for ten percent of the population, are generally free to practice their faith and by law there is no difference in their civil, political and economic rights. On the other hand, more complex situational negotiations are reflected in practice. For example, Christians occupy several official positions up to the level of Minister as part of an unwritten convention (in all Cabinets since Independence). This, however, does not mean that in practice selection of public officials is fully based on merit, without consideration of religious (as well as ethnic) background. These kinds of issues are seldom disclosed completely, and as such it is difficult to obtain reliable data about these negotiations. Regardless of what the facts are, these political issues may strengthen mutual suspicion between certain Muslim and Christian communities. A significant source of Muslim-Christian distrust was the government's anti-communist policy after 1965, which opened the space for religious conversion as a way to oppose communism. The number of Christians increased significantly during that period, but in the end it created an air of suspicion about "Christianization" with impacts that endure until today. This theme is recurrent in contemporary disputes over houses of worship, and has been used to mobilize objections against churches. Unfortunately, certain Christian groups strengthen this image of "Christianization" through what is perceived as being an aggressive form of evangelical conduct.¹¹¹

110 See in particular Section I.B.2(d) of this report regarding observance of religious holidays.

111 International Crisis Group, *Indonesia: "Christianisation" and Intolerance* (Asia Briefing No. 114), Jakarta/Brussels, 2010.

One trend that deserves particular attention is the increasingly visible difficulties experienced by Christians in building their houses of worship over the past few years. The regulations about building houses of worship are sometimes the cause of the difficulties associated with this process for Christians. Several prominent examples were discussed in Part I of this report.¹¹² Anecdotal evidence would tend to suggest that many other churches in different parts of Indonesia have experienced the same or similar difficulties.¹¹³

According to data issued by the MORA in 2013 (collected through local MORA offices), out of 388,448 houses of worship in Indonesia, there are 289,951 mosques (75%), 61,796 (16%) Protestant churches, 7,907 (2%) Catholic churches, 24,801 (6.4%) Hindu houses of worship, 3,342 (0.9%) Buddhist and 651 (0.2%) Confucian houses of worship. Drawing from this data, MORA found that the Hindus have the largest number of houses of worship per capita, followed by the Confucians and the Protestants (one church for 267 Protestants). Muslims and Catholics have significantly less houses of worship (one church for 874 Catholics and one mosque for 715 Muslims).¹¹⁴ One conclusion that has been drawn by some government officers from this data is that despite all of the difficulties faced by Christians (and in particular, Protestants), in

112 Note in particular the discussion concerning the Taman Yasmin Church and the Filadelfia Church, both in West Java; and the closing of 16 churches in the district of Aceh Singkil in May 2012. See in particular Part I.B.2.b and Part I.C.1.b of this report.

113 As is evident from the annual reports on religion in Indonesia published over the last few years, the building of houses of worship constitutes a major issue in relations between religious communities and with the state. Indeed, it is not only Christians who experience difficulties in building their houses of worship. There are cases of Muslims in non-Muslim neighbourhoods, as well as Hindus and Buddhists in neighbourhoods dominated by other religious communities who found it challenging to build their houses of worship. However, partly reflecting the fact that Christians are the largest minority and due to the existence of many denominations in Christianity, issues over churches occur more frequently.

114 Ministry of Religious Affairs, *Laporan Tahunan Kehidupan Keagamaan di Indonesia 2013, 2014*, 14-15.

general they have more houses of worship *per capita*, implying that their needs should have been fulfilled. Looking at the issue more closely, however, reveals deeper problems.

The reports published in Indonesia since 2008 provide sufficient knowledge about such events in the past few years. The patterns of problems with churches are similar, mostly centred on the regulation of houses of worship as discussed in Part I. In many cases, the main reason cited to object to the building of churches is that they are illegal in the sense they do not have a licence, or that religious services are held in a house or a rented shop..

Anecdotal evidence suggests that it is quite difficult to get a licence to build a church in non-Christian majority areas. First, part of the process to get a licence is to show proof of at least 90 users and to obtain a written approval 60 other persons from the neighbourhood. The idea behind the regulation is that there should be social acceptance of the house of worship, but this requirement does not always work as expected. It can become a means to express intolerance and hinder the attempt to build a place of worship.

One critique that has been mounted against the government is its repeated failure to protect affected Christian communities from attacks or threats from these kinds of organisations. Additionally, in a number of cases the churches have fulfilled the requirements spelled out in the regulation, but their licence still is not issued. While the incidents do not affect churches uniformly, a very significant impact is the loss of legal certainty that results in the denial of the enjoyment of basic rights, including rights to property and physical security from violence.

E. Significant Events of Inter-Religious Conflict

Between 1990 and 2008, more conflicts took place during the transition to democracy (1998-2004) than in the previous New Order period (1990-1998) and the new democratic regime (after 2004).¹¹⁵ During the transition to democracy, there were several large communal conflicts between Muslims and Christians, which involved the mobilization of religious communities. The worst violent conflicts took place in Ambon and Maluku, and in Poso, Central Sulawesi. These originated as local conflicts but then drew people from other places to join in the violence. In Ambon and Maluku some 10,000 people died. In Poso, hundreds of Muslims and Christians were killed. Between 2003-2004, however, peace agreements were signed and most of the communal conflicts were contained. The consequences of the conflicts, such as increasing Muslim-Christian segregation in Ambon, remain until today. However, mostly it was the community itself that controlled several potential conflicts that threatened to escalate in recent years.

Starting from 2005, inter-religious conflicts tended to be smaller but more dispersed geographically. Two main sources of these conflicts concern issues around defamation of religion and houses of worship. These conflicts are smaller, claim less lives and are more localized, but are also more frequent. The main sites of conflict that have been identified are the three adjacent provinces of West Java, Banten and Jakarta, East Java, Central Java, and North Sumatera, but conflicts are spreading to other areas. The conflicts around those issues overlap with places where violations of religious freedom took place. An interesting phenomenon here is what Crouch¹¹⁶ calls the “judicialization of inter-religious disputes”, that is when conflicting

115 Ihsan Ali-Fauzi, Rudy Harisyah Alam, and Samsu Rizal Panggabean, *Pola-pola Konflik Keagamaan di Indonesia* (1990-2008) Yayasan Wakaf Paramadina (YWP), Magister Perdamaian dan Resolusi Konflik, Universitas Gadjah Mada (MPRK-UGM), The Asia Foundation (TAF), Jakarta, February 2009.

116 Melissa Crouch, *Law and Religion in Indonesia Conflict and the Courts in West Java* (London: Routledge, 2014).

groups exploit laws and regulations to justify their grievances. These conflicts are not always violent, but tense situations are easily exploited to transform the disputes into violent conflicts. In this regard, crucial moments such as local elections sometimes exacerbate the situations.

F. Significant Events of Terrorism and/or Terrorist Threats

Recent terrorism in the name of religion has taken place in the context of democratization, but appears to have been triggered by international events (such as 9/11) and the ensuing repercussions in Muslim countries. Since 1998 there have been several bombings, but beginning in 2002 larger bombings became more frequent, taking place every year (Kuta, Bali, 2002; JW Marriott Hotel, Jakarta, 2003; Australian Embassy, Jakarta, 2004; and Jimbaran and Kuta, Bali 2005). After 2005, due mostly to successful counter-terrorism measures effected by the police there was a significant weakening of terrorist activity, though it does not mean that the threat is completely over. In August 2013, a bomb exploded in a Buddhist temple in Jakarta, apparently related to concerns about the persecution of the Muslim Rohingya minority in Burma.¹¹⁷

Terrorism is another kind of conflict that for some time was distinguished from communal conflicts as well as the newer trend of smaller but more frequent and dispersed conflicts. It was vigilante groups, not terrorists, who were usually responsible for the latter. Along with the decrease in acts of terrorism, however, there was another trend that links these disparate kinds of violence and groups of actors. After the peace agreement in 2003 ended the communal conflict in Poso, the place became a site of terrorist acts where bombings and mysterious

killings took place.¹¹⁸ The 2011 bombings of a mosque in the police complex in Cirebon and an evangelical church in Solo were carried out by suicide bombers (a mode of terrorism) who were known to be active in vigilante groups that have pursued anti-Ahmadiyah and anti-vice campaigns.¹¹⁹

The latest phenomenon of the involvement of around 100 Indonesian militants in the conflict in Syria (and more recently moving to Iraq) may result in additional terrorist activities in Indonesia.¹²⁰ In this respect, it is important to note that the Syrian conflict is conceived as a sectarian Sunni-Shi'a conflict by the hard-line Indonesian media. The sectarian agenda, as discussed in many places in this chapter, has found its legal justification in the defamation of religion law.

G. Significant Cross-Border Incidents

As of April 2014 UNHCR states there were 7,181 registered asylum seekers and 3,489 refugees in Indonesia, coming from Myanmar, Sri Lanka, Afghanistan, Iran, and Somalia.¹²¹ It is not clear how many of them left their countries because of religious conflicts. With regard to refugees or asylum-seekers from Myanmar, however, many of them are Rohingya who fled persecution in their home country. A 2012 report mentions that there were around 400 Rohingya in Indonesia, mostly in North Sumatera.¹²² In April 2013, there were riots between Rohingya refugees and illegal fishermen from

117 Institute for Policy Analysis of Conflict, *Weak Therefore Violent: The Mujahiddin of Western Indonesia* (IPAC Report No.5), December 2013. See also the section on Indonesia in Freedom House's *Freedom in the World 2014* report: <http://www.freedomhouse.org/report/freedom-world/2014/indonesia-0>.

118 International Crisis Group, *Indonesia Background: Jihad in Central Sulawesi* (Asia Report No. 74), Jakarta/Brussels, 2004

119 International Crisis Group, Indonesia: From Vigilantism to Terrorism in Cirebon *Asia Briefing No.132*, 2012.

120 On the influence of recent Syrian conflicts, see two recent reports issued by the Institute for Policy Analysis of Conflict, *Weak Therefore Violent: The Mujahiddin of Western Indonesia* (IPAC Report No.5), December 2013; and *Countering Violent Extremism in Indonesia: Need for a Rethink*, (IPAC Report No.11), June 2004.

121 <http://www.unhcr.or.id/id/siapa-yang-kami-bantu>.

122 <http://nasional.inilah.com/read/detail/1889302/inilah-jumlah-pengungsi-rohingya-di-indonesia>.

Myanmar in the immigration detention facility in Belawan, North Sumatera. This conflict led to eight deaths.¹²³ The significance of the Rohingya issue in Indonesia is evident in the bombing of a Buddhist temple in Jakarta in 2013; there is a concern that Indonesian Buddhists could become a target of radical extremists as a way to retaliate against the persecution of the Rohingya.¹²⁴

H. Governmental Response

The problems discussed in the previous sections concerning persecution and inter-religious conflicts, especially the trend noted above of the judicialization of inter-religious disputes, lie partly in policies that open the possibility for discrimination, weak law enforcement, and intolerance. One of the legislative measures to deal with these conflicts was the enactment of the Law on the Management of Social Conflict that addresses inter and intra-religious disputes. It draws a connection between respect for FOTCR and the principle of non-discrimination with regard to both the prevention and resolution of conflict. Social conflict needs to be handled by taking into account cultural, religious and ethnic diversity (Art. 2 (c)). Conflicts shall be prevented by, among other things, law enforcement, without discrimination based on religion or other sources of diversity (Art. 9(e)). To keep the peace, everyone shall develop tolerance and mutual respect for others' freedom of religion and belief (Art. 7(a)), acknowledge equality regardless of differences in ethnicity, religion, belief, sex, or skin colour (Art. 7(d)), and respect the views and freedom of others (Art. 7(f)).

123 <http://www.republika.co.id/berita/internasional/asean/13/04/05/mksk7w-pbb-khawatir-konflik-rohingya-meluas-ke-asean>.

124 The sentiment to defend the Rohingya actually is present not only among the extremists, but also moderate Muslim organisations and even the parliament. See <http://www.understandingconflict.org/conflict/read/9/INDONESIAN-EXTREMISTS-AND-THE-ROHINGYA-ISSUE>.

A law on inter-religious harmony has been in draft form since 2003, but has attracted strong controversy. The law contains provisions taken from existing lower level regulations concerning all aspects related to religious life (religious holidays, houses of worship, proselytization, foreign aid for religious organisations, as well as the criminal law on the defamation of religion). The draft law was again introduced to the national legislative agenda in 2009 with minor revisions. Part of the reason for its re-emergence was to respond to increasing inter-religious disputes. In 2011 it was prioritized and discussed briefly in the parliament, and still drew controversy. If enacted as in the draft, it would retain the substance of the defamation of religion law with no significant change. In 2012 it was dropped from priority before the discourse went far enough, and has not been prioritized again until now. While in 2003 the draft was rejected outright by many civil society organisations, in 2011 it motivated some CSOs to propose revisions and counter-legal drafts, one of which would make it not a law on inter-religious harmony, but religious freedom.¹²⁵

There are two other legislative responses to specific inter-religious disputes, both which of have already been discussed in depth in this report. The first is the 2008 Joint Decree by the Ministers of Religious Affairs, Home Affairs and the Attorney General that significantly restricts the activities of Ahmadiyah followers.¹²⁶ The second legislative response is the revision of the 1969 regulation in houses of worship by a 2006 Joint Ministerial Decree of the Ministers of Religious Affairs and Home Affairs. While the Decree does improve the older regulation, and ensures that the government must guarantee that the needs surrounding houses of worship are fulfilled, its establishment of Forums for Inter-religious

125 The draft law and responses to it are discussed in Melissa Crouch, 'Shifting conceptions of state regulation of religion: the Indonesian Draft Law on Inter-religious Harmony', (2013) *Global Change, Peace & Security*, 1-18.

126 See in particular Part II.A, and Part II.D.1 of this report. The Decree was issued in response to attacks on the Ahmadiyah which is regarded as a source of public disorder to due its teachings which have been deemed as 'deviant'.

Harmony have proved to have mixed results.¹²⁷

In terms of the prosecution of perpetrators, in large conflicts such as the 2011 anti-Ahmadiyah attack in Cikeusik and the 2012 anti-Shia attack in Sampang, the perpetrators of specific attacks were at least nominally brought to justice. However, there has been criticism of the light sentence of 1-6 months that was received by the killers of the three Ahmadis, and the fact that one Ahmadi involved in the conflict was also sentenced to six months in prison. In the Sampang case, the perpetrators of the attack were put in prison, but those regarded as the leaders of the attack went free. Other than direct action towards actors in violent conflicts, human rights activists have suggested that the police could attempt to prevent attacks by acting on the emergence of hate speech, which usually precede such attacks.

I. Analysing the Trends

The discussions heretofore show that understanding trends in freedom of thought, conscience and religion in Indonesia is not straight forward: there does not appear to be a linear trajectory in regard to the manner in which the issue is dealt with, in part because national policies and laws appear to be subject to distinct local variation in interpretation. However, in terms of the enactment of laws, there appear to have been two countervailing forces at work. One is promotes greater freedom, while the other seeks to restrain the progressive changes made. One way to describe these developments is in looking at the international human rights conventions that Indonesia has ratified (especially ICCPR and its two General Comments) as the normative benchmark establish by Indonesia's government. In this way, it may be argued that the sweeping changes post-1998 started a series of progressive changes in the direction of strengthening the foundation of FOTCR, but there has been a failure of harmonization. In this light, the task of the government is to strike out objectionable laws, such

¹²⁷ See *CRCS Annual Report 2009, 2010*, 23-28.

as the old law on the defamation of religion.

However, rather than viewing the adoption of these international conventions as creating a new normative benchmark, one may also see this as the latest development in Indonesian history whereby progressives attempt to challenge a prevailing orthodoxy that do not wish to enable such a shift toward secularisation within the Indonesian state to ever truly take hold. Viewed in this light, Indonesian governmental institutions will always be characterized by a duality in which certain forces will continue push for more religious freedom, and other forces will continue to assert the old politics of religion placing greater emphasis on harmony and stability. These tensions and the attempt to find a "middle path" between them is best captured in the 2010 constitutional review of the Defamation of Religion Law, where the Court itself indicated it was trying to find a "middle path".¹²⁸ It may be debated whether the Court was successful in this regard, but this shows the strength of the pull of the old politics of religion until today.

As is clearly evident from the review of redress mechanisms provided in Part I.C of this report, the government and the judiciary institutions (especially the Constitutional Court) maintain that human rights in general, and more particularly FOTCR, have to take into account Indonesian political and social-cultural history, and that such accommodation is within the permissible bounds of the interpretation of international law. This position continues to be maintained, despite the fact that Indonesia has not entered any reservations pertaining to freedom of thought, conscience and religion in its ratification of international human rights conventions.¹²⁹

¹²⁸ Constitutional Court Decision No.140/PUU-VII/2009, 270.

¹²⁹ Judging from the process of the review, it seems that at the societal level, including among moderate Muslim groups, this latter view is also more prevalent

These debates show that despite sweeping reforms in the post-1998 period, there has been no unequivocal movement in support of freedom of thought, conscience and religion in Indonesia. It seems likely that the tensions identified here will remain a concern for some time, and will continue to frame the debates on freedom of religion for some time.

However, regardless of this theoretical debate, a more unambiguous question relates to the presence of violent conflicts as a result of this seeming ambiguity in the approach to issues pertaining to religious freedom. The conflicts occurred because of some laws and regulations that (potentially) discriminate against vulnerable religious groups, but also because of weak or absent law enforcement. The state's inaction in such cases has emboldened intolerant groups and may be viewed by them as acquiescence or encouragement. While the theoretical debate takes time and the outcomes are not all predictable, the least one can say is that there should be zero tolerance for violence. If this stance were taken, the situation with regard to FOTCR would already look much brighter.

PART THREE: NEGATIVE AND POSITIVE CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

In this section negative and positive contributing factors will be discussed in terms of different actors relevant to the issue of FOTCR. Post-1998 Indonesia is a very open arena where many actors, both state and non-state, assert their influences to shape the country. Perhaps unsurprisingly, it can be challenging to determine which actors contribute positively and which actors contribute negatively to the situation of religious freedom in Indonesia: in many respects, actors can have a both negative or a positive impact on the situation of religious freedom in Indonesia, depending on the context and time-frame in which their role is viewed.

1. *The State, the Muslim majority and democratization*

In their report to the Human Rights Council during the second Universal Periodic Review (UPR, May 2012), Indonesia's representatives mentioned the challenge of human rights in a newly democratic country: "While democracy brings freedom, it can also provide openings for extremists to exploit the democratic space for their own gains, often promoting religious intolerance and triggering communal conflicts, against democratic principles. For Indonesia, given its size and diversity, the challenges are multiplied."¹³⁰ This statement summarizes well, though only partially, the situation in guaranteeing FOTCR in today's Indonesia. Other challenges include some weaknesses within the state, now also diversified. The negative contributing factors come from the society as well as from the state.

Indonesia has traditionally been a pluralistic society, but religion has always played an important role in the lives of its citizens. Muslims, as the majority religious community, have always played a central role in politics, so the character of Islam developed here to a significant extent determines the state-religion relation, inter-religious relations, and FOTCR in general. While there has always been a significant Muslim portion of the population who maintains aspirations for an Indonesia that is formally "more Islamic" and as such it in tension with the pluralist democracy, results of the free general elections reflect the fact that Muslims are diverse and those committed to a plural, democratic Indonesia are the majority. More specifically, a force that Robert Hefner calls "Civil Islam" is central in the 1998 democratization process.¹³¹ Its proponents include prominent Muslim intellectuals such as Nurcholish Madjid and Abdurrahman Wahid (who later became the President in 1999-2001).

130 Report of the Working Group on the Universal Periodic Review – Indonesia, Document No. A/HRC/21/7, 5 Juli 2012, p. 4.

131 Robert Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000).

This reformist, pluralist democratic movement developed in 1980s and 1990s as an alternative to “statist Islam”, a political struggle for an Islamic state that had been dominant for decades, and played an important role in Indonesian democratization in 1998. Commenting on the pre-1998 development, Hefner warned that the potential of civil Islam might be hindered by the uncivil authoritarian state. After the 1998 democratization, while the state is more ambiguous, the uncivil society has become a more important competitor for civil Islam.

2. *Extremist and conservative views espoused by religious and quasi-religious organizations*

As noted in the above report to the Human Rights Council, political liberalization has also opened up a space for certain uncivil forces to be given voice and a place in Indonesian political life. Groups previously repressed by the authoritarian regime now have equal rights to freedom of expression. The rise of new vigilante and extremist violent groups are seen as part and parcel of the weakening of the previously authoritarian state.

Additionally, the oldest and largest moderate Muslim organisations (namely, *Muhammadiyah* and *Nahdhatul Ulama*) have also been experiencing tensions between their more liberal and conservative factions, and while it would be wrong to characterize the views espoused by them as ‘extremist’ they have evinced a tendency toward being more conservative. These two organisations, which make up a significant part of “civil Islam”, continue to be central and dominant representatives of moderate Islam. This became evident during the 2010 Constitutional Court’s review of the Defamation of Religion Law. Hence, while they are moderate, tolerant, and strongly anti-extremist, they are not liberal. In this respect, while they accept the universality human rights in general, they are concerned to maintain the centrality of religious values as a source of social norms. On minority issues, they hold a constructive, inclusive view, but may have not realized their full potential to shape the discourse among the majority

of Indonesian Muslims.¹³²

Another case in point is the semi-governmental Council of Ulama (*Majelis Ulama Indonesia* or “MUI”) that is also undergoing transformation. Established by the New Order government in 1975, MUI was designed to function as the moderate, pro-government representation of Islam. However, since 1998, it has repositioned itself to be more independent from the state, aligning its stance closer to factions of Muslims who want to assert a more visible Islamic identity, yet at the same time pressures the state to enforce its *fatwa*, which in many cases represent conservative Islam. In this new function it assumes for itself a role to define and control Islamic orthodoxy.¹³³ It is here that the MUI may become a negative contributing factor. Nevertheless, on other issues where it is easier to draw the line, such as in the case of terrorism (or more recently, responding to the rise of the self-titled Islamic State in Syria and Iraq), its stance is clear: it rejects terrorism and even works together with state counter-terrorism agency, to the disappointment of the hard-line Muslim groups.¹³⁴

The state’s effort to develop FOTCR works in this arena, with all its strengths and weaknesses. The MUI’s (and other Muslim organisations’) support to counter terrorism is significant in lending legitimacy to the state’s effort to curb terrorism in the name of religion. However, its *fatwa* that Ahmadiyah is not part of Islam, for example, does not help to encourage the police to take a stance

132 Robin Bush and Budhy Munawar Rachman ‘NU and Muhammadiyah – Majority Views on Religious Minorities in Indonesia,’ in Bernard Platzdasch and Johan Saravanamuttu (eds), *Religious Minorities in Muslim-majority States in Southeast Asia: Areas of Toleration and Conflict* (Singapore: ISEAS, 2014).

133 See Moch. Nur Ichwan, “Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy”, in Martin van Bruinessen, ed., *Contemporary Developments in Indonesian Islam: Explaining the “Conservative Turn”* (Singapore: ISEAS, 2013), 60-104.

134 See Jeremy Menchik, “Illiberal but not intolerant”, Inside Indonesia *Inside Indonesia* 90: Oct-Dec 2007; <http://www.insideindonesia.org/weekly-articles/illiberal-but-not-intolerant>.

against violent anti-Ahmadiyah movements. It may even have encouraged bold vigilante actions against non-conformist religious groups.¹³⁵

3. The Police

The police force itself has performed variably. The area where Indonesian police have been praised is in dealing with terrorism, though there are also criticisms about the way the police handled some suspected terrorists. By many accounts, however, the work of the police in this regard is considered successful. Besides prosecuting convicted terrorists, in 2010 the National Anti-Terrorism Agency (*Badan Nasional untuk Penanggulangan Terorisme*) was established with programs on deradicalisation and counter-radicalisation. The situation is different in the case of inter- and intra-religious conflicts, in which the actions of the police have often been criticised. Even though there are also a few examples where police resisted pressure from violent religious groups and in that way successfully protect the minority,¹³⁶ such as what happened in a village in Kuningan West Java in 2011, in general the police have not done what they were supposed to do to protect vulnerable religious minorities.

4. Ministries

Within the state, the President and Ministers are not always of one voice on religious freedom issues. Their political support is, to say the least, greatly needed. The most relevant Ministries here are the Ministries of Religious Affairs, Home Affairs, and Law and Human Rights. While human rights issues clearly are closer to the jurisdiction of the Ministry of Law and Human Rights, religious freedom issues find their home more prominently in the Ministry of Religious Affairs. This may reflect the ambiguity of the role of the Ministry, which does not deal

only with administration of religious communities, but also, in one way or another, with religious issues within each community. This involvement of religion within the state is illustrated in the fact that high-ranking officials within each of the divisions representing different religions in the Ministry usually have theological degrees. This is an illustration of the historical fact that the make-up of the Indonesian state has defied the strict separation of religion and the state since its inception.¹³⁷

The Ministry of Religious Affairs has traditionally been a moderating and pro-development force within the religious communities it represents through its religious education function.¹³⁸ In general, regardless of the question of effectiveness, in addition to the general directorates representing religions, there is a centre for inter-religious harmony that is directly under the general secretary of the Ministry.

Despite this generally moderate stance toward religious on issues related to religious freedom, the Ministry has not shown itself to be a progressive force. This may be said to be the case with other ministries as well. Of particular note is the fact that the governmental ministries who sought a review of the Law on Defamation all defended the law in their submissions to the Constitutional Court.¹³⁹

On more specific issues such as the government's perspective on the Ahmadiyah and the Shi'a, the Ministry in general has been very careful to avoid making theological judgments about the groups and to maintain a position that their stance simply reflects the mainstream Muslim view. An exception is the previous Minister of Religious Affairs,

135 See for example Luthfi Assyaukanie, "Fatwa and Violence in Indonesia" (2009) *Journal of Religion and Society* 11: 1-21.

136 Ihsan Ali-Fauzi, et.al., *Pemolisian Konflik Beragama*, Pusad Paramadina, 2013. The book describes eight cases of policing of inter and intra-religious disputes.

137 Explicit pronouncements to that effect are available in the 2010 Constitutional Court's review of the defamation of religion law as discussed above. Another interesting example that shows how the state sees it as its task to improve citizens' piety can be seen in the discussion on the law on correctional centers, discussed in Part One B.4.d on persons deprived of their liberty.

138 More literature is available on Islam than on other religions. In the case of Islam, see for example Ichwan (2006) and Saeed (1999).

139 See in particular the discussion at Part II.C.1.a. above.

Suryadharma Ali,¹⁴⁰ who on occasion has suggested that the Ahmadiyah and the Shi'a are deviant (though later he tried to qualify his statements). On the issue of churches which do not get a licence to build their houses of worship, or whose licence was revoked, in general he maintains that it is all an administrative issue that has nothing to do with discrimination or intolerance.

5. *The President's office*

Indonesia's previous President Susilo Bambang Yudhoyono frequently and strongly stated his commitment to maintaining the tolerant character of Indonesia and upholding religious freedom, but the reality on the ground was different. Part of the issue appears to have been that his subordinates did not always share his stance and he did not insist on it; furthermore, there were several occasions in which he made statements that reflected his taking sides with the more conservative religious groups. A case in point was his statement that opened the Seventh National Congress of the MUI in July 2005, the Congress that issued the *fatwa* declaring the Ahmadiyah as outside Islam. In his speech, Yudhoyono asked the MUI to help the government by giving its views and *fatwa* to respond to issues related to Muslim life. He would "receive the thoughts, recommendations and *fatwas* from the MUI and *ulama* at any time, either directly to [him] or the Minister of Religious Affairs or other branches of government."¹⁴¹ In 2012, speaking at the UN General Assembly, he proposed that the UN member states adopt a legal instrument to prevent defamation of religion, to protect religious symbols and to promote dialogue between different faiths. Such an instrument is expected to prevent incitements to violence based on religion—this was

140 Minister Suryadharma Ali assumed his position in the 2009-2014 cabinet, but in May 2014 the Corruption Eradication Commission made him a suspect in a corruption case related to the management of *hajj* funding and soon he left his position. At the time of this writing his replacement has just been appointed.

141 www.presidentri.go.id/index.php/pidato/2005/07/26/370.html. Part of the statement is quoted in

at the time when Indonesia was recommended to annul its own defamation of religion law at the 2012 UPR forum.¹⁴²

On specific issues such as the relocation of the Shi'a community of Sampang, the President promised in July 2013 to return them to their village very soon, but it took until he ended his term in October 2014. On the issue of the Taman Yasmin Church, after all the legal avenues were exhausted and the Bogor Mayor still maintained the revocation of their licence, the President was expected to be the highest authority to intervene. Instead he took the position that, based on the law on regional autonomy, he could not constitutionally intervene in local affairs.¹⁴³

6. *Regional autonomy and local actors*

Beyond these specific cases, the new situation of regional autonomy, as a direct consequence of democratization, indeed has made the issue of religious freedom more complex. While religion is one of the sectors excluded from the authority of local governments, the head of the local government is responsible for maintaining public order in his or her area, and many of the issues related to religion as discussed in this chapter could indeed be interpreted to have elements of public order, including the need to nurture harmony between religious communities. This is true with regard

142 <http://www.thejakartapost.com/news/2012/09/26/yudhoyono-touts-blasphemy-ban-un.html>. It is stated here that the proposal was related to the decade-old attempts by the Organisation of Islamic Cooperation to push for anti-defamation resolutions in UN forums. However in April 2011, the OIC actually had dropped the initiative, replaced by a resolution that was adopted by the Human Rights Council as Resolution 16/18 on "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief" (Document No. A/HRC/RES/16/18, 12 April 2011)

143 <http://www.tempo.co/read/news/2012/02/06/173382077/Kasus-GKI-Yasmin-Presiden-Berdalih-Undang-undang>; for an alternative view by civil society organisations: <http://tekno.kompas.com/read/2012/10/24/1434385/kerukunan.hidup.beragama.urusan.pemerintah.pusat>.

to the local authorities governance of so-called 'deviant' sects, the issuing of licences to build houses of worship¹⁴⁴, as well as religious-based local laws.

Especially on the last issue, the NCVAW has pointed out in its reports on discriminative local laws that besides the structural issue of the review mechanism at the central state level (which is discussed in Part I of this chapter), two other problems are the conceptual and political issues related to the local governments. The conceptual issue concerns lawmakers' knowledge about Indonesian commitment to human rights and how they should be reflected in all regulations as well as the skill to draft laws that reflect the commitment. The political issue concerns the local political pressure to accommodate sectarian aspirations for the sake of obtaining votes that weakens the will of the political elites to eradicate discrimination. These weaknesses of local governments remain one of the main challenges in realizing a strong commitment to freedom of thought, conscience and religion in Indonesia.

PART FOUR: CONCLUSION

The situation with regard to freedom of thought, conscience and religion in democratizing Indonesia resists a straightforward assessment. The overall picture that emerges is one of pervasive tensions that began in 1945 and which have remained throughout different historical periods until today. Since 1998, while Indonesia's normative commitment to international human rights has become unquestionable, it has also become clear that in practice the situation is more complex and that infringement on, or denial of, religious freedom persists in a variety of forms. The lack of a separation between religion and state, the

administration of religion through state and semi-official institutions, the prosecution of minority beliefs under the rubric of religious defamation law, and political decentralization are all institutional factors which continue to enable religious freedoms to be curtailed in a manner that appears inconsistent with Indonesia's human rights obligations. The influence of groups propagating intolerance and persecution is another factor, though the strength of this influence varies locally, as does the degree of permissiveness, encouragement, or participation in persecution by local officials, police, or various kinds of vigilante groups.

In terms of legal developments, while religious freedom was already present as early as in Indonesia's 1945 Constitution, written even before the UDHR, post-1998 Indonesia shows a progressive stance to uphold human rights in general, and FOTCR particularly, which goes far beyond that initial commitment. This is shown in the insertion of an extensive bill of rights, the ensuing attempt at mainstreaming human rights, and the establishment of a number of new institutions, such as the Constitutional Court and independent bodies like the National Human Rights Commission and the National Commission for Violence Against Women. However, all of these developments must be considered in light of existing laws that continue to represent an older policy paradigm that emphasizes control, public order and harmony, sometimes at the expense of religious freedom. Human rights have been mainstreamed into newly enacted laws and regulations, but at the same time these laws have to be qualified to ensure that the protection of religious values, especially as asserted by some Muslim groups, occupies a central place in the state management of citizens' lives. The independent bodies such as the NHRC and the NCAVW have shown that they can work as mechanisms to check the implementation of human rights, but they do not have sufficient power to alter the situation as significantly as expected. This is especially true in light of the institutional factors that enable, permit, or protect denial of religious minority rights. The redress mechanisms are well in place, but they

144 It is to be noted that the regulation on the building of house of worship is contained in a joint ministerial decree (Ministers of Religious Affairs and Home Affairs) on the tasks of heads of regions (provinces and districts) to maintain inter-religious harmony, the empowerment of religious harmony forums, and the establishment of houses of worship.

have not covered all possible loopholes and, more importantly, also reflect the tensions between the old and the new.

In terms of FOTCR issues that deserve special attention, there are a few main problems that stand out. *First*, in almost all parts of this report, on legal developments, redress mechanisms, law enforcement and incidents of persecutions, the Defamation of Religion Law appears to serve two functions—as a source of the definition of ‘religion’ and as the basis of criminalizing religious activities deemed ‘deviant’ by the state. This 1965 law indeed occupies a central place in the history of state-religion relations and reflects a crucial point in the nexus between state and religion. The latest trend is that the law has been used to marginalize religions other than the six that receive special recognition, as well as to discriminate against minority but significantly large religious groups within a religion such as the Ahmadiya and the Shi’a. If the trend goes unchecked, it may soon hit other non-conformist groups. This tension does not always transform into violence, but leaves those minority religious groups vulnerable to attack. More importantly, the law provides a tool for the repression of allegedly “unorthodox” beliefs or minority religious practices in the name of preserving “public order.” But, as has been seen, in many instances public order is preserved by blaming the victims of violence rather than by prosecuting the perpetrators. Local law enforcement institutions, such as the police and prosecution, often do not protect the victims of violence and persecution and in some cases use the Defamation of Religion Law instead to prosecute them.

Second, while post-1998 terrorism in the name of religion and large violent communal conflicts that pitted different religious communities against each other have in general been overcome, more frequent inter-religious disputes have occurred. This has mostly manifested itself as between Muslims and Christians concerning houses of worship. It is surely not only about the administrative issues of how to find an arrangement agreed upon by all parties

representing different religious communities. The problems pertaining to houses of worship may be seen as symbolic of a decades-old mutual suspicion about the role and place of Christianity in Indonesia. This history of mutual suspicion finds its expression in several issues, such as suspicion of religion-based discrimination in employment or promotion in offices, regulation on religious education, child protection, and even the Law on Marriage. Today, tension over houses of worship is the most visible manifestation of this suspicion. As recommended in some reports, for these first two problems, besides improvement in terms of policies, a better system of law enforcement that is supported by the elite’s political will to resolve issues would help to improve the situation.

Third, the most recent development of decentralization has become an effective avenue to express aspirations for *shari’a*, which in many but not all cases has led to discrimination against religious minorities and women. The source of this phenomenon is partly in a strong religious identity that may be the motivation for a small group of conservative religious elites. More importantly and directly, *shari’a* by-laws and regulations are often being drafted and administered by local lawmakers who have limited competence and governance capabilities to do so. This is a serious problem, considering that ‘local’ refers to more than 500 provinces and districts/cities and thousands of lawmakers in local parliaments.

The very existence of difficult problems and a complex history may be a source of pessimism with regard to the prospect of religious freedom in Indonesia. However, optimism may come from the fact that, more than 15 years after the start of its democratization process, the situation does not appear to be characterized by a lawless jungle, but instead by a discrete set of issues that can be isolated, receive special attention and with time, hopefully be overcome. Although undoubtedly imperfect, there is already a working system in place, in which freedom of thought, conscience and religion stands on firm legal ground at the very foundation

of the state, and through which several redress mechanisms, including independent institutions, have been built and are operational. On the other hand, that legal ground has been interpreted by the Constitutional Court and by governmental institutions at the national and local level in ways that undermine the guarantees it should provide. This reflects the underlying tensions that make religious freedom such a complex and controversial issue in Indonesia today.

While many vibrant civil society organisations, which are not discussed specifically in this report, work to protect the rights of persecuted groups, countervailing societal groups and organizations seek to enforce the orthodoxy and repress any beliefs they find offensive. The picture of religious freedom in Indonesia is thus one that to some extent reflects the geographical, political and social diversity of the country itself: the contestation over the meaning and implementation of rights guaranteed by the Constitution and Indonesia's international obligations in fact evinces the plurality of views and opposing forces within the state. Perhaps not surprisingly, this has meant that freedom of thought, conscience and religion is as yet unable to be fully realized at the national and local level.

The road to a better guarantee of FOTCR in Indonesia is not a linear path: new changes are afoot, but the historical place of both state-religion and inter-religious relations remains apparent. While it seems unlikely that there will be a reversal in the state's general commitment to freedom of thought, conscience and religion specifically, and to human rights generally the ongoing challenge remains to be how the country will navigate these different forces while still addressing more particular challenges, and ensuring that its vibrant, pluralistic democracy continues to flourish.

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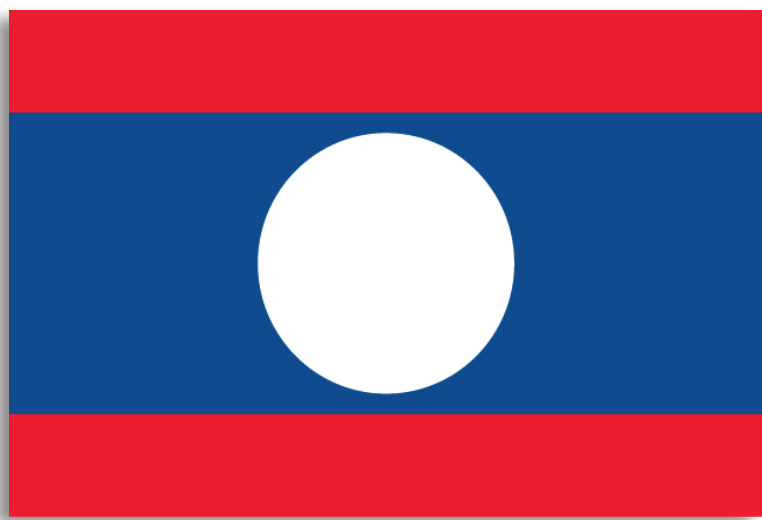
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Lao PDR

Lao People's Democratic Republic

Formal Name:	Lao People's Democratic Republic
Capital City:	Vientiane
Declared Relationship between State and Religion in Constitutional/Foundational Documents: (e.g., whether or not a state religion is declared in the constitution)	None
Form of Government (e.g. Federal or Unitary system)	People's Democratic State - Socialist Republic
Whether the regulation of religion (if any) is part of the State's functions, and if so which government (federal or state) and which institution of government:	Lao Front for National Construction; Ministry of Home Affairs
Total Population:	6,541,432 (est. 2012)
Religious Demography:	Buddhist 66.8%, Other (Animist) 30.9%, Christian 1.5%, No Answer 0.7%, Muslim 0.03%, Bahai 0.02% (2005 census)

Changing Religious Demography:¹

	Pop. Size	Buddhism	Animism	Christianity	Muslim	Other religions	No answer/ Unknown
2005	5,622,000	66.8 %	30.9 %	1.5 %	0.03 %	0.07 %	0.7%
1995	4,575,000	65.43 %	33.12 %	1.31 %	0.02 %	0.10 %	0.01 %

¹ The source for all statistics included in this table and the one that has preceded it is the Lao Statistics Bureau <nsc.gov.la> accessed 27 June 2014. Figures are taken from the Lao PDR Population and Housing Censuses conducted in 1995 and 2005, respectively. It is important to note that Animism was not considered as a religion by was indicated as part of 'Others' categories in the 2005 census. Additionally, Bahai was considered as a separate category in on the 2005 census.

INTRODUCTION

The Lao People's Democratic Republic ("Lao PDR") is a single-party socialist republic established on 2 December 1975 under the guidance of the Lao People's Revolutionary Party ("LPRP").² The government operates on the principle of democratic centralism,³ with the LPRP described as the "leading nucleus" or "axle" and the Lao Front for National Construction ("LFNC") and other mass organizations as the "power" in managing the State.⁴ The LFNC is designated as the main organization to manage and supervise religious practice in the country.⁵ Through the LFNC, the Government officially recognizes four religions: Buddhism, Islam, Baha'i, and Christianity. Christianity is further categorized into only three groups: the Catholic Church, the Lao Evangelical Church ("LEC"), and the Seventh-day Adventist Church.⁶

Theravada Buddhism is the religion of two-thirds of Lao PDR's population⁷ and is generally practiced free from restrictions and oversight, particularly in

the past five years.⁸ The religion has a long tradition in the country, often traced from the ascent of the Lan Xang kingdom in Luang Prabang in the 14th century, with Lao kings acting as patrons to the religion over the centuries.⁹ Buddhism was declared as the state religion of Lao PDR in the 1947 Constitution, during French colonial rule.¹⁰ In contrast, the 1991 and 2003 Constitutions, promulgated under the current regime, do not designate a state religion.¹¹ Nevertheless, many regard Buddhism as an integral part of Lao culture and as a way of life, with more than 4,000 Buddhist temples serving as the center of community life in

2 See Preamble and Article 3, Constitution of the People's Democratic Republic (No. 25/NA) (6 May 2003) (hereinafter "**CONSTITUTION (2003)**").

3 Articles 3, 5, and 7, Constitution (2003); Article 3, Law on the Government of the Lao People's Democratic Republic (No.02/NA) (6 May 2003) (hereinafter "**LAW ON GOVERNMENT**").

4 Article 3, Law on Government (2003).

5 See Article 10, Decree on Management and Protection of Religious Activities in the Lao People's Democratic Republic, Prime Minister's Office (No. 92/PM) (05 July 2002) (hereinafter "**Decree No.92**").

6 United States Department of State. *International Religious Freedom Report for 2010 – Laos* (November 17, 2010). <<http://www.state.gov/j/drl/rls/irf/2010/148878.htm>> accessed 27 April 2014 (hereinafter "**U.S. IRF REPORT 2010 – LAOS**").

7 Theravada Buddhism is the religion of most of the *Lao Loum* or lowlanders, while ethnic groups of *Lao Soung* (highlanders/minority tribes) and *Lao Theung* (mid-slope dwellers) usually practice animism and ancestor worship. See *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, Mission to the Lao People's Democratic Republic* (A/HRC/13/40/Add.4, para. 20), 27 January 2010 (hereinafter "**REPORT OF THE SPECIAL RAPPORTEUR, ASMA JAHANGIR (2010)**").

8 United States Commission on International Religious Freedom. *Annual Report of the U.S. Commission on International Religious Freedom 2014*, chairman, Dr. Robert P. George (Washington D.C., 2014), 133. <<http://www.uscifr.gov/sites/default/files/USCIRF%202014%20Annual%20Report%20PDF.pdf>> accessed 26 April 2014 (hereinafter "**USCIRF ANNUAL REPORT 2014**").

9 See John Clifford Holt. *Spirits of the Place: Buddhism and Laos Religious Culture*. Honolulu: University of Hawai'i Press, 2009 (hereinafter "**HOLT, SPIRITS OF THE PLACE**"). Holt posits that the consolidation of Buddhist political power occurred in the 16th century. In the reign of King Phothisarath, the Lao Buddhist *sangha* rose in influence, with the state and the *sangha* related in "a dynamic of mutual legitimation." With the decline of the LanXang kingdom in the 18th century and during the early decades of French rule, the Buddhist *sangha* became more decentralized and localized, with the local village articulation of the Buddhist practice becoming more wedded to ritual and conceptual frameworks of the local spirit cults. The *sangha's* traditional political function in relation to the ruling power was deemed irrelevant to the French colonial administrative scheme, according to the author, but the initial stance of benign neglect of Buddhism changed in the 1920s to 1940s, when the French encouraged a renewed vitality of Buddhism to serve French geopolitical purposes in sharpening Lao national identity against the Thai, but the Buddhism espoused was a religion "scientific in character", one that is "completely anthropocentric, ethical at its core, and rational in its method," which is an image of the religion quite foreign to its Lao context (see pp. 64, 81, 82, 97).

10 Articles 7 & 8, Constitution of the Kingdom of Laos (11 May 1947). <<http://mjp.univ-perp.fr/constit/la1949.html>> accessed 20 August 2014.

11 See Article 30, Constitution of the Lao People's Democratic Republic (13-15 August 1991) (hereinafter "**1991 CONSTITUTION**"); Article 43, Constitution (2003).

many rural areas.¹² Not surprisingly, it has been noted that Theravada Buddhism appears to be given an elevated status by the Government, as exhibited in the incorporation of Buddhist ritual and ceremony in state functions, exemption of Buddhism from registration requirements, sponsorship of Buddhist facilities, and the promotion of Buddhism as an element of the country's cultural and spiritual identity.¹³ Interestingly, scholars note that Theravada Buddhism practiced in Lao PDR has evolved a distinctive character, interlinked and practiced alongside native spirit practices.¹⁴

Animism, the next largest belief group, while not officially recognized as a religion by the Government,¹⁵ is practiced by around 30% of the population, most of whom belong to the 48 ethnic minority groups in the country. Animists believe that spirits inhabit animate and inanimate forms of nature, and offerings and sacrifices of animals promote good terms with the spirits.¹⁶ This belief system is often well entrenched with daily life and customs in the ethnic group. Some, such as Mon-Khmer groups,¹⁷ also practice ancestor worship

along side their belief in animistic spirits. Political heads may also hold religious authority in some ethnic groups. As an example, in Lu-Mien societies, secular and religious functions are combined in the leadership, with the religious leader and the head of the tribe being the same person, while in the Hmong, a political leader may also be invested with responsibilities for beliefs and traditional customs.¹⁸ Animists generally experience little interference in their religious practices, although the Government has actively discouraged animist practices that it deemed outdated, dangerous, or illegal, such as the practice in some tribes of killing children born with defects or burying the bodies of deceased relatives underneath homes.¹⁹

Christian groups constitute approximately one and a half to two percent of the population. There are around 45,000 to 50,000 Roman Catholics, many of whom are ethnic Vietnamese concentrated in major urban centers. The Lao Evangelical Church approximates that the Protestant community has around 100,000 believers, most of whom belong to ethnic minority groups. There are, on the other hand, between 1,200 and 2,000 Seventh-day Adventists members. Although not officially recognized, other Christian congregations exist, including the Methodists, Jehovah's Witnesses, Church of Christ, Assemblies of God, Lutherans, The Church of Jesus Christ of Latter-day Saints (Mormons), and Baptists. Their membership numbers are, however, not available.²⁰ It has been noted that most religious freedom issues have affected the small but fast-growing Protestant Christian groups in ethnic minority areas.²¹

The Baha'i faith claims to have around 8,500 adherents, with five centers in the country. There are about 400 adherents of Islam with two active mosques in Vientiane, most of whom are foreign residents or Cambodian in origin. These two groups are generally able to practice their faith openly with

12 United States Department of State. *International Religious Freedom Report for 2011 – Laos* (30 July 2012). <http://www.state.gov/j/drl/rls/irf/2011/eap/192639.htm>>accessed 27 April 2014 (hereinafter “**U.S. IRF REPORT 2011 – LAOS**”); United States Department of State. *International Religious Freedom Report for 2003 – Laos* (18 December 2003). <<http://www.refworld.org/docid/3fe81549e.html>> accessed 27 April 2014 (hereinafter “**U.S. IRF REPORT 2003 – LAOS**”); U.S. IRF Report 2010 – Laos. See also Report of the Special Rapporteur, Asma Jahangir (2010), para. 63.

13 Ibid.

14 See Robert Cooper. *Laos: Work in Progress*. Laos: Lao Insight Books. 2004; also Holt, *Spirits of the Place*, at pp.15-16 citing Marcello Zago, “Buddhism in Contemporary Laos” in *Buddhism in the Modern World*, ed. Heinrich Dumoulin and John Maraldo, London: Collier Macmillan Publishers, 120-129.

15 USCIRF Annual Report 2014, 133.

16 Report of the Special Rapporteur, Asma Jahangir (2010), para. 55-56.

17 The Mon-Khmer group include Khmu, Pray, Lamet, Makong, Tri, Taring, Brao, Kri, and 24 other ethnic tribes. See Lao PDR Ministry of Justice. *Customary Law and Practice in Lao PDR* (July 2011) 3. <http://www.la.undp.org/content/lao_pdr/en/home/library/democratic_governance/customary-law.html> accessed 4 July 2014 (hereinafter “**CUSTOMARY LAW (2011)**”).

18 Ibid., 3-4.

19 U.S. IRF Report 2011 – Laos.

20 U.S. IRF Report 2010 – Laos.

21 U.S. IRF Report 2011 – Laos.

few restrictions.²²

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

1. Ratified Conventions

The Lao People's Democratic Republic has acceded to or ratified six international human rights conventions²³ that incorporate guarantees to the right to the freedom of thought, conscience and religion:

International Document	Year of Signature	Year of Ratification / Accession	Declaration
International Covenant on Civil and Political Rights (ICCPR)	2000	2009	Article 18
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	N/A	1974	none
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	2007	none
Convention on the Rights of Persons with Disabilities (CRPD)	2008	2009	none
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1980	1981	none
Convention on the Rights of the Child (CRC)	N/A	1991	none

Lao PDR ratified the International Covenant on Civil and Political Rights with the following declaration as regards *Article 18*, to wit:

The Government of the Lao People's Democratic Republic declares that Article 18 of the Covenant shall not be construed as authorizing or encouraging any activities, including economic means, by anyone which directly or indirectly, coerce or compel an individual to believe or not to believe in a religion or to convert his or her religion or belief. The Government of the Lao People's Democratic Republic considers that all acts creating division and discrimination among ethnic groups and among religions are incompatible with Article 18 of the Covenant.²⁴

²² Ibid.

²³ United Nations Treaty Collection. <<https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?tab=UN>> accessed 29 June 2014.

²⁴ United Nations Treaty Collection. 'International Covenant on Civil, Political Rights.' <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#28> accessed 25 April 2014.

The Government's declaration as to *Article 18* of the ICCPR is in accordance with the 2003 Constitution of Lao PDR (the "Constitution") prohibiting divisions based on religion or class.²⁵ The declaration, however, raises some concern on the implementation of this clause in the Lao context. In her Report to the Human Rights Commission after her mission in Lao PDR, the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir noted the "different approach and lower threshold for limitations on the freedom to manifest one's religion or belief applied by Lao PDR by seeking to outlaw 'all acts creating division among religions.'" Citing the Human Rights Committee in its General Comment No. 22 on acceptable limitations to freedom of thought, conscience or religion, the Special Rapporteur cautioned that Lao PDR's domestic concept of the right is "highly subjective and could be abused by the State to prohibit religious activities that are protected under international law, such as the teaching and dissemination of religious beliefs or proselytism in general."²⁶

2. *Dualism and the Incorporation of International Obligations*

Lao PDR adheres to a dualist legal system.²⁷ The 2009 *Presidential Ordinance on the Conclusion, Accession, and Implementation of International Treaties* provides for, among others, the application and implementation of international treaties in the domestic sphere, as follows: (a) treaty provisions which are not consistent with or not yet reflected in existing laws shall be transformed into domestic law to become effective; (b) treaty provisions prevail over domestic law in case of conflict but the treaty must be consistent with the Constitution and reservations

made by Lao PDR; and (c) international treaties are directly applicable if their provisions are consistent with and provided for in the Constitution and domestic laws, and do not require the amendment of existing laws or do not require the enactment of new laws and regulations.²⁸

Using this consideration, the Government enumerated existing provisions of the Constitution and its domestic laws to show compliance with their obligation under the International Convention on the Elimination of All Forms of Racial Discrimination, as indicated in its Report to the Committee on the Elimination of Racial Discrimination ("CERD Committee").²⁹ Acknowledging the efforts of the Government, the CERD Committee stated that Lao laws still need to include all the elements of the definition of racial discrimination under *Article 1* of the International Convention on the Elimination of All Forms of Racial Discrimination and has urged the Government to review its legislation and incorporate the provisions of the Convention into its domestic law.³⁰

In relation to women and children's rights under the CEDAW and CRC, Lao PDR has promulgated the Law on the Development and Protection of Rights and Interests of Children (2007) and the Law on the Development and Protection of Women (2004). There are, at the time of writing, no separate laws to implement the provisions of the ICCPR and the CRPD.

²⁵ Article 8, Constitution (2003).

²⁶ Report of the Special Rapporteur, Asma Jahangir (2010), para. 29.

²⁷ United Nations Development Programme. Lao PDR Framework Document Support Project for Implementation of the Lao Legal Sector Master Plan of the Lao People's Democratic Republic (2013). <http://www.la.undp.org/content/dam/laopdr/docs/Project%20Documents/Governance/UNDP_LA_SPLSMP_%20Prod.pdf> accessed 27 June 2014.

²⁸ British Institute of International and Comparative Law and Centre for International Law. *Compilation of Constitutional and Legislative Provisions on Treaty Practice of the Lao People's Democratic Republic* (December 2012). <<http://cil.nus.edu.sg/wp/wp-content/uploads/2012/12/Compilation-State-Lao-PDR.pdf>> accessed 30 June 2017.

²⁹ Lao People's Democratic Republic. Reports submitted by States Parties under Article 9 of the Convention, Sixteenth to eighteenth periodic reports of States parties due in 2009 (CERD/C/LAO/16-18) 18 February 2011. <www2.ohchr.org/english/bodies/cerd/docs/CERD.C.LAO.16-18.doc> accessed 30 June 2014 (hereinafter "**CERD/C/LAO/16-18**").

³⁰ Report of the Committee on the Elimination of Racial Discrimination (A/67/18, para. 6-7) 2012 (hereinafter "**CERD REPORT (A/67/18)(2012)**").

B. Domestic Laws and Policies

The Constitution of Lao PDR expressly guarantees freedom of thought, conscience and religion of its citizens, with *Article 43* thereof providing that:

Lao citizens have the right and freedom to believe or not to believe in religions.³¹

The guarantee of religious freedom is expounded on in *Article 9* of the Constitution, as it proclaims thus:

The State respects and protects all lawful activities of Buddhists and of followers of other religions, [and] mobilizes and encourages Buddhist monks and novices as well as the priests of other religions to participate in activities that are beneficial to the country and people. All acts creating divisions between religions and classes of people are prohibited.³²

These Constitutional tenets on religion are reflected in the *Decree on Management and Protection of Religious Activities in the Lao People's Democratic Republic, Prime Minister's Office No. 92/PM ("Decree 92/PM")*.³³ Promulgated on 5 July 2002, this Decree is the principal legal instrument for "the management and protection of religious activities in the Lao PDR".³⁴ It empowers the Central Lao Front for National Construction to manage all matters concerned with religious activities,³⁵ with the aim of "making religious activities conform to laws and regulations, and ensuring the exercise of the right

of Lao people to believe or not to believe."³⁶ Decree No. 92 assures that the Government "respects and protects legitimate activities of believers"³⁷ but also requires believers to "preserve and expand historic traditions, cultural heritage and Lao National Unity."³⁸ While the Constitution guarantees fundamental rights, the same is predicated on the exercise of these rights according to law. Decree No. 92, as will be discussed below, sets specific requirements on how religious activities are to be considered as legitimate.

It should also be noted that the Constitution guarantees fundamental rights, including religious freedom, only to Lao citizens.³⁹ The rights and freedoms of aliens and apatrids,⁴⁰ on the other hand, are protected by the laws of the Lao People's Democratic Republic.⁴¹ For these persons, Decree No. 92 is the main law that provides and delineates their right to religious freedom, with *Article 4* thereof expressly enumerating Lao citizens, aliens, stateless persons and foreigners as holders of "the right to carry out their undertakings or organize religious ceremonies where their monasteries or churches are located."⁴² The other clauses of Decree No. 92 provides the rights, limitations, and obligations of "believers"⁴³ in general without further reference to citizenship, and it is interpreted that these clauses apply to non-citizens.

In addition, customary practices remain an important source of law, especially among the members of the 49 ethnic groups and in the most remote areas of the country. Consequently,

31 Article 43, Constitution (2003). See also Article 30 of the 1991 Constitution, which provides the same guarantee to Lao citizens.

32 Article 9, Constitution (2003). See also Article 9 of the 1991 Constitution, which guarantees the same protection from the State for lawful religious activities.

33 Decree No.92 was promulgated a year before the amendment of the Lao PDR Constitution in 2003 and references Article 9 of the 1991 Constitution. However, the present Constitution essentially adopted the 1991 Constitution wording for the present Articles 43 and 9. See footnotes 35 and 36 above.

34 Article 1, Decree No. 92.

35 Article 10, Decree No. 92.

36 Ibid.

37 Article 3, Decree No.92.

38 Article 5, Decree No.92.

39 See Articles 34 to 51, Chapter 4, Fundamental Rights and Obligations of Citizens, Constitution (2003).

40 Article 7 of the Lao Law on Nationality (2004) defines an *apatrid* as an individual who resides in Lao PDR but who is not a Lao citizen and who is unable to certify his nationality.

41 Article 50, Constitution (2003).

42 See Article 4, Decree No.92.

43 See Articles 3, 5, 6, 11, 13, 14, 15, and 17, Decree No.92.

informal traditional local rules regulate the lives of many citizens and significantly impact on ways of thinking and behaving, rather than official statutory laws and regulations.⁴⁴

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

As quoted above, the basic guarantee on religious freedom is provided under *Article 43* of the Constitution, granting Lao citizens the right and freedom to believe or not to believe in religions.⁴⁵

Article 6, meanwhile, assures State protection to the freedom and democratic rights of its people in general, to wit:

The State protects the freedom and democratic rights of the people, which cannot be violated by anyone. All State organisations and government officials must disseminate and create awareness of all policies, regulations and laws among the people and, together with the people, organise their implementations in order to guarantee the legitimate rights and interests of the people. All acts of bureaucratism and harassment that can be detrimental to the people's honour, physical well-being, lives, consciences, and property are prohibited.⁴⁶

Article 3 of Decree No. 92 reiterates *Article 43* of the Constitution with a seeming qualification, providing that citizens are “equal before the law in believing or not believing religions as provided by the Constitution and laws of the Lao PDR.”⁴⁷ Furthermore, *Article 10* of Decree No. 92 confers on the LFNC the authority to manage, give opinions on, and instruct religions not only as to the country's

laws but ostensibly even as to theology and the group's own creed, to wit:

The Central Committee of the Lao Front for National Construction has the right to manage, promote theology, and give instructions, report to, give opinions on or submit to administrative authorities of each level concerning the activities of each religion in order that such activities are in conformity with its own principles and with laws and regulations of the Lao PDR.⁴⁸

2. *Right to manifest one's religion or belief*

Article 44 of the Constitution guarantees that Lao citizens have “the right and freedom of speech, press and assembly; and have the right to set up associations and stage demonstrations which are not contrary to the laws.”⁴⁹

Article 9 of the Constitution, quoted above, also proclaims State protection for lawful activities of followers of all religions. Nevertheless, while *Article 9* accords protection to religious activities, it is to be noted that State protection is predicated on such activity being considered “lawful”. Activities encouraged are those that are “beneficial to the country and people” and all acts that cause divisiveness between religions are prohibited. The 2005 *International Religious Freedom Report* of the U.S. Department of State observed that, “the Government interprets this clause restrictively, and cites it as a reason for placing restrictions on religious practice, especially those belonging to minority religions. Although official pronouncements accept the existence of different religions, they emphasize the potential to divide, distract, or destabilize. Local and central government officials widely referenced *Article 9* as justification for prohibiting such

44 Report of the Special Rapporteur, Asma Jahangir (2010), para. 19; Customary Law (2011), Foreword, 2.

45 Article 43, Constitution (2003).

46 Article 6, Constitution (2003).

47 Article 3, Decree No.92.

48 Article 10, Decree No.92.

49 Article 44, Constitution (2003).

religious activities as proselytizing.”⁵⁰

The prerequisite for lawfulness in the manifestation of religious belief is reflected in Decree No. 92, which assures State protection for “legitimate activities of believers”⁵¹ and proclaims “the aim of making religious activities conform to laws and regulations.”⁵² Indeed, it is Decree No. 92 itself that has set down the requirements for these religious activities to be considered lawful, with the LFNC accorded the mandate not only to approve registration but also to manage matters concerning the activities of each religion.⁵³ As discussed below, this encompasses the approval on the places of worship, the right to proselytize, the printing and distribution of religious materials, appointing clergy, accepting financial assistance, and traveling within and outside the country for religious activities and studies.

a. Freedom to worship

Article 4 of Decree No. 92 provides Lao citizens, aliens, stateless persons and foreigners of “the right to carry out undertakings or organize religious ceremonies”, while *Article 11* assures “the right to organize meetings of their own believers for the purpose of delivering sermons, disseminating religious teachings, conducting religious ceremonies, organizing festivals or praying on normal important days of each religion” provided that these activities are done in the worshipers’ “monastery or church.”

⁵⁰ United States Department of State. *International Religious Freedom Report 2005 – Laos* (8 November 2005). <<http://www.state.gov/j/drl/rls/irf/2005/51517.htm>> accessed 27 April 2014 (hereinafter “U.S. IRF REPORT 2005 – LAOS”).

⁵¹ Article 3, Decree No.92.

⁵² Article 1, Decree No.92.

⁵³ Articles 7 and 10, Decree No.92.

b. Places of Worship

As stated in *Article 4* of Decree No. 92, religious activities and meetings are decreed to be conducted within a monastery or church. Further, *Article 15* of Decree No. 92 imposes a duty on religious organizations “to preserve sacred sites, articles of historical heritage, Lao national culture, customs and traditions.” To repair or build new churches or other religious buildings, an organization needs approval from relevant local governmental authorities and the local LFNC under *Articles 15* and *16*. Buddhist temples, meanwhile, require the approval of higher authorities: the Prime Minister and president of the Central Committee of the LFNC.⁵⁴

c. Religious symbols

There is no law that restricts or prohibits the use of religious symbols and there have been no report of significant issues in this regard. However, it is noted that consistent with the long history and strong influence of Theravada Buddhism in the culture of the majority, Buddhist symbols are predominant in the country. The That Luang Pagoda, a gold-inlaid Buddhist stupa built in 1566, is the national symbol of Lao PDR. Its image forms a central part of the country’s national emblem, as expressly provided under *Article 90* of the Constitution, and as such, this symbol is printed in all official documents from the Government and in all denominations of the country’s paper bills.

d. Observance of holidays and days of rest

The Labor Law, which became effective on 29 October 2014, lists the official holidays observed in Lao PDR, which does not include the observance of any religious event,⁵⁵ although the Government generally permits major religious festivals of all

⁵⁴ Article 16, Decree No.92.

⁵⁵ Article 55, Labor Law (Amended) (National Assembly No. 43/NA) (2013).

established congregations without hindrance.⁵⁶ However, there have been a few reports of local officials obstructing Christian congregations' observance of religious holidays such as Christmas and Easter and even arresting ministers and worshippers conducting Christmas celebrations.⁵⁷

e. Appointing clergy

As part of the LFNC's power to oversee religious organizations, *Article 9* of the Decree states that members of the clergy and believers "who will be selected or granted any status, and who will accept any title or honorific distinction from a foreign country, shall seek approval from the Central Committee of the Lao Front for National Construction, which will submit the matter to the relevant competent organ for approval."

It appears that non-compliance with this provision holds penal sanctions. *Article 162* of the Penal Law (2005) punishes ordination of clergy without authorization, thus:

The ordainment of a monk or novice without approval from the administrative authorities shall be punished by three months to one year of imprisonment and a fine from 50,000 Kip to 100,000 Kip.

A monk performing ordainment without authorisation shall be punished on the same charges.⁵⁸

Under this penal provision, it was reported that in February 2007 two Buddhist monks were arrested for being ordained without government approval and for celebrating inappropriately following

⁵⁶ United States Department of State. *International Religious Freedom Report 2004 – Laos* (16 September 2004). <<http://www.state.gov/j/drl/rls/irf/2004/35404.htm>>accessed 27 April 2014 (hereinafter "**U.S. IRF REPORT 2004 – LAOS**").

⁵⁷ Ibid; U.S. IRF Report 2011–Laos, 4.

⁵⁸ Article 162, Penal Law (No. 12/NA) (2005) (hereinafter "**PENAL LAW (2005)**").

the ordination ceremony, although the two were reportedly detained only a short time before being released.⁵⁹

While the Penal Law (2005) seems to refer to the majority Buddhist religion with its reference to a "monk or novice," there is no reason why this provision could not be interpreted to apply to other religions as well in light of the LFNC's broad authority under Decree No. 92. There has not been any reported application of the penal law to minority religions, but there was a report that a Roman Catholic ordination of priests – the first since 1995 – was blocked in late 2005 by the Government in exercise of its authority under Decree No. 92.⁶⁰ The ordination was allowed to proceed a year later in Vientiane Municipality along with the ordination of a deacon in Champassak Province. Approval for these ordinations represented significant improvements from past restrictions.⁶¹

f. Teaching and disseminating materials (including missionary activity)

Article 12 of Decree No. 92 grants a religious organization the right to proselytize or disseminate religious teachings upon the approval of the village or district LFNC or the head of the village or district. Activities conducted outside the village, district, or province where they are registered must similarly hold prior approval from the appropriate LFNC or local government authorities. A broadly-worded

⁵⁹ United States Department of State. *International Religious Freedom Report 2009 – Laos* (26 October 2009). <<http://www.state.gov/j/drl/rls/irf/2009/127276.htm>> accessed 27 April 2014 (hereinafter "**U.S. IRF REPORT 2009 – LAOS**").

⁶⁰ United States Department of State. *International Religious Freedom Report 2006 – Laos* (15 September 2006). <<http://www.state.gov/j/drl/rls/irf/2006/71346.htm>>accessed 27 April 2014 (hereinafter "**U.S. IRF REPORT 2006 – LAOS**").

⁶¹ United States Department of State. *International Religious Freedom Report 2007– Laos* (14 September 2007). <<http://www.state.gov/j/drl/rls/irf/2007/90142.htm>>accessed 27 April 2014 (hereinafter "**U.S. IRF REPORT 2007 – LAOS**").

Article 13, however, cautions that conducting activities against the Lao PDR regime or dividing ethnic groups or religions in order to cause social disorder are prohibited acts and merit punishment under applicable laws.

Further, *Article 14* forbids the publication and even the possession of books or other documents that are “distortions of truth, slandering or obstructing the progress of the nation, or the production and duties of citizens towards the country.” To this end, the printing of books, documents for dissemination, signs and various plates related to religion must be authorized by the Ministry of Propaganda and Culture⁶² with the approval of the Central Committee of the LFNC.⁶³

g. The rights of parents to ensure the religious and moral education of their children

While the Law on Education obliges parents and guardians to support their children’s education and to cooperate and support their children’s schools, it does not give parents the right to decide on their children’s religious and moral education.⁶⁴ In recent years, it was noted that the government promotes the teaching of Buddhist practices as part of Lao culture in public schools with cultural sessions reportedly including lessons taught in Buddhist temples,⁶⁵ which may affect the right of non-Buddhist parents to decide on the religious instruction of their children according to the family’s beliefs.

h. Registration

Article 7 of Decree No. 92 requires the submission of “a comprehensive set of documents required by regulations” to the LFNC Central Committee through local authorities for the registration

of religious organizations. The Decree further provides that regulations on registration will be provided by the LFNC, but it has been noted that such regulations have not been issued.⁶⁶

In March 2004, the LFNC issued Instruction No. 001/LFNC, which provides that no Christian denominations other than those already recognized by the government (which are the Catholic Church, the Seventh-day Adventist Church, and the Lao Evangelical Church) may register as independent entities. All other Protestant groups are required to register as part of the Lao Evangelical Church or the Seventh-day Adventist Church. The government believes that this measure will prevent “disharmony” in the religious community.⁶⁷ As a result of this Instruction, other Protestant Christian groups have little recourse but to either be under the LEC despite differences in leadership or beliefs, or to remain underground as an unregistered group. This has also placed the LEC in a somewhat elevated position within the Christian community, with the discretion to accept or deny a group who wants to be included under the umbrella of the LEC organization, and the authority over activities of its member groups. This instruction has elicited comment from the Special Rapporteur Jahangir in her Report. “It is imperative that no religious groups should be empowered to decide about the registration of another religious group,” she stressed.⁶⁸ A church leader from a Christian group opined that this was another form

⁶² This government body is now renamed as the Ministry of Information, Culture and Tourism.

⁶³ Article 14, Decree No.92.

⁶⁴ Article 47, Law on Education (No.03/NA) (8 April 2000).

⁶⁵ U.S. IRF Report 2011 – Laos, 6.

⁶⁶ Shantel Talbot. ‘Lao People’s Democratic Republic (Laos) Law and Religion Framework Overview.’ *Religion and Law Consortium* (2 April 2014), 4. <<http://www.religlaw.org/common/document.view.php?docId=6184>> accessed 24 April 2014 (hereinafter “**LAO PDR LAW AND RELIGION FRAMEWORK OVERVIEW (2014)**”).

⁶⁷ United States Department of State. *Laos 2012 International Religious Freedom Report*, (20 May 2013) 3. <<http://www.state.gov/documents/organization/208454.pdf>> accessed 27 April 2014 (hereinafter “**U.S. IRF REPORT 2012 – LAOS**”). See also Report of the Special Rapporteur, Asma Jahangir (2010), para. 31.

⁶⁸ Report of the Special Rapporteur, Asma Jahangir (2010), para. 33.

of restriction to religious freedom in the country.⁶⁹

Pursuant to Instruction No. 001/LC, no new Protestant denomination has been recognized despite the presence of these groups in the country. An example is the Methodist church which has a long-standing application for registration that is still pending to this date.⁷⁰ It is observed that despite having an established procedure for registration, the government's desire to consolidate religious practice would appear to have effectively blocked new registrations by particular religious groups.⁷¹

Moreover, regulation does not end with registration, as *Article 6* of Decree No. 92 requires religious groups to maintain a register of their members, priests, and teachers, with the clergy required to maintain an identification card. The list of persons who compose the administration of a religion must be reported under *Article 8*. The government's requirement to report membership information periodically to the Religious Affairs Department of the LFNC, however, does not seem to include Buddhists and Catholics.⁷²

i. Communicate with individuals and communities on religious matters at the national and international level

Articles 17 to 20 of Decree No.92 relate to communications on religious matters with foreign counterparts. The right of believers to communicate with foreign organizations, religious agencies, other believers, and individuals,⁷³ and to accept assistance from foreign religious sources or international organizations must conform with the policy, laws

and regulations of the LFNC and the Government.⁷⁴ Foreign trips related to religion must be approved by the LFNC, while theological studies abroad must be approved by the Ministry of Education.⁷⁵ Similarly, inviting foreign persons to Lao PDR on matters related to religion also requires the approval of the LFNC.⁷⁶

j. Establish and maintain charitable and humanitarian institutions/solicit and receive funding

Article 44 of the Constitution provides that "Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the laws." Decree No. 92 is silent on the matter of religious organizations maintaining charitable or humanitarian institutions, although a number of foreign non-governmental organizations with religious affiliations have been permitted to work in Lao PDR.⁷⁷ In 2009, the Decree on Associations was promulgated setting rules and regulations for the establishment of non-profit civil organizations, including social welfare associations, but this Decree specifically excluded religious organizations from its scope of application.⁷⁸

Article 20 of Decree No. 92 requires that acceptance of assistance from foreign religious agencies, believers or organizations must be in accordance with Lao PDR regulations. Religious organizations and individuals intending to receive or give assistance to other religious organizations or individuals must seek prior approval from the Central Committee of the LFNC.

⁶⁹ Interview with Christian church leader, Vientiane, 14 June 2014.

⁷⁰ U.S. IRF Report 2011, 5. The fact that the application is pending was confirmed by a member of the Methodist church in Vientiane. *Interview with Methodist church member, Vientiane, 17 December 2014.*

⁷¹ U.S. IRF Report 2011, 4.

⁷² Ibid.

⁷³ Article 17, Decree No.92.

⁷⁴ Article 20, Decree No.92.

⁷⁵ Article 18, Decree No.92.

⁷⁶ Article 19, Decree No.92.

⁷⁷ U.S. IRF Report 2010 – Laos.

⁷⁸ Article 9, Decree on Associations, Prime Minister's Office (No.115/PM) (6 May 2009).

3. *Freedom from intolerance and discrimination*

Article 35, of the Constitution ensures equality before the law regardless of one's beliefs, class, or ethnicity, thus:

Lao citizens are all equal before the law irrespective of their gender, social status, education, beliefs and ethnic group.⁷⁹

The Government of Lao PDR in its consolidated Report to the Committee on the Elimination of Racial Discrimination ("CERD"),⁸⁰ highlighted *Articles 9* and *3* of the 2003 Constitution and *Article 3* of Decree No. 92 to demonstrate that freedom from discrimination is guaranteed and enjoyed by Lao citizens. In addition, the following domestic laws also contain non-discrimination provisions:

- a. *Article 176* of the Penal Law (2005) makes it a crime to discriminate against persons on ethnicity, decreeing that, "any person who excludes, obstructs, restricts the participation or practices selective treatment against other persons on the ground of ethnicity shall be punished by imprisonment from 1 to 5 years or fined from 1,000,000 to 3,000,000 kip."
- b. *Article 45* of the Labour Law (2006) accords equal rights to employees in receiving salaries for equal work without discrimination as to race, nationality, gender, age, religion, belief, or social economic status. However, non-discrimination on the basis of religion and belief has been omitted in the new Labour Law (promulgated in 2014).
- c. *Article 4* of the Law on Health Care provides that all citizens, regardless of gender, age, ethnic origin, race, religion, or socio-economic status, shall be entitled to health care when they are ill, and to complain if the health care provided is "not in conformity with professional techniques or equitable".

⁷⁹ *Article 35*, Constitution (2003).

⁸⁰ CERD/C/LAO/16-18, para. 60.

Despite these legal safeguards, as will be discussed in greater detail below, acts of discrimination and intolerance continue to be reported against religious minorities.⁸¹

4. *Freedom of Religion and Belief: The Right of Vulnerable Groups*

a. *Women*

Article 29 of the Constitution provides for the protection of the "legitimate rights and benefits of women and children." To this end, the Law on Development and Protection of Women was promulgated in 2004. This law expressly provides protection to women and their children from harm because of superstitious beliefs and prohibits forcing a woman to deliver her baby in the forest,⁸² as is the tradition of some ethnic groups.⁸³ However, while the law accords equal political, economic, cultural and social rights between women and men, it is silent on the guarantee of freedom of religion or belief for women. It must be noted that the Committee on the Elimination of Discrimination against Women, considering the country report of Lao PDR in July 2009, expressed its concern at "the persistence of adverse norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, especially within some ethnic groups," which perpetuate discrimination against women and girls, according a disadvantageous and unequal status in many areas, including in education and public life and

⁸¹ Additionally, Special Rapporteur Jahangir expressed concern in her Report on the discriminatory implementation of domestic laws, the denial of due process and the bias by law enforcement organs against religious minorities. See Report of the Special Rapporteur, Asma Jahangir (2010), para 50.

⁸² *Article 22*, Law on the Development and Protection of Women (No. 08/NA, 22 October 2004).

⁸³ Each community has its own distinct beliefs in relation to pregnancy and childbirth. As an example, while the Lao, Hmong, Khmu and Xouay deliver their babies in houses, the Taoi, Katang, Makong, and Tri groups traditionally deliver their babies in the forest. See Customary Law (2011), 17-18.

decision-making, and the persistence of violence against women.⁸⁴

b. Children

Adhering to the Convention on the Rights of the Child, the Law on the Protection of the Rights and Interests of Children, promulgated in 2007, declares among others, the rights of a child to education, access to health care, speech and expression, and to be protected from all forms of physical and moral abuse.⁸⁵ It also secures a child's right against discrimination of any kind regardless of gender, race, ethnicity, language, beliefs, religion, physical state and social-economic status of their family.⁸⁶

c. Migrant Workers

There is no law expressly guaranteeing migrant workers the right to religious freedom. As the fundamental rights guaranteed under the Constitution (particularly *Article 43* on the right to belief) is expressly limited to Lao citizens, and *Article 50* thereof provides that the right of foreigners are provided under laws, their rights appear to be limited with those provided under Decree No. 92.

d. Persons deprived of their Liberty

The arrest of religious clergy has a specific procedure under *Article 62* of the Law on Criminal Procedure and Decree No.92, which requires that the head monk or the representative of the relevant religious organisation be informed of the impending arrest of a monk or novices so that the monk or novice

is defrocked before his arrest. For an ordained person in other religions, the head of the religious organization must be informed of the arrest. While this requirement seems to accord courtesy to the religious institution involved, there is a possible violation of the presumption of innocence as an accused Buddhist clergy is already penalized with defrocking prior to his trial.

There is no statutory protection expressly providing for the right to religious freedom while in detention aside from the guarantees provided under the Constitution. While prisoners should continue to enjoy their rights to manifest their religion and belief, there are concerns that this may not be the case in reality for some prisoners in Lao PDR.⁸⁷

e. Refugees

Lao PDR currently does not have a law on the rights of refugees.

f. Ethnic Minorities

The Constitution, in its Preamble and provisions, consistently highlights that Lao PDR is a multi-ethnic community.⁸⁸ There are 49 officially recognized ethnic groups in the country based on a study conducted by the LFNC's Department of Ethnic Affairs.⁸⁹

Article 35 of the Constitution accords the assurance of equal treatment before the law regardless of the ethnicity of a person. As stated above, *Article 176* of the Penal Law (2005) penalizes discrimination based on ethnicity as a criminal offense. In

⁸⁴ Concluding Observations of the Committee on the Elimination of Discrimination against Women, Lao People's Democratic Republic (CEDAW/C/LAO/CO/7, para. 21) (7 August 2009).

⁸⁵ Article 3, Law on the Protection of the Rights of the Child (2006).

⁸⁶ Article 6, Law on the Protection of the Rights of the Child (2006).

⁸⁷ In Special Rapporteur Jahangir's visit to Samkhe prison on 25 November 2009, the prison authorities refused to allow her to speak in private and freely with the prisoners despite her mandate as special rapporteur. She observed: "The detainees appeared to be frightened to respond to some very basic queries and were afraid to speak to the Special Rapporteur without the presence of the prison authorities." See Report of the Special Rapporteur, Asma Jahangir (2010), para. 3, 51.

⁸⁸ Preamble, Articles 1, 2, 7, 8, Constitution (2003).

⁸⁹ CERD/C/LAO/16-18, para. 24.

addition, *Article 66* of the Penal Law (2005), mirrors the controversial wording of *Article 9* of the Constitution, and punishes an offence against solidarity, thus:

“Any person dividing or causing resentment between ethnic groups and social strata with the intention of undermining national solidarity shall be punished by one to five years of imprisonment and shall be fined from 500,000 kip to 10,000,000 kip.”⁹⁰

It should be noted that in the Lao PDR setting, members of ethnic minorities are often the ones who are converted to Christianity, rendering them more vulnerable to double discrimination for their ethnicity and their religion.⁹¹ Thus, while acknowledging the intent to protect ethnic groups, there is a peril that using this Article, members of ethnic minority groups who practice a different religion are accused of causing division or resentment within the community, a situation that has already been reported in some areas.⁹²

Referring to the observations of the Special Rapporteur Jahangir in her Report (see Section I.B.3. above), and taking into account the intersectionality of ethnicity and religion in Lao PDR, the CERD Committee echoed the concern on discrimination experienced by certain ethnic groups in the country in the exercise of their freedom of religion. It reiterated its previous recommendation for the Government to take all the necessary measures to ensure that all persons enjoy their right to freedom of thought, conscience and religion without

discrimination in accordance with *Article 5* of the Convention.⁹³

C. Redress Mechanisms and Interpretation of Policies

1. Judiciary

The People’s Courts constitute the judicial branch of government, and is composed of the People’s Supreme Court, the appellate courts, the people’s provincial and city courts, the people’s district courts, and the military courts.⁹⁴ The people’s courts are composed of panels of judges who issue decisions in cases and are mandated to be independent and to comply strictly with the laws in their adjudication.⁹⁵ In addition, the Constitution also refers to the Office of the Public Prosecutor who has the duty “to monitor the correct and uniform implementation of the laws and regulations” and “to exercise the right of public prosecution.”⁹⁶

Citizens whose rights have been violated under the laws of Lao PDR have the right to file a complaint before the courts. However, based on the searches conducted for this report there is no data available pertaining to cases of religious persecution, hence suggesting that no cases have been filed. There has also been no landmark ruling in relation to the freedom of thought, conscience, and religion issued by the Lao PDR judiciary. In addition, reports of cases where religious minorities experienced arrests or detention due to their beliefs indicate that their rights as accused have not been respected.⁹⁷

90 Article 96, Penal Law (2005).

91 Mouvement Lao pour les Droits de l’Homme. Situation of the ethnic and religious minorities In the Lao People’s Democratic Republic. Alternative Report of the Lao Movement for Human Rights, February 2012, 8-9. <www2.ohchr.org/.../LaoMovementforHumanRights_LAOS_CERD80.doc> accessed 26 April 2014 (hereinafter “**ALTERNATIVE REPORT TO THE CERD (2012)**”).

92 Ibid. See also Christian Solidarity Worldwide. *Briefing Laos: Religious Freedom Report* (Surrey: May 2012). <<http://www.cswusa.org/filerequest/2864.pdf>> accessed 27 April 2014 (hereinafter “**CSW BRIEFING LAOS (2012)**”).

93 CERD Report (2012) A/67/18, para.14.

94 Article 79, Constitution (2003).

95 Article 82, Constitution (2003).

96 Article 86, Constitution (2003).

97 See U.S. IRF Report 2011 – Laos, 4; Alternative Report to the CERD (2012); CSW Briefing Laos (2012), 16, 19;.

It is important to note that access to justice and the rule of law is an on-going concern for Lao PDR. In 2011, a survey on the people's perspectives on access to justice conducted by the United Nations Development Programme in Lao PDR indicated that there is a lack of awareness of access to, or interaction with, the formal justice system, and that instead of courts, customary mechanisms for resolving disputes are used by most of the population.⁹⁸ Customary justice mechanisms include negotiation and traditional mediation conducted by a council of elders or the head of clans who are often the religious and customary authorities in the community. This is part of the lifestyle of many ethnic minority communities who still consider themselves predominantly governed by customary law rather than state law.⁹⁹

The Government itself has acknowledged the need to strengthen the rule of law in the country. To this end, it has launched the Legal Sector Master Plan ("LSMP") in 2009 with the aim of developing the country as a full rule of law State by 2020. The LSMP includes as its main pillars the development of systemic, transparent, and effective law implementation and enforcement institutions, the development of human resources in the legal and justice sector, and the development of legal databases and information resources and people's participation in the legal and justice sector.¹⁰⁰

2. Administrative Bodies

As discussed above, *Article 10* of Decree No. 92 confers on the Central Committee of the LFNC "the right to manage, promote theology and give instructions, report to, give opinions on or submit to

administrative authorities of each level concerning the activities of each religion in order that such activities in conformity with its own principles and with laws and regulations of the Lao PDR." As such, the LFNC, either through its Central Committee or its local branches, has been the primary institution that parties approach on controversies involving religion. Within the LFNC, matters concerning religion are handled by the Department of Religious Affairs.

The Department of Ethnic Issues and Religious Affairs ("DEIRA") of the Ministry of Home Affairs ("MHA"), which was established in 2011, also play a role in overseeing the implementation of policy, rules, and regulations in relation to religious groups throughout the country. DEIRA is "tasked with examining Decree 92 with a view to revising it to reflect the current state of religious affairs. The LFNC and DEIRA work to establish protocols outlining the shared roles and responsibilities of the government related to the governance of religious groups"¹⁰¹

3. Independent Bodies

One of the recommendations of the CERD Committee in its Report was the establishment of an independent human rights institution to address human rights issues in the country.¹⁰² On 1 November 2012, the Prime Minister signed the Prime Minister's Decree No. 149/PM establishing the National Steering Committee on Human Rights ("NSCHR"), with functions to coordinate human rights activities in the Lao PDR such as proposals for ratification of human rights treaties, national implementation and reporting on human rights obligations of the country for those treaties, and to deal with issues related to the promotion and protection of human rights of the Lao people. It is to be noted that the Committee on Human Rights is chaired by Mr. Phongsavath Boupha, who is concurrently the Head of the Presidential Office.

98 U.N. Development Programme. *People's Perspective on Access to Justice Survey in Four Provinces of Lao PDR* (2011). <http://www.la.undp.org/content/dam/laopdr/docs/Reports%20and%20publications/Access%20to%20Justice_Lao%20PDR_2011.pdf> accessed 26 April 2014.

99 Customary Law (2011), 1-2.

100 U.N. Development Programme. *Primer on the Legal Sector Master Plan: Building a Rule of Law State in Lao PDR*, 9-14.

101 U.S.IRF Report 2012 – Laos, 3.

102 CERD Report (2012) A/67/18, para. 8.

Due to its recent establishment, the NSCHR's ability to promote human rights and address human rights issues has yet to be determined.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

The adoption of Decree No. 92 in 2002 was a response to the need for a law that protects the practice of the freedom of religion in Lao PDR. When Decree No. 92 was introduced, it was “at that time a step forward in advancing the freedom of religion or belief” in the country.¹⁰³ It legitimized many activities that were previously regarded as illegal, such as proselytizing, printing of religious material, owning and building houses of worship, and maintaining contact with overseas religious groups.¹⁰⁴

However, Decree No. 92 appears to have also institutionalized the Government's role as the final arbiter of permissible religious activities.¹⁰⁵ The comprehensive rules and regulations laid down by this Decree impose serious restrictions on religious activities for both Lao citizens and foreigners as almost all aspects of religious practice now require LFNC approval. Some government authorities have also used its provisions to justify prohibiting religious practice in some parts of the country.¹⁰⁶

In the Report of the Special Rapporteur for freedom of religion in 2010, Special Rapporteur Asma Jahangir expressed concern that some provisions of the Decree are not in conformity with international law.¹⁰⁷ She pointed out that: (1) several obligations

and duties imposed on religious communities are vaguely worded, rendering the Decree susceptible to discriminatory application; (2) the procedures for registration and approvals are complicated and restrictive; and (3) the powers given to Government authorities over the practice of religion are too extensive.¹⁰⁸

She observed that the mandate given to the LFNC “seems to lead to undue State interference in religious autonomy.”¹⁰⁹ While some regulation by the authorities may be necessary in order to protect individuals' interests and beliefs, “the State has a duty of neutrality and impartiality which bars it from pronouncing on the legitimacy of beliefs and their means of expression.”¹¹⁰ She also stressed the need for comprehensive guidelines for local authorities to avoid any misunderstandings or misinterpretation on the correct implementation of the Decree.¹¹¹

As to the registration requirements imposed by Decree No. 92, Special Rapporteur Jahangir reminded that registration must not be a mandatory precondition for practicing one's religion. Any registration procedures should be quick and should not depend on extensive formal requirements or the review of the substantive content of the belief or the structure of the faith group.¹¹²

This was echoed in the Report of the succeeding Special Rapporteur on freedom of religion or belief in 2011, when Special Rapporteur Heiner Bielefeldt stressed, “it is not that the State could “grant” certain individuals or groups of individuals the right to freedom of religion or belief, rather, it is the other way around.” The State has to respect everyone's freedom of religion or belief as inalienable – and thus non-negotiable – entitlement of human beings, all of whom have the status of right holders in international law by virtue of their

103 Report of the Special Rapporteur, Asma Jahangir (2010), para. 24.

104 U.S. IRF Report 2006 - Laos.

105 Ibid.

106 Ibid.

107 Report of the Special Rapporteur, Asma Jahangir (2010), para. 24.

108 Ibid., para. 27-39.

109 Ibid., para. 36.

110 Ibid.

111 Ibid., para. 24.

112 Ibid., para. 33.

inherent dignity.¹¹³ Citing *Article 18, paragraph 1* of the ICCPR, he posits that registration should not be compulsory, and not a precondition for practicing one's religion, but only for the acquisition of legal personality status.¹¹⁴

B. Significant Changes in State Enforcement

In general, based on the review of materials for this report, religious minorities in Lao PDR could be considered to enjoy a fairly high level of religious freedom in the early part of the new millennium. For example, Animists were said to generally experience 'no interference from the Government in their religious practices'.¹¹⁵ Similarly, members of the Islamic community in Lao PDR have been said to be able to practice their 'faith openly, freely attending actively the two Mosques'.¹¹⁶

However, several acts of repression pertaining to Christian minorities were reported as evidenced by the closure of Christian houses of worship in Savannakhet, Luang Prabang and Vientiane provinces in 2001 and arrests of religious leaders and worshippers. Some minor officials were also reported to have decreed forced renunciations.¹¹⁷

113 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt (A/HRC/19/60; para. 30) 22 December 2011.

114 *Ibid.*, para. 41.

115 United States Department of State. *International Religious Freedom Report 2002–Laos* (7 October 2002). <<http://www.state.gov/j/drl/rls/irf/2002/13878.htm>> accessed 27 April 2014 (hereinafter “**U.S. IRF REPORT 2002 – LAOS**”), para. 18.

116 *Ibid.* para 20.

117 United States Department of State. *International Religious Freedom Report for 2001 – Laos* (26 October 2001). <<http://www.refworld.org/docid/3bdbdd9ae.html>> accessed 27 April 2014 (hereinafter “**U.S. IRF REPORT 2001 – LAOS**”). The report notes that by the end of the May 2001, 35 people had been arrested and detained or were serving long-term jail sentences. This number decreased to 20 persons by the end of June, 2001. The report further notes that in areas such as Sayabouly, Bolikhamxai, Vientiane province, Luang Namtha, Luang Prabang, Savannakhet, Oudomxai, and Phongsaly, the authorities arrested and detained without charge religious believers and their spiritual leaders.

The LNFC was reported as intervening to mitigate harsh measures taken by local authorities in instances where the harassment of Christian minorities was most severe.¹¹⁸ However, in certain instances the Government appeared either unable or unwilling to take measures to reprimand local authorities.

Governmental authority appeared to become more decentralized with the issuance of Decree No. 92 in 2003. After this law was promulgated, the LFNC's Religious Affairs Department is reported as adopting a policy of non-involvement in local religious controversies except in extreme cases, urging localities to resolve their own problems, using Decree No. 92 as guide. As a result, the application of Decree No. 92 has been inconsistent and the government's tolerance of religion varied by region and religion.¹¹⁹

Despite this development, however, most areas of the country saw improvements in religious tolerance. In general, larger urban areas, such as Vientiane, experienced little or no overt religious abuse and reported an improved atmosphere of religious tolerance. Moreover, the large Protestant and Catholic communities of several provinces, including Xieng Khouang, Khammouane, and Champasak, reported no difficulties with authorities, with relations between officials and Christians in these areas described as generally amicable. However, even in these areas, religious practice was restrained by official rules and policies that allowed properly registered religious groups to practice their faith only under circumscribed conditions.¹²⁰ On the other hand, religious minorities in certain rural areas still experience abuses until the present time. It must be emphasized, however, that these isolated conflicts usually involve local authorities in the communities and not central Government.

118 U.S. IRF REPORT 2002 – LAOS,.

119 U.S. IRF Report 2011 – Laos, 3.

120 U.S. IRF Report 2003 – Laos.

C. Significant Changes in Religious Claims (By Non-State Actors)

Based on the research undertaken for this report, there have been no significant changes in religious claims made by non-state actors noted in the Lao PDR setting during the reporting period (2000 – 2014).

D. Significant Events of State Persecution of Religious Groups

Based on the reviews conducted for this report, conditions pertaining to religious freedom appear to have improved over the past few years, particularly for the Buddhist majority and for Christians, Muslims and Baha'i living in urban areas. However, isolated incidents of violations of religious freedom still occur, particularly in rural areas where local officials have interpreted Decree No. 92 restrictively against religious minorities.¹²¹

1. Non-Violent Persecution

While the government has exerted efforts to provide access to education regardless of religion or belief throughout the country, there have been a few accounts of local officials denying educational benefits to children of Protestant minorities because of their religious beliefs.¹²² For instance, 19 children from Christian families in Saravan Province were reportedly not 'invited' to start school in 2010 after their families were evicted from their villages as a result of their Christian faith. The families were forced to live in the forest without access to

healthcare and limited water resources.¹²³ A recent article reported that three female Christian students at a village school in Atsaphanthong District, Savannakhet Province were denied the right to take their final examinations by their village chief due to their Christian faith.¹²⁴

It was also reported that some Christians in Southern Laos, particularly in Savannakhet Province, were denied employment due to their Christian faith. In one instance, a school teacher was reportedly forced to sign renunciation papers in order to keep her job.¹²⁵ In June 2012, the Phin District military command discharged two men from active duty in the village security forces after learning that they had converted to Christianity.¹²⁶ In another case, Mr. Som Sak, a former district governor in Bokeo Province, reportedly failed to receive his retirement pay from the Government after he converted to Christianity.¹²⁷ Some Christians also have reportedly faced resistance from provincial level officials when attempting to add their newborn's details to their Family Registration documents.¹²⁸ Additionally, a Christian not-for-profit notes that several small Western-owned companies have also experienced harassment due as a result of their Christian connections, although its report does not give details as to who has conducted such harassment.¹²⁹

¹²³ CSW Briefing Laos (2012), 15.

¹²⁴ Sirikoon Prasertsee. 'Atsaphanthong District – Christian Students Denied Education and Police Raided Christian Worship Service.' *Human Rights Watcher for Lao Religious Freedom* (26 May 2014). <<http://hrwlr.net/?p=220>> accessed 29 June 2014.

¹²⁵ CSW Briefing Laos (2012), 15.

¹²⁶ U.S. IRF Report 2012 – Laos, 8.

¹²⁷ Mr. Som Sak was arrested with 5 other church leaders in 2005. He became ill in prison and died while in detention after his transfer to a military hospital. See U.S. IRF Report 2006 – Laos.

¹²⁸ CSW Briefing Laos (2012), 18.

¹²⁹ Ibid.

¹²¹ See United States Commission on International Religious Freedom. *Annual Report of the U.S. Commission on International Religious Freedom April 2013*, chairman, Dr. Katrina Lantos Swett (Washington D.C., April 2013). <[www.uscifr.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20(2).pdf)> accessed 26 April 2014 (hereinafter referred to as "**USCIRF ANNUAL REPORT 2013**"); USCIRF Annual Report 2014; U.S. IRF Report 2012 – Laos, 2, 5.

¹²² U.S. IRF Report 2012 – Laos, 6.

2. Violent Persecution

Local officials have reportedly perpetrated acts of violent religious persecution against religious minorities. In some instances, this has included acts of reported coercion of these minorities to renounce their faith. Aside from threats, minorities have suffered from arrest, expulsion from their homes, closure of places of worship, and restrictions on their freedom of movement.

a. Closure of Places of Worship

Between 1999 and 2001, it was reported that district and provincial authorities closed 65 churches of the Lao Evangelical Church (“LEC”) in Savannakhet and Luang Prabang Provinces and 20 LEC churches in Vientiane.¹³⁰ Many of these churches were allowed to reopen starting in 2002, perhaps marking a more relaxed policy towards minority religions, particularly in Vientiane and Luang Prabang provinces. However, some of the churches remained closed. Additionally closures have continued over the past few years,¹³¹ particularly in some areas such as Savannakhet Province.¹³²

In 2011 and 2012, a number of unregistered churches in Savannakhet were closed by district officials, including the Khamnongsung church, which was established in 1963¹³³ and had 745 members. The closure was reportedly due to the failure of these groups to obtain government registration and permission to build their churches, but members assert that they have been in operation decades before Decree No. 92, thus the Decree should not

be applied retrospectively.¹³⁴ The series of church closures triggered expressions of concern from groups that the province was instituting a wider crackdown on Christian congregations.¹³⁵ Despite this, it is reported that at least 20 other churches in Savannakhet continue to operate without official permission.¹³⁶

b. Forced Renunciations of Faith

Between 1998 and 2001, there were frequent reports of authorities forcing members of LEC congregations to renounce their religious faith on pain of arrest, denial of education for their children, expulsion from their village, or other harsh punishments. As a result of these campaigns, whole congregations gave up their faith in some areas. By late 2001, however, reports of these forced renunciations declined, and it appears the Government has abandoned systematic efforts to compel Christians to renounce their faith.¹³⁷ Nevertheless, forced renunciations have reportedly occurred more recently in certain areas of the country, particularly in Savannakhet, Attapeu, and Bolikhamsai, provinces, usually involving local authorities from the village or the district level.¹³⁸

Some local authorities reportedly forced renunciations through forced participation in animist traditions, including drinking animal blood,¹³⁹ drinking “sacred water” and swearing

130 U.S. IRF Report 2002 - Laos.

131 U.S. IRF Report 2004 - Laos.

132 Sirikoon Prasertsee. ‘A 49-Year-Old Lao Church Now Becomes the 4th Victim of Lao Government’s Aggression on the Even of Good Friday Celebration.’ *Human Rights Watcher for Lao Religious Freedom* (6 April 2014). <<http://hrwlr.net/?p=55>> accessed 29 June 2014.

133 USCIRF Annual Report 2013, 251.

134 Sirikoon Prasertsee. ‘A 49-Year-Old Lao Church Now Becomes the 4th Victim of Lao Government’s Aggression on the Even of Good Friday Celebration.’ *Human Rights Watcher for Lao Religious Freedom* (6 April 2014). <<http://hrwlr.net/?p=55>> accessed 29 June 2014.

135 ‘Laos: Church Closures Spark Fears of Wider Crackdown.’ *Release International* (16 April 2012). <http://www.releaseinternational.org/laos-church-closures-spark-fears-of-wider-crackdown/> accessed 29 June 2014.

136 USCIRF Annual Report 2013, 251.

137 USCIRF Report 2003 - Laos.

138 Ibid. See also USCIRF Annual Report 2014, 133-134; USCIRF Annual Report 2013, 251-252; Alternative Report to the CERD (2012); CSW Briefing Laos (2012), 12-18.

139 U.S. IRF Report 2001.

an oath to spirits.¹⁴⁰ Other officials forced some believers to drink alcohol and smoke cigarettes against their will,¹⁴¹ while others resort to threats of confiscation of ID cards, detention, and even death. In several cases, authorities are reported to have seized the livestock of Christians who refused to renounce their faith.¹⁴² In addition, in 2011 there was a report that certain officials threatened entire villages of denying schooling to children, and access to water projects, land, and medical care.¹⁴³ The International Federation of Human Rights in its 2012 Briefing Paper asserted that, “repression against Christians has not diminished and has even intensified in 2012. Intimidations and threats come in different forms, such as cutting off running water, refusal of social rights, poisoning of cattle, and the throwing of stone or fire at houses of Christians, for instance in Savannakhet province. Local authorities have reportedly encouraged non-Christian villagers to throw stones at their houses or throw burning torches to their house.”¹⁴⁴

In a recent report, the children of a deceased Christian woman were denied the right to mourn and bury their mother according to their faith, with the village chief and village party secretary banning the holding of a wake unless they recant their faith, and forcibly conducting a Buddhist ceremony and

burial in a Buddhist cemetery.¹⁴⁵

c. *Forced Evictions and Attacks against Property*

During the reporting period, there have been reports that Christian minorities who refused to renounce their faith despite orders from local authorities have forcibly evicted from their villages. As described below, while some groups were able to transfer to other villages, others were forced to live on the fringes of communities and were denied access to their basic rights.

In early 2003, officials in Khengkok Village, Champon District, Savannakhet Province expelled several LEC families from property belonging to the LEC community and forcibly took over the house for use as a village office.¹⁴⁶ Some ethnic Hmong Christians in Bolikhamsai Province relocated to another part of the province as a result of pressure from local officials and non-Christian villagers who saw their Christian faith as a threat to traditional animist beliefs.¹⁴⁷

In October 2004, nearly 70 ethnic Khmou Christians in Ban Phiengsavat, Saisomboun Special Zone suffered dispossession and eviction on account of their beliefs.¹⁴⁸ In February 2005, a second expulsion of 100 ethnic Khu Christian villagers took place in Ban Kok Pho Village of Bolikhamsai Province, only a short distance from Ban Phiengsavat. Central

140 Sirikoon Prasertsee, ‘Authorities Coercing Lao Christians to Participate in Animist Rituals of Oath-taking,’ *Human Rights Watcher for Lao Religious Freedom* (26 September 2013). <<http://hrwlr.net/?p=14>> accessed 30 June 2014.

141 U.S. IRF Report 2001.

142 U.S. IRF Report 2004.

143 United States Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom March 2012* (Covering April 1, 2011 – February 29, 2012), Leonard A. Leo, chair, Washington D.C.: 2012), 314.

144 ‘Laos: an overview of human rights violations, A briefing Paper prepared for the 9th Asia-Europe Meeting Summit of Heads of State and Government (ASEM9), Vientiane, Laos, 5-9 November 2012.’ *International Federation for Human Rights and Lao Movement for Human Rights* (October 2012), 8. <http://www.fidh.org/IMG/pdf/mldh_fidh_briefing_paper_on_human_rights_in_laos_final_25102012-2.pdf> accessed 30 June 2014.

145 Sirikoon Prasertsee, ‘A Lao Village Chief Banned Christian Burial Rite and Arrested Leaders in Atsaphanthong District of Savannakhet Province.’ *Human Rights Watcher for Lao Religious Freedom* (24 June 2014). <<http://hrwlr.net/?p=230>> accessed 29 June 2014.

146 U.S. IRF Report 2003 - Laos.

147 Local officials reportedly expelled the group after they refused to give up their religious beliefs, which forced them to sell their possessions at prices significantly lower than the market rate. Military trucks transported the families to Sayaboury Province, from where they had moved several years previously but provincial authorities refused to accept the group and negotiated for their resettlement in Luang Prabang Province. See U.S. IRF Report 2002 – Laos. <<http://www.state.gov/j/drl/rls/irf/2002/13878.htm>> accessed 27 April 2014.

148 U.S. IRF Report 2005 - Laos.

government authorities blamed both events on the two Christian groups, whom they said had settled in Bolikhamsai without permission several years previously. Interestingly, other inhabitants who were non-Christians or who had renounced their religious faith did not suffer from the expulsions.¹⁴⁹

In 2006, lands belonging to several Christian families in Ban Huang Village of Oudomsai Province were reportedly confiscated by the village chief and redistributed to other villagers. Some other Christians who previously lived in the village were said to have moved to Phongsaly Province after being pressured by the village chief. According to Lao officials and the LEC, the land confiscation issue was resolved. However no clear explanation was given regarding how the situation was resolved.¹⁵⁰

In January 2010, 11 families, consisting of 48 men, women and children, were evicted at gunpoint from Katin village, Ta-Oyl District, Saravan Province after 100 officials, police and villagers reportedly raided their worship service. Their houses were reportedly destroyed and their possessions confiscated. The group had to live in the jungle outside the village without access to healthcare or water, and they were not allowed to farm their rice paddies.¹⁵¹ A second expulsion of seven families from the same village occurred in December 2010, when the village chief, elders, security forces and non-Christian villagers carrying guns reportedly forced these families from their homes and barred their return for refusing to recant their Christian faith.¹⁵²

Recently, in March 2014, six Lao Christian families were forced to abandon their native village in Natahall, Phin District, Savannakhet Province after

months of discord with village officials, who were pressuring them to renounce their faith.¹⁵³

d. Arrest, Arbitrary Detention and Imprisonment

Over the course of the last fourteen years, instances of arbitrary detention and imprisonment have been reported involving religious minorities. Some of the detained were held for weeks or months, often without charges. A few of the faithful, usually the leaders and proselytizers, have been charged and sentenced under various offenses for their religious activities.

Of note is the imprisonment of two members of the LEC in Oudomxai Province, Mr. Nyoht and Mr. Thongchanh, who were arrested in 1999 and charged with treason and sedition, although their arrests appear to have been for proselytizing. Nyoht was sentenced to 12 years in prison and Thongchanh to 15 years,¹⁵⁴ which the observers believed to be unduly harsh.¹⁵⁵ Thongchanh, who was a former district governor and a well-known Khmu leader instrumental in the conversion of a number of Khmu in his province, was still serving his sentence as of 2012.¹⁵⁶ Another long-term religious prisoner, Mr. Phiasong, was held in Phongsaly Province for several years without trial, and released in 2003.¹⁵⁷

Additionally there have been several reports that authorities arrested or detained persons, often without charge, because they either held unauthorized religious services or conducted

149 Ibid.

150 U.S. IRF Report 2006–Laos.

151 CSW Briefing Laos (May 2012), 15-16. <<http://www.cswusa.org/filerequest/2864.pdf>> accessed 27 April 2014.

152 Sirikoon Prasertsee. 'Katin Village Officials Expelled 15 Believers (7 Seven Families) from Their Homes Due to Christian Faith.' *Human Rights Watcher for Lao Religious Freedom* (24 December 2010). <<http://hrwlr.net/?p=84>> accessed 10 July 2014.

153 'Lao Christians Leave Buddhist-Majority Village Amid Tensions.' *Radio Free Asia* (27 March 2014). <<http://www.rfa.org/english/news/laos/christians-03272014155205.html>> accessed 29 June 2014; 'Lao Christian families who refused to convert to Buddhism flee village.' *AsiaNews.it* (28 March 2014). <<http://www.asianews.it/news-en/Lao-Christian-families-who-refused-to-convert-to-Buddhism-flee-village-30681.html>> accessed 29 June 2014.

154 U.S. IRF Report 2004–Laos.

155 U.S. IRF Report 2001–Laos.

156 CSW Briefing Laos (2012), 19.

157 U.S. IRF Report 2004–Laos.

unauthorized religious activities.¹⁵⁸ In recent years, reports of arrests include the following incidents:

- In January 2011, 11 Christian leaders were reportedly arrested in Hinboun District, Khammouane Province while conducting a service in a home church, alleging that they were conducting a ‘secret meeting’, and of particular note is that the list of arrested people appeared to include 2 children, ages 4 and 8; prior to this arrest the pastor of the home church has reportedly been summoned repeatedly by the police and ordered to recant his faith and discontinue his belief, he was also previously imprisoned in 2010 for 6 months on charges of “destroying Lao customs and beliefs”;¹⁵⁹
- In December 2011, eight Protestant Christian leaders were reportedly arrested in Boukham Village, Savannakhet Province for allegedly violating village law by conducting Christmas services that is contrary to the traditional spirit beliefs of the village;¹⁶⁰
- In June 2012, two Thai citizens and two Lao citizens were reportedly arrested in Luang Namtha Province while they were explaining the bible in the home of a local Christian;¹⁶¹

- In February 2013, 3 pastors in Phin District, Savannakhet Province were reportedly arrested while in a local shop for having 3 copies of the Christian movie End of Times made, and accused of “spreading the Christian religion.”¹⁶²

Mass arrests have also been reported, such as the case of 30 LEC members arrested for unauthorized assembly while attending Christmas services in 2003.¹⁶³ In another case, 21 ethnic Brou minorities were detained for two months for travelling to another village for a religious ceremony without permission, while others were accused with possession of illegal weapons.¹⁶⁴

There are also reported instances of detained religious minorities being released and rearrested after a few weeks.¹⁶⁵ In this respect the Lao Movement for Human Rights asserts that the release of detained religious minorities is often contingent on international media or Western governments speaking out, with authorities releasing some detainees only to arrest others, or the same ones, at a later date.¹⁶⁶

158 Ibid.

159 Sirikoon Prasertsee, ‘Hinboun District Police Authorities’ Abuse of Power and Unlawful Arrest of Christians in Villages of Khammouane Province,’ *Human Rights Watcher for Lao Religious Freedom* (5 January 2011). <<http://hrwlr.net/?p=168>> accessed 29 June 2014.

160 Sirikoon Prasertsee, ‘Eight Church Leaders Arrested for Holding Christmas Service in Boukham Village in Savannakhet Province,’ *Human Rights Watcher for Lao Religious Freedom* (19 December 2011). <<http://hrwlr.net/?p=97>> accessed 29 June 2014.

161 Sirikoon Prasertsee, ‘Lao Authorities Arrest Thai and Lao Citizens in Luang Namtha,’ *Human Rights Watcher for Lao Religious Freedom* (23 June 2012). <<http://hrwlr.net/?p=37>> accessed 29 June 2014.

162 Sirikoon Prasertsee, ‘Lao Police Arrested and Detained Christian Pastors for Spreading Christian Religion Through Movie CDs,’ *Human Rights Watcher for Lao Religious Freedom* (7 February 2013). <<http://hrwlr.net/?p=23>> accessed 29 June 2014. A subsequent report stated that while 1 of the pastors and the salesman have been released shortly after the arrest, 2 were detained in a prison where conditions are particularly restrictive: the prisoners are chained together and cannot leave the cell to carry out physiological needs, and with 1 of the pastors reportedly beaten by the police in an attempt to obtain a confession. See ‘Two Christian Pastors released/arrested for “spreading the Christian faith”,’ *Agenzia Fides* (09 March 2013). <http://www.fides.org/en/news/33481-ASIA_LAOS_Two_Christian_pastors_released_arrested_for_spreading_the_Christian_faith#.VGkZDMIKQSk> accessed 12 Nov. 2014. Also *News.va: Official Vatican News* <<http://www.news.va/en/news/asialaos-two-christian-pastors-released-arrested-f>> accessed 14 November 2014.

163 U.S. IRF Report 2003 – Laos.

164 Ibid.

165 U.S. IRF Report 2004 – Laos.

166 Alternative Report to the CERD (2012).

While some arrests were ostensibly made for legitimate reasons, they appear to be underlined by the detainees' religious activities or affiliation. The grounds used in reported arrests include: possessing "poisons" or illegal weapons,¹⁶⁷ "disturbing the peace" by holding unauthorized worship services,¹⁶⁸ refusal to pay a debt,¹⁶⁹ criticizing members of the provincial administration,¹⁷⁰ extortion of money from local villagers,¹⁷¹ and illegal gathering for Christmas celebrations.¹⁷²

In a recent incident that is surely a blow to efforts to promote religious freedom, murder charges were leveled against four Christian leaders and a follower in Savannakhet Province in June 2014, allegedly for praying for a woman who embraced Christianity shortly before she died.¹⁷³

e. Involuntary Disappearances

In its Religious Freedom Report for 2012, Christian Solidarity Worldwide highlighted concern over two long-term cases of disappearances. First, is the disappearance of a Christian family, Mr. Boontheong, his wife and 7-year old son, from a Khmu village in Luang Namtha in 2004. Prior to his disappearance, Mr. Boontheong allegedly received threats from plainclothes policemen in his village. He was previously imprisoned for several months in 1998 for leading many from his village to convert to Christianity. There was a rumor that the family is being held in an underground prison but this claim

cannot be verified.¹⁷⁴

Second, five men, one of whom was identified as a policeman, reportedly took Mr. Khamson Baccam, a Christian with influence in his area in Udomxai Province, away in 2006. No news was heard of him, his family did not receive any arrest papers, and no charges were filed against him.¹⁷⁵ Authorities reportedly released Mr. Baccam in 2012.¹⁷⁶

E. Significant Events of Non-State Persecution of Religious Groups

Based on the literature searches and interviews conducted for this report, there has not been any significant event of persecution in Lao PDR perpetrated by non-state actors, except insofar as persons have appeared to be acting together with local authorities as identified in Section II.D.2.c above.

F. Significant Events of Inter-Religious Conflict

As discussed in Section III.A.2. below, the dominant Buddhist faith is generally tolerant of other religious practices. However, a sharp disconnect in belief systems, particularly between animism and Christianity have sometimes led to conflicts within the community, particularly in rural areas where Buddhist and animist beliefs form an integral part of community life. While no single event can be considered as significant, these conflicts frequently underlie and give rise to reported acts of abuse against the religious minorities in a given community. As an example, the refusal of converted Christians to participate in rituals for the spirits (*phi*) and instead performing foreign forms of worship has been viewed as a violation of the community's traditions

¹⁶⁷ U.S. IRF Report 2003 - Laos.

¹⁶⁸ U.S. IRF Report 2004 - Laos.

¹⁶⁹ U.S. IRF Report 2005 - Laos.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² U.S. IRF Report 2004 - Laos.

¹⁷³ Sirikoon Prasertsee. 'Laos Church Leaders Charged with 'Murder' after Praying,' *Human Rights in ASEAN* (27 June 2014). <<http://humanrightsinasean.info/article/laos-church-leaders-charged-%E2%80%98murder%E2%80%99-after-praying.html>> accessed 30 June 2014.

¹⁷⁴ CSW Briefing Laos (2012), 19.

¹⁷⁵ Ibid.

¹⁷⁶ U.S. IRF Report 2012, 4.

and beliefs, angering the spirits of the place. These violations at times result in punishments meted out under the customary law of the ethnic group, such as banishment from the village.

Minor conflicts have also been reported within the different Christian groups. Registration with the LEC has reportedly led to some tensions within the Protestant community, particularly in relation to the efforts of these congregations to establish churches independent of the LEC or associated with denominations based abroad.¹⁷⁷ A church leader of a Christian group commented that the LEC has been placed in a position of influence with the LFNC, as it is the organization that the Government consults on issues although it does not represent all the other congregations and may at times have interests that are not in line with other groups.¹⁷⁸

G. Significant Events of Terrorism and/or Terrorist Threats

Based on the literature searches and interviews conducted for this report, there has been no incident of conflict that has been linked to terrorist groups.

H. Significant Cross-Border Incidents

Although there have been cross-border incidents between Lao PDR and Thailand involving Hmong minorities, these are ascribed as political and not religious in nature.

I. Governmental Response

In the course of the past decade, the Government has taken steps that improved the state of freedom of religion in Lao PDR.

1. Legislative

As discussed in Section II.A. above, Decree No. 92, promulgated in 2002 to promote and regulate the practice of religious freedom in Lao PDR, was at the time of its introduction, a step forward for religious freedom. However, various sectors have aired their concerns with regards Decree No. 92, including the U.N. Special Rapporteurs on freedom of religion and belief. Possibly in response to these concerns, the Ministry of Home Affairs (“MHA”) has provided guidance that Decree No. 92 is being revised, with the amended decree to supersede the current Religious Activities Decree and also repeal Instruction No. 001/LFNC.¹⁷⁹

2. Prosecutions of perpetrators

Based on the literature review and interviews conducted for this report, to date no alleged perpetrators of acts of religious persecution have faced prosecution. The U.S. State Department International Religious Freedom Report for 2005 notes that the Lao PDR Government typically refused to acknowledge any wrongdoing on the part of its officials at the time, even in egregious cases of religious persecution. Instead, blame was attributed to the victims. In some cases, officials provided explanations for events, which lacked credibility, seemingly to exonerate local officials.¹⁸⁰ More recently, even during the times when the government admitted that local officials were partly at fault, it had been unwilling to take action against officials who violated laws and regulations on religious freedom.¹⁸¹ Nevertheless, corrective actions are taken at times in response to reports of serious violations to religious freedom.

¹⁷⁷ U.S. IRF Report 2009–Laos.

¹⁷⁸ Interview with Christian church leader, Vientiane, 14 June 2014.

¹⁷⁹ Lao PDR Law and Religion Framework Overview (2014), 6.

¹⁸⁰ U.S. IRF Report 2005–Laos.

¹⁸¹ U.S. IRF Report 2011–Laos, 5.

3. *Other measures*

In its official pronouncements in recent years, the Government called for conciliation and equality between religious faiths. To this end, the LFNC, joined by the Ministry of Home Affairs starting 2012, continued to instruct local officials on religious tolerance. Officials from the LFNC, with representatives of the LEC, travelled to several provinces to promote better understanding between LEC congregations and local officials.¹⁸²

The LFNC has at times used its offices to mitigate the arbitrary behaviour of local officials in some areas where harassment of Christian religious minorities had been most severe.¹⁸³ In recent years, LFNC officials have intervened to resolve disputes between religious groups and provincial officials, including cases of detention or arrest, sometimes resulting in positive outcomes.¹⁸⁴ Such interventions are a positive step, though it was noted that the LFNC has failed to curtail ongoing religious freedom problems in some provincial areas.¹⁸⁵ In some instances, other government officials have also intervened in the settlement of issues in the local level. In March 2010, the provincial governor of Saravan province met with local Protestants in Katin village and reportedly assured them that they could worship freely and return to their property, apparently contravening the actions of local government officials.¹⁸⁶

The Government has also been noted to have exerted efforts to stop harmful traditions and cruel practices of some ethnic minorities in the country. As an example, members of the Akha ethnic group, who regard giving birth to twins as a misfortune and believe that twins are demons that must be

killed instantly at birth, have been prohibited by the Government from continuing this cruel practice.¹⁸⁷ Likewise, in some ethnic groups, opium has been traditionally offered during village events such as shamanistic rituals and funeral walks, which contributed to a high level of opium dependency among its members. In 2005, the Government officially prohibited opium cultivation, and has resulted in a significant drop in opium addiction.¹⁸⁸

J. **Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation**

1. *Dialogue and Conflict Mediation*

As discussed in Section II.I. above, the Lao Government, through the LFNC and the MHA, continues to exert efforts positively towards the direction of greater religious tolerance by intervening in some cases where members of minority religious groups have been harassed or mistreated.¹⁸⁹

2. *Trainings and Education*

Efforts to educate have also been stepped up by the Lao Government. In 2012, LFNC and MHA officials reportedly travelled to the provinces “to encourage religious groups to practice in accordance with the country’s laws and regulations.” They also instructed local officials on religious tolerance and provided training on protecting religious freedom under Decree No.92 and other regulations related to religious affairs, in collaboration with government religious and peace-building experts from Vietnam.¹⁹⁰

¹⁸² U.S. IRF Report 2012 – Laos, 9.

¹⁸³ U.S. IRF Report 2003 – Laos.

¹⁸⁴ United States Commission on International Religious Freedom, *USCIRF Annual Report 2010 - The Commission's Watch List: Laos* (29 April 2010), 270. <<http://www.uscifr.gov/sites/default/files/resources/ar2010/laos2010.pdf>> accessed 30 June 2014 (hereinafter “**USCIRF ANNUAL REPORT 2010**”).

¹⁸⁵ USCIRF Annual Report 2013, 250.

¹⁸⁶ USCIRF Annual Report 2010, 270.

¹⁸⁷ Report of the Special Rapporteur, Asma Jahangir (2010) para. 58.

¹⁸⁸ Report of the Special Rapporteur, Asma Jahangir (2010), para. 59.

¹⁸⁹ U.S. IRF Report 2012 – Laos, 9.

¹⁹⁰ Ibid.

In March 2010, the LFNC signed an agreement with the Institute for Global Engagement (“IGE”), a U.S.-based religious freedom organization, to conduct trainings to “deepen and expand religious freedom there in a manner that builds social stability and encourages sustainable development.”¹⁹¹ IGE has since engaged in seminars on religious freedom, peace-building and conflict resolution for government officials and religious leaders.¹⁹² From 2009 to 2013, IGE reports that they have conducted 35 workshops, training over 2,300 participants on religious freedom and peace-building.¹⁹³ IGE reports that feedback on the trainings has been positive. In a peace-building training (titled as a “Solidarity Training”) held in November 2011, IGE stated that attendees were provided with “concepts and skills that carried the potential of helping them address real problems in the countryside.”¹⁹⁴ The report went on to reveal that unlike some meetings that “were dominated by government officials explaining the official views of the state, in this meeting officials became emotionally engaged and raised real life examples from the tensions created by conflicting religious loyalties” and that “pastors and government officials exchanged experiences and raised difficult questions about peace and religious freedom in Laos.”¹⁹⁵ As these trainings have

191 Institute for Global Engagement. ‘IGE’s Relational Diplomacy Results in Historic Accord.’ (5 April 2010). <<http://globalengage.org/news-media/press-release/iges-relational-diplomacy-results-in-historic-accord>> accessed 30 June 2010.

192 Institute for Global Engagement. ‘Religious Freedom, Peace-Building, and Conflict Resolution skills Seminars in Laos’ (4 June 2012). <<http://globalengage.org/news-media/press-release/religious-freedom-peace-building-and-conflict-resolution-skills-seminars-in>> accessed 30 June 2014.

193 Institute for Global Engagement. ‘IGE & the LFNC Host Religious Freedom Meeting for 98 Religious Leaders & Government Officials’ (6 August 2013). <<http://globalengage.org/news-media/press-release/ige-the-lfnc-host-religious-freedom-meeting-for-98-religious-leaders-govern>> accessed 30 June 2014.

194 Institute for Global Engagement. ‘The Complexities of Peace and Religious Freedom in Laos’ (27 January 2012). <<http://globalengage.org/news-media/press-release/the-complexities-of-peace-and-religious-freedom-in-laos>> accessed 30 June 2014.

195 Ibid.

been organized with the government, however, it appears that religious sector representatives who participated are limited to groups that are officially recognized by the Government.

3. Consultative Meetings on Decree No. 92

There have also been active efforts on the part of the Lao Government to review Decree No. 92 and address the concerns that have been raised by this law. The MHA, supported by the Australian Embassy, organized a two-day consultative workshop in January 2013, collecting the opinions of stakeholders in order to improve the existing legislation. The workshop was reportedly attended by 70 participants.¹⁹⁶

Similar consultative meetings were also held in 2012 by the LFNC and MHA, in partnership with the IGE, for religious group representatives in Vientiane, Champasak, Bokeo, and Bolikhamxai Provinces, with open discussions about the government’s plan to amend the decree.¹⁹⁷ However, the date when this decree will be released has not been announced and the contents of the amended decree have not yet been made publicly available.¹⁹⁸ Moreover, the degree of representation from unregistered groups in these consultations is unknown and the issues faced by these groups may not have been sufficiently raised in these meetings. Thus, it is still unknown if the anticipated decree would sufficiently address the real-world challenges experienced by the different religious groups in Lao PDR.

196 See Lao Expat Services. ‘Consultation on PM’s Decree on Religious Affairs.’ (04 February 2013). <<http://jclao.com/consultation-on-pms-decree-on-religious-affairs/>> accessed 28 April 2014.

197 U.S. IRF Report 2012, 9.

198 Lao PDR Law and Religion Framework Overview (2014), 6.

K. Analysing the Trends

It must be emphasized that it is generally acknowledged in various reports that over the past years, improvements have been made in the state of freedom of religion in Lao PDR. The decrease in the incidents of repression on religious freedom over the last 14 years has indicated a shift in central Government policy towards greater tolerance and harmony between religions, albeit within the constraints of the existing laws and within the framework of unity that the Government espouses. This has been reflected by its active efforts to conduct trainings and consultations on religious freedom issues.

As a result, urban areas have largely enjoyed greater tolerance in the practice of religion and a general decrease in reports of acts of repression has been noted. However, serious concerns remain, particularly for certain rural areas where the threat of forced evictions, detention and other acts of persecution continue to exist. It is observed that reports on acts of persecution in recent years are centered in specific rural areas such as Savannakhet, Bolikhamsai and Luang Namtha. This tends to indicate that abuses do not stem from a centralized Government policy but are acts of local state actors that may even be attributed to decentralization. This does not mean however, that the Government is not accountable for the continued incidents of persecution in Lao PDR. As cited in Section III.A. below, the continued reluctance of the Government to try alleged perpetrators for the act committed in contravention of Lao's Penal Law has resulted in impunity and a lack of accountability to prevail in certain instances. Conciliatory measures to resolve issues, such as mediation and interventions, while a commendable effort for on the part of the LFNC and MFA, may not be sufficient to address the root cause of the problem and may not be sending the correct message to local authorities regarding the primacy of religious freedom.

It is interesting to note that in the United States Commission on International Religious Freedom previously removed Lao PDR from its Watch List in 2005, citing the Government's positive steps to address serious religious freedom concerns, particularly in urban areas and for the majority Buddhist community, in advance of the U.S. decision to grant Laos permanent normal trade relations. However, the USCIRF observed a rise in the number of religious freedom abuses targeting ethnic and religious minorities in provincial areas over the next years, which prompted the return of Lao PDR to its Watch List in 2009.¹⁹⁹ In its 2013 Report, the USCIRF revised its classification system but still placed Lao PDR in the Tier 2 Category,²⁰⁰ equivalent to its former "Watch List", as it found that the Government engaged in or tolerated violations in religious freedom that are particularly severe and meet at least one, but not all, of the criterion of the U.S. International Religious Freedom Act's three-fold "systematic, ongoing, egregious" standard.²⁰¹ In the United States Commission of International Religious Freedom Annual Report of 2014, Lao PDR remained in the Tier 2 Category.²⁰² Although not expressly stated, this classification may have considered that violations committed are ongoing and egregious but not a systemic act from the Government.

199 United States Commission on International Religious Freedom. *USCIRF Annual Report 2009 - The Commission's Watch List: Laos* (1 May 2009). <<http://www.refworld.org/docid/4a4f272cc.html>> accessed 30 June 2014.

200 USCIRF Annual Report 2013, 250.

201 It should be noted that the Tier 2 designation provides advance warning of negative trends that could develop into severe violations of religious freedom, giving policymakers an opportunity to engage early and increasing the likelihood of preventing or diminishing the violations. See USCIRF Annual Report 2013, 3.

202 USCIRF Annual Report 2014, 133.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

1. *Socio-cultural and political conditions*

a. *Socio-cultural conditions*

The Christian belief system itself differs fundamentally from many animist and Buddhist beliefs and traditions, which may have resulted in misunderstandings between members of communities in Lao PDR. While in general, amicable relations exist among various religious groups and the dominant Buddhist faith is tolerant of other religious practices,²⁰³ tensions over religious practice occasionally occurred in some villages from conflicts over use of village resources or from proselytizing,²⁰⁴ which is not customary in the Buddhist tradition but is considered a duty in certain Christian sects. Discord also stems from the refusal of some Christians to participate in local rituals or traditions that are contrary to their Christian belief or doctrine, such as village festivals, or to drink alcohol, or to take part in the community's effort to build a Buddhist temple. These acts are interpreted as disloyal to the local community.²⁰⁵ As observed by one Christian church leader, these cultural differences and sensitivities are at times not taken into account when Christians interact with locals, leading to tensions in the community.²⁰⁶

Likewise, a refusal to take part in community rituals and events may be interpreted as an offense against tradition or the spirits, which is subject to sanctions under the group's customary law. However, while customary law remedies aim to advance reconciliation, compromise and discourse between the parties, emphasis is placed upon what is considered as the interest of the community as a

whole,²⁰⁷ and it has been noted that in prioritizing community harmony, customary law systems tend to ride roughshod over the rights and interests of vulnerable individuals and groups.²⁰⁸ The remedies involved itself under the customary law may also be contrary to Christian belief or human rights, which could only lead to an exacerbation of the conflict. As an example, the Lu-Mien would require a person who violates a traditional belief or desecrates a holy place to pay a fine or to worship the spirits of the place, including covering the costs of offerings and payment to a clairvoyant to perform the ceremony. For the Makong, witchcraft or offenses against spirits are considered as serious and threatening offenses, and the offender might be banished from the village or placed in custody in a district jail.²⁰⁹ This may explain the acts of local leaders requiring Christian converts to perform animist rituals or decisions of evictions from the village. While these sanctions are considered as acceptable forms of remedies under the customary law of the community, these acts are violations of the one's fundamental rights under international law.

b. *Political conditions*

As a socialist State whose population has a long history of Buddhist and animist traditions, some Lao authorities continue to view the rapid spread of Christianity among ethnic minorities, particularly those who have long resisted or resented government control, both as an imperialist or "American import" that potentially threatens Communism, or a cause of social and familial friction in local communities, who are mostly animist or Buddhist in belief.²¹⁰

The view of Christianity as a foreign religion or as a tool of deception by "the American enemy" to infiltrate homes and break up Lao society or to oppose the present Lao political system has been used by local authorities as a means to disparage

²⁰³ U.S. IRF Report 2012, 10.

²⁰⁴ U.S. IRF Report 2003.

²⁰⁵ CSW Briefing Laos (2012), 12.

²⁰⁶ Interview with Christian church leader, Vientiane, 14 June 2014.

²⁰⁷ Customary Law (2011), 58.

²⁰⁸ Ibid., 10.

²⁰⁹ Ibid., 59-61.

²¹⁰ USCIRF Annual Report 2013, 251.

the faith of Christian believers and to force them to recant their faith in some instances.²¹¹ It should also be noted that the believers in the LEC (as well as other Protestant Christian groups) mostly comprises members of the ethnic Mon-Khmer and Hmong tribes, two groups that historically have resisted central Government control. This may perhaps also contribute to the distrust of this new religion.²¹² As a result, when acts of repression against these minorities are committed, they are regarded as justified.

Christian faiths are also considered suspect, as they do not share the high degree of incorporation into the government structure that Theravada Buddhism experiences,²¹³ which is the religion of the majority and of most Party officials. Some authorities have chosen to interpret Christian teachings of obedience to God as signifying disloyalty to the Government and Party.²¹⁴

It is likely that these different factors intertwine to result in conflicts in communities. As opined by IGE's Laos Program Officer after the arrest of eight Christians for holding Christmas celebrations in 2011, determining how these incidents happen in Laos "takes time to unravel as there are multiple personal, social, ethnic, and political threads that

weave themselves into a full blown conflict."²¹⁵

2. Rule of Law in Lao PDR

The weakness of the rule of law in Lao PDR is a major contributing factor that exacerbates and perpetuates the persecution of religious minorities. Weak mechanisms for accountability appear to create an atmosphere wherein authorities may act with impunity against persons regarded as posing a threat to the existing social order.²¹⁶ As has already been discussed in detail in this report, this would tend to enable religious minorities to become susceptible to harassment and arrest with little expectation of a just recourse under the law.

Additionally, there has, in the past, appeared to be limited knowledge on the part of local officials regarding government policies on issues such as religious tolerance. This would appear, at least in part, to be attributable to the incomplete dissemination of existing laws and regulations to those authorities.²¹⁷ As can be seen from the charges against certain religious minorities regarding security or other criminal offenses²¹⁸ local police are either not fully cognizant of the elements of the offenses required to prove the offence or lack concern as to the wrongfulness of the arrest. The right of an accused to know the charges against him and to a trial without undue delay also appear to have been violated in certain instances, as several arrested persons were held for lengthy periods without charges or without trial. Detentions can last a few days, a few weeks or even a few years, and the authorities have exhibited discretionary power to determine the duration.²¹⁹ This is despite

211 'Lao Christian families who refused to convert to Buddhism flee village' *AsiaNews.it*. (28 March 2014). <<http://www.asianews.it/news-en/Lao-Christian-families-who-refused-to-convert-to-Buddhism-flee-village-30681.html>> accessed 29 June 2014; Sirikoon Prasertee, 'Hinboun District Police Authorities Abuse of Power and Unlawful Arrest of Christians in Villages at Khammouane Province.' *Human Rights Watcher for Lao Religious Freedom* (5 January 2011). <<http://hrwlr.net/?p=168>> accessed 29 June 2014; Sirikoon Prasertee, 'Savannakhet Provincial Authorities Unlawfully Seized a Building of 50 Years Old Church.' *Human Rights Watcher for Lao Religious Freedom* (13 January 2012). <<http://hrwlr.net/?p=182>> accessed 29 June 2014.

212 U.S. IRF Report 2004 – Laos.

213 U.S. IRF Report 2007 – Laos.

214 U.S. IRF Report 2004 – Laos.

215 Institute for Global Engagement. 'The Complexities of Peace and Religious Freedom in Laos' (27 January 2012). <<http://globalengage.org/news-media/press-release/the-complexities-of-peace-and-religious-freedom-in-laos>> accessed 30 June 2014.

216 U.S. IRF Report 2003 - Laos.

217 U.S. IRF Report 2006 - Laos.

218 U.S. IRF Report 2003 - Laos.

219 Alternative Report to the CERD (2012).

the express safeguards provided under criminal law and procedure, in addition to Lao PDR's obligations under the International Covenant on Civil and Political Rights.

Victims of illegal detention or false charges have no real avenue for redress. In some cases, victims were able to resort to informal interventions such as communications between the LEC and/or the LFNC and the local authorities and police, or the payment of fines to the police for the release of detainees even without a formal charge or conviction.²²⁰ However, as discussed in Section II.I. 2. above, the Government has been so far unable to prosecute perpetrators.

Moreover, as disclosed during interactions with Special Rapporteur Jahangir, some people have admitted to self-censorship and have hesitated to approach the authorities on matters of religion, which may also be attributed partly to lack in confidence in the rule of law in the country.²²¹

If this lack of administrative and criminal accountability is allowed to persist, the Government efforts to promote religious freedom and to strengthen the rule of law in the country, however genuine, will be continuously undermined.

3. *Government emphasis on national unity and national interests*

"Lao PDR is keen to preserve a strong, united sense of national identity exemplified through its citizens' loyalty to the country, regardless of their ethnic or religious identity."²²² This Government policy towards "national unity" has been consistently reaffirmed, from the Constitution and Decree No.92, to the declaration of the Government in its ratification of the ICCPR in 2009. The primacy given by the Government to a singular national

identity among Lao PDR's multi-ethnic population, however, has in certain instances been detrimental to the country's religious minorities, and in particular, to Christians. This appears to be the case because some officials interpret unity as *uniformity*, hence resulting in little tolerance for activities that deviate from the norm. Authorities have thus intervened in the activities of minority religious groups on the grounds that their practices did not promote national interests, or demonstrated disloyalty to the Government.²²³ As a result, while it appears that the freedom "to believe or not to believe" is guaranteed under the Constitution, in practice, the freedom to manifest one's belief is subject to the preservation of "national unity" or "national interest" – terms which have at times been open to abuse.

B. Positive Contributing Factors

1. *Initiatives and Interventions by other States and International Organizations*

International organizations such as the UNDP and other States such as the U.S. Government have consistently advocated the advance of the right to freedom of thought, conscience and religion in Lao PDR and have supported the Lao Government in its goal to improve the state of religious freedom in the country.

Through the years, the U.S. Government has constantly engaged the Lao PDR Government in dialogue on religious freedom issues in the context of its overall dialogue and policy of promoting human rights. U.S. Embassy representatives discussed the need for greater religious freedom at senior as well as at working levels of the Government and the LPRP, and remained in frequent contact with religious leaders.²²⁴ The U.S. State Department and the U.S. Commission on International Religious Freedom, under the International Religious Freedom Act of 1998, monitors the conditions of religious liberty in

220 CSW Briefing Laos: (May 2012), 16-17.

221 Report of the Special Rapporteur, Asma Jahangir (2010), para. 4.

222 CSW Briefing Laos: (May 2012), 12.

223 U.S. IRF Report 2006 – Laos.

224 U.S. IRF Report 2003 - Laos.

various countries, including Lao PDR, and produces annual reports on their findings.

The UNDP, along with other contributing States, has also implemented programs in the country for the promotion of human rights and the rule of law in the country, including its support project for the Legal Sector Master Plan, which envisions the realization of Lao PDR's goal of a Rule of Law State by 2020.

As discussed in Section II.J. above, the Institute for Global Engagement has actively cooperated with the Lao Government to conduct consultative meetings and trainings for government officers and religious leaders, to foster religious tolerance and a better understanding of religious freedom. Other non-governmental organizations, such as the Human Rights Watcher for Lao Religious Freedom, also continue to actively monitor the human rights and religious freedom situation in the country, and highlighting incidents of religious conflict to provide awareness and encourage resolutions to these conflicts.

2. *Public service and community programs by religious minorities*²²⁵

The LEC has adopted programs and activities in local communities to foster solidarity between the different religions and to educate against religious intolerance. The LEC conducts an active program of public service providing developmental assistance and organizing social welfare projects in several areas that had previously experienced religious intolerance. It continued its program to provide educational materials to provincial schools and also

provided emergency supplies to flood victims in the country's southern provinces in 2011. As discussed above, in coordination with the LFNC, the LEC continued to conduct meetings with officials and Protestants in some villages where there had been religious tensions.²²⁶

Catholics and Buddhist groups have also been noted to take part in community programs. Students from a Catholic seminary visited elderly citizens in rural areas, provided agricultural trainings and volunteered in farms during harvest season. Buddhist associations donated clothes and contributed to school building and local infrastructure projects. Some monks organized donation drives to assist natural disaster victims of all religions and poor children who are unable to afford school expenses received education in Buddhist temple schools.²²⁷

²²⁵ According to the Report of Ms. Jahangir, there were some concerns expressed by Government interlocutors over "unethical conversions" by Christian groups who use material assistance to lure the poor to convert. However, the Rapporteur stated that these seem to be unlikely in practice since NGOs work under the close supervision of Government. She reiterates that missionary activity is accepted as a legitimate expression of religion or belief and therefore enjoys the protection afforded by Article 18 of the ICCPR. See Report of the Special Rapporteur, Asma Jahangir (2010), para. 42-43.

²²⁶ U.S. IRF Report 2011 – Laos, 10.

²²⁷ U.S. IRF Report 2012 – Laos, 10.

PART FOUR: CONCLUSION

The Constitution of Lao PDR guarantees and protects the freedom of thought, conscience and religion of Lao citizens. In practice, however, the right to manifest one's religious beliefs has, to some extent, been restricted by laws that regulate religion and has been somewhat dependent on the area in the country where that religion is practiced. In this respect, religious minorities in certain rural areas continue to be vulnerable to acts of harassment and abuse. This largely appears due to a combination of social, cultural, and political factors pertaining to the way in which those minorities are viewed by rural communities and from the restrictive interpretation of Decree No. 92 accorded by local authorities.

While clearly, incidents of persecution have reportedly decreased over the course of the last 14 years, and adherents of the Buddhist faith and believers of different religions in urban areas have been largely free to practice their faith, isolated cases of serious human rights violations continue to occur. Unfortunately, the weakness of rule of law has enabled perpetrators, usually local authorities, to act with impunity and victims have been left with no real recourse in law with the country's underdeveloped formal justice system.

Nevertheless, the Government's efforts to foster greater religious tolerance are noteworthy. The LFNC and the MHA are collaborating with various organizations for trainings on religious freedom for local government authorities. The Government, with the aim to transform Lao PDR into a rule of law State by 2020, has also launched the Legal Sector Master Plan. The reported review of Decree No. 92 is a welcome development and stakeholders anticipate that the new law will be promulgated soon and that it will be able to address the issues that exist due to the present decree.

More reforms are still needed, and the Government would seemingly do well to take into account the recommendations of various sectors, particularly the recommendations of the Special Rapporteurs,

stakeholders in religious communities, and the international organizations working to address human rights issues in the country, when considering how best to proceed with these efforts. Additionally, a more concerted effort to ensure accountability for that local authorities that fail to safeguard religious freedom in accordance with the country's domestic and international legal obligations would send a strong and clear message of its capacity to protect freedom of thought, conscience and religion in Lao PDR. Education and awareness campaigns may also be expanded to different sectors of society, from the schools, communities, and even the private sector, to create greater awareness and respect for freedom of religion and diversity in the community.

For their part, the different religious groups must also find a way to have dialogues to diffuse tensions in communities with conflict and to promote tolerance and understanding of each other's beliefs.

Lao PDR has made good progress in securing religious freedom in the past decade. While it is acknowledged that the system and certain prevailing mindsets cannot be changed overnight, there are good reasons to expect that further initiatives to improve the state of religious freedom in the country will be able to be sustained and expanded. It is hoped that all persons in Lao PDR will soon be able to exercise religious and convictional freedom in all parts of the land.

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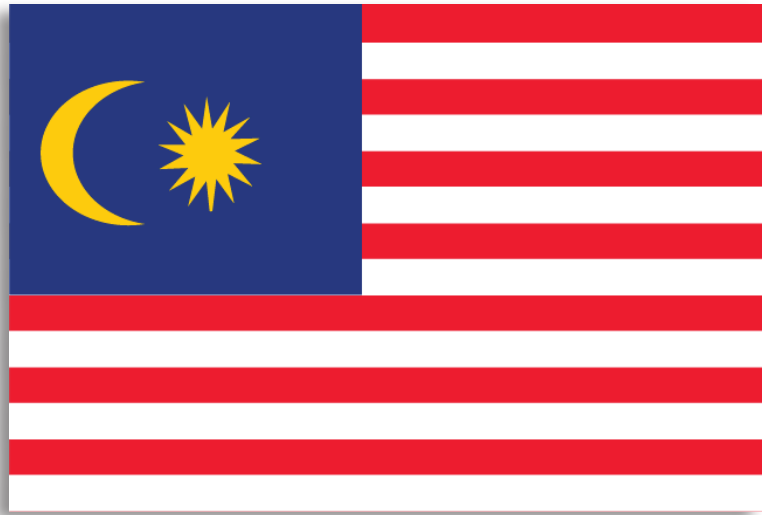
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43. U.S. Commission on International Religious Freedom. *Annual Report of the U.S. Commission on International Religious Freedom April 2013*, chairman, Dr. Katrina Lantos Swett, (Washington D.C., April 2013).<[www.uscirf.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20(2).pdf)> accessed 26 April 2014.
44. United Nations Treaty Collection. 'International Covenant on Civil, Political Rights.' <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#28> accessed 25 April 2014.
45. United Nations Treaty Collection. <<https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?tab=UN>> accessed 29 June 2014.
46. United States Department of State. *International Religious Freedom Report for 2001 – Laos* (26 October 2001).<<http://www.refworld.org/docid/3bdbdd9ae.html>> accessed 27 April 2014.
47. United States Department of State. *International Religious Freedom Report 2002– Laos* (7 October 2002). <<http://www.state.gov/j/drl/rls/irf/2002/13878.htm>> accessed 27 April 2014.
48. United States Department of State. *International Religious Freedom Report 2004 – Laos* (16 September 2004). <<http://www.state.gov/j/drl/rls/irf/2004/35404.htm>>accessed 27 April 2014.
49. United States Department of State. *International Religious Freedom Report 2005– Laos* (8 November 2005).<<http://www.state.gov/j/drl/rls/irf/2005/51517.htm>>accessed 27 April 2014.
50. United States Department of State. *International Religious Freedom Report 2006 – Laos* (15 September 2006). <<http://www.state.gov/j/drl/rls/irf/2006/71346.htm>>accessed 27 April 2014.
51. United States Department of State. *International Religious Freedom Report 2007– Laos* (14 September 2007). <<http://www.state.gov/j/drl/rls/irf/2007/90142.htm>>accessed 27 April 2014.
52. United States Department of State. *International Religious Freedom Report 2009 – Laos* (26 October 2009). <<http://www.state.gov/j/drl/rls/irf/2009/127276.htm>> accessed 27 April 2014.
53. United States Department of State. *International Religious Freedom Report 2010 – Laos* (17 November 2010). <<http://www.state.gov/j/drl/rls/irf/2010/148878.htm>>accessed 27 April 2014.
54. United States Department of State. *International Religious Freedom Report 2011 – Laos* (30 July 2012). <http://www.state.gov/j/drl/rls/irf/2011/eap/192639.htm>>accessed 27 April 2014.
55. United States Department of State. *Laos 2012 International Religious Freedom Report*, (20 May 2013). <<http://www.state.gov/documents/organization/208454.pdf>> accessed 27 April 2014.

Other:

1. John Clifford Holt. *Spirits of the Place: Buddhism and Laos Religious Culture*. Honolulu: University of Hawai'i Press, 2009.



Malaysia

Malaysia

Formal Name	Malaysia
Capital City	Kuala Lumpur
Declared Relationship with Religion	"Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation." (Article 3(1) of the Federal Constitution) ²
Form of Government	Federal System
Regulation of Religion	State Powers
Total Population	29,947,000 (2013) ³

Religious Demography in 2010:⁴

Year	Islam (%)	Buddhist (%)	Christian (%)	Hindu (%)	Confucianism, Taoism, Tribal/folk/ other traditional Chinese religion (%)	Unknown (%)	No religion (%)	Other religion (%)
2010	61.3	19.8	9.2	6.3	1.3	1.0	0.7	0.4

1 The Malaysian Centre for Constitutionalism and Human Rights would like to thank Long Seh Lih, K. Shanmuga, Paula Tena, Khairil Zhafril and Zaharom Nain for their contribution to the research.

2 Article 3 of the Federal Constitution reads, "(1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. (2) in every State other than States not having a Ruler the position of the Ruler as the head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as head of that religion, are unaffected and unimpaired; but in any acts, observances or ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the other Rulers shall in his capacity of head of the religion of Islam authorise the Yang di-Pertuan Agong to represent him. (3) the Constitution of the States of Malacca, Penang, Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong the position of head of the religion of Islam in that State. (4) nothing in this Article derogates from any other provision of this Constitution. (5) notwithstanding anything in this Constitution the Yang di-Pertuan Agong shall be the head of the religion of Islam in the Federal territories of Kuala Lumpur, Labuan and Putrajaya; and for this purpose Parliament may by law make provisions for regulating Islamic religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam."

3 'Population Quick Info', Department of Statistics, Malaysia, <<http://pqj.stats.gov.my/result.php?token=722a7dd0dce833949ad90ddb5ed91b0>> accessed 24 March 2014.

4 'Population Distribution And Basic Demographic Characteristic Report 2010', *Department of Statistics, Malaysia*, <http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=1215%3Apopulation-distribution-and-basic-demographic-characteristic-report-population-and-housing-census-malaysia-2010-updated-2972011&catid=130%3Apopulation-distribution-and-basic-demographic-characteristic-report-population-and-housing-census-malaysia-2010&Itemid=154&lang=en> accessed 24 March 2014; Religious demography for 2014 is unavailable – the latest figures obtained was during the census in 2010.

Religious demography by ethnic group in 2010:⁵

Religion	Malay	Other Bumiputera	Chinese	Indians	Others
Islam	14,191,720	1,347,208	42,048	78,702	102,334
Christianity	-	1,549,193	706,479	114,281	22,870
Buddhism	-	33,663	5,341,687	32,441	51,274
Hinduism	-	2,941	14,878	1,644,072	4,474
Confucianism, Taoism and Tribal/ folk/other traditional Chinese religion	-	131,407	218,261	716	689
Other religion	-	50,347	8,576	36,599	856
No religion	-	132,560	49,320	824	1,104
Unknown	-	84,469	11,387	192	5,784

Changing Religious Demography (in 10 year intervals):⁶

Year	Islam (%)	Buddhist (%)	Christian (%)	Hindu (%)	Confucianism, Taoism, Tribal/ folk/ other traditional Chinese religion (%)	Folk [#]	Unknown (%)	No religion (%)	Other religion (%)
2010	61.3	19.8	9.2	6.3	1.3	N/A	1.0	0.7	0.4
2000	60.4	19.2	9.1	6.3	2.6*	0.8	0.3	0.8	0.4
1991	58.6	18.4	8.1	6.4	5.3*	1.2	0.1	1.4	0.5
1980	52.9	17.3	6.4	7.0	11.6*	2.0	0.0	2.1	0.5
1970	50.04	25.54	5.33	7.42	Category not included in the census	Category not included in the census	Category not included in the census	3.99	7.69

*These figures include only 'Confucianism, Taoism and other traditional Chinese religion'.

This category applies only to the years 2000, 1991 and 1980. In 2010, 'Folk' was combined with 'Confucianism, Taoism and other traditional Chinese religion'.

⁵ Population Distribution And Basic Demographic Characteristic Report 2010', *Department of Statistics, Malaysia*, <http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=1215%3Apopulation-distribution-and-basic-demographic-characteristic-report-population-and-housing-census-malaysia-2010-updated-2972011&catid=130%3Apopulation-distribution-and-basic-demographic-characteristic-report-population-and-housing-census-malaysia-2010&Itemid=154&lang=en> accessed 11 November 2014

⁶ The Population Distribution and Basic Demographic Characteristic Reports do not define or explain the different religious categories.

INTRODUCTION

Malaysia is a federal state and, under the Federal Constitution, religion falls under the State List and is thus a state matter. From the time of its independence in 1957, every state has adopted Islam as the its respective official state religion. In states having a *Sultan* as the head of state, the *Sultan* is also the head of the religion of Islam. For states without *Sultans*,⁷ the head of Islam is the *Yang di-Pertuan Agong* (the King). This is provided for under article 3 of the Federal Constitution. The *Sultan* is empowered with all the rights and privileges as head of Islam except in matters that the Conference of Rulers agrees applies to the whole Federation. Each *Sultan* is assisted and advised by their respective state Islamic Religious Council (*Majlis Agama Islam*). Each respective state has its own Islamic Religious Department (*Jabatan Agama Islam*), *Mufti*,⁸ *Fatwa* Committee and Syariah Subordinate Courts and Syariah High Court. Depending on the state Syariah law, generally, Syariah court judges are appointed by the Sultan on the advice of the Islamic Religious Council.⁹

These state machineries are responsible for regulating Islam in the following areas - succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions, and non-charitable trusts; *wakafs* (pious endowment), and the definition and regulation of charitable and religious trusts.¹⁰ They have jurisdiction only over persons professing the religion of Islam.

Beyond these state establishments, there are Federal government agencies that regulate some aspects of

Islam such as banking and pilgrimages. For example, one of the functions of the Ministry of Home Affairs is to regulate the publication, printing and distribution of printed materials and to ensure the authenticity and prevent the distortion of Qur'anic texts and materials;¹¹ any person who wishes to print or publish any Al-Quran text must apply for a licence from the Board of Control and Licence of Al-Quran, Ministry of Home Affairs.¹² Also, the Department of Islamic Development Malaysia (JAKIM) under the Prime Minister's Department is the main Federal agency managing Islamic affairs; JAKIM is tasked with three functions: formulation and standardisation of Islamic Law; Islamic coordination and administration; and coordination and development of Islamic education.¹³

As for the judiciary, the delineation of jurisdiction of Syariah courts and civil courts can be found in article 121(1A) of the Federal Constitution, which states that the High Court shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

As regards religion other than Islam, article 3 of the Federal Constitution provides that while Islam is the religion of the Federation, *other religions may be practised in peace and harmony*. As such, the regulation of religion other than Islam falls within the purview of the Federal government. Different ministries in the Federal government govern different aspects of religion. For example, the Registrar of Societies (ROS), Ministry of Home Affairs is in-charge of registration of, amongst others, religious organisations; the Immigration Department provides for issuance of visas to foreign nationals, including Muslim and non-Muslim clergy.

7 Melaka, Penang, Sabah and Sarawak.

8 A Muslim legal expert who is empowered to give rulings on religious matters.

9 For example for the state of Kelantan, Syariah Court judges are appointed by the Sultan on the advice of the State Service Commission (section 7 of the Administration of the Syariah Court Enactment 1982 (Kelantan).

10 List II (State List) of the Ninth Schedule of the Federal Constitution.

11 Ministry of Home Affairs < <http://www.moha.gov.my/index.php/en/maklumat-korporat/fungsi-kementerian>> accessed 25 March 2014.

12 Section 5(1) of the Printing of Al-Quran Texts Act 1986.

13 Department of Islamic Development (JAKIM), Prime Minister's Department <<http://www.islam.gov.my/en/jakim-functions>> accessed 25 March 2014.

The current regulation and administration of religion (as expounded by article 3 and Item 1, State List, Ninth Schedule of the Federal Constitution) is very much a by-product of British colonial policies in Malaya and political manoeuvrings by the colonial powers at that time. Article 3 of the Federal Constitution, which has given rise to contentious debate as to whether Malaysia is a secular or theocratic state stems from the time when Malaysia was about to gain independence from the British. The Reid Commission, which was tasked to, *inter alia*, draw up the federal constitution, had meant to make Malaysia a secular country but at the same time, it included in the constitution that Islam is the religion of the Federation; Reid Commission papers stated that this was merely for ceremonial purposes.¹⁴ Some have argued that this makes the Federal Constitution a hybrid one – it does not create an Islamic state but it contains provisions that allow the state to establish or maintain Islamic educational institutions; and it allows for the formation of Syariah courts.¹⁵

As regards the position of the Sultan as the head of Islam in each state in Malaysia in article 3(2) to (5) of the Federal Constitution, this is rooted in the 1874 Treaty of Pangkor between the British and the Sultans where the Sultans' powers were removed except in two areas – Islam and *adat* (Malay custom).¹⁶ The carving out of Islam and Malay custom from the rest of the political arena of the Sultan also provided the template of reserving Islam as the religion of the state¹⁷ and hence the Sultans saw themselves as the protector of Islam and the

Malay culture.¹⁸

To give practical effect to the Sultan's power over Islam and Malay custom, the British created a bureaucratic and legal machinery to ensure that the Sultans are able to implement their directives in a systematic way.¹⁹ This started with the codification of Islamic law followed by the establishment of a system of administration of Islamic law - Syariah courts were established to administer Muslim affairs, *muftis*, *Kadis* and *Imams* were officially appointed as state personnel and each state had a *Majlis Agama Islam dan Adat Istiadat Melayu* (Council of Islamic Religion and Malay Customs) and a *Jabatan Hal Ehwal Agama Islam* (Department of Religious Affairs).²⁰

Co-opting the religious bodies and personnel into bureaucratic machinery meant that their salaries were paid from the state budget, they were empowered with an elevated status and given the official power to govern the religion, such as offering the right to religious instruction (*tauliah*)

14 Professor Dr. Shad Saleem Faruqi, 'Document of Destiny the Constitution of the Federation of Malaysia', (Kuala Lumpur: The Star Publications, 2008), pp. 123–124.

15 Professor Dr. Shad Saleem Faruqi, 'Document of Destiny the Constitution of the Federation of Malaysia', (Kuala Lumpur: The Star Publications, 2008), pp. 127–149.

16 Julian C.H. Lee, 'Islamization and Activism in Malaysia', (Singapore: ISEAS Publications, 2010), pg. 19.

17 Andrew Harding, 'The Constitution of Malaysia – A Contextual Analysis', (United Kingdom: Hart Publishing, 2012), pg. 227.

18 Christopher Rodney Yeoh, 'Malaysia Truly Asia? Religious Pluralism in Malaysia', *The Pluralism Project – Research Report*, <http://pluralism.org/research/reports/yeoh/Pluralism_Malaysia.pdf> accessed 3 September 2014>.

19 Hefner, R. W. 2001, 'Introduction: Multiculturalism and Citizenship in Malaysia, Singapore, and Indonesia', *The Politics of Multiculturalism*, (University of Hawaii Press, Honolulu) in Christopher Rodney Yeoh, 'Malaysia Truly Asia? Religious Pluralism in Malaysia', *The Pluralism Project – Research Report*, <http://pluralism.org/research/reports/yeoh/Pluralism_Malaysia.pdf> accessed 3 September 2014>.

20 Roff, 'The Origins of Malay Nationalism', pp. 140 - 141; Means, 'The Role of Islam in the Political Development of Malaysia', pg. 274; Syed Ahmad Hussein, 'Islam and Politics in Malaysia 1969-82: The Dynamics of Competing Traditions', pg. 81; Yegar, 'The Development of Islamic Institutional Structure in Malaya 1874 – 1941: The Impact of British Administrative Response', pp. 98 - 199 in Ahmad Fauzi Abdul Hamid, 'The Impact of British Colonialism on Malaysian Islam; An Interpretive Account', *Islam and the Modern Age*, Volume XXXV, No. 2, May 2004, Zakir Husain Institute of Islamic Studies, New Delhi, <http://www.academia.edu/842881/The_Impact_of_British_Colonialism_on_Malaysian_Islam_An_Interpretive_Account> accessed 3 September 2014.

to religious teachers and issuing *fatwas*.²¹ This marked a significant departure from its traditional role where these religious personnel/bodies relied on income from donations, gifts and *zakat* and *fitrah* payments.

This Federal-state division of powers in relation to Islam (as explained above) has been a point of contention of late, particularly in two areas – Islamic civil law and Islamic penal law in terms of state assemblies enacting Hudud laws.²²

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

1. Ratified Conventions

Malaysia is party to three main international human rights conventions.²³

International Document	Year of Signature	Year of Ratification / Accession	Reservations
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	N/A	1995	Articles 9 (2), and 16 (1) (a), (c), (f) and (g)
Convention on the Rights of the Child (CRC)	N/A	1995	Articles 2, 7, 14, 28 paragraph 1 (a) and 37
Convention on the Rights of Persons with Disabilities (CRPD)	2008	2010	Articles 15 and 18

For both CEDAW and CRC, some of the reservations made were on the basis of religious grounds - for CEDAW, Malaysia declared that the accession is “subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law...”, with the majority of the reservations made pertaining to family matters in article 16 of CEDAW. Reservations were made to article 16(1)(a) on the same right to enter into marriage; article 16(1)(c) on the same rights and responsibilities during marriage and at its dissolution; article 16(1)(f) on equal rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children; and article 16(1)(g) on equal rights to choose a family name, profession and occupation.²⁴ In July 2010, Malaysia withdrew its reservations to articles 5(a),

21 Roff, ‘The Origins of Malay Nationalism’, pp. 73 – 74; Means, ‘The Role of Islam in the Political Development of Malaysia’, pg. 274; Syed Ahmad Hussein, ‘Islam and Politics in Malaysia 1969-82: The Dynamics of Competing Traditions’, pg. 81 in Ahmad Fauzi Abdul Hamid, ‘The Impact of British Colonialism on Malaysian Islam: An Interpretive Account’, *Islam and the Modern Age*, Volume XXXV, No. 2, May 2004, Zakir Husain Institute of Islamic Studies, New Delhi, <http://www.academia.edu/842881/The_Impact_of_British_Colonialism_on_Malaysian_Islam_An_Interpretive_Account> accessed 3 September 2014.

22 ‘Document of Destiny the Constitution of the Federation of Malaysia’, pp. 133 and 145.

23 ‘Malaysia – Status of Ratifications’, *Office of the High Commissioner for Human Rights*, <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN> accessed 24 March 2014.

24 The Government of Malaysia declares that Malaysia’s accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia. With regard thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 9 (2), 16 (1) (a), 16 (1) (c), 16 (1) (f) and 16 (1) (g) of the aforesaid Convention. In relation to article 11 of the Convention, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only”, United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed 24 March 2014.

7(b), and 16 (2).²⁵

As regards the CRC, although there was no explicit reference to religion at the time of accession, Malaysia reserved article 14 of the CRC, which guarantees a child's right to freedom of thought, conscience and religion.²⁶

Reservations made to CRPD do not pertain to religious matters.²⁷

2. *Dualism and the Incorporation of International Obligations*

Malaysia adopts a dualist approach to international law and which requires an Act of Parliament before international human rights conventions are directly applicable in Malaysia. Thus far, no specific law has been passed to incorporate CRC, CEDAW and the CRPD into domestic law, although parts of the CRC are reflected in the Child Act 2001. Furthermore, the Constitution was amended in 2001 to include gender as a prohibited basis for discrimination under article 8(2) of the Federal Constitution, with the stated aim of complying with Malaysia's CEDAW obligations.

²⁵ United Nations Treaty <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en#36> accessed 10 June 2014.

²⁶ "The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 2, 7, 14, 28 paragraph 1 (a) and 37, of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia", United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec> accessed 24 March 2014.

²⁷ Malaysia made reservations to articles 15 and 18 of the CRPD, which relates to freedom from torture or cruel, inhuman or degrading treatment or punishment and liberty of movement and nationality, United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec> accessed 24 March 2014.

Whilst there are no structured mechanisms to implement these international human rights conventions, the government has taken steps to streamline compliance and implementation of its obligations under international human rights conventions, including creating specialised committees to implement obligations and monitor compliance.²⁸

The Malaysian courts have conventionally taken a strict interpretation of the dualist system adhered to by Malaysia²⁹ and have held that domestic law takes precedence over customary international law and treaty law.³⁰ A recent Court of Appeal decision in *Air Asia Berhad v Rafizah Shima Binti Mohamed Aris*³¹ held that the provisions of CEDAW could not be enforced in Malaysia without express incorporation into domestic law by an act of Parliament.

²⁸ Human Rights Council Working Group on the Universal Periodic Review, 17th session, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Malaysia*, (A/HRC/WG.6/4/MYS/1/Rev.1), 19 November 2008, para.23.

²⁹ NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia – Reviewing the Government's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2005, pg. 16, <http://www.iwraw-ap.org/resources/pdf/Malaysia_SR.pdf>; see also, Malik Imtiaz Sarwar, 'Representations by Governments and Legitimate Expectations: A means to the enforcement of international norms in the domestic courts', *Infoline*, January/ February 2004, <<http://www.malaysianbar.org.my>>; in *Jakob Renner v Scott King, Chairman of Board of Directors of the International School of Kuala Lumpur* [2000] 3 CLJ 569, the High Court side stepped the issue of whether the CRC was applicable in Malaysia.

³⁰ The Human Rights Commission of Malaysia Act 1999 (SUHAKAM Act 1999) makes reference to the Universal Declaration of Human Rights (UDHR); section 4(4) of the 1999 Act states that "regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution". In the case of *Mohd. Ezam bin Mohd Noor v Ketua Polis Negara and Anor Appeal* [2002] 4 MLJ 449, pg. 514, the Federal Court, in discussing section 4(4) of the SUHAKAM Act 1999, held that the UDHR is not a convention subject to the usual ratification and ascension requirements for treaties and since the principles are only declaratory in nature, they do not have the force of law or binding on member states.

³¹ Rayuan Sivil No. B-02-2751-11/2012.

In two landmark cases - *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and 5 others*,³² and *Indira Gandhi d/o Mutho v Perak Registrar of Converts, Perak Islamic Religious Department, State Government of Perak, Ministry of Education, Government of Malaysia, & Patmanathan s/o Krishnan*³³ - the courts seem to indicate a departure from this strict dualist stance. In *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and 5 others*, the High Court for the first time held that even though CEDAW has not been incorporated into domestic law, the Court is compelled to interpret the principle of gender equality in article 8(2) of the Federal Constitution in light of Malaysia's international obligations under CEDAW; the appeal against the judgement of the High Court was withdrawn by the Attorney-General's Chambers.

In the *Indira Gandhi* case, the High Court held that ratification of CEDAW, public statements by government ministers and the Bangalore principles meant that Malaysia is bound to give legal effect to the rights in CEDAW. The Court went further to state that the Universal Declaration of Human Rights (UDHR) is part of the corpus of Malaysian law as section 4(4) of the Human Rights Commission of Malaysia Act 1999 requires the Human Rights Commission of Malaysia (SUHAKAM) to have regard to the UDHR to the extent that it is not inconsistent with the Federal Constitution. The High Court judge held that articles 18, 26, and 29 of the UDHR is not inconsistent with the Federal Constitution. The appeal of the High Court decision is pending at the Court of Appeal.

B. Domestic Laws and Policies

Constitutional provisions on freedom of thought, conscience and religion

Article 11(1) of the Federal Constitution guarantees every Malaysian the "right to profess and practice his religion", and article 12(3) provides that all persons have the right not to receive instruction in or take part in any ceremony or act of worship of a religion other than one's own religion. The Federal Constitution also provides that religious freedom cannot be abrogated even in times of emergency.³⁴

The Federal Constitution also prohibits discrimination on the grounds of religion in various areas:

- Article 8 of the Federal Constitution prohibits discrimination on the basis of religion generally;
- Article 12(1)(a) specifically prohibits discrimination on the grounds of religion in the administration of any educational institution maintained by a public authority, particularly in the admission of pupils or students or the payment of fees; and
- Article 12(1)(b) of the Federal Constitution prohibits discrimination on the basis of religion in the provision of financial aid (from funds of a public authority) for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside Malaysia).

Furthermore, the Federal Constitution guarantees every religious group the right to manage its own religious affairs, establish and maintain institutions for religious or charitable purposes, as well as to acquire and own property and hold and administer it in accordance with law (article 11(3)). Religious groups also have the right to establish and maintain institutions for religious education of children (article 12(2)).

32 *Saman Pemula* No. MT-21-248-2010, para. 9.

33 [2013] 7 CLJ 82 (HC).

34 Article 150 (6A) of the Federal Constitution.

The right to religious freedom under article 11 is qualified by sub-article (5), which provides that the right to profess and practice one's religion may be restricted by general law relating to public order, public health or morality.

The courts have shied away from providing a concrete definition of the limitations of "public order, public health or morality" listed in article 11(5) of the Federal Constitution.

i. National security

In *Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals*,³⁵ the courts merely held that the executive (i.e. the Minister) is the sole judge of what is "national security" and that the test of what amounts to national security is a subjective one.

Although the Syariah courts have not provided a definition of national security, in *Pendakwa Syarie Pulau Pinang v. Azemi Aziz & Anor*,³⁶ the Syariah High Court in Penang elaborated on the notion of "security" which it divided into five areas: religion, life, dignity, property and lineage. The Syariah Court held that deviant teachings will lead to an erosion of the Muslim faith and practice, which is contrary to the true Islamic teachings, and that distortions of faith may contribute to the collapse of family institutions and destabilisation of individual life. This would result in a society that is not proactive and will eventually affect the country's political and economic stability.

35 [2002] 4 CLJ 309; see also *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81; *Theresa Lim Chin Chin & Ors v. Inspector General of Police* [1988] 1 LNS 132, *Re Application Of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 1 LNS 126, and *Darma Suria Risman Saleh v. Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 CLJ 300.

36 [2012] 1 CLJ SYA 193.

ii. Public order

The courts have only provided a hint of the elements of public order - in *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors*,³⁷ and *Darma Suria Risman Saleh v. Menteri Dalam Negeri Malaysia & Ors*,³⁸ it was held that public order is not necessarily antithetical to disorder but would include considerations of "public safety", "danger to human life and safety" and "disturbances of public tranquillity".

iii. Peace and harmony

In the recent case of *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur*³⁹ (the *Herald* case), the Court of Appeal appeared to read into the Constitution a further restriction on the religious freedom of non-Muslims. It held that the words "peace and harmony" in article 3(1) of the Federal Constitution was intended to "protect the sanctity of Islam as the religion of the country and also to insulate against any threat faced or any possible and probable threat to the religion of Islam... the most possible and probable threat to Islam, in the context of this country is the propagation of other religion to the followers of Islam". The Court also held that "potential disruption of the even tempo of the community" is an acceptable ground to restrict freedom of expression and freedom to practice one's religion.

In sum, several provisions in the Federal Constitution, case law, as well as other domestic laws that restrict the right to the freedom of thought, conscience, and religion in Malaysia, could possibly violate international standards of religious freedom. One such restriction is found in Article 11(4) of the Federal Constitution, which prohibits the propagation of religion other than Islam to persons

37 [1976] 1 LNS 126.

38 [2010] 1 CLJ 300 (FC).

39 [2013] 8 CLJ 890 (CA).

professing the religion of Islam.⁴⁰ (See below for a more detailed discussion on this prohibition.)

1. Freedom to adopt, change or renounce a religion or belief; and freedom from coercion

a. Persons professing religion other than Islam

There are no restrictions for persons converting out of their religion (other than Islam) or converting into Islam. Non-Muslims are free to recant their religion or belief, replace one's religion or belief with another or to adopt atheistic views, or to convert to another religion, in accordance with article 18(1) of the ICCPR.

Generally, non-Muslims are not coerced to embrace or leave a particular religion. However, there is anecdotal evidence of individuals being subjected to physical and emotional coercion to convert to Islam, usually with the inducement of monetary and other rewards.

In *Thayalan*,⁴¹ a young man alleged that he was kidnapped, beaten up and tortured and threatened with death if he did not convert to Islam and marry the sister of the four men who alleged kidnapped him. Thayalan and their sister had a relationship and she claimed to be pregnant.

In *Ragu*,⁴² the accused alleged that while he was in his practical wiring class, he was abruptly taken away by two religious teachers and the administrator and brought to the Selangor Islamic Council. He was there for about three hours and was reportedly forced to sign documents that showed that he had embraced Islam and given a new name, Muhammad

Ashraf Abdullah. Ragu claimed that he signed the document as he was afraid that if he did not, the school would fail him.

Also, the Native Solidarity of Sabah alleged that the government was organising mass conversions through fraudulent means, taking advantage of the illiteracy and the Sabahans' poverty-stricken conditions to trick people into thinking that they will bring welfare and aid.⁴³ In addition, the said organisation pointed out that Sabahans who have a "bin" or "binti" in their names are automatically listed as Muslims in their national identification card by the National Registration Department as a matter of policy, regardless of the religion of that person.

b. Persons professing Islam

For Muslims, the process of leaving Islam is often difficult and cumbersome. This situation is further complicated by the negative connotation attached to the term "apostasy" since it implies that the person concerned has committed an offence and must be judged according to religious laws.

Different states have different laws, procedures (if any) and punishment for persons intending to leave Islam; some states allow apostasy although detention for rehabilitation is a pre-requisite (Negeri Sembilan, Melaka and Sabah), while others do not allow apostasy at all (Terengganu). In Terengganu, apostasy is a capital offence but to date, there have been no known convictions. See **Annex 1** for the specific provisions in the different state Syariah laws pertaining to apostasy.

The majority of states allow the Syariah court to declare a person no longer a Muslim but there is no corresponding procedure to allow a Muslim to leave Islam (Kelantan, Perlis, Perak, Johor, Kedah, Selangor and Penang). The Syariah courts have held that this provision does not allow anyone

40 Article 11(4) of the Federal Constitution states, "... except that this right does not include the right to propagate any religious doctrine or belief among persons professing the religion of Islam; State law and federal law may control or restrict proselytisation to Muslims".

41 Ipoh High Court Originating Summons.

42 Andrew Ong, 'Student converts on fear of failing electrical course', *Malaysiakini.com*, 24 May 2007, <<http://m.malaysiakini.com/news/67660>> accessed 13 April 2014.

43 'Islamisation, influx of foreigners hit Sabahans', *Malaysiakini.com*, 12 April 2014, <<http://www.malaysiakini.com/news/259808>> accessed 13 April 2014.

to renounce Islam. In *Majlis Agama Islam Pulau Pinang lwn. Siti Fatimah Tan Abdullah*,⁴⁴ the Syariah Court of Appeal held that section 61(3)(b)(x) of the 2004 Administration of the Religion of Islam (Penang) 2004 does not allow anyone to renounce Islam. Taking into consideration section 107(1) of the 2004 Enactment,⁴⁵ the word “no longer” in section 61(3)(b)(x) of the 2004 Enactment does not allow anyone to renounce Islam; instead, it refers to persons who have already taken the declaration of faith (*syahadah*) but whose status (whether they had put to practice the conditions and requirements embodied in the *syahadah*) was as yet unascertained. If that person refuses to fulfil the conditions, the Syariah court may declare that person no longer a Muslim. However, if that person complies with the conditions of the *syahadah*, he or she becomes a Muslim as a matter of course. This is because, in cases of apostasy, a person must be shown to be a genuine Muslim prior to his *riddah* (apostasy). The Syariah Court of Appeal further stated that, “clothing the Syariah Court with jurisdiction to grant leave to anyone to abandon the religion of Islam is abhorrent and repugnant to the principles of *Hukum Syarak*”.

Recently, the Minister in the Prime Minister’s Department, Jamil Khir Baharom, stated (in Parliament) that there have been no apostasy applications by Muslims through the Syariah courts in the past 10 years.⁴⁶

44 [2009] 1 CLJ (Sya) 162.

45 Section 107(1) of the 2004 Enactment states, “*Kehendak-kehendak yang berikut hendaklah dipatuhi bagi pemelukkan sah agama Islam oleh seseorang: (a) orang itu mestilah mengucapkan dua kalimah Syahadah dalam bahasa Arab secara semunasabahnya jelas; (b) pada masa dia mengucapkan kalimah Syahadah itu, orang itu mestilah sedar bahawa kalimah itu bermakna “Aku menjadi saksi bahawa tiada Tuhan melainkan Allah dan aku menjadi saksi bahawa Nabi Muhammad s.a.w. ialah Pesuruh Allah”; dan pengucapan itu mestilah dibuat dengan kerelaan had orang itu sendiri*”.

46 Abdul Rahim Sabri, ‘No apostasy applications in 10 years’, *Malaysiakini.com*, 24 March 2014, <<http://www.malaysiakini.com/news/258052>> accessed 24 March 2014.

There are a number of reported cases of coercive practices employed by religious authorities to ensure that a Muslim continues to profess the religion of Islam. Coercive methods have also been used on persons who have contravened Syariah law. These coercive practices are codified in Syariah state laws and are usually in the form of detention for rehabilitation or a sentence of imprisonment and are sometimes enforced with the help of the police. Examples of such cases include *Revathi Masoosai*.⁴⁷ Revathi was an ethnic Indian and was born to Muslim parents who gave her the name Siti Fatimah binti Ab Karim. Revathi married a Hindu man called Suresh in a traditional Hindu marriage and the couple had an infant daughter. As the marriage cannot be registered under the Law Reform (Marriage and Divorce) Act 1976 and the National Registration Department refused to register the baby, Revathi submitted to the jurisdiction of the Syariah court and asked the court permission to renounce Islam. The Syariah court ordered Revathi to be detained at the Ulu Yam Aqidah Rehabilitation Centre, Selangor, for six months. Throughout her detention, she continued to assert that she was a Hindu and did not want to live as a Muslim. While in detention, Revathi’s Muslim mother obtained a Syariah court order granting her custody of Revathi’s daughter; the order also directed the police to assist in enforcing the order. On 26 March 2007, the police, Revathi’s mother and Islamic enforcement officials went to Suresh’s house and took the infant away. The Syariah court released her from detention and dismissed her application to leave Islam and ordered her into the custody of her father; Revathi was 28 years old at that time.

Similarly in *Kamariah Ali & Yang Lain lwn Kerajaan Negeri Kelantan & Satu Lagi*,⁴⁸ Kamariah and three others affirmed statutory declarations renouncing Islam. They were subsequently convicted by the Syariah High Court for failing to comply with the sentence of the Syariah Appeal Court to report every month to express their repentance.

47 *Siti Fatimah binti Ab. Karim v Majlis Agama Islam Melaka*, Melaka Syariah High Court Case No.04200-043-0005-2006.

48 *Kamariah Ali (FC)*, pg. 411.

In *Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor*,⁴⁹ in the first set of charges, the applicants claimed that they apostatised and were convicted by the Syariah court and sentenced to jail. Their imprisonment orders were subsequently set aside (by the Syariah Court of Appeal) and ordered to appear at the *Kadi*'s⁵⁰ office every month for three years, and were required to repent (*melafazkan taubat*). Subsequently, the applicants, in a purported move to oust the jurisdiction of the Syariah court, swore under oath that they had apostatised; this brought about fresh charges of apostasy against them (second charges). They were then remanded and the court subsequently detained them. The Syariah court then sentenced the applicants to three years' imprisonment pursuant to section 102 of the Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994.

c. Successful applications to be declared a non-Muslim

Despite the strict laws and the difficult process, courts have declared individuals non-Muslims. However, there are very few such cases and are allowed only in very specific circumstances – either on a technicality or when the person had been brought up as a non-Muslim. There are no cases dealing with genuine changes of belief or faith.

In the case of *Nyonya Tahir*,⁵¹ the Negeri Sembilan Islamic Religious Council and two others applied for a declaration of a deceased person's religious status, namely, whether she was a Muslim at the time of her demise. The Syariah High Court of Seremban held that she was not a Muslim at the time of her death, even though she was brought up a Muslim. When she was 18 years old, she married a non-Muslim (Chinese), lived a life of a Chinese, eating pork, worshipping idols, embracing and practicing Buddhism, and bearing children, all of whom were non-Muslim. In addition, she executed a statutory

declaration renouncing Islam. It was interesting that the Syariah High Court judgment explained the three ways of leaving Islam – first is through his or her act, a person worships other God apart from Allah; the second way is if a person utters the words that shows his or her *kekufuran* (impiety); and third, *iktikad* or that he or she believes in his heart that he or she is no longer a Muslim.

In *Majlis Agama Islam Pulau Pinang lwn. Siti Fatimah Tan Abdullah*,⁵² the applicant converted to Islam when she married an Iranian. She later decided to revert to Buddhism when her husband left her and applied to the Syariah High Court of Penang for a declaration that she was no longer a Muslim and for her Certificate of Conversion to be revoked. During the trial, her admission that she professed Islam solely only to get married and that she continued to engage in idol worshipping thereafter was unchallenged. The Syariah Court of Appeal held that she failed to comply with section 107(1)(b) of the 2004 Enactment and the conditions of her *syahadah*. As such, her declaration of faith did not constitute a valid conversion into Islam and, since she was not a Muslim, she could not be accused of apostasy.

d. Wide definition of "Muslim"

Item 1 of the State List, Ninth Schedule of the Federal Constitution specifically allows Islamic laws to be applied and enacted only over "persons professing the religion of Islam", with no mention of the word "Muslim". However, over the years, the application of Islamic law has been expanded from "persons professing the religion of Islam" to "Muslims". The latter definition includes a wider class of persons; under it, a person who may not personally profess the religion of Islam may nonetheless be regarded as a Muslim. For example, the Administration of Islamic Law (Federal Territories) Act 1993 defines a Muslim as:

49 [2004] CLJ (ISL) 204.

50 Islamic judge.

51 [2006] 1 CLJ (Sy) 335.

52 *Siti Fatimah Tan Abdullah*, para. 45–46.

- (a) a person who professes the religion of Islam;
- (b) a person either or both of whose parents were, at the time of the person's birth, Muslim;
- (c) a person whose upbringing was conducted on the basis that he was a Muslim;
- (d) a person who has converted to Islam in accordance with the requirements of section 85;
- (e) a person who is commonly reputed to be a Muslim; or
- (f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written.

Other state Syariah laws have similar provisions.

Widening the definition of those who may be subjected to Islamic law is problematic as Syariah law may apply to persons who do not necessarily profess Islam. This would be inconsistent with an individual's freedom of religion guaranteed in article 11 of the Federal Constitution since Islamic law should only apply to adherents of the religion of Islam.⁵³

The situation is further complicated by the fact that the courts have not defined the word "profess" in article 11⁵⁴ and have preferred to side-stepped the issue (of constitutional definition of a Muslim). For example, in *Kamariah Ali & Yang Lain lwn Kerajaan Negeri Kelantan & Satu Lagi*,⁵⁵ and *Priyathaseny & Ors v Pegawai Penguatkuasa Agama Jabatan Hal Ehwal Agama Islam Perak & Ors*,⁵⁶ although the issue before the High Court was the constitutionality of the definition of a Muslim, the Court did not

consider these constitutional questions. In *Lim Yoke Khoon v Pendaftar Muallaf, Majlis Agama Islam Selangor & Yang Lain*,⁵⁷ the High Court parried the issue by holding that the state legislature can define who was a Muslim.

e. *Atheism and non-religion*

The courts have not expressly included atheism and non-religion in their interpretation of freedom of religion though Article 11 presumably protects persons claiming to be atheists or professing no religion. However, this presumption would only apply to non-Muslims since they are free to change their religion whereas Muslims wishing to express atheistic or non-religious beliefs, must first go through the hurdle of leaving Islam first (see above).

2. *Right to Manifest One's Religion or Belief*

a. *Freedom to worship*

- i. Persons professing religion or belief other than Islam

Generally, Malaysians enjoy the freedom to worship in Malaysia. Save for specific groups (Falun Gong, communist followers – see below), most religious and belief communities are free to worship or assemble in connection with a religion or belief and make, acquire and use the necessary articles related to rites or customs of their religion or belief.

- **Falun Gong.** In 2005, it was reported that 17,000 copies of the Chinese-language weekly Epoch Times June issue, which supports the spiritual movement Falun Gong and critiques China's communist policies, were seized by

53 Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) Memorandum, April 2002 and October 2005.

54 In *Lina Joy*, the High Court and the Federal Court did not consider the meaning of the word "profess".

55 [2004] 3 CLJ 409 (FC).

56 [2003] 2 MLJ 302.

57 [2006] 4 CLJ 513.

the Ministry of Home Affairs.⁵⁸ In mid-2010, the Falun Gong community complained to SUHAKAM about interference in their activities – according to their complaint, the police disrupted their art exhibition and group exercise in a public park; they also complained that they were stopped from peacefully protesting at the Chinese Embassy in Kuala Lumpur by the Federal Reserve Unit (FRU).⁵⁹

- **Communism.** There seems to be low tolerance for followers of communism, possibly due to the history of the Communist Party of Malaysia (CPM) in Malaysia. For example, in 2011, before the Emergency Proclamations were repealed, the Minister in the Prime Minister's Department, Dato' Seri Mohamed Nazri, stated that the Emergency Ordinance was needed as communism is still a threat to national security.⁶⁰ When Chin Peng, the exiled leader of CPM died in Thailand in 2013, two men who arrived from Bangkok were detained and arrested; the police seized books, CDs and a cap with the communist emblem.⁶¹

Literary works related to communism have also been banned. In May 2006, the Ministry of Home Affairs banned the movie, "The Last Communist", a semi-musical documentary

movie based on the life of Chin Peng; the ban was provoked by a local newspaper Berita Harian denouncing the film as a glorification of communism.⁶² From the same filmmaker (Amir Muhammad), the authorities also banned the film "Village People Radio Show", a documentary about former Malay-Muslim Communists living in exile in Southern Thailand; the Film Censorship Board banned the film for being sympathetic towards communism.⁶³ Similarly, the film "New Village", which tells a love story between a village girl and a young communist guerrilla, and offers a glimpse into the lives of Chinese citizens during the Malayan emergency, was banned by the authorities.⁶⁴

Most religious communities may establish and maintain institutions for religious purposes. This is guaranteed by Article 11(3)(b) of the Federal Constitution. There are no mandatory registration requirements for a person to practise his or her religion, apart from registration to acquire legal personality and related benefits. Religious communities may form a society and register under

58 'Malaysia freezes circulation of pro-Falun Gong newspaper printed in Indonesia', *World Wide Religious News*, 1 July 2005, <<http://wwwrn.org/articles/17653/?amp;place=indonesia-brunei§ion=falun-gong>> accessed 9 April 2014.

59 'SUHAKAM receives memorandum from Falun Dafa on 3 August 2010', <<http://www.suhakam.org.my/wp-content/uploads/2013/11/ENG-SUHAKAM-receives-memorandum-from-Falun-Dafa-on-3-August-2010.pdf>> accessed 9 April 2014.

60 Patrick Lee, 'Nazri: EO needed to curtail communism', *Free Malaysia Today*, 19 July 2011, <<http://www.freemalaysiatoday.com/category/nation/2011/07/19/nazri-eo-needed-to-curtail-communism/>> accessed 10 April 2014.

61 Opalyn Mok, 'Cops: Duo with Chin Peng memorabilia were questioned and released', *The Malay Mail online*, 25 September 2013, <<http://www.themalaymailonline.com/malaysia/article/cops-duo-with-chin-peng-memorabilia-were-questioned-and-released>> accessed 10 April 2014.

62 Dennis Lim, 'Your Film Is Banned. There's Not Enough Violence', *The New York Times*, 9 July 2006, <http://www.nytimes.com/2006/07/09/movies/09lim.html?_r=0> accessed 10 April 2014.

63 Silvia Wong, 'Malaysia bans Muhammad's Village People', *Screen Daily*, 24 February 2007, <<http://www.screendaily.com/malaysia-bans-muhammads-village-people/4031149.article>> accessed 10 April 2014; see also, Michelle Tam, 'Filmmakers: Let audience decide on The New Village and Tanda Putera', *The Star Online*, 31 July 2013, <<http://www.thestar.com.my/News/Nation/2013/07/31/The-New-Village-movie-hold.aspx/>> accessed 10 April 2014.

64 Michelle Tam, 'Filmmakers: Let audience decide on The New Village and Tanda Putera', *The Star Online*, 31 July 2013, <<http://www.thestar.com.my/News/Nation/2013/07/31/The-New-Village-movie-hold.aspx/>> accessed 10 April 2014.

the Societies Act 1966.⁶⁵ Apart from registering as a society, religious communities may establish a private trust (registration is unnecessary) by way of a trust deed/declaration, a charitable trust,⁶⁶ or a company.⁶⁷

Generally, registration may be refused if the proposed institution is likely to be used for unlawful purposes or any purpose prejudicial to/incompatible with peace, welfare, security, public order, morality, national security or public interest. There are no known cases of outright refusal based on religion save for a few allegations that the Registrar of Societies refused to register Jehovah's Witnesses and The Church of Jesus Christ of Latter-day Saints (Mormons).⁶⁸

ii. Persons professing Islam

Sunni Islam of the Shafi'i school is the official and legal form of Islam practised in Malaysia; non-Sunni Islamic communities find it difficult to exercise their freedom to worship. Their teachings are perceived by the National *Fatwa* Committee as

65 According to the annual report of the Registrar of Societies (ROS), registered societies are classified into 14 categories – religion, charity, social and recreational, education, women, culture, mutual benefit, commerce, sports, youth, politics, labour, general, and others, *Jabatan Pendaftaran Pertubuhan Malaysia, Laporan Tahunan 2011*, <http://www.ros.gov.my/files/File/documents/Laporan_Tahunan_2011.pdf> accessed 6 April 2014.

66 A trust for charitable purposes must be non-profit, prohibited from political/trade union activities and come within one of four categories: - relief of poverty; advancement of education; advancement of religion; other purposes beneficial to the community.

67 Section 24(2)(a) of the Companies Act 1965 permits a public company with limited liability to be formed for the purposes of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community.

68 '2012 Report on International Religious Freedom – Malaysia', *United States Department of State*, 20 May 2013, <<http://www.refworld.org/docid/519dd4ad18.html>> accessed 10 April 2014.

against the teachings of Sunni Islam and should not be tolerated. A number of such communities have been banned and some of their followers have been arrested and detained (see below).

In 1996, the National Fatwa Committee held that Shia Islam is not allowed in Malaysia; this *fatwa* prohibiting Shia in Malaysia was gazetted (hence in force) in 11 states.⁶⁹ Since then, there have been several reports of arrest of Shia followers:

- In 1997, seven Shia followers were detained for spreading their teachings;
- In 2001, six Shia followers were arrested under the (then) Internal Security Act 1960 (ISA);⁷⁰
- In December 2010, more than 200 Shiites including Iranians and Pakistanis were arrested by the Selangor Islamic Religious Department (JAIS) as they observed Ashura, the Shiite holy day commemorating the death of the Prophet Muhammad's grandson Ali;
- In May 2011, four Shiites were arrested at a lunch celebrating the birthday of Fatimah Zahra, the daughter of Prophet Muhammad;⁷¹
- In September 2013, religious enforcement authorities detained 16 people and carried out 120 inspections in connection with those identified as linked to the dissemination of Shia teachings in the country;

69 Kedah, Melaka, Negeri Sembilan, Pulau Pinang, Kuala Lumpur, Terengganu, Selangor, Kelantan, Perlis, Johor, and Perak. National Fatwa Committee, 'Syiah di Malaysia', 1996/Khas, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

70 Norshahril Saat, 'Religious traditionalism in contemporary Malaysia', *The Malaysian Insider*, 1 August 2013, <<http://www.themalaysianinsider.com/sideviews/article/constructing-the-deviant-other-religious-traditionalism-in-contemporary-mal>> accessed 16 April 2014.

71 Patrick Lee, 'Malaysian Shiites face growing persecution', *Free Malaysia Today*, 14 January 2014, <<http://www.freemalaysiatoday.com/category/nation/2012/01/14/malaysian-shiites-face-growing-persecution/>> accessed 6 April 2014; see also Liz Gooch, 'In a Muslim State, Fear Sends Some Worship Underground', *The New York Times*, 27 January 2011, <http://www.nytimes.com/2011/01/28/world/asia/28iht-malay28.html?pagewanted=all&_r=0> accessed 6 April 2014.

- On 9 March 2014, the Perak Islamic Religious Affairs Department and the police arrested 114 individuals for their alleged involvement in the Shia religious community.⁷²

According to the government, there are approximately 1,500 Shia followers in Malaysia⁷³ and the Minister in the Prime Minister's Department Datuk Seri Jamil Khir Baharom said that 139 cases were being monitored.⁷⁴

Apart from Shias, a review of *fatwas* issued by the National *Fatwa* Council show that a number of other religious communities have been banned and their activities proscribed; such groups were regarded as false, misguided, and aberrant as their teachings and beliefs deviate from Sunni Islam. Such groups include the Al-Arqam group lead by Haji Ashaari Muhammad,⁷⁵ Ayah Pin,⁷⁶ Tal Tujuh group,⁷⁷ black metal groups,⁷⁸ the teachings of Azhar bin Wahab,⁷⁹

72 Jimadie Shah Othman and Radzi Razak, '114 suspected Shiites nabbed in Perak', *Malaysiakini.com*, 9 March 2014, <http://www.malaysiakini.com/browse/a/en/Jimadie%20Shah%20Othman%20&%20Radzi%20Razak> accessed 10 March 2014.

73 'Jamil Khir: 16 arrests, 120 inspections made in connection with Shia teachings', *The New Straits Times*, 24 September 2013, <<http://www.nst.com.my/nation/general/jamil-khir-16-arrests-120-inspections-made-in-connection-with-shia-teachings-1.362315>> accessed 6 April 2014.

74 Ibid.

75 National Fatwa Committee, 'Fatwa Terhadap Kumpulan Al-Arqam Pimpinan Haji Ashaari Muhammad', 1981/7/2, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

76 National Fatwa Committee, 'Ajaran Ayah Pin', 26 October 1997; 'Ajaran Ariffin bin Muhamad (Ayah Pin)', 18 August 2005; 'Kepercayaan, Ajaran, Amalan dan Pegangan Ariffin bin Mohd @ Ayah Pin', 26 July 2007, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

77 National Fatwa Committee, 'Kumpulan Tal Tujuh', 2006/74/6, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

78 National Fatwa Committee, 'Kumpulan Black Metal Serta Langkah-langkah Menanganinya', 2006/72/1, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

79 National Fatwa Committee, 'Ajaran Azhar bin Wahab', <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

Tariqat Naqsyabandiah Al-Aliyyah Syeikh Nazim Al-Haqqaan led by Syeikh Nazim,⁸⁰ teachings of Wahdatul Wujud,⁸¹ the teachings of the Al-Mas Syed Mohamad Al-Masyhor group,⁸² and Tarekat Naqsyabandiah Khalidiah Kadirun Yahya.⁸³

At state level, the various state *fatwa* committees have prohibited other groups and communities, viewing the teachings of these communities as false, misguided, aberrant, and a deviation from Sunni Islam. For example:

- In the state of Johor, the teachings of *Kumpulan Layar Bahtera* has been banned;⁸⁴
- In Kedah, Selangor and Kelantan, the teachings of Tok Hussin Janggut/Ahmad Laksamana have been prohibited;⁸⁵
- In Kelantan, the teachings of Awang Teh bin Kamal (Pak Teh Selamat) and Hassan Anak Rimau have been prohibited;⁸⁶
- In Melaka, the teachings of Asalama religion, Zamre bin Ab. Wahab, Hassan bin Jont, Haji Abdul Hadi, *Hakikat Insan*, Qadiani and Hasan

80 National Fatwa Council, 'Tariqat Naqsyabandiah Al-Aliyyah Syeikh Nazim Al-Haqqaan led by Syeikh Nazim', 2000/48/3, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

81 National Fatwa Council, 'Wahdatul Wujud, 2000/48/1', <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

82 National Fatwa Council, 'Ajaran Kumpulan Al-Mas Syed Mohamad Al-Masyhor', 2000/48/2, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

83 National Fatwa Council, 'Tarekat Naqsyabandiah Khalidiah Kadirun Yahya', <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

84 'Ajaran Kumpulan Layar Bahtera', 30 March 2010, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

85 'Ajaran Tok Hussin Janggut/ Ahmad Laksamana, 15 November 1999; 'Fatwa Ajaran Hj. Ahmad Laksamana bin Omar, 28 January 1986; 'Fatwa Mengenai Ilmu Tajali Ahmad Laksamana (*Hakikat Insan*)', 19 October 1995 and 25 September 1995, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

86 'Fatwa Tentang Ajaran Awang Teh bin Kamal', 1 July 1986; 'Fatwa Ajaran Hassan Anak Rimau', 28 January 1986, <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

Anak Rimau have been banned;⁸⁷

- In Perak, the teachings of *Cahaya Qursani*, Hassan bin Jonit and the Al-Maunah group have been prohibited on the same grounds;⁸⁸
- In Penang, the teachings of Tok Husin Janggut, Laduni Ramatullah, and Tok Mat Janggut were declared as teachings that deviate from Islam;⁸⁹
- In Sabah, three groups have been prohibited – Qadiani, Tuan Haji Uyut Utun and Nasrul Haq;⁹⁰
- In Selangor, a number of groups and their teachings have been prohibited by the state fatwa committee; these groups include the teachings of Zamree bin Ab. Wahab, Haji Banuar bin Roslan, Ahmadiyah. Qadiani, Syed Muhamad Al-Masyhor, Tarikat Samaniah Ibrahim Bonjol, *Tujuh Pimpinan* Hamzah bin Embi, Jahar bin Dumin (*Ilmu Hakikat*), Nordin bin Putih, and

Haji Ghazali bin Otheman,⁹¹ and

- In Kuala Lumpur, the following teachings have been prohibited – Tariqat Hasan Anak Rimau and Ayah Pin, Haji Kahar bin Haji Ahmad Jalal, Abdul Rahim bin Abdul Razak, Mohd. Seman al-Banjari, Ahmadiyah/Qadiani led by Mirza Ghulam Ahmad, Juruzon bin Abd. Latif, Tijah@Khatijah binti Ali, and Nordin Putih and *Kumpulan Ikhwan*.⁹²

The sole acceptance of Sunni Islam in Malaysia appears to be sanctioned by the country's leaders. In December 2013, Prime Minister Najib Razak declared at the general assembly of his party, the United Malays Nationalist Organisation (UMNO), that UMNO's constitution would be amended to indicate that Islam in Malaysia is of *Sunna wal Jamaah* or the Sunni sect of Islam.⁹³ Other factions of UMNO went further to call for an amendment to the Federal Constitution to reflect this. However, the chairman of the National Fatwa Committee recently stated that whilst Shia teachings conflict

87 'Pengharaman Ajaran Agama Asalama', 13 October 2010; 'Ajaran Zamre bin Ab. Wahab', 24 May 2003; 'Ajaran Ilmu Hakikat Hassan bin Jonit', 31 December 2002; 'Amanat Haji Abdul Hadi', 24 July 2002; 'Ajaran Ilmu Tajalli Ahmad Laksamana (*Hakikat Insan*)', 2 July 2001; 'Ajaran Qadiani (*Qadianiah/Ahmadiyah*)', 2 July 2001; 'Tariqat Zikrullah Hasan Anak Rimau dan Ayah Pin', 2 July 2001; <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

88 'Ajaran Cahaya Qursani', 6 November 2008; 'Kedudukan Ajaran Ilmu Hakikat Hassan bin Jonit', 22 October 2002; 'Fatwa Tentang Kumpulan Al-Maunah', 2 July 2001; <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

89 'Fatwa Ajaran Tok Husin Janggut/Ilmu Tajalli Ahmad Laksamana Sebagai Ilmu Salah dan Sesat', 7 July 2009; 'Pengharaman Ajaran Dan Fahaman Perjalanan Laduni Ramatullah (Ajaran Ismail bin Harun)', 25 September 2003; 'Fatwa Mengenai Ajaran Tok Mat Janggut', 5 May 2000; <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

90 'Ajaran Qadiani', 13 December 2006; 'Ajaran Tuan Haji Uyut Utun', 8 April 1982; 'Ajaran Nasrul Haq', 1 January 1970; <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

91 'Fatwa Tentang Ajaran Zamree bin Ab. Wahab', 22 May 2001; 'Fatwa Tentang Ajaran Haji Banuar bin Roslan', 20 July 2000; 'Fatwa Tentang Ajaran Ahmadiyah/Qadiani', 22 June 1998; 'Fatwa Tentang Ajaran Syed Muhamad Al-Masyhor', 19 April 1998; 'Fatwa Tentang Tarikat Samaniah Ibrahim Bonjol', 7 February 1998; 'Fatwa Tentang Ajaran Martabat Tujuh Pimpinan Hamzah bin Embi', 25 October 1995; 'Fatwa Tentang Tarikat Zikrullah Hasan Anak Rimau dan Ayah Pin', 19 October 1995; 'Fatwa Tentang Ajaran Jahar bin Dumin (*Ilmu Hakikat*)', 25 September 1995; 'Fatwa Tentang Ajaran Mohd Nordin bin Putih', 15 September 1995; 'Fatwa Tentang Ajaran Haji Ghazali bin Othman', 15 September 1995; <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

92 'Tariqat Hasan Anak Rimau and Ayah Pin', 3 January 2007; 'Ajaran Salah Haji Kahar bin Haji Ahmad Jalal', 17 August 2006; 'Ajaran Abdul Rahim bin Abdul Razak', 16 July 1997; 'Ajaran Mohd. Seman al-Banjari', 9 November 1993; 'Ajaran Ahmadiyah/Qadiani Yang Dibawa Oleh Mirza Ghulam Ahmad', 3 November 1976; 'Risalah dan Ajaran Juruzon bin Abd. Latif', 21 August 1996; 'Ajaran Yang Dibawa Oleh Puan Tijah@Khatijah binti Ali', 14 June 1989; 'Ajaran Nordin Putih and Kumpulan Ikhwan', 24 April 1988; <<http://www.e-fatwa.gov.my/>> accessed 2 April 2014.

93 Ding Jo-Ann, 'Beyond the Shia "threat"', *The Nut Graph*, 16 December 2013, <http://www.thenutgraph.com/beyond-the-shia-threat/> accessed 6 April 2014.

with Sunni teachings, Shias are not infidels and they are still part of the Islamic community.⁹⁴

iii. Narrow interpretation of the right to profess and practise his/her religion

The Malaysian civil courts have either avoided dealing with this constitutional question or have explicitly excluded the right of a Muslim to renounce his or her religion from the ambit of freedom of religion. In *Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor*,⁹⁵ in deciding whether the applicant's rights pursuant to article 11(1) of the Federal Constitution had been infringed (the applicants had apostatised), the High Court held that "the act of exiting from a religion is certainly not a religion, or could be equated with the right 'to profess and practise' their religion. To seriously accept that exiting from a religion may be equated to the latter two interpretations, would stretch the scope of article 11(1) to ridiculous heights, and rebel against the canon of construction."

In *Kamariah Ali & Yang Lain lwn Kerajaan Negeri Kelantan & Satu Lagi*,⁹⁶ the court appeared to vacillate. When Kamariah Ali and three others wanted to renounce Islam, she sought a declaration and *habeas corpus* relief from the civil courts. The High Court held that article 11 of the Federal Constitution did not give Muslims the right to choose his or her religion. Since the four had not obtained permission from the Syariah court to renounce Islam, they must still be considered Muslim and their renunciation a matter within the jurisdiction of the Syariah court. On the other hand, the Court of Appeal appeared to acknowledge that there was a right to renounce Islam but this right was subject to provisions of Islamic law. The Federal Court dismissed the appeal and held that the issue

as to whether the appellants had the right to convert out of Islam was irrelevant because at the material time, they had not yet signed the declaration renouncing Islam and so must be considered as still Muslim. The Federal Court further held that it did not need to answer the question as to whether article 11(1) of the Federal Constitution, which guarantees freedom of religion, includes the right of a Muslim to leave Islam.

iv. Blasphemy, deviant behaviour, heretic

Civil law does not define the words "blasphemy", "deviant behaviour", or "heretic". Similarly, state Syariah laws do not use or define "blasphemy", "deviant behaviour", or "heretic". There are no reported cases where courts have defined "blasphemy" or "heretic".

However, Syariah and civil courts have used the term "deviant teachings" in a few cases. In *Fathul Bari Mat Jahya & Anor v. Majlis Agama Islam Negeri Sembilan & Ors*,⁹⁷ the petitioner was arrested by religious enforcement officers from the Negeri Sembilan Department of Islamic Affairs, for conducting a religious talk without *tauliah* (credentials). The petitioners were charged under section 53(1) of the Syariah Criminal Enactment (Negeri Sembilan) 1992.⁹⁸ The petitioners challenged section 53(1) of the 1992 Enactment as invalid on the grounds that it is not an offence against the precepts of Islam as provided in Item 1, State List, Ninth Schedule of the Federal Constitution. The Federal Court held that section 53 of the 1992 Enactment is necessary to "protect the integrity of the *aqidah* (belief), *syariah* (law), and *akhlak* (morality), which constitutes the precepts of Islam. This measure is to stop the spread of deviant teachings among Muslims... it

97 [2012] 1 CLJ (Sya) 233.

98 Section 52(1) reads, "(1) Any person who engages in the teaching of religion without a tauliah from the Tauliah Committee under subsection 118(3) of the Administration Enactment, except to members of his family at his place of residence only, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or both."

94 'National Fatwa chairman: They are not jihardists but sinners', *The Star Online*, 3 July 2014, <<http://www.thestar.com.my/News/Nation/2014/07/03/not-jihadists-but-sinners-says-national-fatwa-chief/>> accessed 3 July 2014.

95 [2004] CLJ (ISL) 204.

96 *Kamariah Ali* (FC), pg. 422.

is commonly accepted that deviant teachings is an offence against the precepts of Islam". The Federal Court went further to state that, "it is necessary in this day and age for the authority to regulate the teachings or preaching of the religion in order to control, if not eliminate, deviant teachings. The integrity of the religion needs to be safeguarded at all cost".

In *Pendakwa Syarie Pulau Pinang v. Azemi Aziz & Anor*,⁹⁹ the first accused person was charged under section 4(1)¹⁰⁰ and 6(b)¹⁰¹ of the Syariah Criminal Offences (State of Penang) Enactment 1996, which prohibits dissemination of false claims against Islam and performing rituals that had transgressed *Hukum Syarak*. The Penang Syariah High Court regarded the accused's claim that he was the last messenger of Allah, that a stick he had was from Allah and that he could communicate with Allah directly; and that the accused performed a ceremony where he had put a stick between the toes of the second accused person and then claimed that he had spoken directly to God through the medium of the second accused person, amounted to "deviant teachings". In convicting both accused persons, the Syariah High Court held that there were elements of *syirik* (elements of worship contrary to the teachings of Islam); the false claims were misleading and damaging to the public's faith, especially since the first accused did not have a strong religious background to talk about

99 [2012] 1 CLJ SYA 193.

100 Section 4(1) reads, "(1) Any person who teaches or expounds in any place, whether private or public, any doctrine or performs any ceremony or act relating to the religion of Islam shall, if such doctrine or ceremony or act is contrary to Islamic Law or any fatwa for the time being in force in the State of Penang, be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof".

101 Section 6(b) reads, "Any person who - (b) states or claims that he or some other person knows of unnatural happenings, such declaration, statement or claim being false and contrary to the teachings of Islam, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both."

the supernatural openly. The said Syariah Court further regarded the offences as *fitnah* (defaming the religion), extreme and outrageous and that the accused persons have indirectly insulted the ruler of the state as the official head of Islam.

b. Places of worship

Generally, all religious communities in Malaysia have the freedom to establish and maintain places of worship, subject to the usual requirement of a planning permission, which are applicable to all buildings, regardless of their use or purpose. However, two areas of concern have arisen over the years – first, the demolition of Hindu temples and churches build on indigenous peoples' land; and second, building approvals.

i. Demolition of places of worship

Section 295 of the Penal Code provides that whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

However, between 2003 and 2006, SUHAKAM received 11 memoranda and complaints pertaining to the demolition of places of worship, of which, six were Hindu Temples, three were Mosques, one each a Church and a Buddhist Temple; these demolitions had been carried out mostly because these structures were built without approval of the local authority or on government or private land without the owner's permission.¹⁰² There were also other reported incidents of demolition or threats of

102 SUHAKAM Press Statement, 'Demolition of Places of Worship', 1 August 2007, <http://www.suhakam.org.my/wp-content/uploads/2014/01/PS08_Perobohan-Kuil_ecosoc090108.pdf> accessed 8 April 2014.

demolition of places of worship by the state. This is discussed further in the next section.

Other reported incidents of demolition or threats of demolition of places of worship include:

Hindu temples

- In February 2006, the 65-year-old Sri Ayyanar Sathiswary Alayam Temple in Jalan Davies (in Kuala Lumpur) was demolished as it was along the path of the RM2 billion Stormwater Management and Road Tunnel (SMART) project;
- In April 2006, the century-old Malaimel Sri Selva Kaliamman Temple was demolished, supposedly to give way to a government project in the area;
- In June 2006, the Om Sri Siva Balakrishnan Muniswarar Temple was threatened with demolition;¹⁰³
- In October 2007, the 60-year-old Sri Maha Mariamman Hindu temple in Shah Alam was demolished just before Deepavali;
- In September 2007, the Ampang Jaya Municipal Council (MPAJ) demolished the Sri Maha Kaliamman Temple;¹⁰⁴
- In November 2013, the prayer hall of the 101-year old Sri Muneswarar Kaliyaman Hindu Temple was demolished by City Hall officers; allegedly without prior notice.¹⁰⁵ The Natural Resources and Environment Minister commented that only the stalls and

sides of the temple were demolished.¹⁰⁶ The Federal Territories Minister added that the temple committee had accepted the offer of RM50,000 and a plot of land to relocate but did not want to move; this was denied by the temple's management committee. The temple committee also alleged that some statues were damaged and four small shrines were demolished.¹⁰⁷ Whilst emotions were running high due to the sensitive nature of the issue, it was made worst when the Federal Territories Minister stated that the temple was used as a facade for illegal activities and that bottles of liquor were found in the temple bathroom;¹⁰⁸

Church

- In February 2014, the Chinese Methodist Church Kepong received a second eviction notice from the Kuala Lumpur City Hall (DBKL), and were given 14 days to move out or "face demolition"; the notices dated 19 September 2013 and 4 February 2014 stated that the church had violated section 26 of the Federal Territories (Planning) Act 1982 for changing the land use from institutional centres (kindergarten) and to places of worship (church) without a Development Order. The Pastor-in-charge said the committee had applied for land use change with the local authority after they received the first notice, and expressed surprise that the second eviction

103 Allen V. Estabillo, 'Hindu Temples Under Siege', *Southeast Asian Press Alliance*, 12 May 2010, <<http://www.seapa.org/?p=3235>> accessed 8 April 2014.

104 Yong Huey Jiun, 'Renewed resolve on places of worship', 11 November 2008, *The New Straits Times*, <http://www.malaysianbar.org.my/general_opinions/comments/renewed_resolve_on_places_of_worship.html> accessed 8 April 2014.

105 Noel Archariam, 'Temple committee upsets over partial demolition work', *The New Straits Times*, 11 November 2013, <<http://www.nst.com.my/latest/temple-committee-upsets-over-partial-demolition-work-1.397581>> accessed 8 April 2014.

106 'Sri Muneswarar Kaliyaman temple not demolished, says Palanivel', *ABN News*, 11 November 2014, <<http://news.abnxc.com/2013/11/sri-muneswarar-kaliyaman-temple-not-demolished-says-palanivel>> accessed 8 April 2014.

107 Afiz Niza, 'No compensation offered: Temple committee', *The Sun Daily*, 11 November 2014, <<http://www.thesundaily.my/news/878361>> accessed 8 April 2014.

108 Suganthi Suparmaniam, 'News Analysis: Temples and demolition', *Astro Awani*, 14 November 2013, <<http://english.astroawani.com/news/show/news-analysis-temples-and-demolition-25465>> accessed 8 April 2014; see also, Charles Ramendran, 'Demolition was legal: Ku Nan', *The Sun Daily*, 2 September 2013, <<http://www.thesundaily.my/news/819415>> accessed 8 April 2014.

notice stating the same reasons was issued;¹⁰⁹

Churches in indigenous peoples' settlement

- In 2005, the state demolished a chapel build by the *Orang Laut* of Kuala Masai, Johor, on the grounds that the church was sitting on state land.¹¹⁰ The matter was brought to court and in August 2012, the Court of Appeal affirmed the High Court's decision (in August 2010) to award damages to the *Orang Asli Laut* of Kuala Masai, Johor, after ruling that the authorities unlawfully demolished their Christian chapel.¹¹¹ The High Court ruled that the state government had trespassed on their land and failed to honour a pledge made in 2001 to list the site as customary native land¹¹² (*Khalip bin Bachik v Pengarah Tanah & Galian Johor*¹¹³);
- In June 2007, an indigenous church of the Temiar *Orang Asli* in Gua Musang, Kelantan, was demolished; the state claimed that the building was constructed on state land without proper approval. The Temiar *Orang Asli*

disputed this, arguing that the building was built on land belonging to village headman Pedik bin Busu, who had donated it to the Temiar *Orang Asli* community.¹¹⁴ The indigenous community sued the government and sought a declaration that they have rights to the land as well as the constitutional guarantee to practice their religion. They also sought a declaration that in demolishing their church, local authorities violated their rights under the Aboriginal Peoples Act 1954 and the Federal Constitution. The court held that *Orang Asli* were owners of the land in question although documents of title were yet to be issued, and entitled to punitive damages for the wrongful demolition of the church.¹¹⁵ Damages were ordered as the local authority demolished the church prior to the 30-day notice period it had given to the *Orang Asli* community pursuant to section 425 of the National Land Code and section 72 of the Street, Drainage and Building Act 1974, respectively. However, the court also held that the lands were not customary lands and that the Christian religion is not part of the plaintiffs' ancestral practices;¹¹⁶

- In January 2008, the *Orang Asli* community in Kuala Krau, Pahang, brought a judicial review application in the High Court over the Temerloh land and district office's decision to deny the supply of electricity and water to their church building. The local authorities explained that the refusal was because the church was built without the permission of the local authority and that the land on which the church stands

109 Yip Yoke Teng, 'Kepong Church given 14 days to move out or face demolition', *The Star Online*, 12 February 2014, <<http://www.thestar.com.my/News/Nation/2014/02/12/Church-DBKL-Eviction/>> accessed 8 April 2014.

110 Kuek Ser Kuang Keng, 'Three months to build, two hours to destroy', *Malaysiakini.com*, 22 December 2005, <<http://www.malaysiakini.com/news/44854>> accessed 13 April 2014.

111 V. Anbalagan, 'Johor govt will compensate Orang Asli community', *New Straits Times Online*, 7 August 2012, <<http://www.nst.com.my/latest/johor-govt-will-compensate-orang-asli-community-1.121892>> accessed 13 April 2014; see also 'Court compensates villagers over church demolition', *Catholic News*, 10 October 2010, <http://www.catholicnews.sg/index.php?option=com_content&view=article&id=5013:court-compensates-villagers-over-church-demolition&catid=253:october-10-2010-vol-60-no-20&Itemid=78> accessed 13 April 2014.

112 Eileen Ng, 'Malaysian tribe wins damages for church demolition, hails it as religious, land rights victory', *Associated Press*, 23 September 2010, <<http://www.winnipegfreepress.com/breakingnews/malaysian-tribe-wins-damages-for-church-demolition-hails-it-as-religious-land-rights-victory-103608994.html>> accessed 13 April 2014.

113 [2013] 5 CLJ 639.

114 'Indigenous Group in Malaysia Sues Over Demolished Church', *Open Doors Canada*, 24 January 2008 <<http://www.opendoorsca.org/content/view/420/139/>> accessed 13 April 2014.

115 *Yg Dipertua Majlis Daerah Gua Musang v Pedik Bin Busu* [2010] 5 MLJ 849.

116 Yogeswaran Subramaniam, 'Orang Asli Land Rights By UNDRIP Standards In Peninsular Malaysia: An Evaluation And Possible Reform', (PHD thesis, UNSW Australia, 2012) <http://www.unsw.edu.au/primo_library/libweb/action/diDisplay.do?docId=unsworks_11285&vid=UNSWORKS> accessed 13 April 2014.

has not been reserved or gazetted as *Orang Asli* land;¹¹⁷

- In August 2008, a private developer tried to demolish an over 80 year old Catholic church/chapel in Triang, Pahang; it was reported that 1,000 people protested the demolition;¹¹⁸
- In August 2010, the *Orang Asli* who are Christians in Temiar village, Pos Pasik, Kelantan, were informed by the Department of *Orang Asli* Affairs (JHEOA) to stop building works of a church on their land. This denial of permission was pursuant to a letter from the head of the village merely informing the JHEOA that the *Orang Asli* were building a church on their land;¹¹⁹
- In May 2012, the Alor Gajah Municipal Council wanted to demolish a chapel built on ancestral/customary land in *Kampung Machap Umboo*; The Melaka High Court granted leave to challenge the decision of the said municipal council.¹²⁰

117 'Orang Asli church sues for basic needs', *Catholic Lawyers Malaysia*, 31 January 2008, <<http://www.catholiclawyersmalaysia.org>> accessed 13 April 2014.

118 Charles Hector, 'Church in Triang, Pahang in risk of being demolished...', August 24, 2008, <<http://charleshector.blogspot.com.au/2008/08/church-in-triang-pahang-in-risk-of.html>> accessed 13 April 2014.

119 Haris Ibrahim, 'Another Orang Asli church building in Kelantan under threat of demolition?', 17 September 2010, <<http://harisibrahim.wordpress.com/category/nation-in-distress/>> accessed 13 April 2014; The background to this incident is that in December 2001, 297 villagers of Pos Pasik were baptized as Christians, including the two *Penghulu* (headmen). A bamboo church was then built in the old village across the river (Sungei Jenera). In 2004, the floods washed away their houses and the church. As a result, the villagers shifted to the current side of the river and the bamboo church was relocated there as well. In late 2009, the Christians requested the pastor from the Gospel to the Poor church to help them build a brick/concrete church since most of their houses are already made of brick. This is to replace the dilapidated bamboo church.

120 Shazwan Mustafa Kamal, 'Orang Asli wins bid to fight church demolition', *The Malaysian Insider*, 11 May 2012, <<http://www.themalaysianinsider.com/malaysia/article/orang-asli-wins-bid-to-fight-church-demolition/>> accessed 13 April 2014.

ii. Symbol of worship

There have been isolated incidents of desecration of symbols of worship. In August 2009, about 50 residents of Shah Alam protested the proposal to relocate a Hindu temple to their area; the protestors gathered after the Friday prayers, placed the head of a cow outside the gates of the state secretariat building for a short period before removing it; the cow is considered sacred to Hindus.¹²¹ Twelve persons pleaded guilty to a charge of illegal assembly and were fined RM1,000 each; two of them were fined for a sedition charge, one of whom was sentenced to a week imprisonment as well.

iii. Building approvals and conditions attached

Section 70 of the Street, Drainage and Building Act 1974 requires approval of local authorities before the construction of any building, including places of worship. Some complaints have been reported on the rather cumbersome process of obtaining approval from local authorities for the construction of religious places of worship. For example, the building plan for the construction of the Vihara Samadhi Temple in Shah Alam was submitted to the Municipal Council in the early 1990s. The application was rejected five years later on the grounds that there was a large Muslim population there. The municipal council compensated with another piece of land nearby and that took another three years to approve; the plan was finally approved in 2008.¹²²

121 Rahmah Ghazali, 'Hindraf files report, urges cops to act fast', *Malaysiakini.com*, 30 August 2009, <<http://www.malaysiakini.com/news/111747>> accessed 8 April 2014; see also, Andrew Ong, 'Temple demo: Residents march with cow's head', *Malaysiakini.com*, 28 August 2009, <<http://www.malaysiakini.com/news/111628>> accessed 8 April 2014.

122 Yong Huey Jiun, 'Renewed resolve on places of worship', 11 November 2008, *The New Straits Times*, <http://www.malaysianbar.org.my/general_opinions/comments/renewed_resolve_on_places_of_worship.html> accessed 8 April 2014.

In 2006, the construction of a Taoist statue (Goddess of Sea Mazu) in Kudat, Sabah was halted when the state government rescinded the approval to build the statue; the approval was rescinded after the state *Mufti* issued a fatwa against the construction of the statue.¹²³ The former Sabah Chief Minister sued the incumbent, seeking amongst others, a court order to revoke Kudat Town Board's withdrawal of the letter of approval and a declaration that the letter of approval was valid and binding on all parties.¹²⁴

There is also anecdotal evidence that unnecessarily onerous conditions have been imposed on approvals of building of non-Muslim places of worship; for example, height restrictions on temples, church steeples and Sikh *Gurdwaras*. It has also been alleged that *Gurdwaras* are not allowed to have their traditional domes as the authorities are worried that it could be confused as a mosque. Also churches have been relocated numerous times even after approvals have been given. This sentiment was reflected in the High Court judgement of *Meor Atiquerahman Ishak & Yang Lain lwn. Fatimah Sihi & Yang Lain*,¹²⁵ where the judge held that because Islam is the religion of the Federation, this means that the federal government has the responsibility to promulgate laws that ensure that non-Muslim places of worship do not compete with national and state mosques, in terms of location, size, and shape and to ensure that the number of non-Muslim places of worship is not excessive.

123 Joe Fernandez, 'Mazu statue: Chong draws first blood in civil suit', *The Malaysiakini.com*, 22 April 2009, <<http://www.malaysiakini.com/news/102834>> accessed 7 April 2014; Joe Fernandez, 'Mazu statue case moves to Court of Appeal', *The Malaysiakini.com*, 28 April 2009, <<http://m.malaysiakini.com/news/103212>> accessed 6 April 2014.

124 'Najib hopes for out-of-court settlement in Mazu case', *The Sun Daily*, 6 May 2009, <<http://www.thesundaily.my/node/156069>> accessed 7 April 2014.

125 [2004] CLJ (ISL) 339 (HC).

c. Religious symbols

Generally, Malaysians enjoy the freedom to make, acquire and use articles and materials related to the rites or customs of their religion or belief. There are no laws prohibiting any religious communities from displaying their respective religious symbols, including distinctive clothing or head coverings. Malaysians are also able to display their religious symbols and wear distinctive clothing or head coverings, subject to reasonable limitations.

However, two cases relating to the Islamic clothing have surfaced where in both cases the courts held that the prohibition of the *pardah* (attire covering the face) and *serban* (turban) did not infringe the individual's right to practice and profess his or her religion.

i. Distinctive clothing

In *Hjh Halimatussaadiyah bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor*,¹²⁶ the appellant had been dismissed under the Public Officers (Conduct and Discipline) (Chapter "D") General Orders 1980, for wearing a *pardah* as her office attire, in contravention of the dress code prescribed for civil servants by Service Circular No. 2 of 1985. The Supreme Court dismissed her appeal, holding that the prohibition against the wearing of *pardah* during work did not affect the appellant's constitutional right to practice her religion. Islam does not prohibit a Muslim woman from wearing, nor does it require her to wear a *pardah*; it is not a religious injunction that must be followed strictly. In the premises, the wearing of *pardah* had nothing to do with the appellant's constitutional right to profess and practice her Muslim religion.

In the case of *Meor Atiquerahman Ishak & Ors v. Fatimah Sihi & Ors*,¹²⁷ students were expelled from school for refusing to comply with the *Peraturan Sekolah Kebangsaan Seriting* (FELDA) 1997 ("The

126 [1994] 3 CLJ 532.

127 [2006] 4 CLJ 1.

School Regulations 1997”), made pursuant to *Surat Pekeliling Ikhtisas* Bil. 9/1975 issued by the Ministry of Education, which prohibited students from wearing the *serban*. The school authorities had requested the students to wear the *songkok* instead of the *serban*; some students refused to comply with this request. The Federal Court held that the wearing of the *serban* was not part of “Islamic prophetic teaching” and there was no *fatwa* on wearing the *serban*. The Court went further to state that the prohibition was not a total one – the students were only prohibited from wearing the *serban* during school hours and they were therefore allowed to wear the *serban* at other times, for example when performing their prayers. As such, the Federal Court held that the regulation prohibiting wearing *serban* did not violate article 11(1) of the Federal Constitution.

d. Observance of holidays and days of rest

Most religious holidays are observed in Malaysia and the state recognises religious holidays of Muslims, Christians, Buddhists and Hindus. In Sabah and Sarawak, religious holidays of Christians (Easter) and the indigenous community (*Hari Gawai Dayak* and *Pesta Menuai*) are observed.

e. Appointing clergy

Article 11(3) of the Federal Constitution gives religious communities the right to manage their own religious affairs, including the right to appoint religious leaders, priests and teachers.

i. Communities professing religion other than Islam

The appointment of religious leaders, priests and teachers is governed by their respective religions – for example, the appointment of Catholic priests, bishops and archbishops are by the Catholic Church and the Vatican in Rome.

ii. Communities professing the religion of Islam

In states with hereditary rulers, the Sultan, after consulting the state Islamic Religious Council, appoints the *Mufti* for their respective states.

f. Teaching and disseminating materials

Under Article 11(4) of the Federal Constitution, states may enact laws to control or restrict the propagation of any religious doctrine or belief among persons professing Islam. State Syariah laws have defined “proselytising” to include persuading, influencing, coercing or inciting a Muslim to become a follower or member of a non-Islamic religion or to send, deliver or distribute publications concerning any non-Islamic religion to a Muslim.

All states in Malaysia, save two (Perlis and Sabah), criminalise a number of propagation activities such as persuading, influencing, coercing or inciting a Muslim to become a follower or member of a non-Islamic religion; subjecting a Muslim under the age of 18 years to influences of non-Islamic religion; approaching a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion; sending or delivering publications concerning any non-Islamic religion to a Muslim; and distributing any publication or publicity material concerning non-Islamic religion to a Muslim. If found guilty, the punishment ranges between RM1,000 and RM10,000 or imprisonment of a term between three and five years, depending on the offence and the state concerned. The state of Kelantan also imposes a punishment of whipping upon conviction. State Syariah laws prohibiting proselytisation to Muslims are found in **Annex 2**.

In March 2011, the Ministry of Home Affairs imposed two conditions on the release of a shipment of 35,000 Malay Bibles. Before they could be released to the Christian Federation of Malaysia (CFM), the Bibles had to be stamped with the words, “Reminder: This ‘Al Kitab Berita Baik’ is for the use of Christians only. By order of the Home Minister”

and the cover of the Bibles would be stamped with the department's official seal and dated as well.¹²⁸ The second condition was for the importers to stamp a serial number on each copy to enable the Bible to be traced back to the port of import. In addition, the CFM was informed that 5,100 Malay Bibles had already been stamped with the official seal of the Ministry of Home Affairs.

In August of the same year, JAIS raided the Damansara Utama Methodist Church (DUMC) compound when the DUMC was having its thanksgiving dinner for all those involved in social services, which covered a number of community projects.¹²⁹ JAIS and a Selangor state executive councillor member, Datuk Hasan Ali of PAS stated that the raid was due to evidence of proselytisation to Muslims. The reaction from politicians were varied – Datuk Hasan Ali of PAS defended the raid and stated that a person was quoted saying the words “Quran” and “pray” in a speech; however, the Menteri Besar of Selangor, Tan Sri Khalid Ibrahim expressed regret over the incident.¹³⁰ In a statement by JAIS, it explained that the 12 Muslims who attended the event were asked to provide details and directed to attend counselling sessions.¹³¹ In addition, there were reports that the names, identification card numbers and other details of the 12 Muslims who attended the said dinner were

leaked and these 12 persons suffered harassment and death threats.¹³²

Recently, the Pahang Malay and Islamic Customs Council (MUIP) informed hotels in that state that they were prohibited from putting any non-Islamic religions materials in public reading places, including hotel rooms, as this could amount to proselytisation to Muslims.¹³³

i. Persons professing the religion of Islam

For followers of the Islamic faith, the Board of Control and Licence Al-Quran, Ministry of Home Affairs regulates the printing and publication of Al-Quran text, through the Printing of Al-Quran Text Act 1986. Section 5 of the 1986 Act states that any person wishing to print or publish Al-Quran text must first obtain a licence from the Ministry of Home Affairs. Failure to do so attracts a fine of RM10,000 or imprisonment of up to three years or both. This licensing requirement applies to all forms of printing/publishing of at least one verse of Al-Quran text.

The Syariah law of each state governs the teaching of religion of Islam in that state. Any person wishing to teach anything relating to Islam must obtain a *tauliah*. Failure to do so makes the “teacher” liable for an offence punishable with a fine or imprisonment or both. This requirement does not apply to a person who teaches Islam in his own residence to members

128 Debra Chong, ‘Churches in Malaysia reject Bibles held up and desecrated by the government’, *Asia News*, 18 March 2011, <<http://www.asianews.it/news-en/Churches-in-Malaysia-reject-Bibles-held-up-and-desecrated-by-the-government-21061.html>> accessed 16 April 2014.

129 Council of Churches of Malaysia, ‘Media Statement on the Raid of Islamic Religious Officers on a Church in Petaling Jaya on 3rd August 2011’, 4 August 2011, <<http://ccm-youth.blogspot.com/2011/08/ccm-press-release-ccm-strongly-condemns.html>> accessed 7 April 2014.

130 ‘Hasan Ali backs Jais raid on church’, *The Star Online*, 4 August 2011, <<http://www.thestar.com.my/story.aspx?file=%2f2011%2f8%2f4%2fnation%2f20110804204529&sec=nation>> accessed 7 April 2014.

131 Shannon Teoh, ‘DUMC insists Jais raid illegal’, *The Malaysian Insider*, 12 August 2011, <<http://www.themalaysianinsider.com/malaysia/article/dumc-insists-jais-raid-illegal/>> accessed 7 April 2014.

132 Joint Action Group for Gender Equality, ‘Jais in serious breach for DUMC raid leaks’, *Malaysiakini.com*, 29 August 2011, <<http://www.malaysiakini.com/letters/174402>> accessed 7 April 2014.

133 Ida Lim, ‘Slippery slope, lawyers say of Pahang ban on holy book in hotels’, *The Malay Mail Online*, 25 April 2014, <<http://www.themalaymailonline.com/malaysia/article/slippery-slope-lawyers-say-of-pahang-ban-on-holy-books-in-hotels>> accessed 7 May 2014.

of his own household.¹³⁴

ii. Persons professing religion other than Islam

Recently, the use of the word “Allah” and other words associated with Islam were highlighted in the *Herald* case. The case concerned the use of the word “Allah” in the Malay version of the *Herald*, a Catholic weekly. In overturning the High Court’s decision, the Court of Appeal allowed the Minister’s ban on the *Herald*, holding that:

- The usage of the word “Allah” in the Malay version of the *Herald* will have an adverse effect upon the sanctity of Islam as envisaged under article 3(1) and the right for other religions to be practiced in peace and harmony in any part of the Federation;
- Any such disruption of the even tempo is contrary to the hope and desire of peaceful and harmonious co-existence of other religions other than Islam in the country, particularly that the majority population in this country are Malay and whose religion is Islam. The Court of Appeal went further to state that the usage of the word “Allah” in this context would cause unnecessary confusion within the Islamic community;
- The prohibition of the use of the word “Allah” in the *Herald* does not inhibit the respondent’s

right to practice their religion;

- The word “Allah” is not an essential or integral part of the religion of Christianity and does not attract the constitutional guarantee of article 11(1) of the Federal Constitution.

Application for leave to appeal the Court of Appeal’s decision was recently denied by the Federal. This decision was lamented by the Bar Council which stated that the constitutional questions posed by the applicant should have been allowed under Section 96 (b) of the Court of Judicature Act 1964.¹³⁵

Apart from the *Herald* case, the use of the word “Allah” by non-Muslims triggered the promulgation of a number of *fatwas*, laws, seizures of Bibles, book bans and police investigations. In 2008, JAKIM issued a *fatwa* prohibiting the use of the word Allah, stating that to allow non-Muslims to use the word “Allah” would be detrimental to the faith and to the followers of Islam. It was thus the government’s responsibility to ensure the purity of the faith and to safeguard the *akidah* of followers of Islam.¹³⁶ Six states (Selangor, Perak, Kedah, Johor, Pulau Pinang and Sabah) gazetted this *fatwa*.

This prohibition can also be found in state Syariah laws – section 9 of the Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (Kedah) makes it an offence to publish in writing or say in any public speech or statement 24 words¹³⁷ to express or describe any fact, belief, idea, concept, act, activity, matter, or

134 Section 11 of the Syariah Criminal Offences Enactment 1997 (Johor); Section 11 of the Syariah Criminal Offences (Federal Territories) Act 1997 (Kuala Lumpur); Section 84 of the Administration Of Islamic Law (Kedah Darul Aman) Enactment 2008; Section 91 of the Council Of The Religion Of Islam And Malay Custom, Kelantan Enactment 1994; Section 107 of the Administration Of The Religion Of Islam (State Of Malacca) Enactment 2002; Section 11 of the Syariah Criminal Offences (State Of Penang) Enactment 1996; Section 108 of the Administration Of The Religion Of Islam (Perak) Enactment 2004; Section 119 of the Administration Of The Religion Of Islam Enactment 2006 (Perlis); Section 49 of the Syariah Criminal Offences Enactment 1995 (Sabah); Section 11 of the Syariah Criminal Offences Ordinance, 2001 (Sarawak); Section 14 of the Syariah Criminal Offences (Selangor) Enactment 1995; Section 103 of the Administration Of Islamic Religious Affairs (Terengganu) Enactment 1422H/2001M.

135 M. Mageswari, Yuen Meikeng, Florence A. Samy, Tan Yi Liang, Christopher Tan, and Victoria Brown, ‘Bar Council: Court should have granted leave’, *The Star Online*, 24 June 2014, <<http://www.thestar.com.my/News/Nation/2014/06/24/Bar-Council-Court-should-have-granted-leave/>> accessed 24 June 2014.

136 ‘Isu Tuntutan Penganut Kristian Terhadap Penggunaan Kalimah Allah’, JAKIM, 2008, <<http://www.e-fatwa.gov.my/fatwa-kebangsaan/isu-tuntutan-penganut-kristian-terhadap-penggunaan-kalimah-allah>> accessed 2 April 2014.

137 *Masjid, Allah, Qiblat, Rasul, Surau, Firman Allah, Haji, Dakwah, Mussala, Hadis, Fatwa, Imam, Mussabaqah, Kaabah, Hajjah, Solat, Zakat, Kadi, Mufti, Khalifah, Fitrah, Ibadah, Khutbah, Quran.*

thing of or pertaining to any non-Islamic religion. Similar provisions can be found in the Syariah laws of Kelantan, Melaka, Negeri Sembilan, Pahang, Selangor, and Terengganu.

In January 2014, JAIS seized 321 copies of Malay-language Bibles and 10 copies of the Iban-language Bibles from the Bible Society of Malaysia (BSM). JAIS also detained a staff member of BSM, arguing that the Bibles contained words exclusive to Muslims. BSM argued that they were mere importers of the Bibles and not propagating the Islamic faith.¹³⁸ The Bibles were returned 11 months later subject to condition that the Bible containing the word “Allah” should not to be distributed in Selangor.¹³⁹ Similarly, the comic book “The Ultra Power” was banned by the Ministry of Home Affairs because the word “Allah” was used.¹⁴⁰

Not only have Syariah authorities taken steps to ensure that non-Muslims do not use certain words pertaining to Islam, but federal authorities have begun taking measures to stop non-Muslims from using the word “Allah”. In January 2014, the police began investigating the editor of *Herald* (a Catholic priest) under the Sedition Act 1984 because the priest stated that churches in Selangor would continue using the word “Allah” in its Malay church services.¹⁴¹

138 ‘Radzi Razak, ‘Jais yet to complete Bible probe, says exco man’, *Malaysiakini.com*, 9 April 2014, <<http://www.malaysiakini.com/news/259496>> accessed 9 April 2014.

139 ‘Bible returned but with strict conditions’, *Malaysiakini.com*, 14 November 2014, <http://www.malaysiakini.com/news/280507> accessed 14 November 2014.

140 ‘Use of ‘Allah’ in Ultraman comic main reason for ban’, *The Star Online*, 7 March 2014, <<http://www.thestar.com.my/News/Nation/2014/03/07/Use-of-Allah-in-Ultraman-comic-main-reason-for-ban/>> accessed 9 April 2014.

141 Mohd. Farhan Darwis, ‘Police question Catholic priest under sedition’, *The Malaysian Insider*, 7 January 2014, <<http://www.themalaysianinsider.com/malaysia/article/police-question-herald-editor-under-sedition-act>> accessed 16 April 2014.

g. *The right of parents to ensure the religious and moral education of their children*

- i. To provide direction to the child in the child’s religious education

Parents have the right to ensure the religious and moral education of their children. This right is guaranteed in article 12(4) of the Federal Constitution, which explicitly states that the religion of a person under the age of 18 years shall be decided by his parent or guardian. The case of *Indira Gandhi*, affirming the case of *Teoh Eng Huat v The Kadhi of Pasir Mas, Kelantan & Anor*,¹⁴² interpreted this provision to include the right of both parents (father and mother) to determine the religious and moral education of their children. In *Indira Gandhi*, the High Court also held that sections 3 and 5 of the Guardianship of Infants Act 1961 conferred equal parental rights to the father and mother in the custody or upbringing of a child, religious upbringing and education of the child.

- ii. To teach the tenets of their faith to their child

The case of *Indira Gandhi* also recognised that the right to freedom of religion includes the parent’s right to teach the tenets of their faith to their children. The Court held that freedom of religion is inextricably linked to right to life and personal liberty and “liberty” includes the freedom to bring one’s own child to a place of worship. A non-converting parent who is unable to teach his or her child the tenets of his or her faith amounts to a deprivation of that parent’s right to practice his or her religion in peace and harmony.

- iii. Education curriculum

The National Curriculum for both primary and secondary schools include the compulsory subject of Islamic education for Muslim students and Moral education for non-Muslim students. The Malaysian Education Blueprint 2013–2025 states that, “in

142 [1990] 1 CLJ 277 (SC).

line with policy that states that every Muslim child must receive Islamic education in school, the KSSR curriculum (as well as the KBSR curriculum before it) provides 160 minutes per week of Islamic Education to Muslim students and 120 minutes per week of Moral Education to non-Muslim students”.¹⁴³ These are compulsory subjects with no opt-out possibility for students. In the case of *Noorliyana Yasira Mohd. Noor lwn Menteri Pendidikan Malaysia*,¹⁴⁴ the court refused a father’s application for his daughter to be exempted from attending Islamic religious class in school on conscientious grounds. The court held that any one professing the religion of Islam had to study the Islamic studies subject in a state-run school and could not dictate what subjects she wished to learn.

h. Registration

Registration is not a pre-condition to practising one’s religion in Malaysia, except for acquiring legal personality and related benefits (see above).

i. Identification card

Regulation 4 of the National Registration Regulation 1990 requires that a person provide his religion when applying for the national identification card. Whilst Regulation 4 applies to all Malaysians regardless of their religion, only persons professing the Islamic religion will have the word “Islam” explicitly written on their identification card.

If a person wishes to change the religion in his or her identification, he or she must bring the following documents (as the case may be):¹⁴⁵

- Card certifying embracing of Islam from the Islamic Religious Department or State Islamic Religious Council for Muslims regardless of name change or name retention; or
- A Syariah court order or certification from the Islamic Religious Council or Department for the application to convert from Islam to another religion, and to change from a Muslim name to a non-Muslim one; or
- Baptism certificate or certification that the applicant is a follower of Buddhism, Hinduism or Sikhism for religion change application affecting name; these documents are needed only if the applicant wishes to change his or her original name.

In the case of *Lina Joy*,¹⁴⁶ the High Court, Court of Appeal and the Federal Court refused to allow Lina Joy, an ethnic Malay Muslim who had converted to Christianity to remove the word “Islam” from her identification card without a Syariah court order permitting this. This decision was followed in the recent case of *Noraini Soon Mohamed Ivan Soon*.¹⁴⁷ Recently, the plight of Zarena Abdul Majid who tried to remove the word “Islam” from her identity card, as she was not a practising Muslim, was highlighted when JAIS disrupted her wedding to a Hindu Man (see below).¹⁴⁸

¹⁴³ Ministry of Education, ‘Malaysian Education Blueprint 2013 – 2025’, pp. 25 and 106 <http://www.moe.gov.my/cms/upload_files/articlefile/2013/articlefile_file_003108.pdf> accessed 8 April 2014.

¹⁴⁴ [2007] 5 MLJ 65.

¹⁴⁵ <<http://www.jpn.gov.my/en/identitycard>> accessed 2 April 2014.

¹⁴⁶ *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* [2004] 2 MLJ 119 (HC); [2005] 6 MLJ 193 (CA), [2007] 3 CLJ 557 (FC).

¹⁴⁷ M. Mageswari, ‘Clerk fails to convince court to remove ‘Islam’ from identity card’, *The Star Online*, 3 September 2014, <<http://www.thestar.com.my/News/Nation/2014/09/03/Court-IC-Islam/?style=biz>> accessed 4 September 2014.

¹⁴⁸ V. Anbalagan, ‘Muslim woman who married a Hindu refuses to back down’, *The Malaysian Insider*, 4 June 2014, <<http://www.themalaysianinsider.com/malaysia/article/muslim-woman-who-married-a-hindu-refuses-to-back-down>> accessed 4 June 2014.

i. *Communicate with individuals and communities on religious matters at the national and international level*

There are no known laws or policies prohibiting religious communities from communicating with individuals or other communities on religious matters at the national and international level.

j. *Establish and maintain charitable and humanitarian institutions/solicit and receive funding*

Article 11(3) of the Federal Constitution provides that every religious community has the right to establish and maintain institutions for religious and charitable purposes.

There are no known laws or policies prohibiting religious communities from establishing and maintaining charitable and humanitarian institutions or to solicit and receive funding.

k. *Conscientious objection*

Malaysia does not have mandatory military service. However, the National Service Act 1952, provides that the *Yang di-Pertuan Agong* may, from time to time, call up every male person between the ages of 17 and 55 years old, who is in Malaysia, to perform services in the armed forces, the police forces and civil defence forces.¹⁴⁹ A person liable to register under the 1952 Act but fails to comply with enlistment notice shall be guilty of an offence and is liable to be imprisoned for up to six months or fined up to RM2,000 or both.¹⁵⁰ The only exception is if one is statutorily exempted under section 3(1) of the 1952 Act; this provision makes no mention of

conscientious objectors.¹⁵¹

Apart from the 1952 Act, under the National Service Training Act 2003, Malaysia implements national service training, which is not a military service but the modules contain training on unarmed combat.¹⁵² The aim of national service training is to “prepare Malaysian youths for national service under the National Service Act 1952 and generally for creating a nation, which is patriotic and resilient and imbued with the spirit of volunteerism guided by the principles of the *Rukun Negara*”.¹⁵³ The Minister of Defence may order any person to undergo national service training.¹⁵⁴ Failure to present oneself for national service training is an offence punishable with a fine or imprisonment of not more than six months.¹⁵⁵

The National Service Training Act 2003 does not make reference to conscientious objection; it contains a general clause stating that those wishing to avoid or postpone national service training may ask the Minister for exemption¹⁵⁶ or apply for a certificate of postponement of liability.¹⁵⁷ To date, there has been no call up under the 1952 Act and

151 Section 3(1) of the National Service Act 1952 states that, that persons who may be exempted include Judges, members of the Cabinet and any House of Parliament, members of any Executive Council or any Legislative Assembly as defined in the Constitution, accredited diplomatic or consular representatives and diplomatic or consular employees who are not domiciled in Malaysia, civil servants, serving members of the regular forces and police forces, persons in holy orders and regular ministers, religious officials or lay missionaries of a recognised religious denomination, mentally disordered persons, blind persons, members of fire brigades, persons who have left or been discharged from the regular forces in consequence of disablement or ill-health, and any other persons or categories of persons exempted by order of the *Yang di-Pertuan Agong*.

152 National Service Training Department Official website, <<http://www.khidmatnegara.gov.my/en/plkn/modul-latihan/modul-fizikal/>> accessed 31 March 2014.

153 Section 2 of the National Service Training Act 2003.

154 Section 16 of the National Service Training Act 2003.

155 Section 18(1) of the National Service Training Act 2003.

156 Section 4(1) of the National Service Training Act 2003.

157 Section 20(1) of the National Service Training Act 2003.

149 Section 4(1) of the National Service Act 1952.

150 Sections 10, 11(3), 12 and 14 of the National Service Act 1952.

there have been no reported cases of conscientious objectors.

3. *Freedom from intolerance and discrimination*

Differential treatment based on religion is most pronounced in four areas - freedom of religion, freedom of expression, religious education, and right to privacy and family life.

a. *Freedom of religion*

Proselytising. The way restrictions against proselytism apply depends on whether the act of proselytization is targeted at Muslims or non-Muslims since the prohibition applies only to the former. The rationale of including article 11(4) in the Federal Constitution can be traced back to the social contract of pre-independence, where two reasons have emerged - firstly, it has been surmised that the prohibition was based on public order and not religious priority, namely, to curb the proselytization of non-indigenous religions by the merchants, the military and the missionaries.¹⁵⁸ The second hypothesis is that because Malays and Muslims are often treated as synonymous, any attempt to weaken Malay religious faith may be perceived as an indirect attempt to erode Malay power; as such, article 11(4) was a pre-Merdeka compromise between the Malays and non-Malays.¹⁵⁹

This prohibition is not applied on an equal basis to all religious communities in Malaysia where there is no corresponding prohibition of proselytisation imposed on Muslims. Rather, one of the functions of JAKIM is to “strengthen *da’wah* (invitation to Islam) to the non-Islamic society, the aborigines and the minority groups”.¹⁶⁰

158 Professor Dr. Shad Saleem Faruqi, ‘Document of Destiny the Constitution of the Federation of Malaysia’, (Kuala Lumpur: The Star Publications, 2008), pp. 138 – 139.

159 Ibid.

160 ‘JAKIM Functions’, <<http://www.islam.gov.my/en/jakim-functions>> accessed 25 March 2014.

In the case of *Jamaluddin Othman v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor*,¹⁶¹ he was detained under the (then) Internal Security Act 1960 for propagating Christianity amongst Malays; his activities of participating in meetings, seminars and work camps were viewed by the Ministry of Home Affairs as prejudicial to the security of Malaysia.¹⁶² Jamaluddin Othman and 105 others were detained under the (then) Internal Security Act 1960 as part of the infamous “Operasi Lalang”. According to the White Paper entitled “Towards Preserving National Security”, these 106 persons were involved in activities that were prejudicial to the security of Malaysia – these activities included, amongst others, the propagation of Christianity to Malays and taking part in Marxist activities.

In *Jamaluddin Othman*, the courts held his detention under the Internal Security Act 1960 unlawful as the Minister did not have the power to deprive a person of his right under article 11 of the Federal Constitution. However, recent incidents show how state and Federal authorities enforced this prohibition strictly, with reported incidents of interference in the activities of the DUMC, restrictions imposed on distributing Malay Bibles, and a directive from the Ministry of Home Affairs instructing that the words “Not for Muslims” be printed on Malay Bibles, that Malay Bibles only be distributed in churches and Christian bookshops, and that certain words pertaining to Islam not be used by non-Muslims. The authorities have justified their interference on the need to protect the sanctity of Islam as the religion of the country and to insulate the religion against any threat.¹⁶³

Pilgrimage. Malaysians are severely limited from visiting Israel, regardless of their religion. However, this prohibition disproportionately affects Christians (compared to other religious communities) as most of the Christian holy sites

161 [1989] 1 CLJ (Rep) 626.

162 ‘Kearah Memelihara Keselamatan Negara’, Kertas Perintah Am 14 Tahun 1988.

163 *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 8 CLJ 890 (CA).

are situated in Israel. In this regard, the government has imposed a number of restrictions on Christians if they intend to make pilgrimages to holy sites in Israel – only 700 Malaysians a year are allowed to visit Israel (with only 40 persons from one church) and Malaysians are only allowed to stay for 10 days at a time. Persons allowed to visit Israel must be at least 18 years old and not allowed to visit Israel more than once in three years.¹⁶⁴ No such restrictions are placed on other faiths with regard to pilgrimages. However, at the end of 2012, the government relaxed these restrictions, doing away with quotas on religious visits to Israel, minimum age, number of visits and the number per group; however, Malaysian Christians are only allowed to visit Israel for a maximum of 21 days.¹⁶⁵

Freedom to change or renounce one's religion.

The restrictions and difficulties placed on Muslims in leaving or changing their religion sees no comparable restrictions for non-Muslims. Such restrictions on Muslims are codified in law and ranges from a total prohibition to detention for rehabilitation before the Syariah court grants him or her permission to leave Islam (see above).

The cases above show that for a Muslim, any avenue available to him or her to renounce Islam is diminutive. In addition, the issue of jurisdiction of the civil and Syariah courts (see below) in apostasy cases, where the civil courts have held that only the Syariah courts have jurisdiction over conversion cases, creates another impediment to an already cumbersome process.¹⁶⁶

164 Lee Yen Mun, 'Government relaxes Israel travel ban', *The Star Online*, 20 December 2012, <<http://www.thestar.com.my/story.aspx?file=%2f2012%2f12%2f20%2fnation%2f12485805&sec=nation>> accessed 22 April 2014.

165 Ibid.

166 Human Rights Council Working Group on the Universal Periodic Review, 17th session, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia*, 25 July 2013(A/HRC/WG.6/17/MYS/3).

The courts and the authorities have often defended these restrictions on the basis that it is needed to maintain the proper working of the Syariah system of administration (*Lina Joy*¹⁶⁷) and any limitation on the grounds of public order or national security have been linked to the need to protect the sanctity of Islam.

The cumulative effect of the onerous state Syariah law, the *lacunae* in the law in some states with regard to apostasy, the criminalisation of apostasy and the claimed exclusive jurisdiction of the Syariah court places excessive discretion in the authorities and is liable to be abused without any possibility of judicial review. At the same time, this could have a discriminatory effect on persons professing Islam.

Non-Sunni Muslims. Malaysia's Islamic religious authorities tend to be intolerant towards non-Sunni Islamic communities. A number of groups, such as Shias, Al Arqam, and Sky Kingdom, have suffered such intolerance. They have been deemed "deviant" and their members arrested and detained by state religious authorities. These groups are subjected to severe state control of their religious doctrine, teachings and freedom to manifest their religion and belief.

Religious authorities have justified the prohibition of Shia in Malaysia on various grounds. The Chair of the National *Fatwa* Committee stated that Shia is unsuitable as it is against *Ahli Sunnah Wal Jamaah* and would cause misunderstanding and confusion to Muslims; the *Mufti* of Perak, Tan Sri Harussani Zakaria and the adviser to the Islamic Religious Council of Johor, Datuk Nooh Gadut, both felt that Shia would destroy national Islamic unity in Malaysia;¹⁶⁸ the Minister in charge of religious affairs, Jamil Khir Bahrom went so far as to say that

167 *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* [2004] 2 MLJ 119 (HC); [2005] 6 MLJ 193 (CA), [2007] 3 CLJ 557 (FC).

168 Sholian Osman, 'Ajaran Syiah tidak sesuai di Malaysia', *Utusan Malaysia Online*, 21 December 2010, <http://www.utusan.com.my/utusan/info.asp?y=2010&dt=1221&pub=Utusan_Malaysia&sec=Dalam_Negeri&pg=dn_08.htm> accessed 25 April 2014.

there would be bloodshed if more than one Islamic school of thought was allowed to be taught.¹⁶⁹

This push for one official view of Islam supported by enforcement to silence differences in opinion was noted by the UN Country Team (UNCT) in its report to the Second Cycle of the UPR process. The UNCT felt that this would breed fear and ignorance and encourage intolerance in interactions within the communities.¹⁷⁰ In addition, the strict controls could also result in a lack of recognition (of these minority groups) within the Muslim society in Malaysia as they are seen as inferior compared to groups practicing Sunni Islam.

b. Private and family life

In private and family life, Muslims are subject to different laws from all others. Islamic law applies in areas such as succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, and partitions.¹⁷¹ This has resulted in concerns about how these laws unnecessarily intrude into the private and family life of Muslims. For example, sexual intercourse outside marriage is prohibited by Syariah law and upon conviction a couple can be punished with imprisonment or fine or both, drinking alcohol is prohibited, gambling is similarly prohibited and marriages between Muslim and

non-Muslims are not recognised in Malaysia.¹⁷² State religious authorities have rigorously implemented these laws. For example, in 2012, the Selangor religious authorities recorded 1,734 cases of *khalwat*, 75 arrests for gambling and 18 cases for consumption of alcohol.¹⁷³ These acts are not offences for non-Muslims and prompts questions as to whether this differential treatment might violate international human rights standards on the prohibition of discrimination based on religion. This is exacerbated by the fact that Regulation 4 of the National Registration Regulation 1990 requires only Muslims to state their religion in the national identification card.

c. Freedom of expression

In Malaysia, persons professing religions other than Islam are prohibited from using certain words that pertain to the Islamic religion. As a result of this prohibition, a number of publications have been banned by the Ministry of Home Affairs. For example, the publishing permit of the Malay version of the Catholic Herald was revoked and the comic book “Ultraman: The Ultra Power” was banned. Also, Erykah Badu’s concert was banned because she had the word “Allah” tattooed on her body.

The prohibition not only pertains to specific words but also any publications and literary works thought to be offensive to Islam. Books such as *Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom (Malay version)*¹⁷⁴ and *The Vagina*

169 Patrick Lee, ‘Malaysian Shiites face growing persecution’, *Free Malaysia Today*, 14 January 2014, <<http://www.freemalaysiatoday.com/category/nation/2012/01/14/malaysian-shiites-face-growing-persecution/>> accessed 6 April 2014.

170 Human Rights Council, Working Group on the Universal Periodic Review, 17th session, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia*, (A/HRC/WG.6/17/MYS/2), 9 August 2013, pg. 8.

171 For the complete list, please refer to List II (State List) of the Ninth Schedule of the Federal Constitution.

172 ‘Washing the Tigers - Addressing Discrimination And Inequality In Malaysia’, *Equal Rights Trust in partnership with Tenaganita*, ERT Country Report Series: 2, London, November 2012, <<http://www.equalrightstrust.org/ertdocumentbank/Malaysia%20CR%201.pdf>> accessed 11 April 2014.

173 Tan Sin Chow, Ong Kay Jen, and A.Raman, ‘Hourly room rates linked to high number of khalwat cases’, *The Star Online*, 24 March 2012, <<http://www.thestar.com.my/News/Nation/2012/03/24/Hourly-room-rates-linked-to-high-number-of-khalwat-cases/>> accessed 22 April 2012.

174 ‘*Allah, Kebebasan and Cinta: Keberanian untuk menyelaraskan kebebasan dengan iman*’ (Kuala Lumpur: ZI Publications, 2012).

*Monologues*¹⁷⁵ have been banned alongside films such as *Noah*, Mel Gibson's *The Passion of Christ*,¹⁷⁶ and the cartoon *The Prince of Egypt*.¹⁷⁷ Recently, author Kassim Ahmad was arrested and charged under sections 7(b) and 9 of the Syariah Criminal Offences Act (Federal Territories) 1997 for deriding Islam and failing to abide by a *fatwa* when he stated (at a seminar) that "people seemed to idolise Prophet Muhammad and that the *aurat* of a woman does not include her hair" and for citing and delivering views from two books¹⁷⁸ authored by him that had been banned by the state religious authorities.¹⁷⁹ At the time of writing, Kassim Ahmad's case is on-going with the Court of Appeal granting leave to hear the merits of the judicial review application.¹⁸⁰

Reasons given for the ban of these publications and literary works are that they are prejudicial to public order as such works would offend Muslims in Malaysia or that it might cause religious confusion among Muslims. This line of argument was however rejected in the case of *ZI Publications Sdn. Bhd. & 1 Ors v. Jabatan Agama Islam Selangor & 5 Ors*¹⁸¹ where the High Court, in setting aside the ban on the book *Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom*, held that the Ministry of Home Affairs failed to show that the book is prejudicial to public order, especially since no action had been

taken to ban the English version when it was first circulated. As to the respondents' concern that the book might cause religious confusion of Muslims, the Court pointed out that the book had been in circulation for about two weeks before the Malay version was banned, while the English version had been in circulation since June 2011.

Additionally, freedom of expression of the lesbian, gay, bisexual and transsexual (LGBT) community continues to be threatened, with incidents of harassment by state and non-state actors.¹⁸² In two cases - *Abdul Qawi bin Jamil & Mohd Suhairi bin Md. Din v Director of the Islamic Affairs Department, Melaka & 2 Ors*¹⁸³ and *Muhamad Juzaili Mohd. Khamis & 3 Ors v Government of Negeri Sembilan & 4 Ors*¹⁸⁴ - the applicants in the judicial review applications were arrested, prosecuted and forced to undergo mandatory rehabilitation. The authorities relied on state Syariah provisions to prosecute the applicants. In both these cases, the applicants are Malay Muslim men who identified themselves as women on account of gender identity disorder. They were ordered by the respective state Islamic religious authorities to report for a mandatory course and counselling for the purposes of rehabilitation, failing which they were threatened with Syariah criminal proceedings for the offence of dressing as women. If found guilty, they could face six months imprisonment or up to RM1,000 fine or both. However, it is encouraging that the Court of Appeal in *Muhamad Juzaili* recently held that the Syariah provision criminalising cross dressing was unconstitutional as it violated articles 5(1), 8(1) and (2), 9(2) and 10(1)(a) of the Federal Constitution.¹⁸⁵

175 Eve Ensler, 'The Vagina Monologues' (London: Hatchet Digital, 2010).

176 'Malaysia urged to lift Muslim ban on "Passion of Christ" movie', *Worldwide Religious News*, 8 July 2004, <<http://wwrn.org/articles/12769/?&place=malaysia§ion=general>> accessed 22 April 2014.

177 'Malaysia bans Spielberg's Prince', *BBC News Online*, 27 January 1999, <<http://news.bbc.co.uk/2/hi/entertainment/263905.stm>> accessed 22 April 2014.

178 'Hadis: Satu Penilaian Semula; Hadis: Jawapan Kepada Pengkritik'.

179 Farah Nor Samat, 'Kassim Ahmad claims trials to two charges', *Malaysiakini.com*, 27 March 2014, <<http://www.malaysiakini.com/news/258332>> accessed 27 March 2014.

180 Abdul Hafiz Yatim, 'High Court must hear scholar's review bid', *Malaysiakini.com*, 24 July 2014 <<http://www.malaysiakini.com/news/269747>> accessed 24 July 2014.

181 Application for Judicial Review No.: 25-154-07/2012.

182 Human Rights Council Working Group on the Universal Periodic Review, 17th session, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia*, 25 July 2013(A/HRC/WG.6/17/MYS/3), paras. 32–34.

183 *Semakan Kehakiman* No. 13-3-2011.

184 High Court Seremban Judicial Review Application No. 13-1-2011.

185 Civil Appeal No. N-01-498-11/2012 (Court of Appeal)(7 November 2014).

d. Religious education in public schools and financial assistance

Religious education opportunities. Religious education is provided for in public schools in Malaysia as stipulated by sections 50(1) and 51 of the Education Act 1996. Section 50(1) provides that where there are five or more pupils professing the Islamic religion in an educational institution, such pupils *shall* be given religious teaching in Islam; whereas section 51 merely states that religious teaching in a religion other than Islam *may* be provided to pupils of an educational institution and such religious teachings can only be carried out if it does not incur government funds.¹⁸⁶

The bias towards Islamic religious education in public schools is not only apparent in the law but in practice since there are many more options for Islamic religious education compared to non-Islamic religious education.

According to the Ministry of Education, there are more than 90,000 students enrolled in public religious schools. These schools comprise federal religious schools or *Sekolah Agama Kerajaan*, which are under the jurisdiction of the Ministry of Education; state religious schools or *Sekolah Agama Negeri* (SAN), which are under the jurisdiction of state religious authorities; and government-aided religious schools or *Sekolah Agama Bantuan Kerajaan* (SABK), which are jointly controlled by the Ministry and the state religious authority or school's board of trustees. All *Sekolah Agama Kerajaan* teach the national curriculum, while the SAN and SABK teach the national and religious (*dini*) curriculum.

¹⁸⁶ Section 51 reads as follows, "The governors of a government-aided educational institution may provide for religious teaching in a religion other than Islam to the pupils of the educational institution or to any of them but—(a) no such provision shall be defrayed from moneys provided by Parliament; and (b) no pupil shall attend teaching in a religion other than that which he professes, except with the written consent of his parent."

These religious schools are not compulsory.¹⁸⁷ In addition, between the years 2016 and 2020, public schools should have designated spaces for Islamic education activities.¹⁸⁸ For Muslim students, compulsory Islamic education means that they cannot opt out of these religious classes. For non-Muslim students, the current education policy and blueprint fails to provide them with the opportunity to receive religious education in their own or other religions.

Financial assistance. Following from the above, article 12(2) of the Federal Constitution permits expenditure in favour of Islam only – the Federal and state governments have the right to establish or maintain or assist in the establishment or maintenance of Islamic institutions or the provision or assistance in providing instruction in the religion of Islam, including incurring expenditure for that purpose. This is further fortified by section 52 of the Education Act 1996, under which the government may provide financial assistance to a non-state Islamic educational institution.¹⁸⁹ There is no corresponding provision with respect to financial assistance to a non-state non-Islamic educational institution; section 34 of the 1996 Act merely provides that the government may establish, maintain and provide financial assistance to other types of educational institutions, with no explicit mention of other non-Islamic religious educational

¹⁸⁷ Ministry of Education, 'Malaysian Education Blueprint 2013 – 2025', <http://www.moe.gov.my/cms/upload_files/articlefile/2013/articlefile_file_003108.pdf> accessed 8 April 2014, pg. 194.

¹⁸⁸ Ministry of Education, 'Malaysian Education Blueprint 2013 – 2025', <http://www.moe.gov.my/cms/upload_files/articlefile/2013/articlefile_file_003108.pdf> accessed 8 April 2014, pg. 175.

¹⁸⁹ Section 52 reads, "Subject to such conditions and limitations as the Minister may deem fit to impose, financial assistance by way of grant may be given out of moneys provided by Parliament to an Islamic educational institution which is not maintained by the Minister under this Act or by the Government of a State and which is either an educational institution within the meaning of this Act or is not such an educational institution only because the teaching therein is confined exclusively to the teaching of the religion of Islam."

institution.¹⁹⁰

A similar emphasis on Islam can also be seen in the budget allocation of the federal and state governments for building of places of worship. Between 2005 and 2008, it was reported that the federal government earmarked RM8 million for building non-Muslim places of worship and RM428 million for Muslim facilities. In the Budget 2009 speech, the Selangor *Menteri Besar* Tan Sri Abdul Khalid Ibrahim proposed RM6 million for non-Muslim places of worship and RM103.5 million for the state Islamic Religious Department to build, maintain and upgrade religious primary schools, offices and mosques.¹⁹¹

4. *Right of vulnerable groups to freedom of religion and belief*

a. *Women*

Women professing religions other than Islam are free to choose their religion/belief and are subjected to the same laws and policies as their male counterparts. Muslim women, like Muslim men, are subject to the restrictive laws and policies regarding leaving their religion, discussed above.

However, in marriage, divorce and other aspects of Islamic family law, Muslim women are disproportionately affected when compared to Muslim men. It has been argued that such laws, which have a religious basis, appear to discriminate

against women.¹⁹² For example, it is more difficult for a woman to secure a divorce than a man. Syariah law places women in a weaker position in the division of matrimonial assets, and it provides women with fewer rights in the issue of custody of children and maintenance.¹⁹³ In addition, Islamic family law requires a woman to have a *wali's* (guardian's) consent before she can get married, a wife is denied maintenance or alimony if she unreasonably refuses to obey the lawful wishes or commands of her husband.¹⁹⁴ A Muslim man can marry without a *wali's* consent, a husband is able to divorce his wife outside court and in a straightforward manner; a wife can only divorce her husband in court and procedures can be rather lengthy if her husband does not consent. Islamic family law also enumerates the conditions under which a mother can lose her limited custody due to reasons of irresponsibility whereas no such conditions are stipulated for fathers.¹⁹⁵

The CEDAW Committee in its Concluding Comments noted that these personal laws for women ascribed to the Islamic religion could result in continuing discrimination against women in marriage and family life (Malaysia made reservations to articles 16(1)(a), (c), (f) and (g) of CEDAW).¹⁹⁶ The said Committee also expressed its concern over the lack of clarity on whether Syariah law applies to marriages of non-Muslim women whose husbands convert to Islam.¹⁹⁷

192 Tamir Moustafa, 'Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia', *Law and Social Inquiry*, Volume 38, Issue 1, 168-188, Winter 2013; see also, 'Working Paper: Guardianship Law and Muslim Women', Sisters in Islam, 2002, < <http://www.sistersinislam.org.my/files/downloads/guardianship.pdf>>.

193 Tamir Moustafa, 'Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia', *Law and Social Inquiry*, Volume 38, Issue 1, 168-188, Winter 2013.

194 Ibid.

195 Ibid.

196 UN Committee on the Elimination of Discrimination against Women, 35th session, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia* (CEDAW/C/MYS/CO/2), 31 May 2006.

197 Ibid, para. 13.

190 'Washing the Tigers - Addressing Discrimination And Inequality In Malaysia', *Equal Rights Trust in partnership with Tenaganita*, ERT Country Report Series: 2, London, November 2012, <<http://www.equalrightstrust.org/ertdocumentbank/Malaysia%20CR%201.pdf>> accessed 11 April 2014.

191 Yong Huey Jiun, 'Renewed resolve on places of worship', 11 November 2008, *The New Straits Times*, <http://www.malaysianbar.org.my/general_opinions/comments/renewed_resolve_on_places_of_worship.html> accessed 8 April 2014.

b. Children

One problem is where a Muslim convert unilaterally converts his or her child to Islam without the consent of his or her non-convert spouse. A slew of cases concerning unilateral conversion by a Muslim parent have left the other parent without a remedy or the right to be heard in the conversion or custody of the children in question. This problem was noted by the CRC Committee, which recommended that the government take necessary measures to create a more harmonious legal framework, which is able to provide consistent solutions to family law disputes between Muslims and non-Muslims.¹⁹⁸

The problem of unilateral conversion of children is typically illustrated in *Subashini a/p Rajasingam v Saravanan a/l Thangathoray (and 2 other appeals)*.¹⁹⁹ Subashini Rajasingam was married to her husband Saravanan under the civil law and under Hindu rites and had two sons. After the birth of the second son, Subashini became estranged with her husband, who left the marital home. In May 2006, her husband came back and told her that he had converted to Islam and that she could have nothing more to do with her elder child. She did not hear from her husband again, until she suddenly received a notification from the Islamic courts that they would be hearing a custody application in respect of her elder son, who had been given a Muslim name.

She went to the civil courts to get an injunction to stop Saravanan from getting an Islamic court order in respect of her marriage and in respect of either of her children. The High Court refused Subashini's application for an injunction but granted her a temporary injunction pending an appeal. To make matters worse, the Federal Court affirmed in an *obiter dictum* that a Muslim convert had a unilateral

right to convert his or her minor children to Islam. Cases with similar facts were *Genga Devi a/p Chelliah lwn Santanam a/l Damodaram*,²⁰⁰ *Shamala Sathyaseelan's*,²⁰¹ *Nedunchelian*,²⁰² and *Priyathaseny & Ors v Pegawai Penguatkuasa Agama Jabatan Hal Ehwal Agama Islam Perak & Ors*. In 2009, in response to these cases, the Cabinet announced a prohibition against the unilateral conversion of children to Islam by either parent, to prevent further cases where custody battles are locked in a legal limbo between the civil and Syariah court systems.²⁰³ However, unilateral conversion continues to exist as can be seen in the recent case of *Deepa*, where her husband unilaterally converted her children in 2013.

In the landmark case of *Indira Gandhi*, three children were converted to Islam when they were aged 12 years, 10 years and 1 year old by their father. The Hindu mother was separated from the father and she maintained that the conversion, which took place in April 2009, was carried out without her knowledge or permission. The first and second respondents (the Perak Registrar of Converts and the Perak Islamic Religious Department) issued Certificates of Conversion pursuant to sections 99 to 101 of the Administration of the Religion of Islam (Perak) Enactment 2004. The applicant mother only found out about the conversion of her children when she read an affidavit by the 6th respondent (her estranged husband). The children were also not present during the alleged conversion. A judicial review application was filed to nullify the certificate of conversion of the three children.

200 [2001] 1 MLJ 526.

201 *Shamala a/p Sathyaseelan v Dr Jeyaganesh a/l C Mogarajah* [2004] 2 MLJ 241 (HC); [2004] 2 MLJ 648 (HC).

202 *Nedunchelian a/l V uthiradam v Nurshafiqah binti Mah Singai Annal @ Valarmathya a/p Mah Singai Annal & 9 Ors* [2005] 2 AMR 711 (HC).

203 Justin Ong, 'Three things we learned from: the Seremban child abduction', *The Malay Mail Online*, 13 April 2014, <<http://www.themalaymailonline.com/malaysia/article/three-things-we-learned-from-the-seremban-child-abduction>> accessed 13 April 2014.

198 UN Committee on the Rights of the Child, 44th session, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention - Concluding observations: Malaysia* (CRC/C/MYS/CO/1), 2 February 2007.

199 *Subashini a/p Rajasingam v Saravanan a/l Thangathoray* [2007] 2 MLJ 798 (HC); *Saravanan v Subashini* [2007] 2 MLJ 205, 2 AMR 540, 2 CLJ 451 (CA); *Subashini v Saravanan (No. 2)* [2007] 3 AMR 370, 3 CLJ 209, 4 MLJ 97 (CA); [2008] 1 AMR 561 (FC).

The High Court made several landmark rulings:

- Article 12(4) of the Federal Constitution, which provides that the *religious education of a child* is to be decided by his parent or guardian, includes the right to determine the choice of a child's religion. The reference to "parent" in article 12(4) means both parents and to interpret it otherwise would lead to an undesirable situation of repeated conversions of one parent against the conversion of the other parent.
- In comparing the *guardianship rights of the converted parent against those of the non-converting parent*, the Guardianship of Infants Act 1961 confers equal parental rights to both the father and the mother in a civil marriage, including matters regarding the child's religious upbringing and education. A unilateral conversion of a child to Islam deprives the non-converting parent of his/her guardianship rights and his/her right to be heard on matters of custody in a Syariah court. This creates unequal rights with respect to the upbringing and education of a child and violates article 8 of the Federal Constitution.
- The right to *freedom of religion* is inextricably linked to right to life and personal liberty, and "liberty" includes the freedom to bring one's own child to a place of worship. A non-converting parent who is unable to teach his or her child the tenets of his or her faith amounts to a deprivation of that parent's right to practice his or her religion in peace and harmony.

Despite the High Court's judgment and an order to award custody to the mother, this case continues to drag out, with the father refusing to hand over custody of the youngest child to the mother.

It should be noted that the High Court judge did not discuss the right to freedom of religion from the child's point of view. In fact, the learned judge affirmed the Supreme Court's decision in *Teoh Eng Huat v The Kadhi of Pasir Mas, Kelantan &*

Anor,²⁰⁴ in interpreting article 12(4) of the Federal Constitution, which held that a person below 18 years of age lacks capacity to choose his or her own religion and that the child's right of religious practice belongs to the guardian until the child reaches 18 years. The fact that the minor in question in *Teoh Eng Huat* case was 17 years and eight months old at the material time was not considered. This ruling may contravene article 14 of the CRC, which guarantees the child's right to freedom of thought, conscience and religion in tandem with the rights and duties of parents to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. Malaysia has, however, made a reservation to article 14 of the CRC.

c. *Migrant workers*

Migrant workers are subject to the same laws and policies as Malaysian citizens. Therefore, the above laws governing persons professing the Islamic faith and persons professing religions other than the Islamic faith, applies equally to migrant workers in Malaysia.

d. *Persons deprived of their liberty*²⁰⁵

For persons deprived of their liberty, regulation 145 of the Prison Regulations 2000 requires every prisoner on reception (at a prison or detention centre or lock-up) to state his or her religious denomination and he or she will be treated as a member of that denomination.

Regulation 146 of the 2000 Regulations prohibits any prisoner from changing his or her religion save in exceptional circumstances where the Officer-in-Charge is satisfied that "after due enquiry, that the change is proposed from conscientious motives and

²⁰⁴ [1990] 1 CLJ 277 (SC).

²⁰⁵ Section 2 of the Prison Act 1995 defines "prisoner" as a person, whether convicted or not, under confinement in a prison and in relation to a convicted prisoner, includes a prisoner released on parole.

not from any idle whim or caprice or from desire to escape prison discipline”.

Regulation 147 requires the Officer-in-Charge to make arrangements for the conduct of religious or moral education for prisoners under his charge; this is to be done equally for Muslim and non-Muslim prisoners. Also, the 2000 Regulation provides that prison authorities should make provision for religious services, such as visits from religious personnel. Books of religious observance and instruction or any other religious articles may be made available to prisoners so far as it is practicable (Regulation 150).

There are no provisions allowing for a variation of diets of prisoners on the grounds of religion; variation to diets of prisoners can only be made on medical grounds or at the discretion of the Officer-in-Charge (Regulation 63). There are, however, provisions made for vegetarian prisoners (Section II of the First Schedule) but beef (which is not eaten by Hindus) is part of the daily diet for prisoners (Section I of the First Schedule).

e. Refugees

Malaysia is not a party to the Convention Relating to the Status of Refugees 1951. As such, there is no specific law regulating the rights of refugees in Malaysia. All laws and policies elaborated above apply equally to persons seeking asylum in Malaysia.

f. Minorities

i. Islamisation and wilful conversion of indigenous peoples

Indigenous peoples in Malaysia enjoy the same guarantees of freedom of religion and belief stipulated in the Federal Constitution. There are no specific provisions protecting the freedom of religion of indigenous peoples; the Aboriginal Peoples Act 1974 Act is silent in this respect.

However, there have been allegations of Islamisation by the Department of *Orang Asli* Development (JAKOA) and its predecessor department, the Department of *Orang Asli* Affairs (JHEOA). A number of civil society organisations have asserted that JAKOA/JHEOA had implemented an Islamisation programme with material benefits with a view to change the *Orang Asli* identity.²⁰⁶ The Centre for *Orang Asli* Concerns (COAC), an NGO, has accused the JAKOA/JHEOA of encouraging missionary organisations, including university students from Islamic faculties, to gain access to the *Orang Asli*, although the JHEOA has categorically denied being involved in conversion activities.²⁰⁷

There are, however, indications that the promotion of Islam is taking place. The JAKIM website shows that an officer is appointed to head proselytisation to *Orang Asli* and *Bumiputeras*.²⁰⁸ In 2006, the Kelantan government announced that they would pay a reward of RM10,000 to each Muslim preacher who marries an indigenous woman and converts her.²⁰⁹ Also, in a JHEOA report in 1974, reference was made to state-led institutionalised Islamic missionary activities where the government requested the JHEOA to promote Islamic missions to the indigenous community. A report entitled *Strategic Perkembangan Ugama Islam di Kalangan Masyarakat Orang Asli* enumerates two objectives: (a) Islamisation of the whole indigenous community;

206 Human Rights Council Working Group on the Universal Periodic Review, 17th session, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia*, 25 July 2013(A/HRC/WG.6/17/MYS/3).

207 Ding Jo-Ann, ‘JHEOA involved in *Orang Asli* conversion’, *The Nut Graph*, 4 May 2010, <<http://www.thenutgraph.com/jheoa-involved-in-orang-asli-conversion>> accessed 10 April 2014.

208 <<http://www.islam.gov.my/e-staff/>> accessed 10 April 2014.

209 ‘Suhakam Says Money Incentives To Convert *Orang Asli* An Abuse Of Power’, *Bernama*, 28 June 1006, in *Worldwide Religious News*, <<http://wwwrn.org/articles/21978/?&place=malaysia>> accessed 10 April 2014.

and (b) integration/assimilation of the indigenous peoples within the Malay community. It was also noted that the Islamisation policy was rooted in the early years of independence – the “Statement of Policy Regarding the Administration of the Aborigine Peoples of the Federation of Malaya” 1961 included the aim of integration of *Orang Asli* within the Malay section of the community. Some have attributed the increase of Muslim population amongst the indigenous peoples, from 5% in 1974 to 16% in 1997, to the Islamisation programme.²¹⁰

The possibility of wilful conversion of the indigenous community has arisen where there have been reports that the vulnerability of the indigenous community, particularly their lack of economic independence and the high level of illiteracy, have been exploited by some religious communities. In 2010, some indigenous peoples claimed that they were converted to Islam against their will; some were asked to attend a banquet and told to recite the *syahadah* and then given food and cash.²¹¹ Recently 64 people in Sabah were allegedly tricked into converting to Islam in exchange for RM100. They were reportedly initially promised RM800 and were brought to a mosque where they were treated to refreshments, asked for their identification card and asked to sign a form. All of them were illiterate but no explanation was given as to what the form was. They were then asked to recite some words and thereafter, a man told them that they had converted to Islam.²¹² Similar reports have also emerged in Sarawak where it was reported that students in

Betong, Sarawak were allegedly prevented from bringing their Bibles to their boarding schools and male students were forced to wear the “songkok”.²¹³

ii. Demolition of places of churches in indigenous settlements

As discussed above, there have been reported incidents of churches built by the indigenous community that were demolished by state authorities (see above Section 2 (b)(i)).

iii. Freedom of religion of indigenous children

There is explicit protection of indigenous children’s right to religion. Section 17 of the Aboriginal Peoples Act 1954 states that no aboriginal child attending any school shall be obliged to attend any religious instruction unless the prior consent of his or her parents or legal guardian is obtained. To date, there are no known complaints of interference of the freedom of religion of indigenous children save for one reported incident in October 2012. In this case, the parents of a number of indigenous and non-Muslim children lodged a police report against teachers in a school in Kelantan for slapping their children because they did not recite the Islamic prayer.²¹⁴ The Education Department and JAKOA apologised for the incident and the Education Department denied any wilful conversion at the school.²¹⁵

210 Toshihiro Nobuta, ‘Islamisation Policy toward the Orang Asli in Malaysia’, *Bulletin of the National Museum of Ethnology* 31(4): 479-495 (2007), <http://ir.minpaku.ac.jp/dspace/bitstream/10502/3335/1/KH_031_4_002.pdf> accessed 10 April 2014.

211 Ding Jo-Ann, ‘Orang Asli converted against will’, *The Nut Graph*, 27 April 2010, <<http://www.thenutgraph.com/orang-asli-converted-against-will/>> accessed 10 April 2014.

212 Desmond Davidson, ‘We were tricked into converting to Islam, claim Christian villagers in remote Sabah district’, *The Malaysian Insider*, 20 January 2014, <<http://www.themalaysianinsider.com/print/malaysia/we-were-tricked-into-converting-to-islam-claim-christian-villagers-in-remot>> accessed 6 April 2014.

213 Mariam Mokhtar, ‘Religious conversion rears its ugly head again’, *The Ant Daily*, 19 October 2014, <<http://www.theantdaily.com/Outspoken/Religious-conversion-rears-its-ugly-head-again/>> accessed 13 November 2014.

214 Aidila Razak, ‘Orang Asli children slapped for not reciting doa’, *Malaysiakini.com*, 25 October 2012, <<http://www.malaysiakini.com/news/212654>> accessed 6 April 2014.

215 Ibid.

C. Redress Mechanisms and Interpretation of Policies

1. Judiciary

The courts provide an avenue of redress for complaints of violation of freedom of religion. However, the Malaysian courts have been criticised for its lack of independence,²¹⁶ its unwillingness to apply international human rights conventions to domestic law and its restrained approach in human rights issues, and in religious freedom cases, the approach of the courts has been far from satisfactory.²¹⁷ (See Part One (A)(2); Part Two (B)(1)(b) and (c); Part Two (B)(2)(a)(iii) and (f) above.)

When article 121(1A) of the Federal Constitution²¹⁸ – which provides that the “civil courts have no jurisdiction in any matter within the jurisdiction of the Syariah courts” – was introduced to demarcate jurisdiction between civil and Syariah courts, a jurisdictional conflict between civil and Syariah courts arose. This amendment evoked a number of issues that remain unresolved. For example, who has the power to determine whether a matter lies within civil or Syariah jurisdiction; which court has jurisdiction if a case involves a Muslim and a non-Muslim or if it involves both elements of civil and Syariah law; and what if the remedy asked for

is unavailable in the Syariah courts.²¹⁹ This problem has been made worse by the civil courts’ willingness to give way to Syariah courts whenever a possible conflict arises, thus avoiding the need to address any constitutional issues occasioned by religious freedom cases.²²⁰ Many scholars have argued that the introduction of article 121(1A) was not meant to give Syariah courts superior status over civil courts.²²¹

Some judges have also issued judgments suggesting their bias towards Islam. This is exacerbated by the fact that in many cases where the outcomes favour Islam over individual religious liberty, the judges have been Muslims. For example, in *Dalip Kaur*,²²² *Soon Singh*,²²³ *Daud Mamat*, *Priyathaseny*, *Shamala Sathyaseelan* and, most recently, the *Herald* case, Malaysian courts have consistently eschewed the restrictive interpretation of “Islam” in article 3(1) of the Federal Constitution expounded in the case of *Che Omar Che Soh*.²²⁴

2. Administrative Bodies

There are no administrative bodies in Malaysia that deal with complaints of violation of freedom of religion.

3. Independent Bodies

Persons whose freedom of religion have been violated can lodge a complaint with SUHAKAM, the national human rights institution (NHRI) in Malaysia. Established in 1999, the initiative to set up SUHAKAM began when Malaysia was elected as a member of the United Nations Commission on

216 Document of Destiny the Constitution of the Federation of Malaysia’, pp. 637-651.

217 Document of Destiny the Constitution of the Federation of Malaysia’, pp. 335-353.

218 Par(1) states, “There shall be two High Courts of co-ordinate jurisdiction and status, namely - (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the *Yang di-Pertuan Agong* may determine; and (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the *Yang di-Pertuan Agong* may determine; (c)(Repealed), and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law. (1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.”

219 ‘Document of Destiny the Constitution of the Federation of Malaysia’, pp. 128-131.

220 Ibid.

221 Ibid.

222 (1992) 1 MLJ 1.

223 (1999) 1 MLJ 690.

224 Document of Destiny the Constitution of the Federation of Malaysia’, pg. 347.

Human Rights (UNCHR) from 1993 to 1995; other factors included Malaysia's active participation in the UN system and the fact that the Philippines and Indonesia had already established their own NHRI.²²⁵ Section 4 of the SUHAKAM Act 1999 sets out the functions and powers of SUHAKAM, which includes the power to inquire into complaints regarding infringements of human rights, to recommend to the government with regard to accession of treaties and other international human rights instruments, to advise and assist the government in formulating legislation, and to promote awareness of and provide education in relation to human rights. Since its inception, SUHAKAM has carried out trainings, public inquiries (where it has the power to subpoena any persons in Malaysia to facilitate the public inquiries), research on various laws, investigations of allegations of human rights violations, visits to places of detention, and roundtable discussions and dialogues with government agencies, civil society and members of the public.

SUHAKAM's engagement in the area of religious freedom is through its investigation of complaints. Through its annual reports, it also tracks human rights violations in Malaysia. A review of SUHAKAM's annual reports from 2000 to 2013 shows that it received 13 complaints concerning religious freedom;²²⁶ the nature of the complaints includes attacks on places of worship and persecution of minority religious communities.²²⁷ SUHAKAM has not conducted any public inquiry or national inquiry on the issue of freedom of religion. It has, however, issued statements condemning the demolition of Hindu temples and the seizure of Bibles from the BSM and submitted an *amicus brief* in religious freedom cases, such as the *Indira Gandhi*

case. Some have criticised SUHAKAM for glossing over the issue of violations of religious freedom in Malaysia in its annual reports.²²⁸ There is also doubt over SUHAKAM's impact on state practice.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

There have been no significant changes in laws relating to freedom of religion. However, the repeal of the Internal Security Act in 2012 is a welcome change as the Act was previously used to preventively detain Shia followers and individuals accused of propagating Christianity to Malays.

Whilst there have been no significant amendments in the law or any repeal or enactment of new laws, there have been significant changes in the interpretation of the law, particularly article 3 of the Federal Constitution. Of late, the courts have elevated the status of Islam in Malaysia, through its interpretation of article 3(1), which states that, "Islam is the religion of the Federation".

Since independence in 1957, scholars have regarded the position of Islam in article 3 as confined to rituals and ceremonies. Professor Ahmad Ibrahim notably observed that:

"...making Islam the official religion of the Federation was primarily for ceremonial purposes, for instance to enable prayers to be offered in the Islamic way on official occasions such as the installation of the *Yang di-Pertuan Agong*, Merdeka Day and

225 Human Rights Commission of Malaysia, <<http://www.suhakam.org.my/about-suhakam/sejarah>> accessed 23 December 2014.

226 For SUHAKAM Annual Reports 2000 to 2006, there is no 'freedom of religion' category for complaints received.

227 SUHAKAM Annual Reports 2000 – 2013, <<http://www.suhakam.org.my/pusat-media/sumber/laporan-tahunan/>> accessed 29 April 2014.

228 Patricia Martinez, 'Muslims in Malaysia', in Shahram Akbarzadeh & Benjamin MacQueen (eds), 'Islam and Human Rights in Practice: Perspectives Across the Ummah' (2008), (Routledge: New York) <http://books.google.com.my/books?i d=hEGj55dCvkC&pg=PA121&lpg=PA121&dq=suhakam+freedom+of+religion&source=bl&ots=1UpNrIOPn&sig=9e_NnjxBSdc51nrmqbeno35aYY&hl=en&sa=X&ei=TIhfU4nDHoumrQfLwYHIDw&redir_esc=y#v=onepage&q=suhaam%20freedom%20of%20religion&f=false> accessed 28 April 2014.

similar occasions...”²²⁹

This view was reinforced in the case of *Che Omar bin Che Soh v Public Prosecutor & Anor Case*,²³⁰ where the Supreme Court – then Malaysia’s highest court – traced the history of Islam in Malaysia and held that “Islam” as understood in the context of article 3 restricts Islamic law to the narrow ambits of the law relating to marriage, divorce and inheritance.

However, a number of subsequent decisions have given greater significance to the position of Islam. The High Court judge in *Meor Atiqulrahman*²³¹ stated that the phrase “Islam is the religion of the Federation” in article 3 of the Federal Constitution meant that Islam is above other religions in Malaysia and that the government has the responsibility to expand and develop Islam in Malaysia. This decision was overruled by the Court of Appeal and the Federal Court. In *Lina Joy*,²³² the High Court held Islam to be the “main and dominant religion in the Federation”. The Court of Appeal and Federal Court, in affirming this decision similarly held Islam’s special position in Malaysia.²³³ Recently in the *Herald* case, the Court of Appeal interpreted the words “in peace and harmony” in article 3(1) to mean “to protect the sanctity of Islam as the religion of the country and also to insulate against any threat faced or any possible and probable threat to the religion of Islam”.²³⁴

229 Ahmad Ibrahim, ‘The Position of Islam in the Constitution of Malaysia’ in Tommy Thomas, ‘Is Malaysia an Islamic State’, 17 November 2005, <http://www.malaysianbar.org.my/constitutional_law/is_malaysia_an_islamic_state_.html#f31> accessed 12 May 2014.

230 [1988] 2 MLJ 55.

231 *Meor Atiqulrahman Ishak & Yang Lain*, at 353.

232 *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan & Anor*, [2004] 6 CLJ 242 (HC).

233 *Lina Joy* (FC), pg. 83.

234 *Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur* (CA), pg. 926.

B. Significant Changes in State Enforcement

Data in publications by the police, Attorney-General Chambers and judiciary of cases investigated/prosecuted/adjudicated respectively, are not sufficiently disaggregated to allow any meaningful analysis of trends in state enforcement. Nevertheless, some constitutional lawyers have noted that of late, there has been more assertive enforcement of state Syariah laws into areas beyond Islamic family matters and to non-Muslims, areas which the Syariah court and Syariah law are not meant to have jurisdiction over.²³⁵ For example, in 2012, a Christian Indonesian woman was convicted by the Penang Syariah Court for *khalwat* (close proximity); the case is pending an appeal before the Syariah Court of Appeal.²³⁶ Similarly, in *Indira Gandhi*,²³⁷ the Syariah court granted custody of the children to the Muslim father (who had converted to Islam after his marriage which had been solemnised under civil law and not Islamic law). The Syariah court has no jurisdiction to grant custody orders in a non-Muslim marriage.

In addition, concern has been expressed over the recent raid of and seizure of Bibles from the Bible Society of Malaysia and the ruling by Pahang Malay and Islamic Customs Council that hotels in the state of Pahang should not carry non-Islamic religious materials. From these two incidents, on the reasoning that the law prohibits propagation of non-Muslim religion to Muslims, the Syariah authorities have extended its reach to non-Muslim religious materials, a matter which does not fall within their

235 Boo Su-Lyn, ‘As Shariah Court flexes muscle, lawyers warn of creeping Islamisation’, *The Malay Mail Online*, 19 April 2014, <<http://www.themalaymailonline.com/malaysia/article/as-shariah-court-flexes-muscle-lawyers-warn-of-creeping-islamisation>> accessed 15 May 2014.

236 Ibid.

237 Ibid.

jurisdiction.²³⁸ Civil liberty lawyers have expressed concern that state Syariah authorities have assumed a larger role in regulating the lives of Muslims and non-Muslims alike, at the expense of fundamental freedoms guaranteed in the Federal Constitution.²³⁹

C. Significant Changes in Religious Claims (by Non-State Actors)

When the *Herald* case was adjudicated by the courts, a few organisations used the case to make a more general claim that non-Muslims should refrain from using the word “Allah” and that Islam is supreme in Malaysia; such claims go beyond the matter adjudicated by the courts (i.e. the use of “Allah” in the Malay publication of *Herald*).

In October 2013, about 150 Muslims – mostly members of Pertubuhan Pribumi Perkasa Malaysia (PERKASA) and Pertubuhan Kebajikan Darul Islah Malaysia (PERKID) – held a protest outside the Court of Appeal holding banners that read “Allah just for Muslim, fight, no fear”.²⁴⁰ The President of PERKASA claimed that the word “Allah” could not be abused for any purpose.²⁴¹ Similarly, when the Court of Appeal delivered its judgment in March 2014, similar claims were made by PERKASA that the word “Allah” could not be used by outsiders or

Christians.²⁴²

At around the same time, Muslim groups claim the supremacy of Islam over other religions. *Ikatan Muslimin Malaysia* (ISMA) President Abdullah Zaik Abdul Rahman said that Christians must accept the supremacy of Islam to safeguard harmony among the different races and religion, stating that “They can choose to move to another country if they cannot accept the supremacy of Islam and the royalty that protects the supremacy of the religion.”²⁴³ Some Muslim groups have said that the Christian use of the word Allah might be used to encourage Muslims to convert to Christianity.²⁴⁴

In addition to making the above claims, such groups have also lodged police reports and organised protests outside churches. The police started investigating Father Lawrence Andrew under section 4 of the Sedition Act 1948 as a result of police reports made by Muslim groups who alleged that Father Andrew’s comments violated the *Sultan’s fatwa*.²⁴⁵ Similarly, a coalition of Klang Muslims Solidarity Secretariat²⁴⁶ organised a rally outside a Catholic church over the use of the word “Allah”; the said coalition blamed church leaders for sparking the current row over the Arabic word and threatened an “uprising” if their demand to stop

238 Ida Lim, ‘Slippery slope, lawyers say of Pahang ban on holy book in hotels’, *The Malay Mail Online*, 25 April 2014, <<http://www.themalaymailonline.com/malaysia/article/slippery-slope-lawyers-say-of-pahang-ban-on-holy-books-in-hotels>> accessed 7 May 2014.

239 Ibid.

240 Tashny Sukumaran and Qishi Tariq, ‘Big crowd gathers outside court as hearing on Allah case begins’, *The Star Online*, 10 September 2013, <<http://www.thestar.com.my/News/Nation/2013/09/10/Court-Allah-Case-Begins.aspx>> accessed 15 May 2014.

241 ‘Malaysian court rules on the use of ‘Allah’’, *The Australian*, 15 October 2013, <<http://www.theaustralian.com.au/news/world/malaysian-court-rules-on-the-use-of-allah/story-e6frg6so-1226739933563>> accessed 15 May 2014.

242 ‘Malaysia’s highest court takes up use of “Allah” by Catholics’, *Channel News Asia*, 5 March 2014, <<http://www.channelnewsasia.com/news/asiapacific/malaysia-s-highest-court/1021044.html>> accessed 15 May 2014.

243 Rita Jong, ‘Accept Allah decision or migrate, says Muslim rights group’, *The Malaysian Insider*, 14 October 2013, <<http://www.themalaysianinsider.com/malaysia/article/accept-allah-decision-or-migrate-says-muslim-rights-group>> accessed 15 May 2014.

244 ‘Malaysia court rules non-Muslims cannot use ‘Allah’’, *BBC News Online*, 14 October 2013, <<http://www.bbc.com/news/world-asia-24516181>> accessed 15 May 2014.

245 Abhrajit Gangopadhyay, ‘Priest’s Use of ‘Allah’ Brings Malaysia Sedition Probe’, *The Wall Street Journal*, 8 January 2014, <<http://online.wsj.com/news/articles/SB10001424052702303848104579308180235121604>> accessed 15 May 2014.

246 Organisations in this coalition include Jalur Tiga Malaysia (JATI), Selangor PERKASA, ISMA, and *Pertubuhan Ikatan Kebajikan dan Dakwah Selangor* (IKDDAS).

non-Muslims from using it is ignored.²⁴⁷

D. Significant Events of State Persecution of Religious Groups

1. Non-violent state persecution

a. Denial of personal status rights

Persons who are denied the right to renounce Islam continue to be subjected to Islamic religious laws (including criminal laws) although they may not profess or believe in the religion of Islam. As a consequence, such persons are unable to enjoy a number of fundamental rights, namely:

- The right to marry the person of their choice
 - Such person cannot marry a non-Muslim (section 3(3) of the Law Reform (Marriage and Divorce) Act 1976). Recently, JAIS stopped a Hindu wedding (at a Hindu temple) and took away the bride for questioning as JAIS suspected that the bride (Zarena Abdul Majid) was a Muslim; it was reported that the bride's father had converted her to Islam without her knowledge.²⁴⁸ JAIS is investigating Zarena under Section 10 of the Syariah Criminal Offences (Selangor) Enactment 1995 for insulting or bringing disrepute to Islam;²⁴⁹
- The right to personal identity. After the case of *Lina Joy*, a person professing the religion of Islam cannot remove the classification of his or her religion as Islam on the identification card;

247 Zurairi Ar, 'Malay groups to protest at Klang church, threaten 'uprising' over 'Allah'', *The Malay Mail Online*, 2 January 2014, <<http://www.themalaymailonline.com/print/malaysia/malay-groups-to-protest-at-klang-church-threaten-uprising-over-allah>> accessed 15 May 2014.

248 'Jais stops Hindu wedding, suspects bride is Muslim', *Malaysiakini.com*, 2 June 2014, <<http://www.malaysiakini.com/news/264505>> accessed 3 June 2014.

249 P. Aruna, 'Jais probing bride's case', *The Star Online*, 4 June 2014, <<http://www.thestar.com.my/News/Nation/2014/06/04/Jais-probing-brides-case-Muslim-woman-practising-Hinduism-being-investigated-for-insulting-Islam/>> accessed 4 June 2014.

- The right to a private life. Such persons may be prosecuted for contravening any offence in the various Syariah criminal offences enactments. For example, a person may be arrested for eating in public during the fasting month, for failure to perform Friday prayers, breaking fast during Ramadhan, gambling, drinking and sexual deviance.²⁵⁰
- Right to perform ritual and ceremonial acts. Upon the death of such a person, his/her body will not be allowed to be buried or cremated according to the rites and rituals of the religion she actually professes. A number of disputes regarding the deceased have risen over the years. In the much-publicised case of *Everest Moorthy*,²⁵¹ upon the death of Moorthy Maniam (a member of the Malaysian team that climbed Mount Everest), the Islamic Religious Affairs Council came to collect the body from the morgue.²⁵² In the *Chandran Dharma Dass*²⁵³ case, Islamic authorities, assisted by about 50 police and/or riot police, went to the deceased's family to take the body away for an Islamic burial. The deceased's family members were only allowed to view the body briefly and the presiding police officer instructed them not to pray. Similar incidents occurred in the *Nyonya Tahir*²⁵⁴ and *Gan Eng Gor*²⁵⁵ cases. Recently, the Penang Islamic Affairs Department took away

250 Tamir Moustafa, 'Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia', *Law and Social Inquiry*, Volume 38, Issue 1, 168-188, Winter 2013.

251 *Kaliammal a/p Sinnasamy Iwn Pengarah Jabatan Agama Islam Wilayah Persekutuan & Lain-Lain* [2006] 1 MLJ 685(HC).

252 Ibid.

253 Datuk A. Vaithilingam, 'Malaysia Hindu Sangam Press Release: Body of practicing Hindu buried by people who never knew', 10 November 2006, <http://www.malaysianbar.org.my/letters_others/press_release_body_of_practising_hindu_buried_by_people_who_never_knew_who_he_was.html?date=2010-05-01> accessed 31 March 2014.

254 *Dalam Perkara Nyonya Binti Tahir, Ex P Majlis Agama Islam Negeri Sembilan & Yang Lain* [2006] 1 CLJ (Sya) 335.

255 'Plea from Gan's Family', *Malaysian Bar*, 28 January 2008, <http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=13579> accessed 31 March 2014.

the body of Teoh Cheng Cheng as they had documents showing that she had converted to Islam in 1997 and had adopted the Muslim name Nora Teoh Abdullah.²⁵⁶

- Inheritance rights. The estate of such a person will not go to her non-Muslim family members but will instead be used by *Baitul Mal* (fund administered by the state's Islamic affairs authorities to assist in the improvement of welfare of Muslims). This was also the case in *Majlis Agama Islam Wilayah Persekutuan lwn Lim Ee Seng & Yg Lain*,²⁵⁷ where the High Court allowed the Islamic Affairs Council to claim the entirety of a deceased estate because their records showed that he had converted to Islam more than 25 years ago; he however did not divorce his non-Muslim wife.

b. Denial of the right to freedom of expression

In June 2012, the religious authorities began to use Syariah law to interfere in the freedom of expression of publishers and book distributors. One of the first cases was the prosecution of Nik Raina (manager of a book store) and Ezra Zaid (director of the publishing house ZI publications) in the Syariah courts for distributing the Malay translation of Irshad Manji's book *Allah, Liberty & Love*. They were charged with publishing and distributing publications contrary to Islamic law. In March 2013, even after the High Court ruled that the Syariah criminal charge against Nik Raina violated article 7 of the Federal Constitution, the Syariah court refused a discontinuance of the Syariah criminal charge as it insisted on upholding the Syariah court's

independence.²⁵⁸ Similarly, the Syariah criminal charge against Ezra Zaid subsists.

c. Denial of freedom to publish and distribute religious materials

Integral to the right to proselytise is the freedom to publish and distribute religious publications. However, in Malaysia, non-Muslims are prohibited from propagating non-Islamic religion to Muslims. A number of incidents have occurred where the prohibition was enforced - seizure of Malay bibles from BSM; conditions imposed on more than 5,000 Malay and Iban Bibles on CFM and the raid of the DUMC activities. Whilst these incidents did not result in any charges due to insufficient evidence,²⁵⁹ the harsh effect of the law prohibiting propagation to Muslims cannot be denied.

In addition, the *Herald* case is of particular importance as it is the first case before the civil courts concerning the prohibition of propagating non-Islamic religion to Muslims. The judgements in the *Herald* case can pose a number of problems for the Christian community as almost two-thirds of Christians in Malaysia are *Bumiputera*. They use Bahasa Malaysia and indigenous languages in their religious practices and they describe God as "Allah" in their prayers and holy book.²⁶⁰ Also this ruling affects not only Christians but also other religions

256 Tan Sin Chow, 'Dead woman's funeral aborted over religious status', *The Star Online*, 10 June 2014, <<http://www.thestar.com.my/News/Nation/2014/06/10/Dead-womans-funeral-aborted-over-religious-status/>> accessed 10 June 2014.

257 [2000] 2 AMR 1890.

258 Borders Press Statement, 'Borders deeply regrets Syariah Court's decision', 7 October 2013, <<http://www.borders.com.my/WebLITE/Applications/news/uploaded/docs/Borders%20Statement.pdf>> accessed 26 April 2014.

259 Shazwan Mustapha Kamal, 'Selangor Sultan backs Jais church raid, no one to be charged', 10 October 2011, *The Malaysian Insider*, <<http://www.themalaysianinsider.com/malaysia/article/selangor-sultan-backs-jais-church-raid-no-one-to-be-charged>> accessed 4 November 2014.

260 Trinna Leong, 'Sabah Christians band together to stop conversions to Islam', *The Malaysian Insider*, 23 January 2014, <<http://www.themalaysianinsider.com/malaysia/article/sabah-christians-band-together-to-stop-conversions-to-islam>> accessed 10 April 2014.

such as Sikhs, who also refer to God as “Allah”.²⁶¹

Interpreting the constitutional provision through the privileging of Islam could have a negative impact on religious minorities and friendly relations between the different religious communities.²⁶² At the same time, this may run contrary to international human rights standards, which ensure that the freedom to profess and practice religion and belief includes the right of believers and communities of believers to acquire, possess and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion and belief.²⁶³

d. Denial of parenting rights

The courts have also (apart from the *Indira Gandhi* case) held that one parent’s consent is all that is required in order to convert a child to Islam (for more details on unilateral conversion of children, please see Part One (B)(4)(b) above).

2. Violent state persecution

Since 2000, there have been reports of violent persecution on account of religion and/or belief. These incidents fall into two main areas of concern: (a) incidents of demolition of Hindu temples and churches of indigenous peoples; and (b) prosecution of Muslim minorities and apostates.

261 Farah Mihar, ‘Ethnic and religious discrimination big challenge for Malaysia’s minorities’, *Minority Rights Group International*, 25 May 2011, <<http://www.minorityrights.org/10815/comment-amp-analysis/ethnic-and-religious-discrimination-big-challenge-for-malaysias-minorities.html>> accessed 10 April 2014.

262 ‘UN rights experts urge Malaysia to reverse decision to restrict use of ‘Allah’ to Muslims’, *UN News Centre*, 25 November 2013, <<http://www.un.org/apps/news/story.asp?html/realfile/story.asp?NewsID=46577&Cr=Religion&Cr1=#.U05xleaSxss>> accessed 16 April 2014.

263 Principle 16 of the Concluding Document of the 1989 Vienna Meeting of Representatives of the Participating States of the CSCE Conference.

a. Demolition of places of worship

Hindu places of worship. A number of Hindu temples have in the past, been demolished by authorities. Most of these demolitions were carried out at the behest of private developers keen on building roads or airports. Some of these temples were built without the approval of the local authority or the private owner. As discussed above, since 2006, the media and SUHAKAM have recorded incidents of about a dozen Hindu temples being either completely or partially demolished. Recently, the prehistoric ruins of a *candi* (tomb temple) at an archaeological site in Bujang valley, which was about 1,200 years old, was secretly demolished by a developer.²⁶⁴ Although the Minister of Home Affairs denied that the *candi* was a religious site, excavations there have revealed relics dating back to a Hindu-Buddhist kingdom from as far back as 110 CE.²⁶⁵

According to SUHAKAM, the Hindu temples were demolished by authorities and private developers because they were illegal or because these structures were built (some dating back to the last century) before the National Land Code came into force when a building permit was not required.²⁶⁶ Others such as the President of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) surmised that the difficulty of establishing non-Muslim houses of worship leads to “illegal” temples and shop houses being turned into churches.²⁶⁷ Whilst it is acknowledged that the demolitions were

264 Opalyn Mok, ‘Centuries-old temple ruins in Bujang Valley furtively destroyed’, *The Malay Mail Online*, 1 December 2013, <<http://www.themalaymailonline.com/malaysia/article/centuries-old-temple-ruins-in-bujang-valley-furtively-destroyed>> accessed 13 April 2014.

265 Ibid.

266 SUHAKAM Annual Report 2006, <<http://www.suhakam.org.my/pusat-media/sumber/laporan-tahunan/>> accessed 10 November 2014.

267 Yong Huey Jiun, ‘Renewed resolve on places of worship’, 11 November 2008, *The New Straits Times*, <http://www.malaysianbar.org.my/general_opinions/comments/renewed_resolve_on_places_of_worship.html> accessed 8 April 2014.

probably not religiously motivated, they show a disregard for the sensitivities of followers of these religions. SUHAKAM has, in the meantime, made recommendations to ensure that this issue is dealt with in a fair manner (see below).

Demolition of churches in indigenous settlement.

Over the years, the indigenous community have been faced with threats or actual demolition of churches built on their ancestral land. Between 2005 and 2014, there were six cases of churches or chapels built by the indigenous community that were demolished by the local authorities. These incidents occurred in Kuala Masai (Johor), Gua Musang (Kelantan), Kuala Krau (Pahang), Triang (Pahang), Pos Pasik (Kelantan), and Alor Gajah (Melaka). As with the demolition of Hindu temples, authorities justified the demolition on the grounds that the church was built without proper approval.

Religion and land are closely connected issues for the indigenous people and, as such, the security of land tenure becomes an important aspect of freedom of religion. Thus, the demolition of places of worship will continue since state governments regard the land as belonging to the state and may be freely dealt with it.²⁶⁸

3. Prosecution of Muslim minorities and apostates

This intra-religious persecution is targeted at Islamic religious communities that are not aligned with Sunni Islam and apostates. In the former, since Malaysia adopts Sunni Islam, all other teachings are generally perceived to deviate from Sunni Islam and members of these minority religious groups face arrest, detention and prosecution by

the state Syariah authorities. Groups that have been prosecuted include, amongst others, Shias, Al-Arqam group, Ayah Pin and the Sky Kingdom. For more details, see Part One (B)(2)(a)(ii).

In addition to the religious communities mentioned above, prosecutions have also been levelled against those who wish to renounce Islam. For more details, see Part One (B)(1)(b), (c) and (d) and Part One (B)(2)(a)(iii) and (iv).

E. Significant Events of Non-State Persecution of Religious Groups

See section F - Attacks on places of worship, below. There are no reported incidents of state complicity in these attacks. Also, it is not known whether these attacks were spontaneously and randomly perpetrated by individuals or are part of a systematic effort by religious groups / organizations.

F. Significant Events of Inter-Religious Conflict

Attacks on places of worship

All recorded incidents of attacks on places of worship were triggered by the *Herald* case. When the High Court ruled that the Catholic church was allowed to use the term “Allah” in the Malay language version of the *Herald* newsletter, distributed only to Catholics in early 2010, 10 churches and one Sikh *Gurdwara* were reportedly attacked:

- Desa Melawati (Metro Tabernacle) church was burned down;²⁶⁹
- Two attacks (firebombs) on Assumption

²⁶⁸ Human Rights Council, Working Group on the Universal Periodic Review, 17th session, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia* (A/HRC/WG.6/17/MYS/2), 9 August 2013.

²⁶⁹ ‘Molotov cocktails thrown at Penang church’, *The Malaysian Insider*, 27 January 2014 <<http://www.themalaysianinsider.com/malaysia/article/molotov-cocktails-thrown-at-penang-church>>, accessed 16 April 2014.

Church and Life Tabernacle;²⁷⁰

- Two burned patches on the wall of Good Shepherd Lutheran Church were seen in Petaling Jaya;²⁷¹
- A Molotov cocktail was hurled at the All Saints church in Taiping, Perak – police found burn marks on the wall but no damage to the building was reported;²⁷²
- The outer wall of the Malacca Baptist church was splashed with black paint;²⁷³
- In Taiping, a broken kerosene bottle with an unlit wick was found inside the compound of the St Louis Catholic church;²⁷⁴
- Attackers hurled bricks and stones at glass windows of the Good Shepherd Catholic church in Miri, Sarawak;²⁷⁵
- The main entrance of the Sidang Injil Borneo (SIB) church in Seremban, Negeri Sembilan was scorched in an arson attempt;²⁷⁶
- The St Elizabeth Catholic church in Kota Kecil (Johor) was splashed with red paint;²⁷⁷

270 'Malaysia: Churches firebombed amid Allah dispute', *CNN*, 9 January 2010, <<http://edition.cnn.com/2010/WORLD/asiapcf/01/08/malaysia.churches.attacked/>> accessed 16 April 2014.

271 'Good Shepherd Lutheran Church', *MSN news*, 8 January 2010, <<http://news.malaysia.msn.com/photogallery.aspx?cp-documentid=3780306&page=2>> accessed 16 April 2014.

272 'More Malaysia churches attacked', *Al-Jazeera*, 11 January 2010, <<http://www.aljazeera.com/news/asia-pacific/2010/01/2010110225838805341.html>> accessed 16 April 2014.

273 Ibid.

274 Ibid.

275 Ibid.

276 'SIB church in Seremban the latest victim of arson attack', *The Star Online*, 12 January 2010, <<http://www.thestar.com.my/story.aspx/?file=%2F2010%2F1%2F14%2Fnation%2F5450289&sec=nation>> accessed 16 April 2014.

277 Farek Zolkepli, 'Church in Johor splashed with red paint', *The Star Online*, 14 January 2010, <<http://www.thestar.com.my/story.aspx/?file=%2F2010%2F1%2F14%2Fnation%2F20100114124758&sec=nation>> accessed 16 April 2014.

- Windows of the Grace Global Prayer Church in Negeri Sembilan, were found to have been smashed;²⁷⁸
- Stones were thrown at a Sikh *Gurdwara* Sahib in Sentul.²⁷⁹

Two brothers were sentenced to five years of prison after they were found guilty for attacking one of the churches. Raja Mohamad Faizal Raja Ibrahim, 24, and his brother Raja Mohamad Idzham Mohd Ibrahim, 22, pleaded not guilty. On the flipside, Muslims also suffered attacks. Pigs' heads were thrown into the compounds of two mosques in Petaling Jaya and Jalan Klang Lama (*Masjid* Taman Datuk Harun and *Masjid* Taman Seri Sentosa);²⁸⁰ two *suraus* in Muar and a *surau* in Klang were attacked.²⁸¹ In the recent Court of Appeal hearing of the same case in January 2014, Molotov cocktails were thrown at a church in Penang after a banner with the word "Allah" was found outside the church.²⁸² In all these incidents, no casualties were reported.

278 'Another church in Malaysia vandalised: spokesman', *The Sydney Morning Herald*, 17 January 2010, <<http://www.smh.com.au/world/another-church-in-malaysia-vandalised-spokesman-20100116-mdkt.html>> accessed 16 April 2014.

279 'Stones thrown at Sikh temple in Sentul', *Malaysiakini.com*, 12 January 2010, <<http://www.malaysiakini.com/news/121808>> accessed 16 April 2014.

280 'Pig Heads Flung Into Mosques To Confuse, Divide M'sians', *Malaysia Today*, 27 January 2010, <<http://www.malaysia-today.net/pig-heads-flung-into-mosques-to-confuse-divide-msians/>> accessed 16 April 2014.

281 Wong Chun Wai, 'Lock up the trouble-makers', *The Star Online*, 24 January 2010, <<http://www.thestar.com.my/story.aspx/?file=%2F2010%2F1%2F24%2Ffocus%2F5535911&sec=focus>> accessed 16 April 2014.

282 'Molotov cocktails thrown at Penang church', *The Malaysian Insider*, 27 January 2014 <<http://www.themalaysianinsider.com/malaysia/article/molotov-cocktails-thrown-at-penang-church>> accessed 16 April 2014.

G. Significant Events of Terrorism and/or Terrorist Threats

There are no links to terrorist groups in the aforementioned violent and non-violent religious persecutions.

H. Significant Cross-Border Incidents

1. Muslim insurgency in Southern Thailand

In the insurgency in the Southern provinces of Thailand of Pattani, Yala and Narathiwat, religion has been cited as one of the causes of the unrest.²⁸³ These three regions share a commonality with Malaysia, as they are predominantly Malay Muslim. Malaysia has played a small role in this insurgency as it has participated in peace talks and has in the past reportedly offered a safe haven to some of the separatist members.²⁸⁴

Malaysia's involvement with the insurgency movement in Southern provinces of Thailand dates back to the 1960s and 1970s, when Malaysia was accused of providing assistance to the separatists groups.²⁸⁵ The support waned in the 1990s after Thailand assisted Malaysia in eradicating the Communist Party of Malaysia (CPM).²⁸⁶ When the separatist movement re-emerged in the early 2000, there were allegations that Malaysian authorities

knew that the separatists were using Malaysian territory as a sanctuary from Thai forces and did not do anything.²⁸⁷ In August 2005, 131 Thais, including women and children, sought shelter in two mosques in the Kelantan, in Malaysia. The (then) Prime Minister of Thailand alleged that these 131 Thais were separatist militants trying to spread the bloody insurgency in Thailand's southern provinces.²⁸⁸ The (then) Minister of Foreign Affairs of Malaysia reportedly agreed to release these persons only if Thailand could guarantee their human rights and safety.²⁸⁹ This was followed by secret talks between the separatist movement and Thai security officials in late 2005/ early 2006, which were facilitated by the Malaysian government. The talks failed as it lacked top-level support from both sides.²⁹⁰

After the bombings in Yala town in March 2012, it was reported that the secretary-general of the Thailand Southern Border Provinces Administrative Centre came to Malaysia to meet with the Malaysian Special Branch Police; speculation was rife that the meeting was to request the Malaysian authorities to contact the separatist leaders to persuade them to agree to a ceasefire during the Ramadhan month.²⁹¹ A dialogue between both countries ensued with a view to diffuse the tension and mistrust. In June 2013, Malaysia hosted the peace talk between the Thai government and the *Barisan Revolusi Nasional*, in an effort to be the peace mediator in this conflict and to assure Thailand that Malaysia is serious in

283 Joerg Eschenfelder, 'Southern Thailand: How to end the insurgency', *World Security Network Foundation*, 11 October 2005, <<http://www.worldsecuritynetwork.com/Asia/joerg-eschenfelder/Southern-Thailand-How-to-end-the-insurgency>> accessed 13 April 2014.

284 Palash Ghosh, 'A Private Little War: Muslim Insurgency In Southern Thailand Rages, Ignored By Outside World', *International Business Times*, 12 March 2014, <<http://www.ibtimes.com/private-little-war-muslim-insurgency-southern-thailand-rages-ignored-outside-world-1560930>> accessed 13 April 2014.

285 Jason Johnson, 'Malaysian role vexes Thai conflict', *Asia Times Online*, 21 September 2012, <http://www.atimes.com/atimes/Southeast_Asia/N121Ae01.html> accessed 13 April 2014.

286 Ibid.

287 Ibid.

288 Nick Cumming-Bruce, 'Ethnic and Religious Tension on the Thailand-Malaysia Border', *The New York Times*, 3 September 2005, <<http://www.nytimes.com/2005/09/03/international/03thai.html>> accessed 13 April 2014.

289 Pavin Chachavalpongpun, 'Malaysia in 2014 – A perspective from Thailand', *New Mandala*, 28 February 2014, <<http://asiapacific.anu.edu.au/newmandala/2014/02/28/malaysia-in-2014-a-perspective-from-thailand/>> accessed 13 April 2014.

290 Jason Johnson, 'Malaysian role vexes Thai conflict', *Asia Times Online*, 21 September 2012, <http://www.atimes.com/atimes/Southeast_Asia/N121Ae01.html> accessed 13 April 2014.

291 Ibid.

its efforts in helping Thailand find a comprehensive solution to the conflict.²⁹²

2. *Rohingya asylum seekers*

Since 1992, the Office of the UN High Commissioner for Refugees (UNHCR) in Malaysia has been dealing with the arrival of Rohingyas in Malaysia. The Rohingyas have come to Malaysia as a result of the inter-communal tension in the Rakhine state in Myanmar²⁹³ and UN describes the Rohingyas as a persecuted religious and linguistic minority from western Burma.²⁹⁴ According to UNHCR Malaysia, as of the end April 2014, there are approximately 133,830 asylum seekers from Myanmar, comprising some 51,810 Chins, 36,290 Rohingyas, 11,790 Myanmar Muslims, 7,790 Rakhine, 3,620 Burmese & Bamars, 5,400 Mon, 5,150 Kachins, and other ethnicities from Myanmar.²⁹⁵

Although Malaysia is not a party to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons or the 1967 Convention on the Reduction of Statelessness, UNHCR noted that Malaysia continued to ensure some level of protection and assistance for the current refugee population.²⁹⁶

292 Pavin Chachavalpongpun, 'Malaysia in 2014 – A perspective from Thailand', *New Mandala*, 28 February 2014, <<http://asiapacific.anu.edu.au/newmandala/2014/02/28/malaysia-in-2014-a-perspective-from-thailand/>> accessed 13 April 2014.

293 2014 UNHCR country operations profile – Myanmar, UNHCR, <<http://www.unhcr.org/pages/49e4877d6.html>> accessed 14 May 2014.

294 'Hundreds of Rohingya refugees reach Langkawi, Malaysia', *BBC News Online*, 31 December 2012, <<http://www.bbc.com/news/world-asia-20873678>> accessed 14 May 2014.

295 UNHCR Malaysia, *Figures at a Glance*, <http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx> accessed 14 May 2014.

296 Human Rights Council, Working Group on the Universal Periodic Review, 17th session, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia* (A/HRC/WG.6/17/MYS/2), 9 August 2013.

I. Governmental Response

1. *Government*

In the immediate aftermath of the incidents of persecution mentioned above, the Prime Minister and some Cabinet Ministers responded positively, urging Malaysians to stay calm and not to heed extremist elements. For example, during the recent 2014 Federal Court appeal hearing of the *Herald* case, the Prime Minister called on Malaysians to ignore extremist elements, while opposition leader, Lim Kit Siang called on Malaysians to “isolate extremists and traitors who wish to create chaos by inciting racial and religious hatred, conflict and tensions”.²⁹⁷ After the 2010 *Herald* case High Court ruling, Prime Minister Najib Razak visited one of the targeted churches and called for calm.²⁹⁸ In response to the firebombing of a church in Penang, the Prime Minister Najib said he directed action be taken to curb any acts that can be construed as “provocative” which will affect race relations.²⁹⁹ When the cow head protest took place, Koh Tsu Koon, then Minister in the Prime Minister’s Department stated that the protest was uncalled for and unnecessarily provocative, especially since the cow is sacred to Hindus. The Prime Minister also instructed the police to investigate this case and take prompt action.³⁰⁰

297 Matt K. George, 'Use of 'Allah' still unresolved for Malaysia's Christians', *WorldWatch Monitor*, 8 March 2014, <http://www.worldwatchmonitor.org/2014/03/article_3046526.html> accessed 27 April 2014.

298 '2 more churches in Malaysia firebombed in 'Allah' row', *CNN*, 10 January 2010, <<http://edition.cnn.com/2010/WORLD/asiapcf/01/10/malaysia.church.bombings/>> accessed 27 April 2014.

299 'Putrajaya calls for calm after church fire bombing', *The Malaysian Insider*, 27 January 2014, <<https://my.news.yahoo.com/putrajaya-calls-calm-church-fire-bombing-115525888.html>> accessed 27 April 2014.

300 'PM furious, tells IGP to act', *Malaysiakini.com*, 28 August 2009, <<http://www.malaysiakini.com/news/111669>> accessed 13 April 2014; See also, 'Khairy: What if they burn the Quran over a mosque?', *Malaysiakini.com*, 28 August 2009, <<http://www.malaysiakini.com/news/111679>> accessed 13 April 2014.

Additionally, during the Universal Periodic Review (UPR) process, the government reaffirmed its respect for the different religions in Malaysia and that the Federal Constitution espouses “moderation, tolerance, understanding and acceptance”.³⁰¹ The government went further to underscore “its commitment to continue ensuring the promotion and protection of all human rights in the country, taking into account the needs of the most vulnerable and disadvantaged segments as well as society’s readiness particularly with regard to certain sensitive issues such as religion, race”.³⁰²

However, despite the good faith of the statements above, the government’s response to violent and non-violent religious persecutions have been far from satisfactory – most of the time, the government has either made rather unhelpful comments or stayed silent on the issue, allowing religious bodies to continue to issue statements that Islam is under threat.³⁰³ For example, when a group of Muslim organisations threatened to hold mass protests outside churches in Selangor on Sunday over the issue of the use of “Allah” by non-Muslims, the Deputy Prime Minister stated that the protestors were merely upholding the decree of the *Sultan* (as the head of Islam in the state of Selangor).³⁰⁴ The Deputy Prime Minister also stated that non-Muslims were insulting Islam and he called for stern action to be taken on activities that touch on

Muslim sensitivities.³⁰⁵ Similarly, the (then) Minister of Home Affairs defended the actions of protestors who had placed a cow head outside a government building,³⁰⁶ saying that the protestors could not be blamed and that they just wanted their voices to be heard.³⁰⁷

As regards inflammatory statements made by religious groups, the reluctance of the government to castigate these groups emboldens them and affords the impression that these groups can act with relative impunity. For example, the government did not respond when ISMA urged Muslims nationwide to be aggressive in defending Islam, which it claimed is under attack from certain bands of non-Muslims,³⁰⁸ or when Datuk Zulkifli Noordin, Deputy President of PERKASA, stated that the move by Christians to drag *Herald’s* “Allah” issue to court was provocative and one which insulted Muslims”.³⁰⁹ Neither was there any response when the President of PERKASA, Ibrahim Ali, called for

301 Human Rights Council Working Group on the Universal Periodic Review, 17th session, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Malaysia, (A/HRC/WG.6/4/MYS/1/Rev.1), 19 November 2008, paras. 48-50.

302 Ibid.

303 Press Release, ‘Malaysia: Move to outlaw human rights groups is an assault on freedom’, *Amnesty International*, 8 January 2014, <<http://www.amnesty.org/en/for-media/press-releases/malaysia-move-outlaw-human-rights-groups-assault-freedom-2014-01-08>> accessed 16 April 2014.

304 Boo Su-Lyn, ‘Muhyiddin: Umno Selangor upholding Sultan’s decree on ‘Allah’, *The Malay Mail Online*, 2 January 2014, <<http://www.themalaymailonline.com/malaysia/article/muhyiddin-umno-selangor-upholding-sultans-decree-on-allah>> accessed 27 April 2014.

305 ‘Non-Muslims are insulting our religion’, *Free Malaysia Today*, 31 July 2013, <<http://www.freemalaysiatoday.com/category/nation/2013/07/31/non-muslims-are-insulting-our-religion/>> 27 April 2014.

306 COMANGO, ‘Stakeholder Report on Malaysia for the 17th Session in the 2nd Cycle of the HRC’s Universal Periodic Review in 2013’; see also, Kee Thuan Chye, ‘Holy cow! Minister defends protestors’, *Malaysiakini.com*, 6 September 2009, <<http://www.malaysiakini.com/news/112228>> accessed 6 April 2014; ‘Two also fined RM3,000 each for sedition, of whom one sentenced to a week’s jail’, *The Star Online*, 27 July 2010, <<http://www.thestar.com.my/story.aspx/?file=%2f2010%2f7%2f27%2fnation%2f20100727113906>> accessed 13 April 2014.

307 Rahmah Ghazali, ‘Hisham: Don’t blame cowhead protestors’, *Malaysiakini.com*, 2 September 2009, <<http://www.malaysiakini.com/news/111974>> accessed 13 April 2014.

308 ‘Fight Back Against Threats With Aggression, Muslims Told’, *Malaysian Digest.com*, 13 February 2014, <<http://malaysiandigest.com/frontpage/29-4-tile/487821-fight-back-against-threats-with-aggression-muslims-told.html>> accessed 27 April 2014.

309 Hasbullah Awang Chik, ‘The 7 threats against Muslims in Malaysia, according to Perkasa’s Zulkifli Noordin’, *The Malaysian Insider*, 7 December 2013, <<http://www.themalaysianinsider.com/malaysia/article/the-7-threats-against-muslims-in-malaysia-according-to-perkasa-zulkifli-no>> accessed 27 April 2014.

Muslims to burn Malay Bibles written in Jawi script, which contain the word “Allah”³¹⁰ or when Perkasa information chief Ruslan Kassim threatened to “chop the heads off” those who “ridicule” Islam and the Sultan of Selangor, although he later clarified that it was a figure of speech.³¹¹

a) Prosecutions of perpetrators

In the case of non-state perpetrators, prosecution has been inadequate in two instances. First, in incidents of demolition of places of worship, private developers have not been charged; any relief is sought through damages for trespass. The courts have taken a rather narrow view of such incidents, preferring to treat them as land issues instead of religious freedom cases. For example, in *Pedik bin Busu*, which involved the demolition of a church for indigenous community by the land administrator, much of the case revolved around whether the construction of the church complied with the Street, Drainage and Building Act 1974. The courts held that the construction was illegal but nevertheless held that the demolition of the church was illegal as the local authority demolished the church before the expiration of the 30-day notice period. Secondly, in the past, the assistance of the police has been sought by religious authorities on an *ad hoc* basis.³¹² However, in wilful/unilateral conversions of children to Islam, it has been difficult to enforce court orders granting custody to the non-Muslim

parent. The police have been wary of going against anything that is perceived to be Islamic and have actively assisted in enforcing Syariah court orders, but will not assist in enforcing civil court orders. In the recent case of *Deepa*, the police, sanctioned by the Inspector General of Police, refused to act on the report lodged by Deepa, whose son was snatched by her estranged Muslim convert husband, as there were two court orders awarding the respective parents’ custody.³¹³ Deepa had won custody through the civil court but it was reported that her husband, Izwan Abdullah, also obtained a similar order from the Syariah court.³¹⁴ Similarly, in the *Indira Gandhi* case, the Inspector General of Police refused to execute the court order to arrest the ex-husband and return the youngest child to her mother; instead the Inspector General of Police wanted the children involved in the interfaith cases to be placed in welfare homes. The Attorney-General has applied to intervene in the case, seeking a stay on both civil and Syariah High Court orders issued to police to locate the children involved.

In addition, civil society organisations have expressed concern over the selective investigation and prosecution of religious freedom cases, citing the example that the Attorney-General refused to take action against Ibrahim Ali, President of PERKASA, when he called on all Muslims to seize and burn copies of the Bible that contain the word “Allah”.³¹⁵

310 Anisah Shukry, ‘Perkasa: Act first against those who insult Islam’, *Free Malaysia Today*, 21 January 2013, <<http://www.freemalaysiatoday.com/category/nation/2013/01/21/perkasa-act-first-against-those-who-insult-islam/>> accessed 27 April 2014.

311 ‘We’ll chop off heads of those who insult Islam’, *Malaysiakini.com*, 23 June 2014, <<http://www.malaysiakini.com/news/266599>> accessed 23 June 2014; Zikri Kamarulzaman, ‘Chop heads’ a figure of speech, says Perkasa man’, *Malaysiakini.com*, 25 June 2014, <<http://www.malaysiakini.com/news/266721>> accessed 25 June 2014.

312 Lee Shi-lan, ‘IGP denies setting up of shariah police unit’, *The Malaysian Insider*, 29 January 2014, <<http://www.themalaysianinsider.com/malaysia/article/no-shariah-police-unit-says-igp>> accessed 12 May 2014.

313 Aidila Razak, ‘Cops won’t act against convert who snatched son’, *Malaysiakini.com*, 11 April 2014, <<http://www.malaysiakini.com/news/259712>> accessed 11 April 2014.

314 ‘IGP blasted for inaction on civil court decision’, *Malaysiakini.com*, 12 April 2014, <<http://www.malaysiakini.com/news/259807>> accessed 13 April 2014.

315 COMANGO, ‘Stakeholder Report on Malaysia for the 17th Session in the 2nd Cycle of the HRC’s Universal Periodic Review in 2013’.

b) Other measures

In cases of demolition of places of worship, SUHAKAM has come out strongly, stating that such issues should not be viewed narrowly as land and permits issues but one which is linked to one's religion and regarded as sacred.³¹⁶ Additionally, SUHAKAM has recommended that in dealing with such matters, the Ministry of Housing and Local Government and the Ministry of Federal Territories should consult the affected community and be more sensitive when dealing with religious traditions and sacred objects; provide an alternative site; preserve historical places of worship; and allow the operation of existing places of worship if their operations were allowed by various authorities before the National Land Code was enforced.³¹⁷

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

In the past decade or so, a number of initiatives have been made to promote inter-religious dialogues and address the religious friction in Malaysia. For example, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST), which was established in 1983, have held several interfaith dialogues with several groups, notably MCA (in January 2010)³¹⁸ and the Global Peace Convention (in 2013). The MCCBCHST is made up of about nine organisations from various religions – Buddhist, Christian, Hindu, Sikh and Taoist, all of whom share the common aim of promoting understanding, mutual respect and co-

operation between people of different religions. The MCCBCHST enjoys some non-financial support from the government, with relatively easier accesses to high ranking government officials, possibly due to the fact that Executive Committee members are religious leaders. Notably, when Parliament discussed the issue of establishing a formal religious consultative body, the role of the MCCBCHST in promoting harmony amongst the different religions was acknowledged by a deputy minister who went further to state that the existence of the MCCBCHST and an Advisory Panel on National Unity were sufficient and that there was no need for a formal religious consultative body.³¹⁹

In November 2013, the government, as part of its national reconciliation plan, established the National Unity Consultative Council (NUCC). Its term of reference includes drafting a National Unity Blueprint to serve as the national framework for the promotion of national unity, social cohesion and national reconciliation.³²⁰ In its first meeting in January 2014, the NUCC discussed the issue of the use of "Allah" by non-Muslims and the raid by JAIS of the BSM and concluded that acts causing disharmony should be deplored, especially the politicisation of religion and that all Malaysians should respect all places of worship.³²¹

The NUCC drafted three bills – the Racial and Religious Hate Crimes Bill; the National Harmony and Reconciliation Bill; and the National Harmony and Reconciliation Commission Bill – aimed at strengthening national unity and eliminating hate crimes against any race or religion. The NUCC saw these three bills as a replacement to the Sedition

316 SUHAKAM Press Statement, 'Demolition of Places of Worship', 1 August 2007, <http://www.suhakam.org.my/wp-content/uploads/2014/01/PS08_Perobohan-Kuil_ecosoc090108.pdf> accessed 8 April 2014.

317 SUHAKAM Annual Report 2006, at pg. 88, <<http://www.suhakam.org.my/wp-content/uploads/2013/11/AR2006.pdf>> accessed 4 November 2014.

318 'MCA holds interfaith dialogue', *The Sun Daily*, 29 January 2010, <<http://www.thesundaily.my/node/146635>> accessed 14 May 2014.

319 *Parliamentary Debates – House of Representatives*, 11 June 1990, 101.

320 <<http://www.nucc.my/usr/pagesub3.aspx?pgid=2&lang=en>> accessed 14 May 2014.

321 NUCC Press Release, 6 January 2014, <<http://www.nucc.my/usr/pagesub.aspx?pgid=11&lang=en>> accessed 14 May 2014.

Act 1948.³²² However, a group of Muslim NGOs were critical of the bills as they felt that the bills attempted to destroy the sovereignty of the Malay rulers and Islam as the religion of the Federation, and Malay privileges.³²³ PERKASA Secretary-General Syed Hassan Syed Ali threatened to quit UMNO if the government accepted the said three bills as he felt that the bills were aimed at weakening Malay political power;³²⁴ to date, the bills have yet to be tabled in Parliament.³²⁵

The NUCC also holds dialogues with the Malaysian public to hear views, positive experiences and stories of achievements in ethnic relations, contemporary critical concerns pertaining to national unity and solutions, recommendations and the way forward in strengthening ethnic harmony of Malaysians; a total of 18 dialogues have been organised in the first quarter of 2014. Other efforts include the participation of the Deputy Prime Minister in the World Interfaith Harmony Week (in February 2012), and an interfaith forum entitled Gateway to Interfaith Goodwill (GEMA) 2012 organised by the Perlis Al Islah Association and the Islamic Council of Perlis, as a platform for interaction among different religions with the hope of creating a better understanding between the religious groups. Seventeen religious groups, including representatives of Islam, Christianity, Buddhism, Hinduism, Sikhism, and Taoism, attended the

forum (November 2012),³²⁶ and events organised by the Global Movement of Moderates. In February 2014, Malaysians for Malaysia, a loose gathering of Malaysians, organised a peaceful walk to various houses of worship in Penang, including a church, a Taoist temple, a Hindu temple and a mosque. The “A Walk in the Park” event saw some 50 Malaysians walking with purple balloons and handing out stalks of carnations to people they met along the way.³²⁷ In March 2014, a PAS member of Parliament organised a “Peace dinner” in Penang in an effort to reach out to the Christian community and non-Muslims.³²⁸

K. Analysing the Trends

1. Non-violent religious persecution

There are no official data or statistics tracking incidents of non-violent religious persecutions. There is no discernible increase in incidents of non-violent religious prosecution, particularly in the area of wilful/unilateral conversion of children to Islam and the denial of personal status rights – in both areas, incidents seem to occur at the same pace, without any perceptible increase.

2. Violent religious persecution

There is no official data of the number of prosecution of apostates. At the height of the incidents of demolition of Hindu temples between

322 Press Statement, ‘NUCC Seeks Public Consultation On Harmony Bills’, *NUCC Working Committee on Law & Policy*, 9 June 2014, <<http://www.nucc.my/usr/pagesub.aspx?pgid=31&lang=en>> accessed 5 November 2014.

323 Athi Shankar, ‘Muslim NGOs against harmony, unity bills’, *Free Malaysia Today*, 10 June 2014, <<http://www.freemalaysiatoday.com/category/nation/2014/06/10/muslim-ngos-against-harmony-unity-bills/>> accessed 5 November 2014.

324 ‘Perkasa sec-gen to quit Umno if bills passed’, *Malaysiakini.com*, 25 June 2014, <<http://www.malaysiakini.com/news/266722>> accessed 5 November 2014.

325 Razak Ahmad, ‘Rahman Dahlan slams Saifuddin for disclosing ‘contents’ of draft Harmony law’, *The Star Online*, 9 September 2014, <<http://www.thestar.com.my/News/Nation/2014/09/09/Rahman-Dahlan-Saifuddin/>> accessed 24 December 2014.

326 ‘15 Countries Improving Religious Freedom’, *Council for the Parliament of the World’s Religion*, 30 May 2013 <<http://www.parliamentofreligions.org/news/index.php/tag/international-religious-freedom-report-2012/>> accessed 15 May 2014.

327 Looi Sue-Chern, ‘Amid growing religious tensions, this group walks for peace in Penang’, *The Malaysian Insider*, 16 February 2014, <<http://www.themalaysianinsider.com/malaysia/article/amid-growing-religious-tensions-group-walks-for-peace-in-penang>> accessed 14 May 2014.

328 Susan Loone, ‘PAS MP and bishop find common ground’, *Malaysiakini.com*, 30 March 2014, <<http://www.malaysiakini.com/news/258606>> accessed 14 May 2014.

2006 and 2007, this issue sparked a street protest led by Hindraf (a coalition of 30 Hindu NGOs) on 25 November 2007. According to media reports, approximately 10,000 ethnic Indian gathered to protest, *inter alia*, the demolition of Hindu temples, lack of educational and business opportunities available to ethnic Indians in Malaysia. A number of activists were arrested and some detained under the now repealed Internal Security Act 1960.³²⁹ However, it is noted that the spate of demolition of Hindu places of worship by local authorities has been happening with less frequency.

As for attacks on places of worship, there has been an increase in social hostilities involving religion and increase in the level of intimidation against Christians since 2009. This increase could be because Muslims perceive the *Herald* case as a threat to Islam and its followers. Whilst the number of incidents have increased, individual incidents have not escalated. Many of the incidents, whether attacks against churches or mosques, are left as it is without any further escalation of attacks and these incidents have not been used by the majority (whether Christians or Muslims) to further target each other; furthermore, incidents of attacks have stopped.

As for prosecution of Muslim minorities, the number of arrests of Shiites saw a spike between 2010 and 2014. In this regard, although the number of arrests of Shiites has been erratic, without any discernible pattern (of increase or decrease), it is observed that the call for Sunni Islam to be the only school recognised in Malaysia has become louder in the recent years. Not only religious authorities but also Federal ministers have shown support for this.

329 Mark Bendeich and Clarence Fernandez, 'Indian protest rocks Malaysia ahead of polls', *Reuters*, 25 November 2007, < <http://www.reuters.com/article/2007/11/25/us-malaysia-protest-idUSKLR16504820071125>> accessed 4 November 2014; see also, Press Release, 'Malaysia: Internal Security Act used to punish human rights activists', Amnesty International, 4 September 2008, < <http://www.amnesty.org/en/for-media/press-releases/malaysia-internal-security-act-used-punish-human-rights-activists-200809>> accessed 4 November 2014.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

The situation of religious freedom in Malaysia is more complicated by several circumstances. Although it is unlikely that the factors below would contribute to a likelihood of violent conflict, they do contribute negatively to any efforts to promote or protect freedom of religion in Malaysia.

1. Religion used as a pawn in the political game

Religion has unfortunately been used by politicians (of both sides of the divide) as a tool to discredit the other party and to gain favour amongst their own party members and the electorate. Within the Muslim divide, politicians often try to prove their Islamic-ness and Malay-ness through religion. Both UMNO (ruling party) and *Parti Islam se-Malaysia* (PAS) (opposition) seek to prove their piety to gain favour of their Malay-Muslim members. For example, when Shia followers were arrested and detained, the President of UMNO stated (in the last UMNO general assembly) that the UMNO constitution should be amended to indicate that Islam in Malaysia is of *Sunna wal Jamaah*; the UMNO youth wing and the Penang UMNO delegate went further to call for an amendment to the Federal Constitution to reflect this;³³⁰ UMNO vice-president Datuk Seri Ahmad Zahid Hamidi, attacked a certain "No. 2 in PAS" at the general assembly, calling the PAS leader a "top Shia leader".³³¹ In the same vein, some political analysts are of the opinion that UMNO is using the *Herald* case to boost their Islamic credentials amongst its

330 Ding Jo-Ann, 'Beyond the Shia "threat"', *The Nut Graph*, 16 December 2013, <http://www.thenutgraph.com/beyond-the-shia-threat/> accessed 6 April 2014.

331 Ibid.

Malay-Muslim voters.³³²

The Prime Minister's statement that the *Herald* ruling would not affect Christians in Sabah and Sarawak³³³ was supported by some Cabinet ministers who suggested introducing a Bill to override the court's ruling.³³⁴ This was seen as an effort to appease the voters in Sabah and Sarawak, who were promised (through the Ten-Point-Solution) just before the Sarawak elections in 2011 that Bibles in Malay language, which contained the word "Allah" could be imported.³³⁵

Religion has also been used by the political parties to discredit each other. In the recent debate on the issue of implementation of *hudud* in the state of Kelantan, *Barisan Nasional* component parties and *Pakatan Rakyat* (opposition) both chipped in but, instead of focusing on the human rights and constitutional implications of *hudud* law, politicians made unhelpful comments that do not promote religious harmony within the different religions in Malaysia. For example, the MCA president, Datuk Seri Liow Tiong Lai, stated that it was the responsibility of DAP to tell PAS to withdraw its decision to table the *Hudud* Bill. Similarly, Baljit Singh, Gerakan's legal bureau chief, said that "DAP got non-Muslims to vote for PAS but now we want to know what is it going to do to stop Kelantan PAS

on *hudud*."³³⁶ In response to the raid by JAIS on the BSM, two Cabinet ministers (Youth and Sports Minister Khairy Jamaluddin and Minister in Prime Minister's Department Nancy Shukri), pushed the responsibility to the Selangor (opposition) government to deal with the problem from a state perspective.³³⁷

When politicians try to tackle the issue (of freedom of religion) from a rights-based approach, they have been criticised for promoting apostasy. For example, when Nurul Izzah, member of Parliament, said that religious freedom was for all, including the Malays, the Perak *Mufti* Tan Sri Harussani Zakaria responded, stating that her views should not be condoned as it contained elements of liberalism; *Wanita* UMNO chief Datuk Seri Shahrizat Abdul Jalil and the Chairman of the National Fatwa Council Tan Sri Abdul Shukor Husin both responded saying that the statement could create chaos and confusion among Muslims.³³⁸

When religion is used as political tool, it distracts the dialogue on religious freedom from focusing on human rights and the impact of the injustices on the lives of ordinary Malaysians. It also runs the risk of creating a division between the different religious communities in Malaysia, pitting one against the other.

332 'Malaysia court rules non-Muslims cannot use 'Allah'', *BBC News Online*, 14 October 2013, <<http://www.bbc.com/news/world-asia-24516181>> accessed 27 April 2014.

333 Ida Lim, 'No to one country, two rule policy on 'Allah', says Sabah church', *Malay Mail Online*, 28 October 2013, <<http://www.themalaymailonline.com/malaysia/article/no-to-one-country-two-rule-policy-on-allah-says-sabah-church>> accessed 27 April 2014.

334 'Allah not exclusive to Muslims, government declares ban only applies to Herald', *MSN News*, 15 October 2013, <<http://news.malaysia.msn.com/malaysia-news/allah-not-exclusive-to-muslims-government-declares-ban-only-applies-to-herald>> accessed 27 April 2014.

335 'Ten Point Solution On Alkitab In April 2011', *LoyarBurok*, 10 January 2014, <<http://www.loyarburok.com/2014/01/10/ten-point-solution-alkitab-april-2011/>> accessed 10 June 2014.

336 Sulaiman Jaafar and Muhamad Syakir Abdul Wahab, 'MCA: Pas hudud plan will cause confusion, disunity', *New Straits Times*, 26 April 2014, <<http://www.nst.com.my/nation/general/mca-pas-hudud-plan-will-cause-confusion-disunity-1.579238>> accessed 27 April 2014.

337 Jennifer Gomez, 'Allah' banned in Herald due to different readership, says Idris Jala', *The Malaysian Insider*, 27 April 2014, <<http://www.themalaysianinsider.com/malaysia/article/allah-banned-in-herald-due-to-different-readership-says-idris-jala>> accessed 27 April 2014.

338 Rahman Ghazali, 'Nurul Izzah rapped over support for apostasy', *New Straits Times Online*, 6 November 2012, <<http://www.nst.com.my/nation/general/nurul-izzah-rapped-over-support-for-apostasy-1.167154>> accessed 12 May 2014.

2. Race and religion

Malays are guaranteed a special position by article 153 of the Federal Constitution, which authorises quotas for Malays for positions in the public service (other than the public service of a state); for scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal government; and for when any permit or license for the operation of any trade or business is required by Federal law. Article 153 was introduced when Malaysia gained independence in 1957 as part of an affirmative action policy for the Malays and as part of “ethnic bargaining and accommodation.”³³⁹ It was part of the Federation of Malaya Agreement 1948 that required that the British safeguard the special position of the Malays and the legitimate interests of the other communities.³⁴⁰

Article 153 has always been a contentious issue and some have felt that article 153 is unnecessary in this day and age when it is perceived that the economic position between the races have been equalised. Because race and religion are interlinked – Article 160 defines a Malay as a person “who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom...” – the discontent with the special position of Malays created by article 153 has assumed a religious dimension. Whilst many Malaysians accept the original objective of article 153, many have begun asking if affirmative action should be founded on poverty levels instead of race. These discussions have, to a certain extent, inflamed the discussion on religion, as they are seen as an attack on Islam. The situation is made worse by politicians playing up the issue to gain popularity.

339 Professor Dr. Shad Saleem Faruqi, ‘Document of Destiny the Constitution of the Federation of Malaysia’, (Kuala Lumpur: The Star Publications, 2008), pg. 691.

340 Ibid.

3. Rising influence of Islamic conservatism

Over the years, the voice of conservative Islamic groups has become louder. The rise of Islamic conservatism did not occur overnight. Since 1957, each Malaysian Prime Minister approached Islam from different angles, but all of them contributed to the Islamisation of Malaysia.³⁴¹

Perhaps one rather important contributing factor to the rise in Islamic conservatism is the institutionalisation of Islam. This intensified in the 1980s and 1990s with the establishment of a number of organisations such as the Institute of Islamic Understanding Malaysia (IKIM) and the International Islamic University of Malaysia (IIUM).³⁴² This was expanded to education curricula to include Islamic civilisation in the history curriculum in secondary schools. In law, the Administration of Islamic Law Act was enacted in all the states and the legislation created religious authorities (*Majlis Agama Islam*, *Mufti* and the Islamic Consultative Council) charged with the responsibility of religious interpretation and enforcement, administration of mosques, and appointment and regulation of local *imams*. At around the same time, the Syariah courts (Subordinate Courts, High Court and Appeal Court) were established.

In the last few years, conservatism within the Muslim communities appeared to have intensified due to two factors – first, the belief that non-Muslims and liberal thinking were threatening the dominance of Islam and of Malays, where the use of the word

341 Ahmad Fauzi Abdul Hamid, ‘Political Islam and the Recent Rise of Islamist Conservatism in Malaysia’, *Institute of Southeast Asian Studies (ISEAS)*, #58, 31 October 2013, <http://www.iseas.edu.sg/documents/publication/Political_Islam.pdf> accessed 28 April 2014.

342 Tamir Moustafa, ‘Islamic Law, Women’s Rights, and Popular Legal Consciousness in Malaysia’, *Law and Social Inquiry*, Volume 38, Issue 1, 168-188, Winter 2013.

“Allah” by the *Herald* was the last straw.³⁴³ Secondly, the waning support for the ruling *Barisan Nasional* party has triggered policies in favour of majority ethnic Malays.³⁴⁴ Whilst the Prime Minister has called for moderation and a rejection of fanaticism and extremism,³⁴⁵ this call for moderation seems to imply a rejection of humanism, secularism, liberalism and human rights, which the Prime Minister views as threats to Islam.³⁴⁶ With the Islamisation of Malaysia and the rise in conservatism – whatever its roots or motivations – this state of affairs can only be counterproductive to a rational dialogue on freedom of religion.

4. Civil/Syariah courts jurisdiction

The protection of freedom of religion in Malaysia is constrained by the lack of political will to deal with issue of jurisdiction between the civil and Syariah courts, particularly in matters of apostasy and wilful/unilateral conversion of children. This issue has created numerous problems over the years, where the civil courts have shied away from dealing with this issue, as evident in the cases of *Genga*

343 Carolyn Hong, ‘Rising Islamic conservatism in Malaysia’, *Jakarta Post*, 24 February 2014, <<http://www.thejakartapost.com/news/2014/02/24/rising-islamic-conservatism-malaysia.html>> accessed 28 April 2014.

344 Siva Sithraputhran, ‘In Malaysia, Mahathir’s rising son signals conservative shift’, *Reuters*, 3 October 2013, <<http://www.reuters.com/article/2013/10/03/us-malaysia-mahathir-idUSBRE99211820131003>> accessed 28 April 2014.

345 Kean Wong, ‘Najib showcases “moderate Muslim” image as Malaysia vies for a seat on UN Security Council’, *The Malaysian Insider*, 28 September 2013, <<http://www.themalaysianinsider.com/malaysia/article/najib-brings-moderate-muslim-image-to-new-york-as-malaysia-vies-for-a-seat>> accessed 12 May 2014; ‘Malaysia PM Najib makes impassioned appeal for moderate Islam’, *The Straits Times*, 29 September 2013, <<http://www.straitstimes.com/the-big-story/asia-report/malaysia/story/malaysia-pm-najib-makes-impassioned-appeal-moderate-islam-2>> accessed 12 May 2014.

346 ‘PM says ‘human rightism, humanism, secularism’ new religion threatening Islam’, *The Malay Mail online*, 14 May 2014, <<http://www.themalaymailonline.com/malaysia/article/pm-says-human-rightism-humanism-secularism-new-religion-threatening-islam>> accessed 14 May 2014.

Devi a/p Chelliah lwn Santanam a/l Damodaram, Shamala Sathyaseelan, Subashini, Priyathaseny & Ors v Pegawai Penguatkuasa Agama Jabatan Hal Ehwal Agama Islam Perak & Ors, and *Lina Joy v Majlis Agama Islam Wilayah Persekutuan*. For more details about the problematic civil/Syariah courts jurisdiction, see Part One (C)(1).

Whilst the courts know that a non-Muslim has no remedy as he or she is unable to go to the Syariah courts, they have continued to be ambivalent. In *Subashini*, the Court of Appeal held that even though Subashini was a Hindu, she was obliged to go to the Syariah court for relief as her husband had commenced proceedings there. However, the Federal Court made *obiter dicta* pronouncements stating that a non-Muslim spouse could not be made to go to the Syariah courts. Curiously, the Federal Court (by majority) held that it could not stop a Muslim convert going to the Syariah courts for his “remedies” under Islamic law but that any pronouncement of the Syariah courts would have “no legal effect” in the civil courts. In *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor*,³⁴⁷ the Federal Court held that although in some circumstances a non-Muslim would be without a remedy, the civil court was not vested with jurisdiction merely because the Syariah court did not have jurisdiction over a particular matter.

While *Latifah* appears to have clarified the law on the jurisdiction of the civil and Syariah courts, it appears that the Attorney-General’s Chambers continues to raise objections to the jurisdiction of the civil court to determine many issues relating to religious freedom.

5. The media

The media in Malaysia is divided into the mainstream/alternative media or the language-based media. Most print media is viewed as mainstream since they are owned by political parties or those closely-connected to politicians.

347 [2007] 5 MLJ 101.

In the latter group, there is an array of English-language based media (News Straits Times, The Star, The Sun), Mandarin-based media (Sin Chew Jit Poh, Nanyang Siang Pau), and Malay-based media (Utusan Malaysia, Sinar Harian). It is thus not surprising that the treatment of freedom of religion by the media follows these delineations of political leanings or language. Additionally, such media articles rarely touch on theological³⁴⁸ or the rights aspects of issue. This polarisation comes out quite clearly when the media covers issues relating to Islam. Some have observed that the way the media cover religious issues depends very much on the ethnicity of their readers – for example, the Chinese media would criticise any government policy that imposes Islamic culture or norms on the Chinese population.³⁴⁹

The English-language media has largely been silent on religious issues particularly if the matter concerns Islam. There is very little analysis and articles would merely report statements by UMNO leaders.³⁵⁰ On the other hand, Malay-language newspapers have become increasingly bold in matters relating to Islam,³⁵¹ with articles such as “*Pertahan Islam dalam apa cara*” (Defend Islam in any way),³⁵² “*Sis ‘hina’ Islam – Perkasa Selangor*” (Sis “dishonors” Islam –

Perkasa Selangor),³⁵³ “*Kempen ‘Saya Mahu Sentuh Anjing’ cabar kesucian Islam – Yadim*” (“I want to touch dogs” campaign challenges the sanctity of Islam),³⁵⁴ “*Demokrasi jadi alat ‘serang’ Islam*” (Democracy is used as a tool to “attack” Islam),³⁵⁵ and “*Jangan cabar orang Islam*” (Do not challenge Muslims).³⁵⁶

The mainstream media has also played into the hands of politicians who use religion to discredit the opposition and consolidate their positions. For example, in 2000, when members of the *Al-Ma’unah* sect were arrested, the mainstream media alleged that members of *Al Ma’unah* were linked with PAS.³⁵⁷ This results in freedom of religion being portrayed as a political issue with racial and religious overtones. This dichotomous coverage does little to enrich the constructive dialogue on freedom of religion. Whilst online media (and some print media like *The Sun* and *Sin Chew Jit Poh*) have been more open to the issue of freedom of religion and have explored the issues in a more in-depth manner, some have felt that the limited reach (of these alternative media) coupled with the state of affairs have resulted in religious walls being

348 Dorothy Teoh, ‘Reporting Religion As News: The Case of Malaysia’, Paper presented at the *The Oxford Centre for Religion and Public Life*, 6-10 August 2007, Washington DC, <<http://www.ocrpl.org/?p=81>> accessed 11 November 2014.

349 Dorothy Teoh, ‘Reporting Religion As News: The Case of Malaysia’, Paper presented at the *The Oxford Centre for Religion and Public Life*, 6-10 August 2007, Washington DC, <<http://www.ocrpl.org/?p=81>> accessed 11 November 2014.

350 Zaharom Nain, ‘The State, the Media and Imagery in Contemporary Malaysia: Words, Deeds and 1Malaysia’, Paper for the *Melbourne Law School Asean Workshop*, June 2010.

351 Ibid.

352 Mohd. Shariza Abdullah, ‘Pertahan Islam dalam apa cara’, *Utusan Online*, 10 November 2014, <<http://www.utusan.com.my/berita/nasional/pertahan-islam-dalam-apa-cara-1.22991>> accessed 13 November 2014.

353 ‘Sis ‘hina’ Islam – Perkasa Selangor’, *Utusan Online*, 8 November 2014, <<http://www.utusan.com.my/berita/nasional/sis-8216-hina-8217-islam-8232-8211-perkasa-selangor-1.22136>> accessed 13 November 2014.

354 ‘Kempen ‘Saya Mahu Sentuh Anjing’ cabar kesucian Islam – Yadim’, *Utusan Online*, 22 October 2014, <<http://www.utusan.com.my/berita/nasional/kempen-8216-saya-mahu-sentuh-8232-anjing-8217-cabar-kesucian-islam-8211-yadim-1.15485>> accessed 13 November 2013.

355 Mohd Izani Mohd Zain, ‘Demokrasi jadi alat ‘serang’ Islam’, *Berita Harian Online*, 12 September 2014, <<http://www.bharian.com.my/node/5698>> accessed 13 November 2014.

356 Mohamad Naufal Mohamad Idris, ‘Jangan cabar orang Islam’, *Sinar Harian Online*, 30 December 2013 <<http://www.sinarharian.com.my/jangan-cabar-orang-islam-1.235433>> accessed 13 November 2014.

357 Zaharom Nain, ‘Religion, Ethnicity and Repression: The State, the Media and Identity Politics in ‘Post-Crisis’ Malaysia’, Paper for the WACC/CMP Workshop, *Communication and Cultural Identity in Asia*, Mr. Tambourine, Brisbane, Australia, 27–29 November 2000.

built³⁵⁸ at the expense of mature and fair dialogue on freedom of religion.

B. Positive Contributing Factors

1. Non-retaliation

Despite the many aggravating factors (discussed above), all the incidents of violent and non-violent religious persecution have not escalated. In many incidents, there were no reprisals for the attacks against places of worship. Perhaps one reason is that, generally, Malaysians view these incidents as actions of a small group of extremists who do not necessarily represent the majority of that particular religious community. Many were also convinced that some incidents were perpetrated by agitators – for example, when controversial banners bearing the word “Allah” appeared on a banner outside several churches in Penang following the 2014 Court of Appeal judgement on the *Herald* case, many believed that these were not done by the churches themselves but by provocateurs. In addition, a show of solidarity by Malaysians has been encouraging – when Selangor UMNO threatened to hold massive protests outside Selangor churches after the *Herald* case, there was overwhelming support by Muslims and non-Muslims, who showed up with flowers outside Selangor churches during Sunday mass.

2. Increased access to information

Access to information in Malaysia has changed significantly over the past two decades, largely due to the Internet. The Internet opened up new avenues for journalists and readers and triggered the rapid proliferation of online news portals such as Malaysiakini.com and Free Malaysia Today. The public, too, have begun to express their opinions

through blogs and social media forums.³⁵⁹

Equally, Malaysians have become increasingly Internet savvy and Malaysia has one of the highest Internet penetration rates across all age groups at 66% in 2012.³⁶⁰ A report commissioned by the United Nations’ International Telecommunication Union attributes this high proportion of “digital natives” to the “youth bulge”. The report also noted that despite having just 15% of the population with home Internet access in 2007, youths were able to access the Internet in other locations, particularly schools. With this increased space and the Internet being largely a free environment in Malaysia,³⁶¹ many youths are finding their voices through blogs and online forums. Dissenting opinions and controversial discussions on Malaysian politics and current state of affairs are expressed freely, although the introduction of section 114A of the Evidence

358 Zaharom Nain, ‘The State, the Media and Imagery in Contemporary Malaysia: Words, Deeds and 1Malaysia’, Paper for the Melbourne Law School Asean Workshop, June 2010.

359 Tamir Moustafa, ‘Liberal Rights versus Islamic Law? The Construction of a Binary in Malaysian Politics’, *Law & Society Review*, Volume 47, Number 4 (2013).

360 ‘3/4 of M’sian youths are net savvy’, *Free Malaysia Today*, 15 October 2013, <<http://www.freemalaysiatoday.com/category/leisure/2013/10/15/34-of-msian-youths-are-net-savvy/>> accessed 15 May 2014.

361 Human Rights Council, Working Group on the Universal Periodic Review, 17th session, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Malaysia* (A/HRC/WG.6/17/MYS/2), 9 August 2013, pg. 8.

Act 1950³⁶² has been criticised as an attempt to erode freedom of expression online.³⁶³

As a result of greater access to information and news, the Malaysian public, especially the youth, are becoming more conscious of governance and the quality of institutions.³⁶⁴ In terms of social justice and human rights, this has translated to higher levels of awareness of human rights, greater participation in the democratic process and higher voter turnout during the last general election. To a certain extent, the increased access to information has facilitated participation, particularly of the youth, in the rights discourse in Malaysia.

362 Section 114A of the Evidence Act 1950 reads, “114A. (1) A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved. (2) A person who is registered with a network service provider as a subscriber of a network service on which any publication originates from is presumed to be the person who published or re-published the publication unless the contrary is proved. (3) Any person who has in his custody or control any computer on which any publication originates from is presumed to have published or re-published the content of the publication unless the contrary is proved. (4) For the purpose of this section— (a) “network service” and “network service provider” have the meaning assigned to them in section 6 of the Communications and Multimedia Act 1998 [Act 588]; and (b) “publication” means a statement or a representation, whether in written, printed, pictorial, film, graphical, acoustic or other form displayed on the screen of a computer.”.

363 ‘Press release: Repeal section 114A of the Evidence Act 1950’, *Malaysian Bar*, 13 August 2012, <http://www.malaysianbar.org.my/press_statements/press_release_repeal_section_114a_of_the_evidence_act_1950.html> accessed 16 May 2014.

364 Steven Feldstein, “Growing Pains in Emerging States: What to Make of Mass Demonstrations in Turkey and Brazil?”, June 27, 2013, *The Huffington Post*, <http://www.huffingtonpost.com/steven-feldstein/growing-pains-in-emerging_b_3508968.html>, accessed 10 October 2013.

PART FOUR: CONCLUSION

The Federal Constitution protects freedom of thought, conscience and religion – it preserves both private rights to religious freedom as well as rights of religious communities to manage and administer themselves without interference from the state. However, some parts of the Federal Constitution, laws and policies and the enforcement of these laws and policies, derogate from international human rights protection. As there are two sets of laws governing Muslims and non-Muslims in Malaysia, where Syariah law administers religious, family and criminal issues of Muslims and civil law rules non-Muslims, the level of freedom of religion enjoyed by Muslims and non-Muslim varies.

For persons professing Islam, religious freedom is significantly eroded for individuals and communities who do not follow Sunni Islam. These persons and groups are viewed as “deviant” and subsequently banned and their members subjected to criminal prosecution under Syariah law. Also, the so-called “apostasy from Islam” cases are particularly problematic as there is almost no avenue for a Muslim to renounce his or her religion. Furthermore, coercive practices (detention for rehabilitation and prosecution) are used by religious authorities to ensure that a Muslim continues to profess the religion of Islam. The consequences of being unable to leave Islam are the denial of a wide range of human rights such as the right to marry, right to a private life, and inheritance rights.

For persons professing religion other than Islam, a number of limitations have been placed on their religious freedom. The strict implementation of the restriction of propagation of religions amongst persons professing the religion of Islam, triggered by the use of “Allah” and other words pertaining to Islam by non-Muslims, have gained traction recently. In addition, the wilful conversion of children, provisions permitting governmental expenditure in favour of the religion of Islam only, and the treatment of demolition of places of worship from a narrow viewpoint of trespass to land instead of a religious freedom issue, could offend principles

of non-discrimination.

The level of intimidation and social hostilities against Christians due to the “Allah” issue and persecution of Islamic religious minorities have increased over the years. Any attempt to discuss these issues has been viewed as an attack on Islam and Malays.

At a macro level, a general “Islamisation” of government coupled with growing vocalism from the minority religious communities has seen more and more complaints of discrimination of minority religious communities and their right to worship in community with each other. This, coupled with religion being used as a political tool, has sowed seeds of intolerance towards divergent viewpoints within Islam and prejudice amongst religious communities in Malaysia.

The situation is not helped when the government continues to keep silent on many incidents of violent and non-violent persecutions, allowing religious groups to continue to issue inflammatory statements. If and when the government reacts, more often than not, the responses hew towards conservative Islam to shore up votes amongst ethnic Malays. To complicate the issue, the civil courts have been reluctant to clarify the issue of civil/Syariah jurisdiction and have disclaimed jurisdiction even though the outcome is to leave victims bereft of a remedy.

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ANNEX 1

Different State Syariah Laws Pertaining to Apostasy

State	Relevant provision	Whether apostasy is allowed
Kelantan	Sections 102 of the Kelantan Islamic Council and Malay Custom Enactment 1994.	<ul style="list-style-type: none"> - Persons intending to leave Islam must go through detention for “rehabilitation”. - However, there are no explicit provisions permitting the Syariah Court to declare him/her an apostate.
Negeri Sembilan	Section 119 of the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003.	<ul style="list-style-type: none"> - There is provision for renunciation but before a person is permitted to leave, he/she must attend state sponsored counselling sessions and the Syariah Court has the discretion to refuse the application. - The Syariah Court can make a declaration that a person is no longer a Muslim.
Perak	Section 50(3)(b)(x) of the Administration of the Religion of Islam (Perak) Enactment 2004.	<ul style="list-style-type: none"> - There is an explicit provision permitting the Syariah Court to declare a person an apostate. - No explicit provision making apostasy a crime or any provision regarding renunciation.
Terengganu	Sections 4(f), 25 and 26 of the Shariah Criminal Offence (Hudud and Qisas) Terengganu Enactment 1423h/2002m.	<ul style="list-style-type: none"> - Apostasy is a crime and any person found guilty of being an apostate by the Syariah Court is given at least three days to repent. If the person refuses to repent, the Syariah Court shall pronounce the death sentence.
Perlis	Section 61(3)(b)(x) of the Perlis Administration of the Religion of Islam Enactment 2006.	<ul style="list-style-type: none"> - There is an explicit provision permitting the Syariah Court to declare a person an apostate. - No explicit provision making apostasy a crime or any provision regarding renunciation.
Johor	Section 61(3)(b)(x) of the Administration of the Religion of Islam (State of Johor) Enactment 2003.	<ul style="list-style-type: none"> - There is an explicit provision permitting the Syariah Court to declare a person an apostate. - No explicit provision making apostasy a crime or any provision regarding renunciation.
Pahang	N/A	<ul style="list-style-type: none"> - No explicit provisions in relation to leaving the religion of Islam.
Kedah	Section 13(3)(b)(x) of the Syariah Courts (Kedah Darul Aman) Enactment 2008.	<ul style="list-style-type: none"> - There is an explicit provision permitting the Syariah Court to declare a person an apostate. - No explicit provision making apostasy a crime or any provision regarding renunciation.

State	Relevant provision	Whether apostasy is allowed
Selangor	Section 61(3)(b)(x) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.	<ul style="list-style-type: none"> - There is an explicit provision permitting the Syariah Court to declare a person an apostate. - No explicit provision making apostasy a crime or any provision regarding renunciation.
Melaka	Section 49(3)(b)(x) of the Administration of the Religion of Islam (State of Malacca) Enactment 2002; Section 66 of the Syariah Offences Enactment (Melaka) 1991.	<ul style="list-style-type: none"> - Person intending to leave Islam must go through detention for “rehabilitation”. - There is an explicit provision permitting the Syariah Court to declare a person an apostate.
Penang	Section 61(3)(b)(x) of the Administration of the Religion of Islam (State of Penang) Enactment 2004.	<ul style="list-style-type: none"> - There is an explicit provision permitting the Syariah Court to declare a person an apostate. - No explicit provision making apostasy a crime or any provision regarding renunciation.
Sabah	Section 11(3)(b)(x) of the Sabah Syariah Courts Enactment 2004; Section 63 of the Syariah Criminal Offences Enactment 1995.	<ul style="list-style-type: none"> - Person intending to leave Islam must go through detention for “rehabilitation”. - There is an explicit provision permitting the Syariah Court to declare a person an apostate.
Sarawak	N/A	<ul style="list-style-type: none"> - No explicit provisions in relation to leaving the religion of Islam.
Federal Territory	N/A	<ul style="list-style-type: none"> - No explicit provisions in relation to leaving the religion of Islam.

ANNEX 2

State Syariah Law - Control and Restriction of the Propagation of Non-Islamic Religion to Muslim

State	Relevant provision	Whether proselytising to Muslims is allowed
Johor	Sections 4 to 8 of the Control And Restriction of the Propagation of Non-Islamic Religious Enactment 1991	<ul style="list-style-type: none"> - It is an offence to persuade, influence, coerce or incite a Muslim to become a follower or member or, etc. a non-Islamic religion. This offence is punishable by fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or to both. It is an offence to subject a Muslim under the age of eighteen years to influences or non-Islamic religion, punishable by fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or to both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. This offence is punishable by a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or to both. - It is an offence to send or deliver publications concerning any non-Islamic religion to Muslim. This offence is liable to a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or to both. - It is an offence to distribute any publication or publicity material concerning non-Islamic religion to a Muslim. Punishment is fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or to both.
Kedah	Sections 4 to 8 of the Control And Restriction Of The Propagation Of Non-Islamic Religions Enactment 1988	<ul style="list-style-type: none"> - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion or to forsake or disfavour the religion of Islam. This offence is punishable with imprisonment for a term not exceeding four years. - It is an offence to subject a Muslim under the age of 18 years to take part in any ceremony, act of worship, or religious activity of a non-Islamic religion or in any activity which is sponsored or organised by or is for the benefit of a non-Islamic religion or any body or institution associated with a non-Islamic religion. This offence is punishable with imprisonment for a term not exceeding four years. - It is an offence to approach a Muslim for the purpose of subjecting the other person to any speech on, or display of any matter concerning, a non-Islamic religion; offence is punishable with imprisonment for a term not exceeding three years.

		<ul style="list-style-type: none"> - It is an offence to send or deliver to a Muslim any publication concerning any non-Islamic religion or any publicity material relating to such a publication, which has not been requested for by that other person himself. This offence is punishable with imprisonment for a term not exceeding three years. - It is an offence to distribute in a public place publications concerning any non-Islamic religion to Muslims. This offence is punishable with imprisonment for a term not exceeding three years.
Kelantan	Sections 4 to 8 of Control and Restriction of the Propagation Of Non-Islamic Religions Enactment 1981	<ul style="list-style-type: none"> - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. This offence is liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both. - It is an offence to subject a Muslim under the age of 18 years to take part in any ceremony, act of worship, or religious activity of a non-Islamic religion or in any activity which is sponsored or organised by or is for the benefit of a non-Islamic religion or any body or institution associated with a non-Islamic religion. This offence is punishable with a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping. - It is an offence to approach a Muslim and subject him to any speech on or display of any matter concerning a non-Islamic religion. This offence attracts a punishment of a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping. - It is an offence send or deliver to a Muslim any publication concerning any non-Islamic religion, or any advertising material for any such publication, which has not be requested for by that other person himself. This offence attracts a punishment of a fine not exceeding RM10,000 or imprisonment for a term not exceeding five years or to both and shall also be liable to whipping. - It is an offence to distribute in a public place publications concerning non-Islamic religion to Muslims. This offence attracts punishment of a fine not exceeding RM10,000 or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping.

Malacca	Section 4 to 8 of the Control and Restriction of the Propagation of Non-Islamic Religions To Muslim Enactment 1988	<ul style="list-style-type: none"> - It is an offence to persuade, influence or incite a Muslim to become a follower or member of, or to be inclined towards, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine of RM10,000 or to imprisonment for one year or to both. - It is an offence to subject a Muslim under the age of 18 years old to take part in any ceremony, act of worship, or religious activity of a non-Islamic religion. Punishment is a fine of RM 10,000 or to imprisonment for one year or to both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine of RM5,000 or to imprisonment for six months or to both. - It is an offence to send or deliver publication concerning any non-Islamic religion to a Muslim. Punishment is a fine of RM3,000 or imprisonment for three months or to both. - It is an offence to distribute in a public place publication concerning non-Islamic religion to Muslims. Punishment is a fine of RM1,000.
Negeri Sembilan	Section 4 to 8 of the Control and Restriction (The Propagation Of Non-Islamic Religions Amongst Muslims) (Negeri Sembilan) Enactment 1991	<ul style="list-style-type: none"> - It is an offence to persuade, influence, coerce or incite a Muslim to become a follower, or member of, etc. a non-Islamic religion or to become inclined towards any non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding three years or both. - It is an offence to subject a Muslim under the age of eighteen years to influences of a non-Islamic religion. Punishment is a fine not exceeding RM10,000 or imprisonment for a term not exceeding three years or both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter relating to a non-Islamic religion. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. - It is an offence to send or deliver publications relating to any non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. - It is an offence to distribute any publication or publicity material relating to non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM3,000 or to imprisonment for a term not exceeding one year or both.

Pahang	Section 4 to 8 of the Control and Restriction of the Propagation of Non - Islamic Religions Enactment 1989	<ul style="list-style-type: none"> - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non - Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or both. - It is an offence to subject a Muslim to influences of a non - Islamic religion. Punishment is a fine not RM10,000 or to imprisonment for a term not exceeding four years or both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non - Islamic religion. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. - It is an offence to send or deliver publications concerning any non - Islamic religion to a Muslim, which was not requested by him/her. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. - It is an offence to distribute any publication or publicity material concerning non - Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.
Penang	Section 5 of the Syariah Criminal Offences (State Of Penang) Enactment 1996	<ul style="list-style-type: none"> - It is an offence to propagate religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith. Punishment is a fine not exceeding RM3,000 or to imprisonment for a term not exceeding two years or both.
Perak	Sections 4 to 8 of the Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (enactment not yet in force)	<ul style="list-style-type: none"> - It is an offence to persuade, influence, or incite, a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine not exceeding RM 10,000 or to imprisonment for a term not exceeding four years or both. - It is an offence to subject a Muslim under the age of 18 years to influences of a non-Islamic religion. Punishment is a fine not exceeding RM10,000 or to imprisonment for a term not exceeding four years or both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. - It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both. - It is an offence to distribute any publication or publicity material concerning non-Islamic religion to a Muslim. Punishment is a fine not exceeding RM5,000 or to imprisonment for a term not exceeding two years or both.

Perlis	No laws prohibiting propagation of non-Islamic religious doctrines or beliefs to Muslims.	
Sabah	No laws prohibiting propagation of non-Islamic religious doctrines or beliefs to Muslims.	
Sarawak	Section 5 of the Syariah Criminal Offences Ordinance 2001.	<ul style="list-style-type: none"> - It is an offence to propagate religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith. Punishment is a fine not exceeding RM3,000 or to imprisonment for a term not exceeding two years or both.
Selangor	Sections 4 to 8 of the Non-Islamic Religions (Control Of Propagation Amongst Muslims) Enactment 1988	<ul style="list-style-type: none"> - It is an offence to persuade, influence or incite a Muslim to be inclined towards any non-Islamic religion, or to become a follower or member of a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is imprisonment for a term not exceeding one year or to a fine not exceeding RM10,000 or to both. - It is an offence to subject a minor who is a Muslim to influences of a non-Islamic religion. Punishment is imprisonment for a term not exceeding one year or to a fine not exceeding RM10,000 or both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is imprisonment for a term not exceeding six months or to a fine not exceeding RM5,000 or both. - It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim. Punishment is imprisonment for a term not exceeding three months or to a fine not exceeding RM3,000 or both. - It is an offence to distribute in a public place publications concerning non-Islamic religion to Muslims. Punishment is a fine not exceeding RM1,000.
Terengganu	Sections 4 to 8 of the Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1980	<ul style="list-style-type: none"> - It is an offence to persuade, influence, or incite a Muslim to become a follower or member of, or to be inclined toward, a non-Islamic religion; or to forsake or disfavour the religion of Islam. Punishment is a fine of RM10,000 or to imprisonment for one year or both. - It is an offence to subject a Muslim under the age of 18 years to influences of a non-Islamic religion. Punishment is a fine RM10,000 or to imprisonment for one year or both. - It is an offence to approach a Muslim to subject him to any speech on or display of any matter concerning a non-Islamic religion. Punishment is a fine of RM5,000 or to imprisonment for six months or both.

		<ul style="list-style-type: none"> - It is an offence to send or deliver publications concerning any non-Islamic religion to a Muslim. Punishment is a fine of RM3,000 or to imprisonment for three months or both. - It is an offence to distribute in a public place publication concerning non Islamic religion to Muslims. Punishment is a fine of RM1,000.
Federal Territories	Section 5 of the Syariah Criminal Offences (Federal Territories) Act 1997	<ul style="list-style-type: none"> - It is an offence for any person who propagates religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith; this offence is liable to a fine not exceeding RM3,000 or to imprisonment for a term not exceeding two years or both.



Myanmar

Republic of the Union of Myanmar

Formal Name	Republic of the Union of Myanmar ¹
Capital City	Nay Pyi Taw / Naypyidaw
Declared Relationship between State and Religion in Constitutional or Foundational Documents	<p>Section 361 of the 2008 Constitution states that “The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union.”</p> <p>On 26 August 1961, during the U Nu government, the third amendment of the 1947 Constitution of the Union of Burma declared Buddhism as the State Religion of Burma. Another amendment (the fourth amendment) was made on 28 September 1961, guaranteeing the religious freedom of minority religions.² However, both of these became redundant or ineffective with the coming into power of the coup regime led by General Ne Win on 2 March 1962, who ruled the country by decree until 1974 when another constitution—the Constitution of the Socialist Republic of the Union of Burma—was adopted. The 1974 Constitution did not give Buddhism a special position as the majority religion.</p>
Form of Government	Nominally federal or quasi-federal
Whether the regulation of religion is part of the State’s functions, and if so which government and which institution of government	The Buddhist Sangha is, in theory, under the direct supervision of the State Sangha Mahanayaka Committee (<i>Ma-Ha-Na</i>), but the Department of Religious Affairs under the Ministry of Religious Affairs regulates ordinary Buddhist affairs. To some extent, the Department of Religious Affairs also regulates the activities of minority religions. Another department under the Ministry, the Department for the Promotion and Propagation of Sāsana, is solely responsible for Buddhist mission at home and abroad. Complete independence of the State Sangha Mahanayaka Committee from the influence of the government, especially in the past, is questionable.
Total Population	51,419,420 (2014 Census) ³
Religious Demography in 2014	<p>Buddhist, 89%;</p> <p>Christian, 4% (Baptist, 3% and Roman Catholic 1%);</p> <p>Muslim, 4%;</p> <p>Animist, 1%;</p> <p>Other, 2%.⁴</p>

1 The name of the country was changed from “Burma” to “Myanmar” in 1989 by the State Law and Order Restoration Council (“SLORC”). This report will interchangeably use both Burma and Myanmar, since publications prior to 1989 used “Burma,” and some governments and authors still prefer to use “Burma” to this day.

2 Dr. Kyaw Win, U Mya Han and U Thein Hlaing, *Myanmar Politics 1958-1962*, Vol 3 (Yangon, Myanmar: Department of Historical Research, Ministry of Culture, 2011).

3 “First Census Results Reveal Myanmar’s Population Size to be 51.5 Million,” UNFPA Myanmar, <http://countryoffice.unfpa.org/myanmar/2014/09/16/10550/first_census_results_reveal_myanmar_s_population_size_to_be_51_4_million/> accessed 5 January 2015

4 “Burma,” CIA Factbook, <<https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>>, accessed 3 July 2014. The Hindu population in Myanmar is not known. It seems to be counted among others (2%) though Hinduism is one of the religions recognized by the state.

Changing Religious Demography (in ten year intervals)	Data is not available. The second to the last census was completed in 1983. The most recent census was conducted in March-April 2014, but the detailed religious demographic data is not available yet. Christian and Muslim populations have each been estimated at three to five per cent since then, whereas Buddhists have been estimated at around 88% to 89%. Demography of animists has never been documented, but they are estimated to comprise around one per cent of the total population. An overlap between animism and Buddhism exists since many people observe a mixture of Buddhist and animist practices, though their exact numbers are not known. ⁵
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INTRODUCTION

Religious Demography

“Myanmar is ethnically diverse, with some correlation between ethnicity and religion. Theravada Buddhism is the dominant religion among the majority Burman ethnic group and among the Shan, Arakanese, and Mon ethnic minorities in the east, west, and south. Christianity is the dominant religion among the Kachin ethnic group of the north and the Chin and Naga ethnic groups of the west, some of whom also continue to practice traditional indigenous religions. Protestant groups report recent rapid growth among animist communities in Chin State. Christianity is also practiced widely among the Karen and Karenni ethnic groups of the south and east, although many Karen and Karenni are Buddhist and some Karen are Muslim. Burmese citizens of Indian origin, who are concentrated in major cities and in the south central region, predominantly practice Hinduism, though some ethnic Indians are Christian. Islam is practiced widely in Rakhine State, where it is the dominant religion of the Rohingya minority, and in Rangoon, Irrawaddy, Magwe, and Mandalay Divisions, where some Burmans, Indians, and ethnic Bengalis practice Islam. Chinese ethnic minorities generally practice traditional Chinese religions. Traditional indigenous beliefs are practiced

widely among smaller ethnic groups in the highland regions. Practices drawn from those indigenous beliefs persist in popular Buddhist rituals, especially in rural areas.”⁶

On the face of it, the Myanmar State does not interfere through legislation or other direct means in affairs relating to minority religions. The Department of Religious Affairs only oversees certain matters, mostly activities and events, of religious minorities. However, as will be discussed below, there is a certain level of state interference in affairs relating to minority religions through other means.

An important but neglected feature of debates on religious freedom in Myanmar is the discrimination and persecution of new Buddhist sects not recognized by the State and Buddhist Sangha in Myanmar. The focus of publications on religious freedom or religious persecution of non-Buddhist minorities is understandable because of the predominant role of Buddhism and Buddhists in the country. A major factor in the persistence of this focus on religious minorities, not only in academia but also within policy circles, is that most writings on Myanmar have focused on the centre-periphery relationships between the Bamar-dominated central regime(s) and the peripheral ethnic or ethno-religious minorities. A contextual study of freedom of thought, conscience and religion in Myanmar must include a discussion of persecution not only of minority religions such as Islam and Christianity,

⁵ Bruce Matthews, ‘Religious Minorities in Myanmar—Hints of the Shadow,’ (1995) 4 (3) *Contemporary South Asia* 287-308.

⁶ ‘International Religious Freedom Report 2009’ prepared by the US State Department available at <http://www.state.gov/j/drl/rls/irf/2009/127266.htm> (accessed 25 March 2014). Note also the use of the term ‘Rohingya’ in this report as explained in footnote 13 below.

but also of minorities within the Buddhist majority.

The United States Department of State has designated Myanmar as a Country of Particular Concern (“CPC”) since 1999. Its annual reports published since 2001 detail particular instances of violations of the right to freedom of religion mainly of Christians and Muslims and often of dissident Buddhist monks over the 1990s and 2000s.⁷ The annual reports start with a discussion of experiences of people of Myanmar in terms of religious freedom since 1962, the year when General Ne Win took power in a coup. This seems to imply that violations of religious freedom only started in 1962. Taking 1962 as the starting point indeed misses an important historical factor, specifically that the concepts of religion, religious majority and minorities, and religious freedom in fact started to be conceptualized in Myanmar during colonial times. Before British colonization, there were only two institutions of Buddhism—the monarch as the supreme material supporter of Buddhism or Sangha, and the Sangha as the provider of Buddhist moral education and guidance to the laity.⁸ However, the rule of the outwardly secular British colonial government destabilized the institutional balance between the monarch and the Sangha by effectively annihilating the ruling elite’s power base. At the same time, while a sizeable number of Muslims and Christians existed in the times of the Burmese kings of the Konbaung Dynasty (1752–1885), it was British colonization, accompanied by Christian missionary activities in minority areas, and a high level of migration from India that led to the emergence of the view in Myanmar of an association between the spread of Christianity and Islam in the country and colonization.

7 See for example, the US State Department annual religious freedom reports of 2006, 2007 and 2008.

8 Donald E. Smith, *Religion and Politics in Burma*. (Princeton: Princeton University Press, 1965); John F. Cady, ‘Religion and Politics in Modern Burma,’ (1953) 12(2) *The Far Eastern Quarterly* 149–162; Mark Woodward, ‘When One Wheel Stops: Theravada Buddhism and the British Raj in Upper Burma,’ 1998 4(1) *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies* 57–90; Michael Aung-Thwin, ‘Those Men in Saffron Robes,’ (2013) 17(2) *Journal of Burma Studies* 243–334.

To some extent, this correlation appears warranted. While Christianity was introduced to Myanmar by missionaries before colonization, the British government was Christian in its religious affiliation and missionary schools dominated colonial-era education, supplanting the education provided by Buddhist monks in the early twentieth century.⁹ However, since it was mostly the ethnic minority groups such as the Kayin (also referred to as the “Karen”), Kachin and Chin that embraced Christianity, monks and lay Buddhists did not openly target Christianity and Christians in both colonial-Burma and present-day Myanmar.

The case is quite different when it comes to Islam. Although sizeable Muslim communities existed prior to colonization,¹⁰ a huge influx of Indian emigrants to Myanmar during the colonial era significantly increased the percentage of the population practicing Islam. Many Muslim men arrived to take on both blue-collar and white-collar jobs in the booming agricultural sector and in the colonial administration. Indian Chettyar migrants, most of whom were moneylenders, provided credit to the Burmese peasantry. Because of the high interest rates charged, Chettyars were considered uninvited and exploitative outsiders. Unfortunately this view persists in present-day

9 Bruce Matthews, *Ethnic and Religious Diversity: Myanmar’s Unfolding Nemesis* (Singapore: Institute of Southeast Asian Studies, 2001).

10 Moshe Yegar, *The Muslims of Burma: A Study of a Minority Group*. (Wiesbaden: Otto Harrassowitz, 1972).

Myanmar.¹¹ Additionally, an association between Christian and Islamic communities as supporters of British colonization has, to some degree, affected interreligious relations in Myanmar.

Myanmar enjoyed a parliamentary democratic form of government from 1948 to 1962, broken briefly between 1958 and 1960 when the military was invited by Prime Minister U Nu to act as “caretaker government”. Thereafter, Myanmar went through two long authoritarian periods under military or military-dominated governments: the Revolutionary Council/Burma Socialist Programme Party government from 1962 to 1988, and the State Law and Order Restoration Council/State Peace and Development Council government from 1988 to 2011.

Under domestic and international pressure for political reform and liberalization, the government announced in 2003 a seven-step roadmap to democracy, which concluded in 2011 with the swearing-in of elected *Hluttaw* (parliament) representatives tasked to build a modern, developed and democratic nation through the government and other central organs they would form. The year 2011 marked a watershed in Myanmar’s post-independence political history as it was the beginning of widely-applauded political and social changes under the government headed by President Thein Sein. The National League for Democracy (“NLD”) led by the Nobel Peace laureate Aung San Suu Kyi initially protested the 2010 general elections,

which were regarded as neither fair nor free by the international community. In the by-elections held in April 2012, the NLD won 43 of the 44 seats it had contested, out of the 45 seats for which elections were held at that time.

Amidst political and social changes in 2011, Myanmar has faced unprecedented large-scale violent conflicts between Buddhists and Muslims, first in Rakhine and then in other parts of Myanmar. The conflicts have disproportionately affected the Rohingya,¹² Kaman,¹³ and other Muslims since they comprise predominantly minority populations in Buddhist-majority areas all over Myanmar, except in the northern Rakhine State (“NRS”) where the Rohingya are in the majority. However, even the Rohingya in NRS are politically and socially powerless due to their highly contentious nationality in Myanmar.

The current Citizenship Law of Myanmar, which was enacted in 1982, does not recognise the Rohingya as one of 135 national groups eligible for citizenship by birth, thus effectively making them stateless.¹⁴ To make matters worse, successive Myanmar governments have failed to naturalize the Rohingya under the Citizenship Law but instead have perpetuated the claim that most, if not all, of the Rohingya in Myanmar are illegal immigrants. This view of the Rohingya as illegal immigrants has emerged in discursive rejections of Rohingya as Myanmar citizens that have especially taken hold in the popular consciousness in the aftermath of the

11 N. R. Chakravarti, *The Indian Minority in Burma: The Rise and Decline of an Immigrant Community* (London: Institute of Race Relations, 1971); Renaud Egreteau, ‘Burmese Indians in Contemporary Burma: Heritage, Influence, and Perceptions since 1988,’ (2011) 12(1) *Asian Ethnicity* 33-54; Khin Maung Kyi, ‘Indians in Burma: Problems of an Alien Subculture in a Highly Integrated Society,’ in: K. Snitwongse and W. S. Thompson (eds), *Ethnic Conflicts in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2006), 624-665; Robert H. Taylor, ‘The Legal Status of Indians in Contemporary Burma,’ in: K. Snitwongse and W. S. Thompson (eds), *Ethnic Conflicts in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2006), 666-682.

12 The ethnonym ‘Rohingya’ is the most controversial term currently in Myanmar. Its use is often pinpointed as one of the most important factors behind Rakhine riots. ‘Rohingya’ also became highly contested before and during the last census taken in late March and early April 2014. Although Myanmar authorities initially allowed the use of ‘Rohingya’ in the census, they rescinded it amidst protests by Rakhines and non-Rakhines. However, this report uses ‘Rohingya’ because it is a better known term.

13 Kamans are another ethnoreligious minority most of whom also live in Rakhine. Unlike Rohingya, they are recognized as one of 135 ethnic groups. They are estimated to number around 50,000 though their exact number is not known.

14 The 1982 Citizenship Law is available at <http://www.ibiblio.org/obl/docs/Citizenship%20Law.htm>

2012 riots in Rakhine. While it is fair to say that, to some extent, two mass exoduses of Rohingya from Myanmar in 1978 and 1991-1992, were themselves the result of authorities' outright oppression of Rohingya at the time, a popular discourse surrounding Rohingya as illegal immigrants to some extent was suppressed by the highly authoritarian regimes governing Myanmar during these periods and the resulting lack of a free press. Further, different forms of violence caused the 1978 and 1991-92 exoduses, on the one hand, and the 2012 riots, on the other. While the first and second exoduses resulted from government oppression exercised by central and local government authorities, the 2012 riots were mainly the result of inter-communal clashes (between Rakhines and Rohingya).

During and after the 2012 riots, people in Myanmar were largely subjected to an official discourse rejecting the Rohingya as Myanmar citizens and by anti-Rohingya coverage in the private press. Violence between the Rohingya and the Rakhine ethnic group has been popularly interpreted as, and understood to be, a clash between illegal Muslim Rohingya and indigenous Rakhine Buddhists. Based on this researcher's review of the documentation released by the State and respected members of the Sitagu International Buddhist Academy, it seems fair to say that an official discourse characterising the Rohingya as illegal immigrants has reached new heights. As will be discussed in greater detail in this report, violent sectarian conflicts have resulted in violations of various human rights and a failure by the State to intervene to safeguard several fundamental freedoms, including religious freedom. This is especially the case for the Rohingya and other non-Rohingya Muslims and has to some extent brought about an ensuing identity crisis.¹⁵ Indeed, the most commonly heard view of current interreligious relations in Myanmar between Muslims and Buddhists is that Muslims and Islam are guests, while Buddhists and Buddhism are hosts. It is thus necessary for the former to accommodate and live in harmony with their hosts. In particular,

Venerable Sitagu Sayadaw Ashin Nyanissara, the Founding President of Sitagu International Buddhist Academy, who is revered in Myanmar for his Buddhist scholarship, sermons, and social work, has promoted this view. Media interviews conducted with Venerable Sitagu Sayadaw in the aftermath of riots in Rakhine and elsewhere and have seen his views being widely echoed across the country.¹⁶

The plight of the Rohingya remains a major concern in Myanmar, with religious freedom being one of the human rights and fundamental freedoms that are failing to be protected. Moreover, the Kaman and other Muslims in Rakhine State and other parts of Myanmar have increasingly found themselves amidst, and disproportionately affected by, the sectarian conflicts of 2012, 2013, and 2014.

At the same time, an armed conflict between the Kachin Independence Organization/Kachin Independence Army (KIO/KIA), which resumed in 2011, has also led to violations of certain religious freedoms amongst the Kachin community (most of which is Christian). However, in general, the picture of religious freedom for ethnic minorities such as the Kayin and Chin has improved since 2011 due to the change in the nature of state-society relations.

In the past, "successive civilian and military governments have tended to view religious freedom in the context of whether it threatens national unity or central authority."¹⁷ This nature of state-society relations seems to have changed with political and social changes in 2011, when the Kayin National Union ("KNU") reached a ceasefire agreement with the government and Chin politicians and representatives now sit on Chin State Hluttaw and Union Hluttaw. However, it is still difficult to estimate the power of representatives of minority religions at the regional (or State Hluttaws) and at the Federal (or Union Hluttaw) level because those representatives are affiliated not only with ethnic

¹⁵ Ian Holliday, 'Addressing Myanmar's Citizenship Crisis,' (2014) 44(3) *Journal of Contemporary Asia* 404-421.

¹⁶ Naw Ko Ko, *The Voice Journal*, March 25-31, 2013, p. D.

¹⁷ United States State Department International Religious Freedom Report ("IRFR") 2007 on Burma.

parties but also, to varying degrees, with the ruling Union Solidarity and Development Party. Additionally, the extent to which debates on the right to freedom of religion will be launched and joined by representatives of minority religions is as yet unknown. Moreover, whatever power state or regional Hluttaws and individual government officials have, it is still weak due to capacity constraints and the on-going centrality of a top-down approach in Parliament and within the civil service.¹⁸

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

International Document	Year of Signature	Year of Ratification / Accession	Reservations / Declarations
UN Convention on the Rights of the Child (CRC)	1991	1991	Articles 15 and 37. Withdrawn on 19 October 1993.
UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	2006	2006	Article 29.
Convention on the Rights of Persons with Disabilities	2011	2011	
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	2012	2012	

In general, Myanmar can be said to be dualist in terms of implementation of international law into domestic law. Indeed, the application of international law domestically is difficult to assess because Myanmar has only ratified four of the international human rights treaties, two of them (CRC and CEDAW) during the SLORC/SPDC rule and the other two after 2011. So far, no domestic legal case has referred to those treaties. Myanmar only passed the Child Law in 1991 after its accession to the CRC in 1991.

B. Domestic Laws and Policies

The Constitution

Myanmar has had three constitutions since independence. The Constitution of the Union of Burma (1947) (“1947 Constitution”) and the Constitution of the Socialist Republic of the Union of Burma (1974) (“1974 Constitution”) were suspended from 1962 to 1974, and from 1988 to 2011, respectively, during the two long periods of military rule. Thus, constitutional protection of religious freedom during those two periods was suspended. The present Constitution of the Republic of the Union of Myanmar (the Constitution) was adopted in May 2008 after a referendum, although the Union Hluttaw did not convene until 2011. It has

¹⁸ Asia Foundation & Centre for Economic and Social Development (CESD), *State and Region Governments in Myanmar*. (Asia Foundation & Centre for Economic and Social Development: Yangon, 2013).

certain articles regarding religion, with Section 361 stating as follows:

The Union recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union.

This constitutional provision was copied verbatim from Myanmar's 1947 constitution. The clause was omitted in the 1974 constitution, most probably due to the contentiousness of "Buddhism as state religion". In the early 1960s, the U Nu government elevated the status of Buddhism to a 'state religion' by amending the Constitution and promulgating the State Religion Promotion Act of 1961 which appeared to give preferential treatment to Buddhists, and which arguably proved to be intensely divisive. It was also supposedly one of the major causes of the rebellion of the Kachin, who are predominantly Christian. Conversely, Ne Win's socialist regime (1962–1988) emphasised national unity over diversity. As such, the 1974 Constitution neither gave Buddhism a special position as the majority religion nor mentioned other religions. Instead, Section 21(b) of the 1974 Constitution states only that:

The national races shall enjoy the freedom to profess their religion, use and develop their language, literature and culture, follow their cherished traditions and customs, provided that the enjoyment of any such freedom does not offend the laws or the public interest.¹⁹

Additionally, section 153(b) of the 1974 Constitution simply states that:

Every citizen shall have the right to freely use one's language and literature, follow one's customs, culture and traditions and profess the religion of his choice...²⁰

19 Section 21(b), The Constitution of the Socialist Republic of the Union of Burma (Yangon: Ministry of Information, 1974).

20 Section 153(b), The Constitution of the Socialist Republic of the Union of Burma.

While the current Constitution returns Buddhism to a special position, it also states:

The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution.²¹

The present Constitution also has certain provisions regarding religious freedom and abuse of religion for political purposes:

Every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution.²²

This affirmation of religious pluralism would seem to be further entrenched by Myanmar's recognition not only of Buddhist customary law, but also the customary laws of Muslims and Hindus, in matters relating to marriage, divorce and inheritance. Indeed, this has been recognised since colonial times when the British legalised this pluralism through the Burma Laws Act (1898). This recognition reportedly led to friction between different customary laws, especially those relating to interfaith marriage. Nationalists in the 1920s and 1930s argued that Buddhist women found themselves at a disadvantage when their matrimonial relationships with their Hindu or Muslim husbands were not considered legal by Hindu and Muslim customary laws. This led to the drafting and passage of the Buddhist Women's Special Marriage Succession Act (1939) and the Buddhist Women's Special Marriage Succession Act

21 Section 362, *The Constitution of the Republic of the Union of Myanmar* (Yangon: Ministry of Information, 2008).

22 Section 34, *The Constitution of the Republic of the Union of Myanmar*

(1954).²³ The 1954 law is still in force and accepts interfaith marriages between Buddhist women and non-Buddhist men, stipulating that matters relating to marriage, divorce and inheritance in any resulting matrimonies are decided in accordance with Buddhist customary law. Indeed, the legality of interfaith marriage and potential ambiguity of Buddhist customary law on the subject has recently been made a serious issue by *Amyo Ba-tha Tha-tha-na Ka-kwaè-saung-shauk-ye Apwè* (abbreviated to *Ma-Ba-Tha*)²⁴ and 969 Buddhist nationalists.²⁵ *Ma-Ba-Tha* has a Central Committee composed of 52 members, including very senior scholar monks such as Ywama Sayadaw Ashin Tiloka Biwuntha (Chairman) and Sitagu Sayadaw Ashin Nyanissara (Vice-Chairman 1), well-known nationalist monks such as Masoeyein Sayadaw U Wirathu, Magwe Sayadaw U Pamauka, leaders of the 969 movement, and lay Buddhist men and women. Both it and the 969 movement argue that Buddhists require a law that is similar to shari'a law which is generally interpreted to forbid marriage between Muslim women and non-Muslim men. This has resulted in the draft of the Religious Conversion Bill, which will be discussed in detail below.

Finally, however, it is important to note that section 360 of the Constitution sets significant limits on religious freedom as guaranteed in Section 34:

- a. The freedom of religious right given in Section 34 shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

23 Maung Maung, *Law and Custom in Burma and the Burmese Family* (The Hague: Martinus Nijhoff, 1963); Aye Kyaw, 'Status of Women in Family Law in Burma and Indonesia,' (1988) 4(1) *Crossroads: An Interdisciplinary Journal of Southeast Asian Studies* 100-120; Melissa Crouch, 'The Layers of Legal Development in Myanmar,' in Melissa Crouch and Tim Lindsey (eds) *Law, Society and Transition in Myanmar* (Oxford: Hart Publishing, 2014), 33-56.

24 Literally translated as Organization for Protection of Race, Religion and Sāsana, but its official English translation is Patriotic Association of Myanmar or PAM.

25 See *Part Two: C. Significant Changes in Claims* for more information on the *Ma-Ba-Tha* and the 969 movement.

- b. The freedom of religious practice so guaranteed shall not debar the Union from enacting law for the purpose of public welfare and reform.²⁶

Additionally, Section 364 of the Constitution prohibits the abuse of religion in politics, as follows:

The abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity.²⁷

Most notably, regarding state support of recognized religions—Buddhism, Christianity, Hinduism, Islam and Animism—the Section 363 of the Constitution provides that:

The Union may assist and protect the religions it recognizes to its utmost.²⁸

The phrase “to its utmost” seems to be consciously inserted because the Myanmar State may never fully succeed in assisting and protecting Buddhism, Christianity, Islam, Hinduism, and Animism. It also seems to implicitly draw upon the concept of “progressive realisation” which appears somewhat misplaced, given this concept is usually referred to

26 Section 360 of the The Constitution of the Republic of the Union of Myanmar.

27 Section 364 of The Constitution of the Republic of the Union of Myanmar.

28 Section 363 of the The Constitution of the Republic of the Union of Myanmar.

in debates on economic, social and cultural rights.²⁹

Finally, it should be noted that the present Constitution or any other legal documents do not define atheism; the Constitution only recognises Buddhism, Islam, Christianity, Hinduism, and Animism as religions. Therefore, atheism does not appear to be recognized at all as a form of belief and consequently the state does not appear to extend legal protection to it, although the blanket provisions in Articles 34 and 354 of the Constitution (discussed below) would at least in principle appear to provide some guarantee of protection.³⁰

National Regulatory Regime for Religions and Beliefs

As mentioned above, the Ministry of Religious Affairs regulates Buddhist affairs, while the Buddhist Sangha is under the direct supervision of the supreme State Sangha Mahanayaka Committee. Although the Department of Religious Affairs under the Ministry of Religious Affairs oversees certain issues relating to religious minorities, the Ministry as a whole is mainly focused upon regulating Buddhism and Buddhist affairs. The Ministry of Religious Affairs also provides grants to different religions, as shown in the table below.

Buddhism (Kachin, Kayah, Kayin and Shan)	Ks 115,000
Protestant (Christian)	Ks 36,350
Catholic (Christian)	Ks 15,600
Hindu	Ks 38,500
Islam	Ks 100,000
Animism	Ks 86,550

Source: www.mora.gov.mm; Exchange rate: 1 USD = 950 Ks.

As can be seen from the table, the amount of financial support given by the Ministry of Religious Affairs to minority religions is remarkably small, perhaps understandably so, given the Ministry is among the least-funded government ministries. Further, financial support given to Buddhism does not significantly exceed that given to other religions. A notable fact here is that the figure does not mention any support given to Buddhism in Bamar-dominated places other than the four states (Kachin, Kayah, Kayin and Shan). Moreover, although the Ministry does not appear to fund Buddhist facilities and activities in Myanmar disproportionately to other religions and faiths, it is worth noting that significant private funding has been mobilized under the auspices of the government to fund such facilities and activities. For example, the State Law and Order Restoration Council/State Peace and Development Council (SLORC/SPDC) which ruled from 1988 to 2011, launched an extensive project to build new Buddhist pagodas and renovate old or existing ones, apparently with private funding.³¹

The other two branches of the Ministry of Religious Affairs—the Department for the Promotion and Propagation of Sāsana and the International Theravāda Buddhist Missionary University (ITBMU)—are concerned with regulating

²⁹ Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, states: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/cesscr.aspx>; Audrey R. Chapman, 'A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights,' (1996) 18 (1) *Human Rights Quarterly* 23-66.

³⁰ See Part I (Section 2: Right to Manifest One's Religion and Belief) below.

³¹ Donald M. Seekins, 'The State and the City: 1988 and the Transformation of Rangoon,' (2005) 78(2) *Pacific Affairs* 257-275; Gustaff Houtman, *Mental Culture in Burmese Crisis Politics: Aung San Suu Kyi and the National League for Democracy* (Tokyo: Tokyo University of Foreign Studies, 1999); Janette Philp and David Mercer, 'Politicised Pagodas and Veiled Resistance: Contested Urban Space in Burma,' (2002) 39(9) *Urban Studies* 1587-1610.

Buddhism and providing state-funded programs in Buddhist education, according to the Ministry of Religious Affairs.³² ITBMU in Yangon, which was built by the SLORC/SPDC regime and opened in 1998, runs programs from one-year diplomas to four-year doctoral courses for lay students, monks, and nuns from Myanmar and foreign countries.³³ Additionally, the Department for the Promotion and Propagation of Sāsana also supervises two State Pariyatti Sāsana Universities in Yangon and Mandalay, which were established in the 1980s but only conduct courses for male monastic students.³⁴

Buddhist missionary teachings and activities are not, however, confined to Buddhists and to big cities such as Yangon and Mandalay. The Department for the Promotion and Propagation of Sāsana has run a special program called ‘Hill Regions Buddhist Mission’ since the early 1990s. Buddhist monks who have links to the government run this grassroots program. In Chin State, this Buddhist mission works in close cooperation with the schools which promote Buddhist teaching and conversion to Buddhism for Chin students established under the Ministry for Progress of Border Areas and National Races and Development Affairs.³⁵

Finally, it should be noted that Myanmar’s national legislation does not provide any definitions of blasphemy, deviant behaviour or heretic, but Article 295 (A) of the Penal Code criminalizes the deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious belief.

32 http://www.mora.gov.mm/mora_itbmu1.aspx accessed 20 December 2014.

33 <http://www.itbmu.org.mm> accessed 20 December 2014.

34 http://www.mora.gov.mm/mora_sasana1.aspx accessed 20 December 2014.

35 Chin Human Rights Organization, ‘Religious Persecution: A Campaign of Ethnocide Against Chin Christians in Burma (2004)’ <<http://www.chro.ca/index.php/publications/special-reports>> accessed 1 April 2014; Chin Human Rights Organization, ‘Threats to Our Existence: Persecution of Ethnic Chin Christians in Burma (2012)’ <<http://www.chro.ca/index.php/publications/73-special-reports/411-threats-to-our-existence>> accessed 1 April 2014.

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

The Constitution and other legal documents do not have provisions for or against adopting, changing or renouncing a particular religion. It is generally regarded by the state as a private matter. However, citizens have to state one religion on their citizenship scrutiny cards (CSCs), which are similar to national identity cards. A child receives his or her CSC at the age of ten, which is changed to an adult CSC when the child turns 18. The State’s involvement in the registration of religious affiliation is likely to become more pervasive when the draft Religious Conversion Bill is enacted, which will be discussed in detail below.

Reports indicate that there were certain instances of forced conversion, particularly in Chin State, during the SLORC/SPDC regime. For example, the US Department of State’s International Religious Freedom Report 2004 notes:³⁶

Since 1990, the Government has supported forced conversions of Christians to Buddhism. The majority of Chins, however, are still Christian. This campaign, reportedly accompanied by other efforts to “Burmanize” the Chin, has involved a large increase in military units stationed in Chin State and other predominately Chin areas, state-sponsored immigration of Buddhist Burman monks from other regions, and construction of Buddhist monasteries and shrines in Chin communities with few or no Buddhists, often by means of forced “donations” of money or labor. Local government officials promised monthly support payments to individuals and households who converted to Buddhism. Government soldiers stationed in Chin State reportedly were given higher rank and pay if they married Chin women and converted them to Buddhism. The authorities reportedly supplied rice to Buddhists at lower prices than

36 U.S. Department of State. ‘Burma: International Religious Freedom Report 2004.’ <<http://www.state.gov/j/drl/rls/irf/2004/35393.htm>> accessed 20 December 2014.

to Christians, distributed extra supplies of food to Buddhists on Sunday mornings while Christians attended church, and exempted converts to Buddhism from forced labor.

Likewise, the same report states:³⁷

There were credible reports that hundreds of Christian tribal Nagas in the country have been converted forcibly to Buddhism by the country's military. The persons were lured with promises of government jobs to convert to Buddhism, while those who resisted were abused and kept as bonded labor by the military.

However, the State Department's International Religious Freedom Report of 2005 noted as follows a change in the trend of forced conversion. This was echoed by the reports issued in subsequent years.³⁸

While in the past, there were credible reports that hundreds of Christian tribal Nagas in the country had been converted forcibly to Buddhism by the country's military, reliable sources indicate that this sort of activity has not occurred in recent years.³⁹

Starting from 2012, there have not been any reported incidents of such systemic forced religious conversion in the U.S. Department of State's Annual Reports.

2. *Right to manifest one's religion or belief*

Section 354 of the Constitution states:

Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence

of law and order, community peace and tranquillity or public order and morality:

- (a) to express and publish freely their convictions and opinions;
- (b) to assemble peacefully without arms and holding procession;
- (c) to form associations and organizations;
- (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

This is in addition to the guarantee of freedom of conscience and to profess and practice religion under section 34 of the Constitution.

a. *Freedom to worship*

On the societal level, it may be said that the right to freedom to worship is respected in Myanmar. However, freedom to worship is intertwined with places of worship since certain religious practices require places of worship, which will be discussed below. Whenever the United States government released its annual reports on religious freedom in the late 1990s and 2000s,⁴⁰ the ruling Myanmar government (SLORC/SPDC) would respond by showing pictures of downtown Yangon near the Independence Monument in which a Buddhist pagoda (Sule Pagoda), a Christian church (Emmanuel Baptist Church), and a Muslim mosque (Bengali Sunni Jameh Mosque) are located in close proximity. The government's claim appeared to

³⁷ Ibid.

³⁸ For example, IRFR 2010; 2011.

³⁹ U.S. Department of State. 'Burma: International Religious Freedom Report 2005.' <<http://www.state.gov/j/drl/rls/irf/2005/51506.htm>> accessed 20 December 2014.

⁴⁰ The US State Department's annual reports on Myanmar provide comprehensive details of the experiences of Myanmar people in the arena of religion although they are admittedly more political rather than legal. Moreover, many of their generalizations are too broad but it does not detract from their enormous value in terms of provision of details of experiences of religions groups in Myanmar over a period of more than two decades since the first annual report on Myanmar was issued in 2001.

be that this was evidence of complete freedom of religion in Myanmar. However, freedom of religion is a broader concept than freedom of worship. Therefore, as one author of very few papers on religious minorities in Myanmar, quoting a Muslim leader, writes:

There is freedom of worship in Myanmar but not freedom of religion— especially for the minority religions, which face state-imposed, and often excessive, limitations in such matters as to what they can publish, what public lectures they can give, whom they can invite into the country to minister to them, and above all, in what outreach they are permitted to engage in.⁴¹

b. Places of worship

Religious freedom in terms of places of worship can be analysed from two perspectives: (a) freedom to build new places of worship; and (b) access to existing places of worship.

Freedom to Build New Places of Worship

Over the last decades, minority religious groups appear to have faced certain barriers to the building of new places of worship in Myanmar. These restrictions appear to apply especially to Muslims. While the Myanmar government is not directly involved in building places of worship for religious minorities, religious minorities must seek approval from the respective authorities in order to build new places of worship.⁴² Muslims find it most

difficult to obtain such approval and Christians also experience similar difficulties, as reported in annual international religious freedom reports. This restriction appears more obvious when newer townships – such as the satellite towns surrounding Yangon – are compared with townships such as Tharkayta, which has a significant number of mosques for its Muslim population.⁴³ As a result, some Muslim residents have increasingly relied upon madrasas, in which young Muslim children take basic Islamic education, for their weekly Friday prayers.⁴⁴

A similar situation is found in the case of churches. Although a number of Catholic, Baptist and Anglican churches which were built during colonial times (1826-1948) are in still operation in big cities such as Yangon and Mandalay, various smaller Christian denominations have not been officially sanctioned and the government watches their ecumenical activities closely.⁴⁵ As has already been noted, in Part I section 1 above, the Constitution only recognises Christianity as such, without defining what Christianity means. National laws similarly do not address this issue when regulating the building of places of worship. A lack of churches for smaller and often newer Christian denominations has meant followers rent rooms or apartments in private buildings and use them for their weekly prayers. For instance, in Nay Pyi Taw, a living room of a Christian pastor couple has been used since 2007 for prayer services of Christian government staff

41 Bruce Matthews, 'Religious Minorities in Myanmar— Hints of the Shadow,' (1995) 4 (3) *Contemporary South Asia* 291.

42 U.S. Department of State. 'Burma: International Religious Freedom Report 2005.' <<http://www.state.gov/j/drl/rls/irf/2005/51506.htm>> accessed 20 December 2014; U.S. Department of State. 'Burma: International Religious Freedom Report 2009.' < <http://www.state.gov/j/drl/rls/irf/2009/127266.htm>> accessed 20 December 2014.

43 For example, in the new townships of Dagon Myothit (South), Dagon Myothi (North), Shwe Pyi Thar and Dagon Seikkan surrounding Yangon, there have been no mosques built, despite those townships having significant numbers of Muslim residents. (Based on the author's own experience living in Yangon).

44 There are no official guidelines for obtaining permits and running madrasas, as they are not directly regulated by the government. Local Muslims fund and run madrasas for children in several neighbourhoods.

45 Bruce Matthews, 'Religious Minorities in Myanmar— Hints of the Shadow,' (1995) 4 (3) *Contemporary South Asia* 287-308.

and others in the capital.⁴⁶ Christians in big cities such as Yangon, Mandalay and Nay Pyi Taw have normally been able to use private space as places of worship without official approval or objection though some were reportedly closed down in 2005, 2007, and 2009 by the government.⁴⁷

A different situation exists in states where the population is predominantly Christian such as northern Kachin and Chin states. The difficulty or impossibility of building new churches also depends upon the economic situation of the place and the extent to which a particular ethno-religious group has been marginalized. For example, though both Kachin and Chin States are Christian-majority territories, on the whole the Kachins have better access to livelihoods than the Chins, at least in terms of natural resources. Chin State is perhaps the poorest state in the whole of Myanmar, as described in detail by two reports of the Chin Human Rights Organization (“CHRO”).⁴⁸ Moreover, Kachins have a stronger ethnic insurgent political organization — the Kachin Independence Organisation (KIO) and its military arm the Kachin Independence Army (KIA)—which was able to strike a cease-fire deal with the SLORC/SPDC regime in 1994 lasting until 2011. On the other hand, the Chins have not been politically mobilized to the same extent. KIO insurgents mainly governed the northern part of Kachin State and as a result, Christians have been

able to build new churches. These economic and political factors have meant that Christians in Chin State suffer more serious persecution than their fellow Christians in KIO-dominated territories. The CHRO has extensively documented various forms of human rights violations and religious persecution, among which destruction of existing churches and difficulty in building new ones are included.⁴⁹

Access to Places of Worship

In addition to having the freedom to build new places of worship, having access to existing places of worship is perhaps a second key indicator in determining the extent to which religious minorities can exercise freedom of religion in Myanmar. As noted above, Christian groups of smaller denominations in Yangon and Nay Pyi Taw have had to rent private residential places for their weekly prayer services.⁵⁰ In some instances, this has meant that Christians have had to travel significant distances in order to attend church services. Similarly, some Muslims report an absence of mosques impacting on their ability to worship five times per day.

The Final Report of the Commission of Inquiry on Sectarian Violence in Rakhine State,⁵¹ formed by President Thein Sein to investigate the origins of Rakhine violence in 2012, states that 32 mosques in total were destroyed during the riots. Due to the fragility of the situation in Rakhine since that time, it seems unlikely that of the majority the mosques which were destroyed have since been rebuilt.

46 See <<http://www.naypyitawshalomministry.com/>> accessed 1 April 2014.

47 U.S. Department of State. ‘Burma: International Religious Freedom Report 2005.’ <<http://www.state.gov/j/drl/rls/irf/2005/51506.htm>> accessed 20 December 2014; U.S. Department of State. ‘Burma: International Religious Freedom Report 2008.’ <<http://www.state.gov/j/drl/rls/irf/2008/108402.htm>> accessed 20 December 2014; U.S. Department of State. ‘Burma: International Religious Freedom Report 2009.’ <<http://www.state.gov/j/drl/rls/irf/2009/127266.htm>> accessed 20 December 2014.

48 Chin Human Rights Organization, ‘The Chin People of Burma: A Struggle for Survival (2006)’, ‘Critical Point: Food Scarcity and Hunger (2008)’, ‘On the Edge of Survival: Conditions and Consequences of the Food Crisis in Chin State, Burma (2009)’, and ‘Waiting on the Mergin (2009)’ <<http://www.chro.ca/index.php/publications/special-reports>> accessed 1 April 2014

49 For reports on various forms of religious persecution of Chins by the Myanmar authorities, see <<http://www.chro.ca/index.php/publications/special-reports>> accessed 1 April 2014

50 In Yangon, most of these rooms are located in the upper block of Seik Kan Thar Street in Kyauktada Township. On Sundays, Christians are seen to rent buses for their transportation, mostly from the suburbs to downtown. See <<http://www.naypyitawshalomministry.com/>> accessed 1 April 2014

51 Inquiry Commission on Sectarian Violence in Rakhine, *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State*, (Nay Pyi Taw: Inquiry Commission on Sectarian Violence in Rakhine, 2013)

Apart from a few mosques in Meiktila and Lashio, others are very likely still closed and inaccessible for Muslim prayers. As will be discussed in greater detail in Part II, Section D (dealing with significant threats of State persecution) below, although the state and local security officials arguably had the responsibility to protect places of worship during the sectarian riots, they failed not only to fulfil their duties but also to let Muslims prayers resume at mosques.⁵² The sectarian violence in 2012 appeared to impact on the Rakhine community as well, with some reports of Rohingya attacking Arakan Buddhist temples emerging during that time period.⁵³

c. *Religious Symbols*

Myanmar, renowned as the Golden Land for its enormous number of Buddhist pagodas and stupas, has generally been depicted as a pluralistic and tolerant society by successive Myanmar governments post-independence. However, the Christian religious symbol of the Holy Cross has been destroyed or removed from the hilltops or sites considered to be scared by the Chin Christian majority in Chin State. A report, titled “Threats to Our Existence: Persecution of Ethnic Chin Christians in Burma,” issued by Chin Human Rights Organization in 2012,⁵⁴ provides photos and detailed stories of 11 Christian crosses, including large ones over 20 feet, that have been destroyed in Chin State since the 1990s with the explicit participation or approval of the local authorities.

⁵² See Part Two, Section D (Significant Threats of State Persecution).

⁵³ Human Rights Watch, ‘The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State’, August 2012 available online at: <http://www.hrw.org/sites/default/files/reports/burma0812webwcover.pdf>, accessed 16 December 2014, at p.30.

⁵⁴ The report is available at <<http://www.chro.ca/index.php/publications/special-reports>> accessed 1 April 2014.

d. *Observance of holidays and days of rest*

The Muslims’ Eid-ul-Adha (Hari Raya Haji) and the Christians’ Christmas are officially recognised as public holidays in Myanmar. However, due to widespread communal conflicts in 2012 and threats by radical Buddhists, Muslim organizations decided not to celebrate Eid-ul-Adha in 2012, which fell on 27 October. However, Muslims in Myanmar were able to celebrate Eid-ul-Adha in 2013.

e. *Appointing clergy*

Based on the research conducted for this report, in general, there has been no regulation by the state or by Myanmar authorities of the appointment of clergy, at least insofar as it pertains to the major religions. In this regard, Christians and Muslims are free to appoint their own clergies. Myanmar Muslims do not have a single ulama council or body of scholars appointed by the government or Muslims themselves. Instead, there are five Muslim religious organisations that are recognized as representatives of the Myanmar Muslim community by the government: Jamiat Ulama-El-Islam, All-Myanmar Maulvi League, Islamic Religious Affairs Council, All-Myanmar Muslim Youth (Religious) Organization, and Myanmar Muslim National Affairs Organization. In the aftermath of sectarian conflicts in 2012, those five organisations have formed a combined organisation—All Myanmar Muslim Association—which has released statements regarding the impacts of conflicts upon Myanmar Muslims.

Similarly, the government recognizes the Myanmar Council of Churches (MCC) representing Protestants and the Catholic Bishops Conference of Myanmar representing Roman Catholics. There is however a second Christian group called the Evangelical Fellowship of Myanmar representing smaller groups of various denominations, which is

not recognized by the government.⁵⁵

However, the extent to which the Buddhist Sangha is free to appoint central committee members to the State Sangha Mahanayaka Committee (*Ma-Ha-Na*) is questionable, because this Committee is widely assumed to have close ties to the government. Moreover, in its quarterly meetings, the Minister for Religious Affairs is always present and explains Buddhist affairs.

f. Teaching and disseminating materials

There is no vibrant Muslim missionary movement in Myanmar to proselytise to non-Muslims in the country. Instead, there is a rather active Tabligh Jamaat (“TJ”) movement among Muslims themselves. So far, the Myanmar TJ movement has not faced serious restrictions from the authorities, probably due to the fact that it does not seek to proselytize among Buddhists or non-Muslims in Myanmar. Notably, 10 TJ itinerants on their way back from Rakhine State to Yangon were taken off the express bus they were on, attacked and killed by a vigilante Rakhine Buddhist mob on 3 June 2012 to avenge the alleged rape-and-murder of a Rakhine Buddhist woman, namely Ma Thida Htwe, by three Muslim men in Thabyaychaung in Ramree Township on 28 May.⁵⁶ Throughout 2012 and 2013 when successive sectarian conflicts occurred, the TJ movement had to reduce its missionary activities and confine itself to Yangon. Most recently, the TJ itineraries have resumed from early 2014 but they are still confined to cities and longer itineraries, which span 40 days, are yet to resume.

Christian missionary movements also appear to enjoy quite extensive freedoms in this regard and are quite active in ethnic minority areas. Certain

Christian missionary movements based in big cities such as Yangon and Mandalay have been able to widely distribute their missionary materials. However, there have been some reports of instances of violations by local authorities of the right to freely print and distribute missionary and religious materials.⁵⁷ There does not, however, appear to be a discernible pattern in the manner in which these activities are regulated by local authorities, tending to suggest that these instances are not part of any mainstream policy. Christians and Muslims have also been banned from using certain Pali or Pali-derived words in their religious literature because those words are reserved for Buddhist literature.⁵⁸

Conversely, while Buddhism is not generally perceived to be a missionary or evangelical religion and Buddhist monks are not usually involved in spreading the message of Buddhism among non-Buddhists, a significant trend has emerged since the 1990s in Myanmar through which Buddhist monks from the Hill Region Buddhist Mission have been actively involved in proselytizing amongst Christians. Quoting a Chin human rights activist, a report issued by Christian Solidarity Worldwide notes:

This [government-assisted proselytization of Christians] is particularly evident in Chin and Kachin States. Since 1990, the SPDC has encouraged the establishment of the Hill Regions Buddhist Mission, and brought in large numbers of Buddhist monks to Chin State. “Protected by the soldiers, these Buddhist monks have considerable powers over the Chin population. Christian villagers have been forced to listen to the Buddhist monk sermons against their will, they are routinely asked to contribute money and labour for the construction of

55 Bruce Matthews, ‘Religious Minorities in Myanmar—Hints of the Shadow,’ (1995) 4 (3) *Contemporary South Asia* 287-308.

56 For a chronological account of the two rounds of violence in Rakhine in 2012, see Final Report of Inquiry Commission on Sectarian Violence in Rakhine State, (Nay Pyi Taw: Inquiry Commission on Sectarian Violence in Rakhine, 2013)

57 As reported by the US Department of State’s International Religious Freedom Reports published in 2002, 2003 and 2004.

58 As reported by the US Department of State’s International Religious Freedom Reports International Religious Freedom Reports published in 2005 and 2006.

Buddhist monasteries and pagodas.”⁵⁹

g. *The right of parents to ensure the religious and moral education of their children*

In general, Myanmar authorities have never put a restriction upon private religious education of children arranged by their parents. Religious education of children has always been in the hands of parents at least since the 1960s not only for Buddhists but also for Muslims, Christians, etc. Buddhist prayers are usually said at the beginning of the school day at government primary, middle, and high schools from which non-Buddhist students are usually exempted. Specific Buddhist education is not incorporated into the school curriculum. However, there have been reports of non-Buddhist students being coerced to participate in Buddhist prayers in schools, as reported by the International Religious Freedom Reports issued in 2003, 2004, and 2006.⁶⁰

In other words, the state has never taken the responsibility of providing religious education for children. Buddhist children are seen to increasingly rely on summer Buddhist courses provided often with state patronage⁶¹ or privately by monasteries and Buddhist associations, whereas Christian, Hindu, and Muslim parents generally have to send their children to part-time classes which teach their respective religion.

59 Benedict Rogers, ‘Carrying the Cross: The Military Regime’s Campaign of Restriction, Discrimination and Persecution against Christians in Burma.’ *Christian Solidarity Worldwide*, (2007), <www.cswusa.org/filerequest/1066.pdf> accessed 12 July 2014, at p.22.

60 U.S. Department of State. ‘Burma: International Religious Freedom Report 2003.’ <<http://www.state.gov/j/drl/rls/irf/2003/23823.htm>> accessed 20 December 2014; U.S. Department of State. ‘Burma: International Religious Freedom Report 2004.’ <<http://www.state.gov/j/drl/rls/irf/2004/35393.htm>> accessed 20 December 2014; U.S. Department of State. ‘Burma: International Religious Freedom Report 2006.’ <<http://www.state.gov/j/drl/rls/irf/2006/71335.htm>> accessed 20 December 2014.

61 http://www.mora.gov.mm/mora_sasana2.aspx accessed 20 December 2014.

h. *Registration*

Section 4(b) of the Law relating to Forming of Organizations enacted by SLORC on 30 September 1988 states that no permissions are required for the formation of purely religious organisations. In this regard, most Muslim and Christian organisations have been able to freely operate in the country as long as they are viewed as a-political by the state. The fact that there is no current registration requirement for religious organisations to some extent reflects the historical relationship between the state and religions in Myanmar, in the sense that the Myanmar state has not traditionally sought to involve itself in the affairs of religious minorities. There are Christian and Muslim organisations recognised by the state, but beyond them is an unknown number of loose associations and networks operating in the current political landscape.

Conversely, however, more restrictive rules apply to Buddhist organisations. After the First All-Gana Sangha [Congregation of All Orders] Meeting for Purification, Perpetuation and Propagation of the Sāsana was held in May 1980, the government-appointed *Ma-Ha-Na* was established. The *Ma-Ha-Na* only recognises nine Buddhist sects, including the four largest ones: Thudhammā, Shwegyin, Dvāra, Mūla Dvāra, Anaut Chaun Dvāra, Veluwun, Hngetwin, Gato, and Mahāyin.⁶² Moreover, the SLORC issued a special law dated 31 October 1990, namely the Law relating to the Sangha Organization, which is still active, to criminalise any new Sangha sects.

The *Ma-Ha-Na* also oversees the registration of Buddhist monks and nuns in Myanmar and those who register are given religious ID cards. The Committee is supposed to be concerned with all affairs relating to Buddhist monks and nuns in Myanmar regarding monastic rules. Starting as a 33-member executive committee, the Committee has increased its executive committee membership to 47 senior monks.

62 A good source on the origins of the State Sangha Ma Nayaka Committee in socialist Burma is: Tin Maung Maung Than, ‘The Sangha and Sasana in Socialist Burma’ (1988) 3(1) *Sojourn: Journal of Social Issues in Southeast Asia* 26-61.

Since its formation, the *Ma-Ha-Na* has issued various orders and directives which effectively allow it to regulate the manner in which Buddhism is practiced and to outlaw Buddhist sects or groups that the *Ma-Ha-Na* itself deems is deviating from what it determines are orthodox Buddhist teachings and ideologies. Since 1980, *Ma-Ha-Na* has determined a number of new Buddhist teachings, ideologies, and sects as espousing evil or deviant doctrines and ordered their leaders and followers, both monks and lay Buddhists, to sign statements denouncing their association with these teachings, ideologies and sects, as well as to destroy or give up materials pertaining to those teaching (including books, audio tapes, etc).

Based on the research conducted for this report, the following doctrines have been determined deviant or evil by *Ma-Ha-Na*: Kyaukpon Tawya Vāda,⁶³ Kyaungpan Tawya Vāda,⁶⁴ Sule U Myint Thein's Theravāda,⁶⁵ U Myat Thein Tun's Vāda,⁶⁶ Yetashay U Malavara's Vāda,⁶⁷ Moenyo (North Okkalapa) Vāda,⁶⁸ Dhammaniti Vāda,⁶⁹ U Htin's Vāda,⁷⁰ U Punyasara's Vāda,⁷¹ Shwe Wah Myaing Kyang Vāda,⁷²

Sankalay Vāda,⁷³ Myikyina Vicittarasara's Vāda,⁷⁴ and Moepyar Vāda.⁷⁵ This would appear to be far more extensive that is reported by the international human rights non-governmental organizations.⁷⁶

Most of the above-mentioned orders do not fully explain how a certain vāda or doctrine is deviant, hence making it somewhat challenging to assess the grounds upon which the so-called deviant doctrine is considered harmful to the established orthodoxy, or how prohibiting their usage is justified upon grounds of 'public order, morality or health' as provided for in Section 34 of the Constitution.⁷⁷

i. Communicate with individuals and communities on religious matters at the national and international level

Based on the research conducted for this report, it appears that Myanmar's intermittently closed social and political environment over the 1960s, 1970s and 1980s, the military coup which took power in 1988 and the ensuing political and social repression until 2011, has tended to segregate religious communities

63 The *Ma-Ha-Na* order No. 46 dated 29 November 1982, lists 147 monks and lay Buddhists as preachers and followers of *Kyaukpon Vada*.

64 A *Ma-Ha-Na* order dated 9 February 1982 declared Kyaungpan Tawya Vāda evil or deviant.

65 The *Ma-Ha-Na* order No. 50 dated 22 February 1983 declared Sule U Myint Thein's Theravāda evil or deviant.

66 The *Ma-Ha-Na* order No. 52 dated 25 May 1983 declared U Myat Thein Tun's Vāda evil or deviant.

67 The *Ma-Ha-Na* order No. 53 dated 27 May 1983 declared Yetashay U Malavara's Vāda evil or deviant.

68 The *Ma-Ha-Na* order No. 54 dated 28 July 1983 declared Moenyo (North Okkalapa) Vāda evil or deviant.

69 The *Ma-Ha-Na* order No. 55 dated 28 July 1983 declared Dhammaniti Vāda evil or deviant.

70 The *Ma-Ha-Na* order No. 70 dated 7 January 1986 declared U Htin's Vāda evil or deviant and lists the names of its three lay leaders and 349 lay followers.

71 The *Ma-Ha-Na* order No. 76 dated 27 February 1988 declared U Punyasara's Vāda evil or deviant.

72 ¹⁹The *Ma-Ha-Na* order No. 78 dated 12 July 1989 declared Shwe Wah Myaing Kyang Vāda evil or deviant.

73 The *Ma-Ha-Na* order No. 86 dated 25 March 1998 declared Sankalay Vāda evil or deviant.

74 The *Ma-Ha-Na* order 16/2008 (n.d.) declared Myikyina Vicittarasara's Vāda evil or deviant.

75 The *Ma-Ha-Na* order 17/2011 (n.d.) declared Moe Pyar Vāda evil or deviant.

76 Among all of these, the international human rights network only paid attention to the arrest and prison sentence given to the leader of Moepyar Vāda Buddhist monk U Nyana who was jailed for twenty years in 2010, one year earlier than the decision in 2011 by *Ma-Ha-Na* that Moe Pyar Doctrine is deviant. For example, see Asian Human Rights Commission, 'Burma: Religious Elder Sentenced to 20 Years in Jail for Peaceful Practice of Faith.' (March 21, 2012) <<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-046-2012>> accessed 10 December 2014

77 In several of these orders as referred to above, they only state the names of monks and lay Buddhists who ascribe to a certain doctrine and order them to stop spreading the message of the doctrine and give up all the audio and video materials used in the proselytization. Most notably, except for Moe Pyar Doctrine's leader U Nyana who was jailed, propagandists and believers of all previous doctrines only had to disown their respective views and give up their missionary materials.

within Myanmar from their counterparts elsewhere. Hence, despite the fact that religious groups have been supposedly free to communicate with co-religionists both within and outside of Myanmar, this has mostly remained informal during the period. Hence religious groups have yet to build strong regional and international partnerships.

j. Establish and maintain charitable and humanitarian institutions/solicit and receive funding

It was very difficult, if not impossible, to establish and maintain Muslim charitable and humanitarian institutions in the past, apart from five government-recognized Muslim organizations which are not humanitarian in nature and focus. The same could be said of the Buddhist, Hindu and Christian counterparts, though it was not as restrictive for them as it was for Muslim organizations. The situation has drastically changed with the political opening in 2011, with newer Muslim humanitarian networks such as Peace Cultivation Network (PCN), which freely raise funds. Registration of such organisations has not been formally sanctioned yet. Many Buddhist and Christian networks have also been informally established for the same cause. Little is known regarding funding of those networks and institutions and it is indeed safe to say that they raise funds within their own social network in Myanmar.⁷⁸

k. Conscientious objection

Based on the literature reviews and searches conducted for this report, no cases of conscientious objection have ever been recorded in Myanmar. It has never emerged as a topic, though Buddhism has a strict teaching against killings and violence. Moreover, the Myanmar armed forces have not actively recruited members of religious minorities.

Even in the case of recruitment of those of religious minority backgrounds, cases of conscientious objection have never been reported in the case of Myanmar.

3. Freedom from intolerance and discrimination

Section 348 of the present Constitution states:

The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

Likewise, the following Article 349 also stipulates:

Citizens shall enjoy equal opportunity in carrying out the following functions:

- (a) public employment;
- (b) occupation.

However, the reality is quite different. It is common knowledge that a Muslim may not become a high-ranking official, such as a cabinet minister although there were Muslim cabinet ministers such as U Razak, U Raschid, and U Khin Maung Latt before independence and during the 1950s. Christians were also present on the cabinet and high command of the army. Nowadays both Muslims and Christians report discrimination in public office and the armed forces in terms of entry and prospects for promotion. Starting from the 1960s, Muslims have increasingly found it almost impossible to join the Myanmar armed forces, whereas an increasingly fewer number of Christians of ethnic minority groups are recruited. The problem with this widely accepted fact of discrimination of religious minorities in the Myanmar armed forces is there is no written evidence of this discrimination issued by the armed forces. However, religious minorities, especially Muslims and Christians, believe it is the case. Therefore, International Religious Freedom Report of 2007 notes:

⁷⁸ Based on author's fieldwork in Myanmar, 2013.

The Government discouraged Muslims from enlisting in the military, and Christian or Muslim military officers who aspired for promotion beyond the rank of major were encouraged by their superiors to convert to Buddhism. Some Muslims who wished to join the military reportedly had to list “Buddhist” as their religion on their application, though they were not required to convert.

4. *Right of vulnerable groups to freedom of religion and belief*

There is no official or social policy affecting the right to freedom of religion and belief of women, children, migrant workers, persons deprived of their liberty, and refugees. However, a particular note should be made here about the right of minorities to freedom of religion and belief. It is generally difficult to argue that minorities are targeted by the central or local authorities with the sole purpose of restricting their religious freedom. Even in the most extreme case of the Rohingya, the loss of the right to freedom of religion of the Rohingya occurs together with the loss of their other rights. For example, when a Rohingya man is not allowed to freely move from his village where there is no mosque to a village where there is a mosque, his loss of the right to freedom of movement has resulted in his loss of the right to freedom of worship. Likewise, in the case of the Chin, an argument that the state or non-state actors in Myanmar violate the Chin’s right to freedom of religion and belief needs to be substantiated with considerations of other contextual factors.

C. **Redress Mechanisms and Interpretation of Policies**

Most cases relating to freedom of thought, conscience and religion in Myanmar have been treated as criminal cases drawing from the Penal Code—mainly its articles 295 (injuring or defiling place of worship, with intent to insult the religion of any class) or 295 (A) (Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs). Upholding rule of law through a functioning courts system, as opposed to the arbitrary decisions which have notoriously dominated Myanmar for decades, is as yet not a reality in Myanmar, mainly because of three reasons—antiquity of laws made in colonial times; corruption within the judiciary; and interference by the executive branch in the judiciary.⁷⁹

Even the case of the Moe Pyar leader U Nyana, which was framed as a case of violation of his and his followers’ freedom of religion by the international community, was not treated as such. In 2010, U Nyana was given two three-year prison sentences (with hard labour) under Sections 12 (forming a new sect other than nine officially recognized ones) and 13 (organizing, agitating, delivering speeches or distributing writings to disintegrate the Sangha organizations) of the Law Relating to the Sangha Organization (1990). He was also sentenced to two two-year prison sentences (with hard labour) under Sections 295 (injuring or defiling place of worship, with intent to insult the religion of any class) and 295 (A) (Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs) of the Penal Code. Additionally, he was given a five-year prison sentence (with hard labour) under Section 6 (illegal

⁷⁹ The prescription of ‘rule of law’ has been most frequently suggested by Daw Aung San Suu Kyi for most, if not all, problems in Myanmar now. For good discussions of the norm of ‘rule of law’ and how it has been understood and practiced in Myanmar, see Nick Cheesman, ‘Thin Rule of Law or Un-Rule of Law in Myanmar?’ (2009) 82(4) *Pacific Affairs* 597-613; Nick Cheesman, ‘What does the rule of law have to do with democratization (in Myanmar)?’ (2014) 22(2) *South East Asia Research* 213-232.

formation of organizations apart from officially recognized ones) of the Law relating to Forming of Organizations (1988).⁸⁰ Interestingly, the Myanmar Law Reports of 2011 fail to mention another five-year prison sentence (with hard labour) also given to U Nyana in 2010 under section 10 of the Law Safeguarding Decisions Made in Cases of Disputes Over Religious Discipline (1983).

U Nyana was penalised under the Law Relating to the Sangha Organization, the Penal Code, and the Law relating to the Forming of Organizations. The latter does not exclusively deal with Sangha organizations or associations like the Law relating to the Sangha Organization does. Using the two laws (Law Relating to the Sangha Organization and Law relating to Forming of Organizations) for a single case of forming a sect or organization suggests that Moe Pyar leader U Nyana was given a sentence exceeding the possible maximum level of penalty. As stated above, the State Sangha Mahanayaka Committee only issued its order declaring that Moe Pyar Doctrine is evil or deviant in 2011, a year after he was sentenced. However, the letter by the Permanent Mission of the Republic of the Union of Myanmar to the United Nations states that the State Sangha Mahanayaka Committee initially notified the Ministry of Religious Affairs about the evil or deviant Moe Pyar Doctrine, after which the Ministry started taking action against U Nyana.⁸¹

The recently established National Human Rights Commission (“NHRC”) has yet to deal with cases of violations of the right to freedom of thought, conscience or religion and has to date mostly dealt with cases of land confiscation. Although the Myanmar NHRC visited Rakhine and released two statements in July 2012 and May 2013 on the

Rakhine violence,⁸² it interpreted the violence as sectarian and did not launch any probes into the alleged violations of human rights, including the right to freedom of religion.⁸³ In the aftermath of sectarian conflicts in 2012 and 2013, there was a parliamentary debate on whether to draft a special law to deal with cases of hate speech, which lead to interreligious conflicts. This would have been covered under Section 364 of the Constitution, which prohibits the abuse of religion for political purposes.⁸⁴ However, the Myanmar government claimed that the Penal Code is still applicable to such cases and rejected the call.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

Since 2011, the most significant change in terms of religious freedom in Myanmar has been the Religious Conversion Bill published in the state newspapers in Myanmar on 27 May 2014, which was drafted by a President-appointed committee (Religious Conversion Bill).⁸⁵ The committee also called the public to submit suggestions by 20 June. The revised version of the draft bill, together with the three other bills, was sent to the Myanmar Hluttaw in late November 2014 for further debates

82 ‘Statement No. (4/2012) of Myanmar National Human Rights Commission concerning incidents in Rakhine State in June 2012’ *The New Light of Myanmar*, 11 July 2012, 10; ‘Myanmar National Human Rights Commission issues Statement No. (3/2013) concerning violence that had occurred in Rakhine State’ *The New Light of Myanmar* 8 May 2013, 16.

83 Melissa Crouch, ‘Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia’ (2013) 5 (2) *Hague Journal on the Rule of Law* 146–177.

84 Section 364 of the Constitution states as follows: “The abuse of religion for political purposes is forbidden. Moreover, any act, which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity.”

85 *The Myanma Ahlin*, 27 March 2014, pp. 10–11.

80 Shin Nyana (aka) Shin Moe Pyar (Monk) v Republic of the Union of Myanmar, Myanmar Law Reports (2011) Criminal Case 126–132.

81 The letter, dated 9 July 2013, is available at <[https://spdb.ohchr.org/hrdb/24th/Myanmar_09.07.13_\(3.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/Myanmar_09.07.13_(3.2013).pdf)> accessed 10 November 2014

before their passage.⁸⁶ The three other bills, when they are passed, will effectively make polygamy and polyandry illegal, put in place measures of population control through restrictions on childbirth, and restrict marriage between Buddhist women and non-Buddhist men. Among the four bills, the Religious Conversion Bill is most pertinent here and will be discussed in detail below.

An unofficial English translation of the Religious Conversion Bill⁸⁷ notes that the bill defines “religion” as “a belief system subscribed to by a person” and “religious conversion” as “a person converting to a new religion after having abandoned his/her previous religion, or in the case of the person not having a religion, converting to a new religion of his or her own free will.”⁸⁸ Although religion is broadly defined in the draft bill, the present Constitution only enumerates Buddhism, Islam, Hinduism, Christianity and Animism as state-recognized religions. Therefore, this broad definition of religion may be understood to refer to those state-recognized religions. Moreover, the draft bill only allows conversion from one religion or belief system (Buddhism, Islam, Hinduism, Christianity or Animism) to another, or from not having a religion or irreligion to one religion. It does not allow conversion from one religion to atheism or non-religion.

Moreover, a person who is willing to convert will have to submit an application to the Registration Board in his/her township of residence.⁸⁹ The board is composed of the officer with the Township

Religious Affairs Department (which is under the Ministry of Religious Affairs) as Chair, an officer appointed by the Township Education Officer as Secretary, and four members (head of the Township Immigration and National Registration Department; Deputy Administrative Officer with the Township General Administration Department under the Ministry of Home Affairs; two local elders selected by the Administrative Officer with the Township General Administration Department, and Head of the Township Women’s Affairs Federation (a governmental or semi-governmental organization)).⁹⁰

The obvious problem with the board’s composition is that it is mostly comprised of government officials, with two civilians selected by a government official. A more serious problem would be the fact that most, if not all, of those officials are most likely to be Buddhists. It is at least clear that the Chair, who is an official with the Religious Affairs Department, would undoubtedly be a Buddhist. An interview between at least four members of the board and the applicant is conducted in order to ensure that conversion is self-willed.⁹¹ Then the applicant is given a period ranging from 90 days to 180 days to study the essence of the religion he/she wishes to convert to, its marriage laws, divorce laws and rules of property division upon divorce, and rules/customs of inheritance and child custodianship after divorce. Finally, a second meeting between the board and the applicant is conducted and if the applicant still wishes to convert, a certificate of conversion shall be issued. If the applicant does not wish to convert after the learning period, the board will cancel the application.

Another serious issue with the wording of the draft bill is found in the three prohibitions as follows:

14. No one is allowed to apply for conversion to a new religion with the intent of insulting, degrading, destroying or misusing any religion.

86 The four draft bills in Burmese were published in the *Myanma Ahlin*, the state newspaper, from 1 to 4 December, 2014. The bills are due to be the subject of parliamentary debate in Myanmar in January 2015. See <http://www.irrawaddy.org/burma/protection-laws-submitted-burmas-parliament.html> accessed 5 January, 2015.

87 The unofficial English translation of the previous version of the Religious Conversion Bill, which is almost identical as the one published in the state newspapers on 1 December 2014, is available at <www.burmalibrary.org/.../2014-Draft_Religious_Conversion_Law-en.pdf> accessed 26 June 2014

88 Ibid.

89 Ibid.

90 Ibid.

91 Ibid.

15. No one shall compel a person to change his/her religion through bonded debt, inducement, intimidation, undue influence or pressure.
16. No one shall hinder, prevent or interfere with a person who wants to change his/her religion.⁹²

Not only these are prohibitions themselves controversial but, due to the absence of the rule of law in Myanmar, the interpretation and implementation of the law, when passed, is likely to be controversial. Most importantly, in a country such as Myanmar where widespread opinion is that Muslims “Islamize” through interreligious marriage and conversion of their spouses and children and Christians “proselytize” through financial means, terms such as “inducement,” “intimidation,” and “undue influence or pressure” under Article 15 may be open to abuse and utilized in local contexts to politicize the behaviour of certain religious groups or to condemn the practices of persons belonging to certain religious minorities. The bill in its current form has faced criticisms from people and groups both inside and outside Myanmar. Women’s rights networks and other human rights advocates within the country have been persistently critical of the bill since the start of the *Ma-Ba-Tha* campaign for race protection bills in 2013. These networks and groups argue that the race protection bill, which was then widely understood to be only concerned with marriage between Buddhist women and non-Buddhist men, would violate the freedom of women to choose their life partners.⁹³

However, after learning that there are four bills in total (covering religious conversion, interfaith marriage, childbirths, and polygamy) in the whole package, those women’s networks and other human rights groups in Myanmar have changed their

⁹² Ibid.

⁹³ Naw Noreen. ‘Women of Burma Speak Out Against Interfaith Marriage Act.’ *Democratic Voice of Burma* (6 May 2014) <<https://www.dvb.no/news/women-of-burma-speak-out-against-interfaith-marriage-act-burma-myanmar/40401>> accessed 20 December 2014

campaign strategy by arguing that there is a political motive behind the movement for race protection bills by *Ma-Ba-Tha*⁹⁴ and their endorsement by President Thein Sein’s administration. They argue that it is more important to protect all women from violence and sexual abuse than to focus on matters relating to women’s marriage and religious conversion.⁹⁵

Although the content of the bill restricting interfaith marriage is apparently still in draft form, a Burmese-language draft prepared by *Ma-Ba-Tha*, which has been circulating since 2013, would appear to indicate that the bill only makes interfaith marriage between Buddhist women and non-Buddhist men illegal. The draft stipulates that non-Buddhist men must convert to Buddhism to marry Buddhist women and those who violate the law shall be subject to a prison sentence of 10 years.⁹⁶ This provision is very likely to violate the right to freedom to adopt, change or renounce a religion or belief, and freedom from coercion.

In the face of criticisms by women’s rights activists of undue interference by the Buddhist Sangha in marriage, the *Ma-Ba-Tha* has responded by asserting that the bill to restrict interfaith marriage is being called for because Muslim men tend to marry Buddhist women who must convert to Islam upon coercion. In this way, Buddhist women’s right to freedom of religion and freedom from coercion is violated, according to *Ma-Ba-Tha*. Moreover, the customary laws of ethno-religious groups such as Christians, Hindus and Muslims, which are

⁹⁴ Lawi Weng. ‘Rights Groups Say Interfaith Marriage Bill is An Unnecessary Distraction.’ *The Irrawaddy* (6 May 2014) <<http://www.irrawaddy.org/burma/rights-groups-say-interfaith-marriage-bill-unnecessary-distraction.html>> accessed 19 December 2014

⁹⁵ Thin Ei Lwin. ‘Burma Activists Demand Law to Ban Violence against Women.’ *The Irrawaddy* (1 October 2014) <<http://www.irrawaddy.org/burma/burma-activists-demand-law-ban-violence-women.html>> accessed 19 December 2014

⁹⁶ Tim Hume. ‘Fears of New Unrest as Myanmar Ponders Monk-backed Interfaith Marriage Ban.’ *CNN* (4 June 2014) <<http://edition.cnn.com/2014/05/29/world/asia/myanmar-interfaith-marriage-laws/>> accessed 19 December 2014

recognized by the courts in Myanmar, also stipulate that interfaith marriage should be prevented in certain instances. Therefore, Buddhist customary law, which has no provisions against interfaith marriage, appears to be weak in this regard. However, the proposed restrictions on interfaith marriage will not only apply to Buddhists but shall have jurisdiction over all citizens of Myanmar regardless of their religious backgrounds.

On the other hand, two other bills (enforcing monogamy and limiting childbirths) are also expected to target religious minorities, especially Muslims. The bills, when enacted, will legalise a popular view that Muslims (especially Rohingya) tend to be polygamous and to overbreed, and that Muslims (especially Rohingya) seek to “Islamize” Myanmar through polygamy, interfaith marriage and the conversion of non-Muslim spouses, as well as consequently having a large number of children. Indeed, this view only appears to have become prominent in the aftermath of Rakhine riots of 2012 and are seen to be most widely propagated by ultra-conservative nationalist Buddhist monks such as Ashin Wirathu and 969 leaders. For example, Ashin Wimalar Biwuntha, a 969 leader, has said:

“Muslim men try to win the love of poor Buddhist women for their reproductive tactics. They produce a lot of children, they are snowballing. We have a duty to defend ourselves if we don’t want to be overwhelmed.”⁹⁷

Likewise, Ashin Wirathu has been quoted as saying: “Muslims are like the African carp. They breed quickly,” and “Because the Burmese people and the Buddhists are devoured every day, the national religion needs to be protected.”⁹⁸ In short, these bills

97 The Diplomat. ‘The Mad Monks of Myanmar.’ (9 July 2013). <<http://thediplomat.com/2013/07/the-mad-monks-of-myanmar>> accessed 30 November, 2013

98 Tin Aung Kyaw. ‘Buddhist Monk Wirathu Leads Violent National Campaign against Myanmar’s Muslims.’ *Global Post* (21 June 2013) <<http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth-burma/buddhist-monk-wirathu-969-muslims-myanmar>> accessed 5 November 2013

are highly likely to be used by state officials to target the Rohingya since they are widely believed to be polygamous and have more children than Rakhine Buddhist families. Additionally, they may be utilized to target other Muslims living in Myanmar, which is cause for further concern.

B. Significant Changes in State Enforcement

Changes in state enforcement that have significant impacts upon religious freedom in Myanmar are yet to come, but are highly anticipated following on from the release to the public of the four bills referred to above. The present administration’s inclination to support the increasingly intense Buddhist nationalist sentiment in Myanmar appeared obvious when President Thein Sein asked the parliament in February 2014 to draft these four bills, following pressures from *Ma-Ba-Tha*, which managed to garner 1.3 million signatures calling for the bills.⁹⁹ When Shwe Mann, the Speaker of the Union parliament, responded that it is the duty of respective ministries to draft such special laws,¹⁰⁰ President Thein Sein proceeded to form a special commission to draft the bills on religious conversion and population growth, and asked the Supreme Court to draft the other bills for interfaith marriage and monogamy. These moves by the administration foreshadow a highly contentious legal environment in the arena of religion and religious freedom in the near future.

99 Lawi Weng. ‘Thein Sein Asks Parliament to Discuss Interfaith Marriage.’ *The Irrawaddy* (27 February 2014). <<http://www.irrawaddy.org/burma/thein-sein-asks-parliament-discuss-interfaith-marriage.html>> accessed 1 April 2014

100 Radio Free Asia. ‘Myanmar Leader Backs Buddhist Monks’ Calls for Laws to ‘Protect’ Religion, Race.’ (27 February 2014). <<http://www.rfa.org/english/news/myanmar/laws-02272014174350.html>> accessed 1 April 2014

C. Changes in Religious Claims (by Non-State Actors)

Against the background of political and social changes in Myanmar since 2011 and sectarian conflicts in Rakhine in 2012 and other parts of Myanmar in 2013, religious movements which the state tightly controlled in previous decades have become prominent and more vocal. Among them, the most prominent one is the Buddhist nationalist movement led by *Ma-Ba-Tha*.

Both *Ma-Ba-Tha* and 969, which is a constituent association of the former, have widely popularised the claim that Buddhism is under threat from Islam and “Islamization”. It is notable here that the international media coverage of and commentary upon anti-Muslim violence in Myanmar in recent years has more often highlighted the role of the so-called 969 movement in inciting anti-Muslim sentiments. Although it is often termed the “969 movement,” it does not have an institutional structure *per se*. It was officially launched in October 2012 by a hitherto unknown young monks’ association based in Mawlamyine (the capital of Mon State) called *Tha-tha-na Palaka Gana-wasaka Sangha Apwè*. Its leadership is composed of five monks – Myanan Sayadaw Ashin Thaddhamma, Hitadaya Sayadaw Ashin Wimalar Biwuntha, Ashin Wizza Nanda, Ashin Ganda Thara, Ashin Sada Ma and Ashin Pandita.

Apart from the monks who formed the association, the movement does not have a clearly visible organisational structure. The movement militantly urges Buddhists to shun Muslim businesses because Muslims’ prosperity will result in the “Islamization” of Myanmar. The 969 movement is more conspicuous than *Ma-Ba-Tha* because its colourful emblem is seen very widely at Buddhist shops, homes, cars, etc. in Myanmar. As noted above, the 969 movement’s campaign is based upon assumptions that Muslims tend to be polygamous, intermarry with Buddhist women, convert them to Islam and have more children than Buddhist families. Therefore, Muslims pose an imminent

demographic threat to Buddhism and Buddhists in Myanmar.¹⁰¹

However, in terms of institutionalization, *Ma-Ba-Tha* is the leading Buddhist nationalist organization in Myanmar with various chapters and networks across the country. The 969 movement’s leaders also sit on the executive committee of *Ma-Ba-Tha*. Therefore, an exclusive focus upon the 969 movement, with its numerologically mythical and rhetorically intriguing extremist speeches, tends to lose sight of the wider ramifications of the Buddhist nationalist movement led by *Ma-Ba-Tha*. Moreover, it was not the 969 movement but *Ma-Ba-Tha* that launched the signature campaign calling for the race protection bills, though the 969 movement’s leaders (as part of *Ma-Ba-Tha*) promoted it through their Buddhist sermons across Myanmar. Therefore, it would seem more accurate to suggest that *Ma-Ba-Tha*, not the 969 movement, is the genuine leader of the rising Buddhist nationalist movement in Myanmar.

D. Significant Events of State Persecution of Religious Groups

State persecution of religious minorities through repression of groups living on the margins, mainly Rohingya Muslims and Chin Christians, has been

101 Jonah Fisher. ‘Anti-Muslim Monk Stokes Burmese Religious Tensions.’ *BBC* (29 August 2013). <<http://www.bbc.co.uk/news/world-asia-23846632>> accessed 18 August 2014; Jason Szep. ‘Special Report: Buddhist Monks Incite Muslim Killings in Myanmar.’ *Reuters* (8 April 2013). <<http://www.reuters.com/article/2013/04/08/us-myanmar-violence-specialreport-idUSBRE9370AP20130408>> accessed 5 November 2013; Thomas Fuller, ‘Extremism Rises Among Myanmar’s Buddhists.’ *New York Times* (20 June 2013) <<http://www.nytimes.com/2013/06/21/world/asia/extremism-rises-among-myanmar-buddhists-wary-of-muslim-minority.html>> accessed 3 November 2013; Tin Aung Kyaw, ‘Buddhist Monk Wirathu Leads Violent National Campaign against Myanmar’s Muslims,’ *Global Post* (21 June 2013). <<http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth-burma/buddhist-monk-wirathu-969-muslims-myanmar>> accessed 5 November 2013.

extensively documented.¹⁰² It seems fair to say that successive Myanmar governments since the 1960s have in general not been actively involved in direct persecution of religious groups, although isolated incidences of religious persecution are discussed below. In instances when the government was allegedly involved in persecution of religious groups in major cities, most, if not all, of those cases were the result of a breakdown in the proper enforcement of law and order in the aftermaths of riots and disturbances, as opposed to a state policy of persecution. However, various anti-Muslim riots occurred in the 1990s and 2000s in different cities and towns across Myanmar with alleged complicity on the part of the government.

Indeed, rather serious anti-Muslim riots also broke out in Taunggyi and Pyay in 1988 but detailed reports on those two riots do not exist because they happened amidst popular protests and a governmental crack down. The most comprehensive, documented report by Images Asia¹⁰³ on SLORC's persecution of Muslims in 1997 lists a total of 42 mosques partly or fully destroyed in various cities and towns in Mandalay Division (now Mandalay Region), Yangon Division (now Yangon Region), Sagaing Division (now Sagaing Region), and Kayin State. The report also contains interviews with Muslims from Kayin State who fled to Thailand to show how SLORC's offensive against Kayin National Union (KNU) oppressed and terrorized Muslims and Muslim properties and religious buildings

in Kayin State. Another report issued in 2002 by Human Rights Watch also details how anti-Muslim riots affected Muslim lives, mosques, and properties in Sittwe (February 2001), Taungoo (May 2001), Pyay (October 2001), and Pegu (October 2001).¹⁰⁴

Apart from these anti-Muslim riots in non-Rakhine areas, the most extensively researched and documented issue is the persecution of Rohingya Muslims who are mostly concentrated in three towns in NRS—Buthidaung, Maungdaw and Rathedaung. Largely regarded in Myanmar as illegal immigrants or treated as such, Rohingya Muslims, whose approximate number is close to 1 million people in Rakhine, have been subjected to various forms of violations of human rights, including religious freedom, especially since the 1990s. The human rights violations that the Rohingya have suffered at the hands of the Myanmar authorities include but are not limited to: the failure to grant the right to nationality or citizenship, restrictions on freedom of movement, obstacles to family development, confiscations of land, forced labour, arbitrary taxation, and monopolization of the local formal and informal economy. Since human rights are interrelated, indivisible and interdependent,¹⁰⁵ all of those extensive forms of violations of Rohingya's human rights may be assumed to have affected their right to religious freedom.

A significant upward trend has been witnessed in Myanmar in terms of violent religious persecution of Muslim minorities since 2012. The presidential declaration through an ordinance of a state of emergency in Rakhine on 10 June 2012 and in Meiktila on 22 March 2013 have been interpreted as potentially damaging to the rights of peoples,

102 For example, Chin Human Rights Organization, 'Religious Persecution: A Campaign of Ethnocide Against Chin Christians in Burma (2004)' <<http://www.chro.ca/index.php/publications/special-reports>> accessed 1 April 2014; Chin Human Rights Organization, 'Threats to Our Existence: Persecution of Ethnic Chin Christians in Burma (2012)' <<http://www.chro.ca/index.php/publications/special-reports>> accessed 1 April 2014; Irish Centre for Human Rights, 'Crimes against Humanity in Western Burma: The Situation of the Rohingyas' (2010) <<http://www.nuigalway.ie/irish-centre-human-rights/publicpolicyengagement/projectsattheirishcentreforhumanrights/completedprojects/burmaproject-situationoftherohingyasinnorthernarakanstate/>> accessed 15 December 2014.

103 Images Asia, *Report on the situation for Muslims in Burma*, (Bangkok: Images Asia, 1997)

104 Human Rights Watch, 'Crackdown on Burmese Muslims.' (18 July 2002). <<http://www.hrw.org/reports/2002/07/18/crackdown-burmese-muslims>> accessed 15 July 2010

105 See Vienna Declaration of 25 June 1993. Full text of the Vienna Declaration and Programme of Action is available at. <<http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> accessed 15 July 2014

especially Muslims.¹⁰⁶ The upward pattern has been stagnant since April 2014. However, it is expected to recur as the general election in 2015 draws near. It is difficult, if not impossible, to find the individuals behind the sectarian conflicts over the last couple of years. It is safe to argue that the Myanmar authorities have failed to protect people, regardless of religious backgrounds, amidst serious sectarian disturbances. For example, security officials reportedly stood by in Meiktila¹⁰⁷ or were even directly involved in violence in Rakhine.¹⁰⁸

E. Significant Events of Non-State Persecution of Religious Groups

Distinguishing between “state” and “non-state” persecution of religious groups is not easy, especially amidst sectarian conflicts that pit the majority religious community (i.e. Buddhists) against minority religious communities such as Muslims. Most, if not all, positions in the central and local government in Myanmar are dominated by Buddhists; therefore, state complicity is oftentimes assumed, but is difficult to prove. As a result, in certain instances the characterisation of sectarian violence as state persecution must to some extent acknowledge the fact that in several instances the

106 Melissa Crouch, ‘The Constitution, Emergency Powers and the Rule of Law in Myanmar,’ in *Myanmar in Transition: Polity, People, and Processes* (Singapore: Konrad-Adenauer-Stiftung, 2013), 45-55.

107 Mizzima. ‘Mobs stalk the streets of Meiktila.’ (22 March 2013). <<http://archive-2.mizzima.com/news/inside-burma/9104-mobs-stalk-the-streets-of-meiktila.html>> accessed 13 May 2014

108 Human Rights Watch, “‘The Government Could Have Stopped This’:

Sectarian Violence and Ensuing Abuses in Burma’s Arakan State.’ (1 August 2012). <<http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>> accessed 13 May 2014; Human Rights Watch, “All You Can Do is Pray”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State.’ (22 April 2013). <<http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray-0>> accessed 13 May 2014

violence has been committed by non-state actors and could equally be characterized as non-state persecution.

F. Significant Events of Inter-Religious Conflict

As stated in other sections of this report, unprecedented inter-religious conflicts occurred in Myanmar in 2012 and 2013. They are: the Rakhine riots (June and October 2012), Meiktila (March 2013), Okkan (April 2013), Lashio (May 2013) and Kanbalu (August 2013), which will be discussed in detail below.

G. Significant Events of Terrorism and/or Terrorist Threats

So far, Myanmar authorities have not explicitly claimed that there are links between Myanmar Muslims and the international Jihadist networks, except in the case of Rohingya/Bengali who are widely assumed to be illegal Bangladeshi interlopers. A few accusations have been made by the international terrorism experts¹⁰⁹ and echoed by certain outlets of anti-Rohingya Myanmar media that claim that a Rohingya armed group, by the name of Rohingya Solidarity Organization (RSO), has links to international terrorist groups such as Al-Qaeda and those in Bangladesh. However, those claims have not been proven with concrete evidence though they are widely believed.¹¹⁰

109 Zachary Abuza, *Militant Islam in Southeast Asia: Crucible of Terror*, (Boulder: Lynne Rienner Publishers, 2003); Rohan Gunaratna, *Inside Al-Qaeda: Global Network of Terror*, (Carlton North: Scribe Publications, 2002).

110 Andrew Selth, ‘Burma’s Muslims and the War on Terror,’ (2004) 27 (2) *Studies in Conflict and Terrorism* 107-12; Andrew Selth, *Burma’s Muslims: Terrorists or Terrorised?*, (Canberra: Strategic and Defence Studies Centre, Australian National University, 2003)

H. Significant Cross-Border Incidents

Persecution of the Rohingya has caused an incessant regional security dilemma for Bangladesh since the late 1970s and for other neighbouring countries such as Thailand, Malaysia and Indonesia since the 2000s. Largely unwanted at home and by Bangladesh and faced with increasingly precarious conditions in Rakhine, Rohingya boatpeople have changed their destinations from Bangladesh to other neighbouring countries in the 2000s and have often fallen prey to regional human trafficking networks. However, unfortunately, Rohingya have been regarded as a threat to territorial and maritime security of those destinations, including Bangladesh.¹¹¹ Likewise, Rohingya are not really welcome in their newer destinations such as Thailand and Malaysia.¹¹²

Moreover, whenever those neighbouring countries complain to Myanmar about the Rohingya boatpeople, Myanmar authorities expediently respond by claiming that those so-called Rohingya who land on the shores of Thailand, Malaysia, etc. are not from Myanmar or that their Myanmar citizenship must be scrutinised first before Myanmar takes responsibility for them.¹¹³ This has effectively created a dilemma for Myanmar's neighbours. Increasingly precarious conditions of Rohingya in Rakhine and complete rejection of them as fellow Myanmar citizens by the majority of the people in

111 Utpala Rahman, 'The Rohingya Refugee: A Security Dilemma for Bangladesh,' (2010) 8 (2) *Journal of Immigrant & Refugee Studies* 233–239; Chris Lewa, 'Asia's New Boat People,' (2008) *Forced Migration Review* 40–42.

112 Equal Rights Trust, 'Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia,' (October 2014); Equal Rights Trust, 'Equal Only in Name: The Human Rights of Stateless Rohingya in Thailand,' (October 2014) <<http://www.equalrightstrust.org/newsstory171014/index.htm>> accessed 1 November 2014

113 'Myanmar departments concerned making contact with departments of Thailand to take measures for Rohingya trying to illegally enter Thailand from sea' *The New Light of Myanmar*, 31 January 2009, 16; 'Bengalis from neighbouring country illegally immigrated Rakhine region of Myanmar: The government had to scrutinize illegal immigrants under nationally necessity: The government keeps on preventing illegal immigrations' *The New Light of Myanmar*, 31 January 2009, 16.

Myanmar will likely mean an ongoing influx in the number of Rohingya boatpeople seeking asylum in neighbouring countries over the coming years.

I. Governmental Response

In the context of serious sectarian conflicts in 2012 and 2013, the Myanmar government has been seen to stick to two major claims in response to international criticisms against persecution of Muslims in Myanmar. The first strategy is to assert that the conflict in Rakhine was just between illegal Bengali Muslims (who had infiltrated Rakhine over the last centuries or decades) and indigenous Rakhine Buddhists. The second is that the conflicts were two-directional involving both sides of Muslims and Buddhists and what happened in 2012 and 2013, hence negating a claim that attacks against the Rohingya amounted to religious persecution.¹¹⁴ Therefore, according to the state, the conflicts were between two groups of people who just happen to be affiliated with two different religions of Buddhism and Islam.

1. Legislative

As stated above, there were parliamentary debates on the necessity of a special law to deal with widespread anti-Muslim hate speech, which is assumed as one of the major causes of nationwide sectarian conflicts in 2012 and 2013.¹¹⁵ However, the Myanmar government did not agree to the motion, arguing that the Penal Code and other relevant laws were adequate to deal with those cases.

114 RadioFreeAsia, 'Myanmar's Thein Sein Urges Cooperation to End Communal Violence,' (2 October 2013) <<http://www.rfa.org/english/news/myanmar/violence-10022013185522.html>> accessed 10 July 2014; Xinhua, 'Myanmar President Urges Prevention of Turning Communal Conflict Issue into Racial, Religious One,' *Global Times* (22 July 2013) <<http://www.globaltimes.cn/content/797996.shtml>> accessed 6 July 2014

115 See Part I.C. of this report.

2. Prosecution of perpetrators

Both extreme swiftness and extreme tardiness in the prosecution of perpetrators in various sectarian conflicts has been witnessed in Myanmar. Extreme swiftness was seen in the litigation and sentencing of three Muslim men who were alleged to have raped and murdered Thida Htwe on 28 May 2012.¹¹⁶ However, on the other hand, those Rakhines who allegedly murdered 10 Muslims in Taungup on 3 June are yet to be sentenced.¹¹⁷

3. Other measures

Based on the literature review and searches undertaken for this report, no other measures appear significant at this time, other than those reported in Section J below.

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

In the aftermath of sectarian conflicts in other parts of Myanmar in 2013 as a consequence of Rakhine conflicts in 2012, some Myanmar authorities and people started to promote inter-faith dialogues among various religious groups in Myanmar—Buddhists, Hindus, Muslims, and Christians. How far those dialogues have resolved misunderstandings between different religious groups, particularly between Buddhists and Muslims, has to be further considered before any real assessment can be made

as to their effectiveness.¹¹⁸ Most, if not all, of these dialogues appear to have been attended by only a few representatives of the four main religions in Myanmar, i.e., Buddhists, Hindus, Muslims, and Christians. In other words, the participants in interfaith dialogues are the same people. Therefore, although a wider impact emanating from these interfaith dialogues is expected in theory, it is unclear that such dialogues will be able to counter the hate messages spread by certain nationalist monks such as Ashin Wirathu, Ashin Pamaukkha, and other 969 movement leaders, given the high level of moral authority enjoyed by Buddhist monks.

K. Analysing the Trends

Overall, incidences of religious persecution have decreased in ethnic minority areas since political opening in 2011, but the situation has become particularly worse for Muslims, especially the Rohingya. Sectarian riots spread like forest fire starting from Rakhine riots in June and October 2012 to other parts of Myanmar in 2013—most serious ones being Meiktila (March 2013), Okkan (April 2013), Lashio (May 2013) and Htan Gone/Kanbalu (August 2013). Although sporadic sectarian conflicts have occurred in the past, they never grew as large as those in 2012 and 2013, mostly because of the nature of the previous military regime and of Myanmar society as well.

The following table shows the list of sectarian conflicts, which have occurred since 2012.

116 Hanna Hindstrom, 'Three Men Given Death Sentence for Murder that Sparked Riots,' *Democratic Voice of Burma* (18 June 2012) <<http://www.dvb.no/news/three-men-given-death-sentence-for-murder-that-sparked-riots/22512>> accessed 10 July 2014

117 Aye Nai, 'Lawyers Appeal Murder Charges in Case of Muslim Pilgrims Lynching,' *Democratic Voice of Burma* (11 July 2014) <<http://www.dvb.no/news/lawyers-appeal-murder-charges-in-case-of-muslim-pilgrims-lynching-burma-myanmar/42214>> accessed 12 July 2014

118 Such interfaith dialogues are a new phenomenon in Myanmar where such gatherings were banned for decades.

No.	Place & Time	Casualties	Alleged Cause
1.	Rakhine (June, October 2012)	200	Rape of Thida Htwe
2.	Meikhtila (March 2013)	34	Brawl between Muslim gold shop owner & Buddhist customer
3.	Okkan (May 2013)	1	Muslim woman bumping into Buddhist novice
4.	Lashio (May 2013)	1	Muslim man pouring petrol at and burning Buddhist woman
5.	Htan Gone/Kanbalu (August 2013)	-	Alleged sexual harassment of a Buddhist woman by a Muslim man
6.	Thandwe (September 2013)	7	Brawl over a Buddhist-owned trishaw with a Buddhist flag parked in front of a Muslim shop
7.	Mandalay (July 2014)	2	Alleged rape of a Buddhist staff by two Muslim teashop owners
		Total: 245	

(Based upon government data & news reports)

The table clearly shows a continuity in sectarian or religiously-motivated or inter-communal conflicts in Myanmar since June 2012. Although the same people from the previous military regime continue to rule Myanmar, the nature of governance has significantly changed since 2011. The administration may not resort to the heavy-handed repression of the past. Therefore, sectarian disturbances in the present political environment have a tendency to grow and spread because the state-society relations have changed.

Moreover, the opposition camp led by Aung San Suu Kyi and the 88 Generation Students has openly started a nationwide signature campaign to amend Section 436 of the present Constitution, which automatically gives 25% of seats in both parliaments to the defence forces. The National League for Democracy chaired by Daw Aung San Suu Kyi announced on 30 June 2014 that it had already garnered 3.3 million signatures from the people who collectively call for a change of Section 436.¹¹⁹

119 Zarni Mann. 'NLD: Over 3 Million People Join Petition to Amend Charter.' *The Irrawaddy* (30 June 2014). <<http://www.irrawaddy.org/burma/nld-3-million-people-join-petition-amend-charter.html>> accessed 15 July 2014

Coincidentally or not, sparked by Ashin Wirathu's Facebook posting of the news that a Buddhist woman had been raped by two Muslim men in Mandalay, disturbances followed the next day and two men—a Muslim and a Buddhist—died. A curfew was imposed and hundreds of people have been arrested. In the immediate aftermath of those disturbances, the Myanmar opposition and society aggressively questioned the alleged complicity of the government and slow response of the Mandalay Region government in the first two days.¹²⁰

Amidst growing competition between the government and the democratic opposition led by NLD and 88 Generation Students over a constitutional amendment and for the 2015 general elections, not to mention widespread hate messages in social media and elsewhere in Myanmar, this

120 Radio Free Asia. 'Anti-Muslim Riots Turn Deadly in Myanmar's Mandalay City.' (2 July 2014). <<http://www.rfa.org/english/news/myanmar/riot-07022014164236.html>> accessed 11 July 2014; Myanmar Eleven. 'Police Role Suspected in Posting of Violent Pictures.' *The Nation* (7 July 2014). <<http://www.nationmultimedia.com/aec/Police-role-suspected-in-posting-of-violent-pictur-30237953.html>> accessed 11 July 2014.

trend of anti-Muslim or inter-communal riots seems, for the time being, likely to continue.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

1. *Historical Prejudices against Muslims*

It is usually accepted that Buddhists in general hold prejudiced views of Muslims and Islam from as far back as colonial times.¹²¹ Faced by intense competition in the labour market between Indians and Burmese as well as fears of loss of the Burmese Buddhist race to Indian migrants in the new British colony of Burma in 1886, Burmese nationalism at the time was mainly fuelled by anti-Indian and anti-Muslim sentiments and movements, as well as an intense desire to gain independence from the British.

Also, Indians in colonial Burma who manned the largest share of the colonial bureaucracy were very visible in the eyes of the Burmese, leading the Burmese to feel that they suffered from a double colonization - first by the British and then by Indians. Indians, as part of the colonial bureaucracy, were mainly seen as pro-Britain or pro-India, which was taken as a betrayal of the Burmese hosts. Apart from economic competition in the market place and labour market, numerous Indians with different socio-cultural norms and practices were perceived as posing an apocalyptic demographic threat by the Burmese.¹²²

Racial and economic nationalism in colonial Burma resulted in waves of economic nationalization of

Indian-owned businesses and Indian emigration after independence in 1948, which culminated in the 1960s.¹²³ However, what started as sentiments against all Indian communities (regardless of religious backgrounds) gradually changed into “Islamophobia” and a fear of Muslims regardless of racial origins. This disposition has unfortunately remained a part of Myanmar society even following independence in 1948.

2. *Fears of Buddhist Decline amidst “Islamization”*

Fears of a loss of a Buddhist kingdom to Christian domination under British colonialism were initially countered by the emergence of a nation-wide Buddhist renaissance movement in the early 20th century. This was followed by a largely secular nationalist movement aiming for the termination of Burma’s status as a province of colonial India and then complete independence. This Buddhist movement aimed to recover the Buddhist roots of pre-colonial Burma by promoting the Burmese language and Buddhist studies.¹²⁴ Although it mainly worked to promote Buddhist pedagogy peacefully, fears of Indian or Indian Muslim domination gradually entered the national political discourse, particularly during the pre-World War II period.

Indian migrants who were brought into Burma by the British were more dominant and visible during the colonial period than the British themselves, perhaps in part because the British ruled colonial Burma as a province of British India. This is perhaps one causal factor which led to the Buddhist revivalist movement in the early 20th century gradually becoming an anti-Indian, and then anti-Indian Muslim or anti-Muslim movement

121 International Crisis Group, *The Dark Side of Transition: Violence Against Muslims in Myanmar* (Jakarta/Brussels: International Crisis Group, 2013).

122 Hugh Tinker, ‘Indians in Southeast Asia: Imperial Auxiliaries,’ in *South Asian Overseas: Migration and Ethnicity*, Colin Clarke, Ceri Peach, & Steven Vertovec (eds) (Cambridge, New York: Cambridge University Press, 1990), 39-56.

123 N. R. Chakravarti, *The Indian Minority in Burma: The Rise and Decline of an Immigrant Community*, (London: Institute of Race Relations, 1971).

124 Alicia Marie Turner, *Buddhism, Colonialism and the Boundaries of Religion: Theravada Buddhism in Burma, 1885-1920*, PhD Thesis. (University of Chicago, 2009).

for political and religious reasons.¹²⁵ Nationalists agitated for the separation of Burma from India, informed at least in part by a prophecy of Buddhist decay or decline 5,000 years after Lord Gautama Buddha. The Islamization of countries such as Indonesia, Malaysia, and Afghanistan, which were once Buddhist or Hindu, may have also influenced this nationalist movement at the time.

Buddhist fears of “Islamization” have remained in Myanmar and emerged as a very potent force both during and after the Rakhine violence. In recent years, such phobias have grown exponentially and have incorporated more layers and dynamics, with claims that Myanmar is now prone to the Muslim tide from Rohingya Muslims who are widely believed to be hyper-fertile and polygamous. A slogan of a demographic catastrophe is being widely spread across the country by *Ma-Ba-Tha* and 969 preachers, Rakhine Buddhist nationalists, and certain politicians and activists. This view also seems to be widely accepted at the official level.

Though freedom of religion, thought and conscience has often been described as a private matter in a secular environment conducive to tolerance, we may not expect such a complete separation of religion and the state in a country such as Myanmar, where Buddhism is perhaps the most important marker of identity. It is more critical when a religion is used as the banner under which a people who are affiliated with that particular religion are mobilized.

The socialist Revolutionary Council/Burma Socialist Programme Party regime (1962-1988) and the SLORC/SPDC regime (1988-2011) did not popularly use Buddhism to mobilize the majority Buddhists in Myanmar. It is undeniable that military generals of the previous SLORC/SPDC regime launched a huge Buddhist donation

campaign in the 1990s and 2000s. Pictures and videos of generals making donations to monasteries and pagodas were included in the state television and newspapers almost on a daily basis. However, all of these ostentatious public donations were done most probably in order to enhance their political legitimacy through Buddhist means, not to mobilize the Buddhist majority under the umbrella of Buddhism for any specific purpose. Instead, they mostly resorted to force and repression to control the public.

However, this pattern of state-society relations in the arena of Buddhism seems to have changed with the political changes in 2011. In the past, under undemocratic authoritarian regimes, the Buddhist majority was politically unimportant. In the new political landscape, the ruling Union Solidarity and Development Party and popular National League for Democracy are strongly competing and eyeing the 2015 general elections. This means that the ruling party, which is rather unpopular, has to find ways to attract the votes of the Buddhist majority. Amidst weak and nascent democratic political institutions, it has become expedient for the ruling party to invoke intense Buddhist nationalism and mobilize Buddhists. How the ruling regime has increasingly tried to attract the votes of Buddhists will be detailed below.

3. *Changing Electoral Landscape*

In the current electoral environment in Myanmar,¹²⁶ popular opinion has emerged as a dynamic factor which may greatly affect the result of the 2015 elections in which three major players—the current ruling Union Solidarity and Development Party led by President U Thein and the Speaker of the Union legislature Thura U Shwe Mann, the popular democratic National League for Democracy, led by Nobel laureate Daw Aung San Suu Kyi, and other popular ethnic minority parties such as Arakan

125 Hugh Tinker, ‘Indians in Southeast Asia: Imperial Auxiliaries,’ in *South Asian Overseas: Migration and Ethnicity*, Colin Clarke, Ceri Peach, & Steven Vertovec (eds) (Cambridge, New York: Cambridge University Press, 1990), 39-56; Renaud Egret, *Burmese Indians in contemporary Burma: Heritage, Influence, and Perceptions since 1988*, (2011) 12 (1), *Asian Ethnicity*, 33-54.

126 Myanmar had free and free general elections in 1990 in which the NLD won in a landslide but the SLORC did not respect the result and transfer power to the NLD.

National Party --are expected to fiercely contest. Since Myanmar is predominantly Buddhist, Buddhist identity is the most important and readily available channel through which people may be mobilized. In other words, popular opinion in the case of Myanmar is Buddhist opinion.

Against the backdrop of serious sectarian conflicts, a nationwide campaign for protection of Buddhism and Buddhists from a perceived Islamic threat, mainly popularized by the world-famous 969 movement, its de facto propagandist U Wirathu, and their parent organization, *Ma-Ba-Tha*, has emerged and is growing. This Islamophobic campaign has accelerated over the past two years after the 2012 Rakhine riots and it is often assumed to be linked to NLD's victory in the by-elections on 1 April 2012 and continued enormous popularity of the NLD Chairperson Daw Aung San Suu Kyi, both of which signal the high probability of the NLD winning in the 2015 elections.¹²⁷

4. Chauvinist Media

One of the most significant reforms that the Thein Sein administration brought about was the removal of press censorship and the allowance of private daily and weekly newspapers to circulate.¹²⁸ Reporters without Borders even released a report calling these changes the "Burmese Media Spring."¹²⁹ Due to increased

competition in the small market,¹³⁰ public hype around sectarian riots in 2012, and almost universal public opinion in Myanmar that all, if not most, Rohingya are illegal immigrants, the private media in Myanmar have largely featured anti-Rohingya/Bengali messages amidst the international media and human rights regime's "victimization" frame of the Rohingya.¹³¹ While the international media framed Rakhine violence as repression of Rohingya and non-Rohingya (Kaman,¹³² etc.) Muslims in Rakhine, local media have mostly described it as violence by illegal Bengali Muslim immigrants against native Rakhine Buddhists. Therefore, most of the media in Myanmar can be said to be anti-Rohingya/Bengali in the sense that they aggressively problematize the Rohingya's legal identity and their belonging in Myanmar.

A distinction has to be made in the media coverage of the two rounds of Rakhine conflict in 2012 and

130 That Myanmar is a small market for old and new weeklies and new dailies in spite of its estimated population of 55-60 million is stated here because newspaper/journal readership is still low compared to its sizeable population. Poverty is one of the reasons but extreme popularity of Facebook among Myanmar's people in which almost all of Myanmar media post their news might have played a role.

131 Fortify Rights, *Policies of Persecution: Ending Abusive State Policies against Rohingya Muslims in Myanmar* (Switzerland/Southeast Asia: Fortify Rights, 2014); Human Rights Watch, *"The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State* (New York: Human Rights Watch, 2012); Human Rights Watch, *"All You Can Do is Pray": Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State* (New York: Human Rights Watch, 2013); Physicians for Human Rights, *Massacre in Central Burma: Muslim Students Terrorized and Killed in Meiktila* (Cambridge, Massachusetts: Physicians for Human Rights, 2013); Physicians for Human Rights, *Patterns of Anti-Muslim Violence in Burma: A Call for Accountability and Prevention* (Cambridge, Massachusetts: Physicians for Human Rights, 2013)

132 Kaman is one of the 135 ethnic groups recognized as a national group by Myanmar authorities. Kamans are Muslim by faith and many of them were also affected during riots in 2012. Although they are citizens by birth according to the 1982 citizenship law, their number is disputed by Rakhine Buddhists and they also find themselves in legal limbo amidst Rakhine calls for scrutiny of Kaman Muslims' citizenship scrutiny cards (CSCs) in IDP camps.

127 Out of 46 vacant seats in total, the NLD won 43 of the 44 seats for which they contested. NLD's Chair Daw Aung San Suu Kyi herself was elected as a member of the Pyithu Hluttaw (Lower Hluttaw) representing Kawhmu in Yangon Division.

128 Indeed, Myanmar had already had private weekly journals in print even before political changes began in 2011, which were subject to tight censorship. But daily private newspapers are a totally new phenomenon in 50 years since General Ne Win took power in a coup in 1962.

129 Reporters without Borders, 'Burmese Media Spring,' (December 2013).

<<http://en.rsf.org/birmanie-how-long-will-the-burmese-media-17-01-2013,43913.html>> accessed 29 July 2014.

of anti-Muslim riots in other parts of Myanmar in 2013. Although the Rohingyas were widely rejected and disowned by Myanmar media, there were many sympathetic reports on anti-Muslim riots in other parts in 2013 because those Muslims in non-Rakhine areas are considered citizens. The most significant example is the serious questioning of the government's alleged complicity in Mandalay disturbances in July 2014. Therefore, local Myanmar media's chauvinism or nationalism has significantly changed over the last couple of years. A number of articles have even started to review and question the probable hand of the government in the previous riots starting from Rakhine in 2012.

B. Positive Contributing Factors

In the aftermath of sectarian conflicts in 2012 and 2013, the increasingly vibrant civil society which has emerged after political opening in 2011 has responded with care. The most significant response by Myanmar's civil society is the emergence of interfaith groups, the most prominent among which is the Interfaith Group comprised of persons representing Buddhism, Christianity, Islam and Hinduism. That particular group was even awarded an Excellence Award by President U Thein Sein on 30 April 2013.

The Myanmar government has been seen to be promoting international and local dialogues and roundtable discussions for peace and development in Rakhine State, which is widely believed to have provoked the anti-Muslim violence since that time. Recognizing that hate speech has played a major role in anti-Muslim riots over the last couple of years, a number of commentators have spoken out and written against prevalence of hate speech in present-day Myanmar.

Besides written commentaries that are mainly in the local Burmese-language media and English-language local and international media, democratic activists provided a more active response to hate speech by launching a movement called *Panzagar* ("Flower

Speech") on 4 April 2014. Led by Nay Phone Latt, the well-known Myanmar blogger jailed in 2007 for 20 years in 2007 under the Electronic Transactions Law and now executive director of Myanmar ICT for Development Organization ("MIDO"),¹³³ the campaign uses a logo of lips clasping a branch of flowers and a slogan of "Let's restrain our speech not to spread hate among people!"¹³⁴ Nay Phone Latt said: "We distribute stickers, posters and pamphlets in Rangoon and also in the provinces. We are trying to spread the campaign's message among the public first, but powerful speakers who are more in touch with the public are specially targeted. If the public gets the message, they will oppose those who are using dangerous hate speech. Also, we want to gradually convince the extremists' groups who are spreading the hate speech to stop."¹³⁵

Additionally, the Myanmar government displayed perhaps its most proactive response to widespread hate messages on Facebook in the aftermath of inter-religious disturbances in Mandalay in early July 2014. The Myanmar government discussed the problem with officials with Facebook and reached an agreement with the latter to monitor hate messages on Burmese-language Facebook accounts and walls. Whether this will counter online "Islamophobia" is yet to be seen. The criteria Facebook and Myanmar authorities will apply in monitoring hateful Facebook accounts and what action is going to be taken against holders of such accounts are not known either. However, this move seems to have sent a message to extremists that they are being watched.¹³⁶

133 Nay Phone Latt was released in 2012 under a mass amnesty.

134 San Yamin Aung. 'Hate Speech Pours Poison Into the Heart.' *The Irrawaddy* (9 April 2014) <<http://www.irrawaddy.org/interview/hate-speech-pours-poison-heart.html>> accessed 12 July 2014

135 Ibid.

136 Tin Zar Aung. 'Facebook to help Myanmar government monitor malicious rumours.' *Mizzima* (9 July 2014) <<http://www.mizzima.com/mizzima-news/myanmar/item/11720-facebook-to-help-myanmar-government-monitor-malicious-rumours>> accessed 13 July 2014

PART FOUR: CONCLUSION

To conclude, the right to freedom of religion is still a very novel concept in Myanmar's newly emerging political and social *milieu*. Against the backdrop of Myanmar's so-called political liberalisation in 2011 and sectarian conflicts that ensued in 2012-13, the nationwide Buddhist nationalist movement led by *Ma-Ba-Tha* and the 969 movement's leaders has emerged and grown. An increasingly populist stance by the ruling Thein Sein administration has emerged, amidst calls by popular democratic leader Daw Aung San Suu Kyi and other activists to amend the constitution and to reduce the military's involvement in politics. Moreover, due to political and moral sensitivities posed by *Ma-Ba-Tha* and led by senior Buddhist monks, the opposition, except women's rights groups and human rights networks, have been largely silent about the race protection bills. Due to dominance of the military representatives (25%) and the ruling Union Solidarity and Development Party in the parliament, when the four bills are debated and voted by lawmakers, the liberal opposition may not have a final say in their passage. In an environment of increasingly intense political competition over various issues between the ruling USDP and the NLD (led by Aung San Suu Kyi), both of whom are eyeing the 2015 elections, *Ma-Ba-Tha* and its influence is expected to grow.

If passed, the four race protection bills to restrict religious conversion, polygamy, interfaith marriage and population growth demanded by *Ma-Ba-Tha* are expected to affect interfaith relationships and freedom of religion especially of minorities. This is because the bills ultimately aim to ensure Buddhist dominance in Myanmar on the pretext of promoting religious harmony.

That said, hate speech which has been widespread across Myanmar since sectarian Rakhine riots in June 2012, has been accepted as a serious impediment to Myanmar's democratization by many activists, commentators and to some extent, by the government itself. The *Panzagar* movement

led by former political prisoner and blogger Nay Phone Latt with the slogan of "End Hate Speech with Flower Speech" has provided a warning to the larger Myanmar society. However, whether those civilian activists including Nay Phone Latt are able to counter the enormous influence that Buddhist Sangha has in Myanmar society is yet to be seen. The fact that a section of people accept that hate speech is dangerous¹³⁷ does not mean that the "flower speech" campaign will result in the elimination of these messages, nor will it tackle deeper issues for which only the state, and Myanmar people as a whole, can be deemed responsible.

137 Susan Benesch distinguishes between hate speech and dangerous speech. She argues that hate speech is inevitable in a society and we only have to be concerned when hate speech becomes 'dangerous speech'. Her discussion of the distinction between hate speech and dangerous speech is available at <<http://voicesthatpoison.org/2012/04/20/free-speech-debate/>> accessed 4 January 2014.

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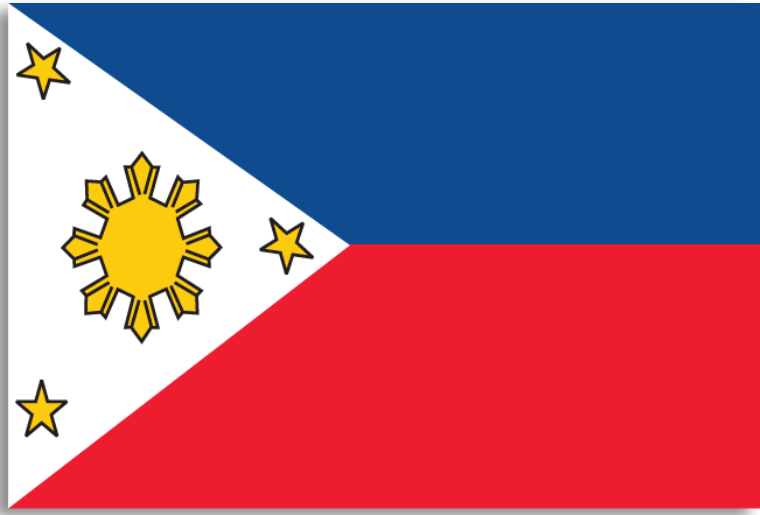
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Philippines

Philippines

Formal Name	Republic of the Philippines
Capital City	Manila
Declared Relationship between State and Religion	<p>The principle of the separation of church and state is established in the Constitution.</p> <p>Section 6, Article II, Declaration of Principles and State Policies, states: "The separation of Church and State shall be inviolable."</p> <p>Section 5, Article III, Bill of Rights, states that, "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."</p>
Form of Government	Presidential (multi-party democracy with elected president and legislature)
Regulation of Religion	No regulation of religion.
Total Population	98,734,798 ¹
Religious Demography (National Statistics Office, 2010 Census on Population and Housing)	<p>Roman Catholic (including Catholic Charismatic), 80.6%;</p> <p>Islam, 5.65%;</p> <p>Evangelicals, 2.7%;</p> <p>Iglesia ni Cristo, 2.4%;</p> <p>Protestant and Non-Catholic Churches, 1.7%;</p> <p>Iglesia Filipina Independiente, 1%;</p> <p>Seventh Day Adventist, 0.7%;</p> <p>Bible Baptist Church, 0.7%;</p> <p>United Church of Christ in the Philippines, 0.5%;</p> <p>Jehovah's Witness, 0.4%;</p> <p>None, 0.08%;</p> <p>Others/Not reported, 4.2%.</p> <p>(See Annex 1 for descriptions of the religious groups.)</p>
Changing Religious Demography	Data collected over the last 50 years indicate that the Philippines is predominantly Roman Catholic (around 80% of the population), with Muslims (comprising around 5% of the population) as the largest non-Christian group in the country.

¹ Projected from 2010 Census of Population and Housing using the 1.89% growth rate; 2010 population documented at 92,337,852 on May 1, 2010. On July 28, 2014, the population was recorded to have reached 100,000,000. J. R. Uy and J. A. Gabieta, *100 millionth Filipino is a baby girl*, PHILIPPINE DAILY INQUIRER, p. 1, at <http://newsinfo.inquirer.net/623904/100-millionth-filipino-is-a-baby-girl>.

INTRODUCTION

The separation of church and state has long been established in Philippine constitutional law, starting with its first Constitution in 1899 following the revolution of independence from Spain, through all the American-era charters from 1902 to 1935, the Marcos Constitution of 1973, and the current 1987 Constitution. Starting from 1902, the Philippines adopted the language and doctrine of American constitutional law, structured along the free exercise and the establishment clauses.

These formal doctrines of separation, however, are applied in a context very different from their American origins, since the Philippines is predominantly Roman Catholic, with a distinct but small Muslim minority concentrated in its southernmost islands. Moreover, the Roman Catholic clergy has historically been involved in secular affairs and many of their religious practices have been absorbed into the nation's culture. This study examines the state practice on freedom of thought, conscience, and religion as situated within the legal and social complexities that arise from the transplantation of American church-state doctrine into the Philippines. It will point out the gaps between the formal separation that has been codified into law vis-à-vis the actual practice reflecting the dominance of the majority religion, and the legal arguments to either excuse or contest such deviations from the principle of separation.

Brief historical background

The Philippines was a Spanish colony from the mid-1500s until June 1898 when native revolutionaries declared independence in Cavite in the outskirts of Manila. At around the same time, the Spanish-American War had broken out and the United States captured Manila in August 1898, while the revolutionaries controlled the neighbouring provinces surrounding Manila. Spain surrendered

to the United States in the Treaty of Peace of December 1898. Meanwhile, by January 1899, the revolutionaries promulgated what is now called the Malolos Constitution, named after the city outside Manila where delegates representing the independence forces all over the archipelago gathered to write a constitution.

When the Spanish arrived in the Philippines, the islands had not been unified under a single government but were organized in distinct island and tribal communities. They had no common religion, except for the Muslims in the southernmost island of Mindanao and, significantly, smaller Muslim sultanates that governed what is now Manila. However, when Spain colonized the islands, they brought in the missionary orders who succeeded in spreading Roman Catholicism, except in Mindanao which was never colonized and of which only the colonial outpost of Zamboanga was brought under Spanish flag.

Still, Spain adopted the union of church (Roman Catholicism) and state in the Philippine archipelago. This was ended by both the 1898 Treaty of Paris, which provided that the “civil rights and political status of the native inhabitants” shall be determined by the United States Congress, and the 1899 Malolos Constitution which declared that “the state recognizes the freedom and equality of all religions, as well as the separation of the church and the state.” After the defeat of the independence movement, the United States Congress adopted the Philippine Bill of 1902 which extended the “free exercise” and “establishment” clauses for Filipinos. That model has since been sustained in every Philippine constitution to the present: the 1935 Constitution under which the country became an American commonwealth, under which it became independent in 1946, and under which President Ferdinand Marcos declared martial law in 1972; the 1973 Constitution under which Marcos established his one-man rule; and the 1987 Constitution adopted under President Corazon Aquino after the ouster of Marcos.

Religious profile of the Philippines

The Philippines is predominantly Roman Catholic. The Muslims are the largest non-Christian group in the country concentrated in the island of Mindanao in the southern part of the archipelago. In the 2010 Census of Population and Housing (CPH),² Protestant churches were classified based on their membership in two umbrella organizations: the Philippine Council of Evangelical Churches (PCEC) and the National Council of Churches in the Philippines (NCCP). The Iglesia ni Cristo (INC) is an indigenous Christian church established in 1913 by a Filipino preacher. The Iglesia Filipina Independiente is a Christian church established during the Philippine Revolution of 1898, and is now a member church of the NCCP. American missionaries established the Seventh Day Adventists, Jehovah's Witnesses, and the Church of Jesus Christ of Latter-Day Saints (Mormon Church) in the Philippines. Interestingly, the Census of Population and Housing has separately listed the Seventh Day Adventists and Jehovah's Witnesses since 1990, but not the Mormon Church despite its significant membership.

Pentecostal and charismatic movements have also flourished in the country. The Pew Forum on Religious and Public Life survey³ shows that 4 out of 10 Catholics identify themselves as charismatic, and 7 out of 10 Protestants identify themselves as either Pentecostal or charismatic. The largest Catholic charismatic group in the country is the El Shaddai,⁴ claiming followership of 8 million; one of the largest

Pentecostal groups is the Jesus is Lord Movement,⁵ claiming membership of 5 million. Indigenous peoples in the Philippines, comprising 110 ethno-linguistic groups and some 11 million people,⁶ were formerly categorized as "non-Christian tribes" which is now no longer recognized as a separate category in the CPH.

The national census

The population census is conducted by the National Statistics Office (NSO) on a quinquennial basis. The 2010 Census of Population and Housing (CPH) is the most recent national population census. The next CPH is scheduled in 2015. For the purpose of this national report, the self-report by religious groups on church membership is compared to that of the official CPH figures (see Table 1). Among the churches surveyed, the Roman Catholic Church and the Iglesia ni Cristo do not allow access to church information on membership.

The PCEC lists 71 denominations, among them the Bible Baptist Church (which is counted as a separate group in the 2010 CPH), as well as several hundred local churches and para-churches (including maternity centres and seminaries).

The NCCP lists 14 member denominations, among them, the United Church of Christ in the Philippines (UCCP) and Iglesia Filipina Independiente (IFI), both counted as separate groups in the 2010 CPH and nine associate member organizations, including the Student Christian Movement and the Philippine Bible Society. The 2010 census does not specify whether the data for PCEC already includes the data

² National Statistics Office, 2010 Census on Population and Housing (Philippines).

³ The Pew Forum on Religion and Public Life, *Spirit and Power: 10-Country Survey of Pentecostals*, (Washington: Pew Research Center, 2007).

⁴ See <http://www.freewebs.com/elshaddai-dwxippfi>.

⁵ The Pew Forum on Religion and Public Life. 'Historical Overview of Pentecostalism in Philippines.' *Pew Research* (6 Oct 2006). <<http://www.pewforum.org/2006/10/05/historical-overview-of-pentecostalism-in-philippines>>accessed 10 April 2014.

⁶ National Commission on Indigenous Peoples, 'Indigenous Peoples of the Philippines', *Republic of the Philippines* (2013). <<http://www.ncip.gov.ph/indigenous-peoples-of-the-philippines.html>> accessed 10 April 2014.

of its member Bible Baptist Church. Likewise, it does not specify whether the data for NCCP already include two of its largest member churches, the UCCP and the IFI. The Salvation Army, the Independent Methodists and Lutherans are members of both PCEC and NCCP and register their membership in both organizations.

Table 1
Religious Demography

GROUP	2010 CENSUS OF POPULATION AND HOUSING 92,097,978 (100%)	SELF-REPORT Data across the years 2008, 2011, 2013, and 2014
Roman Catholic Including Catholic Charismatic	74,211,896 80.6%	76.18M⁷ (as of 2013)
Islam	5,127,084 5.65%	10,754,361⁸
Evangelicals [Philippine Council of Evangelical Churches (PCEC) Member Denominations]	2,469,957 2.7%	- PCEC reported 71 member denominations, no data on individual denominational membership.
Iglesia ni Cristo (INC)	2,251,941 2.4%	No public access to internal information on membership citing the privacy of its members. ⁹
Protestant and Non- Catholic Churches	1,071,686 1.7% (NCCP Member Denominations <i>excluding</i> the following denominations: United Church of Christ in the Philippines, Iglesia Filipina Independiente, Convention of Philippine Baptist Churches)	National Council of Churches in the Philippines data for 2008: ¹⁰ Apostolic Catholic Church: no data Convention of Philippine Baptist Churches: 500,000 Episcopal Church in the Philippines (Anglican): 64,995 Iglesia Evangelica Metodista En Las Islas Filipinas (IEMELIF): 37,664 Iglesia Unida Ekyumenikal: 2,736 Lutheran Church in the Philippines: 6,018

⁷ As reported in the Philippine Daily Inquirer. See Jocelyn R. Uy, 'Filipino Catholic population expanding, say Church officials,' *Philippine Daily Inquirer* (11 Aug 2013). <<http://newsinfo.inquirer.net/463377/filipino-catholic-population-expanding-say-church-officials>> accessed 10 Apr 2014

⁸ Bureau of Muslim Settlements estimate as of 2012 based on 2.38% annual growth rate with 2000 as base year.

⁹ Letter to Erika Rosario, Project Research Assistant, dated April 21, 2014.

¹⁰ NCCP presently updating membership database. Information to be released 3rd quarter of 2014.

		The Salvation Army ^{**} : 5,536 United Church of Christ in the Philippines (UCCP): 1,122,393 United Methodist Church (UMC): 245,595 ^{**} Also a PCEC member church
Iglesia Filipina Independiente (Aglipay)	916,639 1%	3,500,000 (as of 2014)
Seventh Day Adventist	681,216 0.7%	853,981 (as of 2014)
Bible Baptist Church	480,409 0.7%	430,490¹¹
United Church of Christ in the Philippines	449,028 0.5%	1,122,393 (National Council of Churches in the Philippines data as of 2008)
Jehovah's Witness	410,957 0.4%	181,236 publishers¹² (as of 2014)
Latter Day Saints (Mormons)	-	695,304 (as of 2011)
None	73,248 0.08%	675,166
Others/Not reported	3,953,917 4.2%	-

11 Data from the Baptist World Alliance, from information provided by member Baptist conferences, namely: Baptist Conference of the Philippines, Inc., Convention of Philippine Baptist Churches, Inc., Convention of Visayas and Mindanao of Southern Baptist Churches, General Baptist Churches of the Philippines, Inc., Luzon Convention of Southern Baptist Churches, Inc

12 Jehovah's Witnesses call members actively preaching "publishers."

Table 2.
Changing Religious Demography

Group	1960 ¹³	1970 ¹⁴	1980 ¹⁵	1990 ¹⁶	2000 ¹⁷	2010 ¹⁸
Total Population	27,087,685 (100%)	36,684,486 (100%)	47,914,017 (100%)	60,561,106 (100%)	76,332,470 (100%)	92,097,978 (100%)
Roman Catholic	83.8% 22,686,096	85% 31,169,488	Question on religion not included in 1980 census	82.9% 50,217,801	81% 61,862,898	80.6% 74,211,896
Islam	4.8% 1,317,475	4.3% 1,584,963	-	4.7% 2,769,643	5% 3,862,409	5.6% 5,127,084
Mainline Protestants	2.9% 785,399	3.1% 1,122,999	-	Specified into Denomina- tions*	Specified into Denomina- tions*	Specified into Denomina- tions*
*Evangelicals (under PCEC, except 1990)	No data	No data	-	0.8% 423,151	2.8% 2,152,786	2.7% 2,469,957
Iglesia ni Cristo	1% 270,104	1.3% 475,407	-	2.3% 1,414,393	2.3% 1,762,845	2.4% 2,251,941
*Non-Roman Catholic and Protestant Churches (under NCCP)	No data	No data	-	No data	No data	1.7% 1,071,686
Iglesia Filipina Independiente (Aglipay)	5.2% 1,414,431	3.9% 1,434,688	-	2.5% 1,590,208	1.9% 1,508,662	1% 916,639
Seventh Day Adventist	No data	No data	-	0.7% 384,423	0.8% 609,570	0.7% 681,216
Jehovah's Witness	No data	No data	-	0.5% 278,472	0.5% 380,059	0.4% 410,957
Buddhist	0.2% 39,631	0.1% 33,636	-	No data	No data	No data
*Bible Baptist Church	No data	No data	-	No data	No data	0.5% 480,409

13 National Statistics Office, Republic of the Philippines, 1999 *Philippine Yearbook*, 15 (Philippines: National Statistics Office, 1999).

14 *Id.*

15 *Id.*

16 National Statistics Office, *Philippines in Figures 2014* (2 February 2014): 27. <www.census.gov.ph/content/2014-philippines-figures> accessed 8 April 2014.

17 *Id.*

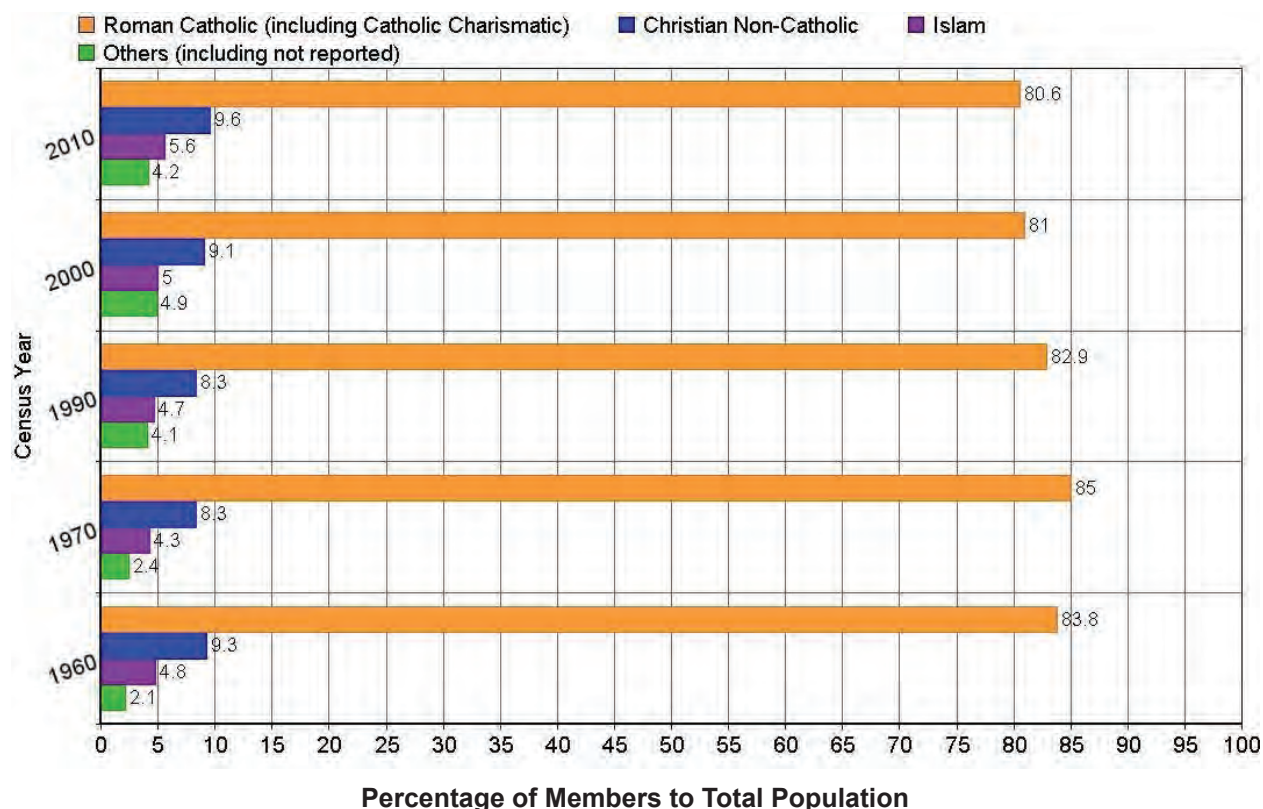
18 *Id.*

*United Church of Christ in the Philippines	No data	No data	-	1.5% 902,446	0.5% 416,681	0.5% 449,028
None	a) No data	b) No data	-	No data	No data	0.08% 73,248
Others/Not reported	2.1% 574,549	2.4% 863,302	-	4.1% 2,578,579	4.9% 3,776,560	4.2% 3,953,917

* "Mainline" Protestant churches or organizations

Graph 1 below illustrates trends in the changing religious demography of Filipinos. Four categories were identified from the census data: (1) Roman Catholic, including Catholic Charismatic, (2) Christian non-Catholic, (3) Islam, and (4) Others, including values not reported. Groups that are Christian non-Catholics were counted as a separate category. This category includes census data of churches under the PCEC, NCCP, INC, Iglesia Filipina Independiente, Seventh Day Adventists, and Jehovah's Witnesses.

Graph 1.
Changing Religious Demography in Four Categories



PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

International Document	Year of Signature	Year of Ratification / Accession	Reservations / Declarations
Convention on the Prevention and Punishment of the Crime of Genocide ¹⁹	9 December 1948	7 July 1950	
Universal Declaration of Human Rights ²⁰		10 December 1948 (adoption)	
International Covenant on Civil and Political Rights (ICCPR) ²¹	19 December 1966	23 October 1986	
Optional Protocol to the ICCPR (on the petitions regime of the Human Rights Committee) ²²	19 December 1966	22 August 1989	
International Covenant on Economic, Social and Cultural Rights ²³	19 December 1966	7 June 1974	
Convention on the Elimination of All Forms of Discrimination against Women	15 July 1980	5 August 1981	
Convention on the Rights of the Child ²⁴	26 January 1990	21 August 1990	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ²⁵	15 November 1993	5 July 1995	
Rome Statute to the International Criminal Court ²⁶	28 December 2000	30 August 2011	
ASEAN Human Rights Declaration ²⁷		18 November 2012 (adoption)	

19 U.N. General Assembly. Convention on the Prevention and Punishment of the Crime of Genocide (78 U.N.T.S. 277), 9 Dec 1948.

20 U.N. General Assembly. *Universal Declaration of Human Rights* (A/810), 10 December 1948.

21 U.N. General Assembly res. 2200A XXI, 21 U.N. GAOR Supp. No. 16 at 52, U.N. Doc. A/6316 (1966); 999 U.N.T.S. 171; 6 ILM 368 (1967).

22 *Id.*

23 U.N. General Assembly res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); 993 U.N.T.S. 3; 6 ILM 368 (1967).

24 U.N. General Assembly res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 U.N.T.S. 3; 28 ILM 1456 (1989).

25 U.N. General Assembly res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990).

26 2187 U.N.T.S. 90/37 ILM 1002 (1998)/[2002] ATS 15.

27 Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 November 2012 <<http://www.refworld.org/docid/50c9fea82.html>> accessed 11 April 2014.

There are conflicting Supreme Court decisions on the direct enforceability of the Universal Declaration of Human Rights. In *Borovsky*²⁸ and *Mejoff*,²⁹ two separate cases in which undesirable aliens were deported but had to be detained because their state of nationality refused to accept them, the Supreme Court accepted the direct applicability of the UDHR. The aliens had filed for *habeas corpus* after two years in detention. The Court granted the petitions, citing the right to liberty in the 1948 UDHR. The Court enforced the right directly, citing the Incorporation Clause of the Constitution:³⁰ “The Philippines... adopts the generally accepted principles on international law as part of the law of the Nation.”

However, in *Ichong v. Hernandez*,³¹ the Supreme Court took an opposite view. The case concerned the Retail Trade Nationalization Act, which bars aliens from retail business in the Philippines. It was challenged by a Chinese retailer citing the equal protection clause of the Constitution and the guarantee of equality in the 1948 UDHR. The Court rejected the claim holding *inter alia* that alienage is a valid criterion of classification and that the UDHR is not a legally binding treaty anyway.

B. Domestic Laws and Policies

The Philippine Constitution³² establishes the separation of church and state in the country, and guarantees freedom of thought, conscience, and religion. The relevant constitutional provisions are as follows:

Article II, Section 6. The separation of Church and State shall be inviolable.

Article III, Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Besides these two constitutional provisions, others ensure non-establishment. For instance, Article VI, Section 5(2) provides that there would not be any allocation of seats for party-list representatives in the legislature on religious grounds. It states:

One-half of the seats allocated to the party-list representatives shall be filled, as provided by law, by selection or election from labour, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

Furthermore, Article VI, Section 29(2) asserts:

No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

Nonetheless, religion has a privileged status in the Philippines. Under Article VI, Section 28(3), for instance, religious institutions are exempt from taxation. The section states:

28 *Borovsky v Commissioner of Immigration* [1949] G.R. No. L-2852

29 *Mejoff v Director of Prisons* [1949] G.R. No. L-2855.

30 Art. II, Sec. 1, Constitution, 1987 (Philippines).

31 *Ichong v. Hernandez* [1959] G.R. No. L-7995.

32 Constitution, 1987 (Philippines).

Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

Furthermore, historically, the 1935 and 1973 Constitutions began their Preamble by “imploing the aid of Divine Providence.” Significantly, the 1987 Constitution replaces “Divine Providence” with “Almighty God.” The Supreme Court, in *Imbong v Ochoa*³³ (where Catholic groups’ opposed the Reproductive Health Law requiring family planning counselling and expanding access to contraceptives), recognized deism among Filipinos as an “undisputed fact.” The Court said, “The undisputed fact is that our people generally believe in a deity, whatever they conceived Him to be, and to whom they call for guidance and enlightenment in crafting our fundamental law.”³⁴

Table 3
Comparative Table of 1987, 1973, and 1935 Philippine Constitutions

1987 Constitution ³⁵	1973 ³⁶	1935 ³⁷
Preamble		
We, the sovereign Filipino people, imploring the aid of Almighty God , in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.	We, the sovereign Filipino people, imploring the aid of Divine Providence , in order to establish a government that shall embody our ideals, promote the general welfare, conserve and develop the patrimony of our Nation, and secure to ourselves and our posterity the blessings of democracy under a regime of justice, peace, liberty, and equality, do ordain and promulgate this Constitution.	The Filipino people, imploring the aid of Divine Providence , in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution.
Religion Clause		
Article III, Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.	Article IV, Section 8. No law shall be made respecting the establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.	Article III, Section 1 (7). No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

33 *Imbong v Ochoa* [2014] GR No. 204819.

34 *Id.*, at 64.

35 Constitution, 1987 (Philippines).

36 Constitution, 1973 (Philippines).

37 Constitution, 1935 (Philippines).

The Omnibus Election Code of the Philippines³⁸ (Election Code) reinforces the separation of church and state by expressly prohibiting the political participation of religious groups, banning their intervention in elections, prohibiting the raising and donating to campaign funds, and preventing ecclesiastics from coercing subordinates to vote for or against any candidate. The relevant provisions are as follows:

Article VIII, Section 61. No religious sect shall be registered as a political party and no political party which seeks to achieve its goal through violence shall be entitled to accreditation.

Article VI, Section 38. Conduct of elections. - [N]o political party, political group, political committee, civic, religious, professional, or other organization or organized group of whatever nature shall intervene ..., directly or indirectly, ... favourable to or against his campaign for election ...

Article XI, Section 97. Prohibited raising of funds. - It shall be unlawful ... for any person or organization, whether civic or religious, directly or indirectly, to solicit and/or accept from any candidate [any] contribution or donation in cash or in kind from the commencement of the election period up to and including election day; Provided, That normal and customary religious stipends, tithes, or collections on Sundays and/or other designated collection days, are excluded from this prohibition.

Article XI, Section 104. Prohibited donations by candidates, treasurers of parties or their agents. - No candidate ... shall ... directly or indirectly, make any donation [for] the construction or repair of ... churches or chapels ... or any structure ... for the use of

any religious or civic organization: Provided, That normal and customary religious dues or contributions, such as religious stipends, tithes or collections on Sundays or other designated collection days ... are excluded from the prohibition.

Article XXII, Section 261. Prohibited Acts.
- The following shall be guilty of an election offense:

....

(d) Coercion of subordinates.

- (1) Any ... head, superior, or administrator of any religious organization ... who coerces or intimidates or compels, or in any manner influence, directly or indirectly, any of his subordinates or members or parishioners or employees ... to aid, campaign or vote for or against any candidate or any aspirant for the nomination or selection of candidates.
- (2) Any ... head, superior or administrator of any religious organization ... who dismisses or threatens to dismiss, punishes or threatens to punish [by] excommunication, ... for disobeying or not complying with any of the acts ordered by the former to aid, campaign or vote for or against any candidate, or any aspirant for the nomination or selection of candidates. (Emphases supplied.)

Significantly, there are political parties that front for religious groups, and now occupy seats in Congress as party-list representatives. A post-Marcos constitutional reform is the election to Congress of representatives elected not by geographical districts but through the party-list system. In the 2013 national elections, BUHAY (or “Life,” based on its complete name *Buhay Hayaan Yumabong*, or

³⁸ Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881, 1985 (Philippines).

“Let Life Flourish”) backed by Bro. Mike Velarde of El Shaddai, the largest Catholic charismatic group, received the highest number of votes among all the party-list groups. Other elected party-list groups backed by religious groups are CIBAC (Citizens’ Battle Against Corruption), linked to Bro. Eddie Villanueva of Jesus is Lord Movement; ACT-CIS (Anti-Crime and Terrorism Community Involvement and Support) and 1-SAGIP (Social Amelioration & Genuine Intervention on Poverty), which were both endorsed by the Iglesia ni Cristo.³⁹

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

Article III, Section 5 of the Philippine Constitution states that “No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.” Furthermore, the section states that “No religious test shall be required for the exercise of civil or political rights.”⁴⁰

The laws do not define “blasphemy,” “deviant behaviour,” or “heretic.”

2. *Right to manifest one’s religion or belief*

The Philippine Constitution in Article III, Section 5 provides that “[t]he free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.” Furthermore, the Constitution guarantees that no religious test shall be required for the exercise of civil or political rights.⁴¹

39 Gil C. Cabacungan Jr. ‘Religious groups infiltrate Congress via partylist elections.’ *Philippine Daily Inquirer* (12 May 2013). <<http://newsinfo.inquirer.net/407229/religious-groups-infiltrate-congress-via-partylist-elections#ixzz30GnOLsSJ>> accessed 29 April 2014.

40 Constitution, 1987 (Philippines).

41 Constitution, 1987 (Philippines).

a. *Freedom to worship*

As mentioned above, freedom to worship is constitutionally protected in the Philippines. Article III, Section 5 provides, *inter alia*, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. The Revised Penal Code⁴² however provides for crimes against religious worship. Section Four, Article 132, prohibits the interruption of religious worship:

The penalty of *prision correccional* in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion. If the crime shall have been committed with violence or threats, the penalty shall be *prision correccional* in its medium and maximum periods.

Furthermore, Article 133 prohibits the offending of religious feelings. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.

In the 2010 case of *People of the Philippines v Carlos Celdran y Pamintuan*,⁴³ a celebrity travel guide was convicted by a lower court for violating Article 133. This occurred at the height of church opposition to the Reproductive Health bill. The accused, Carlos Celdran, staged a protest inside the Manila Cathedral where he, dressed as the Filipino national hero Jose Rizal, shouted that the church should stop meddling in government affairs while holding a sign referring to “Padre Damaso,” the villainous

42 Act No. 3815, The Revised Penal Code of the Philippines (1930) (hereinafter, Revised Penal Code of the Philippines).

43 *People of the Philippines v Carlos Celdran y Pamintuan* [2013] CR- 36170.

Catholic priest in Rizal's novel, *Noli Me Tangere*.⁴⁴ Monsignor Nestor Cerbo of the Manila Cathedral filed a complaint of the violation of Article 133. Celdran was sentenced to a prison term by the lower court. The case is currently on appeal.

The law also provides specific protection for privileged communication for clergy. Under the Rules of Evidence, priests cannot be compelled to disclose information received in the confidentiality of the confessional. Section 24 of Rule 130 of the Rules of Evidence states:

Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases:

....

(d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;

Furthermore, the law protects religious individuals' right of access to justice (specifically, to testify as a witness in court). The Rules of Evidence, promulgated by the Supreme Court, expressly provide that religion cannot be a ground to disqualify a person from testifying as a witness. In the section governing "testimonial evidence," it states that the only qualifications required are that the witness be capable of perceiving and making known their perception to others, and that "religious ... belief ... shall not be a ground for disqualification."

44 Tetch Torres, 'RH advocate Carlos Celdran guilty of offending Church,' *Philippine Daily Inquirer* (28 January 2013). <<http://newsinfo.inquirer.net/348415/rh-advocate-carlos-celdran-guilty-of-offending-church#ixzz2zYScl8lh>> accessed 18 April 2014.

b. Places of worship

There are no legal or policy restrictions on the building of and access to places of worship in the Philippines.

c. Religious symbols

There is no law regulating religious symbols, but Catholic icons are commonplace in government buildings. The Supreme Court also adopted what it called the "Centennial Prayer for the Courts."⁴⁵

Almighty God, we stand in Your holy presence as our Supreme Judge. We humbly beseech You to bless and inspire us so that what we think, say and do will be in accordance with Your will. Enlighten our minds, strengthen our spirit, and fill our hearts with fraternal love, wisdom and understanding, so that we can be effective channels of truth, justice and peace. In our proceedings today, guide us in the path of righteousness for the fulfilment of Your greater glory. Amen.

This Prayer is supposed to be ecumenical and to be read by judges in open court at the start of each session day. It has not been challenged before any court because the prayer was issued by the Supreme Court itself under its rule-making powers under the Constitution.⁴⁶

d. Observance of holidays and days of rest

Several Christian holidays are recognized by law as national holidays, i.e. Maundy Thursday, Good Friday, All Saints' Day, Christmas Day, and New

45 Address of Justice Artemio V. Panganiban at the University of Sto. Tomas Central Seminar, *Saving the Constitutional System*, 19 February 2002. <http://philippinecommentary.blogspot.com/2005/12/chief-justice-panganiban-in-his-own_23.html> accessed 29 April 2014.

46 Art. VIII, Sec. 5.5, Constitution, 1987 (Philippines).

Year's Day.⁴⁷ The same law also recognizes the Muslim Eid al-Fitr and Eid al-Adha as national holidays. The Eid'l Fitr was nationally observed by law as a holiday only in 2002⁴⁸ and the Eid'l Adha only in 2009.⁴⁹ These are the only religious, non-Christian holidays in the official calendar of national holidays. Until then, the earliest legal recognition for the Eid'l Fitr was in 1964 but its observance was limited to Muslims.⁵⁰ President Marcos likewise recognized in 1977 both the Eid'l Fitr and the Eid'l Adha,⁵¹ but again their observance was limited to the predominantly Muslim provinces in Mindanao⁵² and, outside these areas, to Muslim government personnel⁵³ and, by presidential proclamation, to Muslim non-governmental personnel as well.⁵⁴

e. *Appointing clergy*

The Philippine Constitution prohibits the making of laws respecting an establishment of religion.⁵⁵ The ruling in *Pamil v Teleron*⁵⁶ bars ecclesiastics from holding public office in municipal governments. The prohibition has been limited to a municipal office, there being no similar law banning ecclesiastics from seeking public offices higher than a municipal office. The new Administrative Code repealed it in 1987.⁵⁷

47 Republic Act 9492 (25 July 2007) ("An act rationalizing the celebration of national holidays").

48 Republic Act 9177 (July 22, 2002).

49 Republic Act 9849 (July 27, 2009).

50 Presidential Decree No. 195 (1964).

51 Art. 169, Presidential Decree No. 1083 (1977) (hereinafter, Code of Muslim Personal Laws).

52 Art. 170, Code of Muslim Personal Laws, *supra* n. 51.

53 Art. 172(1), Code of Muslim Personal Laws, *supra* n. 51.

54 Art. 172(2), Code of Muslim Personal Laws, *supra* n. 51.

55 Art. III, Sec. 5, Constitution, 1987 (Philippines).

56 *Pamil v Teleron* [1978], G.R. No. 34854.

57 Administrative Code (1987) (Philippines).

f. *Teaching and disseminating materials*

There is no specific law regulating teaching and disseminating materials, including missionary activity. Pre-Arranged Employees Visa for Missionaries may be secured under Section 9(g) and Section 20 of the Commonwealth Act No. 613 or the Philippine Immigration Act of 1940 (PIA). The Bureau of Immigration requires non-immigrant foreign nationals holding the necessary visa under this category to show proof of a bona fide membership in an educational or religious organization in the Philippines. A foreign national is qualified to apply for a Pre-Arranged Employee Visa – Missionary once he/she has been endorsed by an educational or religious organization in the Philippines such as the CBCP or PCEC. Missionaries may have a one (1), two (2) or three (3) years initial period of validity on the Missionary Visa. Furthermore, visa may be extended for another one (1), two (2) or three (3) years for a total maximum period of ten (10) years.⁵⁸

In *Iglesia ni Cristo v Court of Appeals*,⁵⁹ the Supreme Court upheld the power of the government to regulate television programmes on a religious channel, but struck down prior restraint. In *American Bible Society v City of Manila*,⁶⁰ the Court held regulatory fees of the City of Manila do not apply to the dissemination of Bibles by missionaries.

g. *The right of parents to ensure the religious and moral education of their children*

The Constitution guarantees the "right of spouses to found a family in accordance with their religious

58 Bureau of Immigration, 'Visa Inquiry' *Bureau of Immigration Website* (2014). <<http://www.immigration.gov.ph/index.php/faqs/visa-inquiry/pre-arranged-employee-visa>> accessed 18 April 2014.

59 *Iglesia ni Cristo v Court of Appeals* [1996], G.R. No. 119673.

60 *American Bible Society v City of Manila* [1957], G.R. No. L-9637.

convictions”⁶¹ Under the Civil Code, the father and mother jointly exercise parental authority over their unemancipated legitimate children.⁶² They have the legal duty to “give[] moral and civil training”⁶³ to their child, though significantly the law does not refer to religious instruction. In contrast, the Child and Youth Welfare Code expressly refers to religion when it provides that the parents shall “extend to [the child] the benefits of moral guidance, self-discipline and religious instruction.”⁶⁴

Moreover, the Constitution gives parents the option to allow religious instruction in public primary and secondary schools within regular class hours provided it does not entail costs for the state.⁶⁵

The Constitution also acknowledges the role of private schools, which are predominantly religious in nature. According to Article XIV, Section 4(1) of the Philippine Constitution, “[t]he State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.”⁶⁶ The Constitution also exempts religious schools from national ownership requirements.⁶⁷ Finally, the Constitution exempts religious schools from taxes. This is guaranteed under the Philippine Constitution, Article VI, Section 28(3), which states:

Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually,

directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.⁶⁸

Madrasahs have the option of registering with the National Commission on Muslim Filipinos (NCMF) or Department of Education, and receive funding for teachers and facility improvements. The Department of Education (DepEd) has 459 public schools nationwide implementing Islamic religious education. This number does not include the Autonomous Region in Muslim Mindanao (ARMM) with its own regional DepEd which is technically independent of the national DepEd. The Philippine government, through the DepEd, has developed the Road Map for Upgrading Muslim Basic Education, a comprehensive program for the educational development of Filipino Muslims.

The development and institutionalization of madrasah education as well as the standard curriculum for elementary public schools and private madaris was approved and prescribed by the Department of Education under DepED Order No. 51, s. 2004. The Autonomous Region in Muslim Mindanao (ARMM) had adopted the national standard curriculum by virtue of ARMM RG Executive Order No. 13-A, s. 2004. With these issuances, the madrasah educational system has now been upgraded as a vital component of the national educational system, similar to the mainstream school system.⁶⁹

The question of the appropriate role of the state in educating the young and its potential conflict with parental rights was discussed in *Imbong v Ochoa*.⁷⁰ There, the Supreme Court upheld Section 14 of the Reproductive Health Law mandating the teaching of

61 Art. XV, Sec. 3.1 Constitution (1987), Philippines.

62 Art. 311, Republic Act No. 386 (The New Civil Code of the Philippines) (1949) (hereinafter, Civil Code of the Philippines).

63 *Id.*, Art. 356, para. 3.

64 Arts. 3 and 46.2, Child and Youth Welfare Code of the Philippines PD 63 (1974) (Philippines) (hereinafter Child and Youth Welfare Code).

65 *Id.*

66 *Id.*

67 Art. XIV, Sec. 4.2, Constitution (1987) Philippines.

68 Constitution, 1987 (Philippines).

69 Guidelines on Implementation of the Curriculum for Public School and Private Madrasah, Department of Education Order No. 51, 28 August 2004 (Philippines) < <http://www.deped.gov.ph/index.php/issuances/deped-orders/2004/document/dos200451pdf?format=raw>>.

70 *Supra*, at n. 33.

Age- and Development-Appropriate Reproductive Health Education.

It is also the inherent right of the State to act as *parens patriae* to aid parents in the moral development of the youth. Indeed, the Constitution makes mention of the importance of developing the youth and their important role in nation building. Considering that Section 14 provides not only for the age-appropriate-reproductive health education, but also for values formation; the development of knowledge and skills in self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in adolescents; women's rights and children's rights; responsible teenage behaviour; gender and development; and responsible parenthood, and that Rule 10, Section 11.01 of the RH-IRR and Section 4(t) of the RH Law itself provides for the teaching of responsible teenage behaviour, gender sensitivity and physical and emotional changes among adolescents - the Court finds that the legal mandate provided under the assailed provision supplements, rather than supplants, the rights and duties of the parents in the moral development of their children.⁷¹

h. Registration

Registration as a religious institution in the Security and Exchange Commission (SEC) and Bureau of Internal Revenue for a tax-exempt status is required. Requirements refer to Sections 109-116 of the Corporation Code of the Philippines, and an affidavit of affirmation or verification by the chief priest, rabbi, minister or presiding elder is required by the SEC. The SEC revokes the certificate of

registration of a church as a religious corporation if it fails to file the reportorial requirements and pay the penalties. The Roman Catholic Church is not SEC registered.

Note too that the Corporation Code codifies into law the Catholic practice of enabling the parish priest to act as a corporation ("corporation sole"), though the language is cast ecumenically to so enable the ecclesiastics of other religions as well. Section 116 of the Corporation Code of the Philippines states:

Any religious society or religious order, or any diocese, synod, or district organization of any religious denomination, sect or church, unless forbidden by the constitution, rules, regulations, or discipline of the religious denomination, sect or church of which it is a part, or by competent authority, may, upon written consent and/or by an affirmative vote at a meeting called for the purpose of at least two-thirds (2/3) of its membership, incorporate for the administration of its temporalities or for the management of its affairs, properties and estate by filing with the Securities and Exchange Commission, articles of incorporation verified by the affidavit of the presiding elder, secretary, or clerk or other member of such religious society or religious order, or diocese, synod, or district organization of the religious denomination, sect or church, setting forth the following:

That the religious society or religious order, or diocese, synod, or district organization is a religious organization of a religious denomination, sect or church;

That at least two-thirds (2/3) of its membership have given their written consent or have voted to incorporate, at a duly convened meeting of the body;

71 At p. 88.

That the incorporation of the religious society or religious order, or diocese, synod, or district organization desiring to incorporate is not forbidden by competent authority or by the constitution, rules, regulations or discipline of the religious denomination, sect, or church of which it forms a part;

That the religious society or religious order, or diocese, synod, or district organization desires to incorporate for the administration of its affairs, properties and estate;

The place where the principal office of the corporation is to be established and located, which place must be within the Philippines; and

The names, nationalities, and residences of the trustees elected by the religious society or religious order, or the diocese, synod, or district organization to serve for the first year or such other period as may be prescribed by the laws of the religious society or religious order, or of the diocese, synod, or district organization, the board of trustees to be not less than five (5) nor more than fifteen (15).⁷²

i. Communicate with individuals and communities on religious matters at the national and international level

Generally speaking, there are no broad restrictions on religious individuals and groups to communicate with other individual and communities on religious matters at the national and international level. However, restriction of religious speech may be valid under certain circumstances. In *Iglesia ni Cristo v Court of Appeals*,⁷³ the Supreme Court held that a television program used by the INC to

criticize other faiths may be censured as speech. The Court stated that:

As great as this liberty may be, religious freedom, like all other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society.

Furthermore, the Movie and Television Review and Classification Board (MTRCB), under the amended 2004 Implementing Rules and Regulations,⁷⁴ has the authority to classify a movie as not for public exhibition (“X” or “X-rated”) if “the film clearly constitutes an attack against any race, creed, or religion (Chapter IV, Section 1.F).” The MTRCB may also disapprove television airing of “work [that] clearly constitutes an attack against any race, creed or religion.”

j. Establish and maintain charitable and humanitarian institutions/solicit and receive funding

There are no restrictions on religious individuals and groups in establishing and maintaining charitable and humanitarian institutions, or to solicit and receive funding. The Constitution allows state subsidy for chaplains in military, prisons, orphanages, and leprosariums.⁷⁵ It also grants tax exemption for charitable institutions and land and buildings used for religious or charitable purposes.⁷⁶

⁷² Corporation Code of the Philippines, Batas Pambansa Blg. 68, 1 May 1980 (Philippines).

⁷³ *Supra*, n. 59.

⁷⁴ 2004 Implementing Rules and Regulations, Presidential Decree No. 1986, 24 February 2004 (Philippines).

⁷⁵ Art. VI, Sec. 29.2, Constitution, 1987 (Philippines).

⁷⁶ Art. VI, Sec. 28.3, Constitution, 1987 (Philippines).

k. *Conscientious objection*

Two leading cases address the principle of conscientious objection in the Philippines: *Gerona v Secretary of Education*⁷⁷ and *Ebranilag v Superintendent*⁷⁸, both involving children belonging to the Jehovah's Witnesses and who refused to take part in the flag ceremony required in all Philippine schools.

In *Gerona v Secretary of Education*, the Supreme Court held that the Jehovah's Witnesses may be compelled to participate in the flag ceremony because the flag is not a religious symbol, contrary to what their religion held. Moreover, the state had a valid interest in fostering nationalism, and no one may be exempted from civic obligations on the basis of religion. It took the Supreme Court 34 years to reverse this ruling in *Ebranilag v Superintendent*, holding that the fears that underlay *Gerona*—that exempting a small portion of the school population from saluting the flag, singing the national anthem and reciting the patriotic pledge would produce a nation “untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes”—had not come to pass. Moreover, in *Ebranilag*, the Court refused to engage in the interpretation of a religion's scripture.

It should also be noted that more recently, in *Imbong v Ochoa*,⁷⁹ the Court upheld the petitioners' plea for “health service providers” who have conscientious objections to contraception, and struck down the health service provider's duty to refer patients to contraceptive-friendly doctors.

The Court is of the view that the obligation to refer imposed by the RH Law violates the religious belief and conviction of a conscientious objector. Once the medical

practitioner, against his will, refers a patient seeking information on modern reproductive health products, services, procedures and methods, his conscience is immediately burdened as he has been compelled to perform an act against his beliefs. As Commissioner Joaquin A. Bernas [a Jesuit priest] has written, “at the basis of the free exercise clause is the respect for the inviolability of the human conscience.”⁸⁰

The Court analogizes the right of conscientious objection regarding contraceptive services, with the “right to be silent” regarding free speech.

Moreover, the guarantee of religious freedom is necessarily intertwined with the right to free speech, it being an externalization of one's thought and conscience. This in turn includes the right to be silent. The Bill of Rights guarantees the liberty of the individual to utter what is in his mind and the liberty not to utter what is not in his mind. While the RH Law seeks to provide freedom of choice through informed consent, freedom of choice guarantees the liberty of the religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one's religion.

In case of conflict between the religious beliefs and moral convictions of individuals, on one hand, and the interest of the State, on the other, to provide access and information on reproductive health ... to enable the people to determine the timing, number and spacing of the birth of their children, the Court is of the strong view that the religious freedom of health providers, whether public or private, should be accorded primacy.

77 *Gerona v Secretary of Education* [1959] G.R. No. L-13954.

78 *Ebranilag v Superintendent* [1993] G.R. No 95770.

79 *Supra*, at n. 33, pp. 72-74 and pp. 77-78.

80 At p. 72.

The Court further extends this position to all hospitals, thus enabling institutions, that is to say, non-natural persons, to invoke the conscientious objector principle.⁸¹ In conclusion, the Court applied heightened standards of judicial review and held that the government had not shown that the requirement is the least intrusive means of achieving a legitimate state objective:

[G]ranting that a compelling interest exists to justify the infringement of the conscientious objector's religious freedom, the [government has] failed to demonstrate "the gravest abuses, endangering paramount interests" which could limit or override a person's fundamental right to religious freedom. Also, the [government has] not ... show[n] that the means it takes to achieve its legitimate state objective is the least intrusive means. Suffice it to say, a person who is forced to perform an act in utter reluctance deserves the protection of the Court as the last vanguard of constitutional freedoms.⁸²

3. *Freedom from intolerance and discrimination*

There is no national law condoning intolerance and discrimination. On the other hand, the principle of "social justice," described as the duty of the state to "reduce social, economic, and political inequalities,"⁸³ justifies what in other jurisdictions would be considered affirmative action for vulnerable or historically disadvantaged groups.

At the moment, a bill is pending before the Senate prohibiting profiling as well as discrimination against persons on account of ethnic or racial origin and/or religious affiliation or belief.⁸⁴ The Catholic clergy

has opposed the Anti-Ethnic or Racial Profiling and Discrimination bill for promoting homosexuality.⁸⁵ The lawyer of the Catholic Bishops' Conference of the Philippines (CBCP) stated that this bill extends the protection against hate speech to lesbians, gays, bisexuals and transgendered persons.

There will be new crimes—hate speech and hate crimes. What's this? If you utter words that are hurtful to the feelings of lesbians, gays, bisexuals and transgenders, that would already be hate crime and hate speech. Besides, you can be sued. What kind of proposed law is this?⁸⁶

She argued that this showed "intolerance" of the Catholic objection to gay rights, and criminalizes them for their beliefs. "If [the government] refuse[s] to tolerate practice, persons or beliefs on religious grounds, that's a crime of religious intolerance."⁸⁷ In effect, she argued that the Catholic condemnation of gay rights is part of their free exercise rights that are being criminalized by the bill. "Government should not meddle in religious doctrine and faith: Religious witnessing (viewed in the bill as "intolerance") is also a form of ethical, moral, ideological and spiritual expression, protected by the Constitution."⁸⁸

81 At p 74.

82 At p. 77-8.

83 Art. XIII, Sec. 1, Constitution, 1987 (Philippines).

84 Senate Bill 2814 (Anti-Ethnic or Racial Profiling and Discrimination Act of 2011).

85 Niña Calleja. 'CBCP wants anti-discrimination bill cleansed of provisions on gay rights.' *Philippine Daily Inquirer* (7 December 2014) <<http://newsinfo.inquirer.net/106981/cbcp-wants-anti-discrimination-bill-cleansed-of-provisions-on-gay-rights>> accessed 10 April 2014.

86 Diana Uichanco, 'Senate 'anti-discrimination bill' mandates religious intolerance – lawyer.' *CBCP For Life* (9 December 2011) <<http://cbcpforlife.com/?p=5234>> accessed 10 April 2014.

87 *Id.*

88 *Id.*

4. *Right of vulnerable groups to freedom of religion and belief*

a. *Women*

The Magna Carta of Women⁸⁹ includes protection of the right of women to freedom of religion and belief. The Magna Carta expressly refers to the Convention on the Elimination of Discrimination Against Women. It guarantees the right of women to “all human rights and fundamental freedoms ... in the economic, social, political, cultural, and other fields without distinction or discrimination on account of ... religion”⁹⁰

i. Religion-based rules on marriage and gender discrimination

The laws regulating marriage and gender are shaped not just by religious but likewise by various sociological and cultural factors. However, there are provisions of Philippine law that track very closely the position of either the Catholic majority, or the Catholic clergy, or the best organized if most conservative laity.

For instance, divorce is not allowed under the 1987 Family Code,⁹¹ reflecting the Catholic position on the sanctity of marriage. There have been attempts to legalize divorce in the Philippines, and in one recent bill (House Bill No. 1799) filed in 2013, the sponsor cited the gender-bias embedded in the no-divorce rule in the Philippines. The Explanatory Note recognized the high prevalence of marital violence against women in the Philippines, for whom, “marital relations facilitate the commission

of violence and perpetuate their oppression.”⁹² The Note argued that existing laws on separation and termination of marriage are not sufficient to protect human rights.

The Family Code allows only legal separation, which is “relative divorce” or “separation of bed and board.” The marriage bonds remain in full force although there is a suspension of common marital life. The separated spouses may not re-marry.⁹³ The Family Code also allows the so-called Article 36 “declaration of nullity” on the basis that one spouse was “psychologically incapacitated to comply with the essential marital obligations of marriage.”⁹⁴ The Supreme Court has recognized that this was a compromise with the Catholic objection to the legalization of divorce.⁹⁵

[C]onsidering the Christian traditional concept of marriage of the Filipino people as a permanent, inviolable, indissoluble social institution upon which the family and society are founded, and *also realizing the strong opposition that any provision on absolute divorce would encounter from the Catholic Church and the Catholic sector of our citizenry to whom the great majority of our people belong*, the [drafters of the Family Code] did not pursue the idea of absolute divorce and instead opted for an action for judicial declaration of invalidity of marriage based on grounds available in the Canon Law. It was thought that such an action would not only be *an acceptable alternative to divorce*

⁸⁹ The Magna Carta of Women, RA 9710 (2009) (Philippines).

⁹⁰ *Id.*, Sec. 2.

⁹¹ Executive Order No. 209 (1987) (hereinafter, Family Code of the Philippines).

⁹² House Bill No. 1799 (An Act Introducing Divorce in the Philippines, Amending for the Purpose Title II, Articles 55 to 66 Inclusive and Article 26 of Executive Order No. 209, as Amended, Otherwise Known as the Family Code of the Philippines, and Repealing Article 36 of the Same Code, and for Other Purposes).

⁹³ E. Aguilang-Pangalangan, Marriage and Unmarried Cohabitation 118-120 (University of the Philippines Law Center, 2014).

⁹⁴ Art. 36, Family Code of the Philippines, *supra* n. 91. See also E.A. Pangalangan, *id.*, at 93.

⁹⁵ *Santos v. Bedia-Santos* [1995] G.R. No. 112019 (Romero, J., concurring).

but would also solve the nagging problem of church annulments of marriages on grounds not recognized by the civil law of the State.

....

Moreover, the judge, in interpreting the provision on a case-to-case basis, must be guided by experience, the findings of experts and researchers in psychological disciplines, and *by decisions of church tribunals which, although not binding on the civil courts, maybe given persuasive effect since the provisions was taken from Canon Law.*⁹⁶ (Emphases supplied.)

The Supreme Court has repeatedly recognized that this clause was derived from the “New Code of Canon Law,” and the Court will “give great respect” to the interpretations “given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines,” because the aim of the Family Code was “to harmonize our civil laws with the religious faith of our people.”

[T]he following guidelines in the interpretation and application of Art. 36 of the Family Code are hereby handed down for the guidance of the bench and the bar:

....

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983.

⁹⁶ *Santos v. Bedia-Santos* [1995] G.R. No. 112019 (Romero, J., concurring).

....

Since the purpose of including such provision in our Family Code is *to harmonize our civil laws with the religious faith of our people*, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — *what is decreed as canonically invalid should also be decreed civilly void*.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — *shall walk together in synodal cadence towards the same goal* of protecting and cherishing marriage and the family as the inviolable base of the nation.⁹⁷ (Emphases supplied.)

In another case, the Supreme Court likewise held that Catholic interpretations “although not binding on the civil courts [shall nonetheless have] persuasive effect.”

The [drafters of the Family Code] would like the judge to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.⁹⁸

⁹⁷ *Republic v. Molina* [1997] G.R. 108763. See also *Baccay v. Baccay* [2010] G.R. 173138 (Brion, J, concurring).

⁹⁸ *Santos v. Bedia-Santos* [1995] G.R. No. 112019.

However, in a subsequent case that purported merely to apply this ruling, the Court gave ecclesiastical tribunals more than just “persuasive effect” and held them to bind civil courts.⁹⁹

The Court of Appeals clearly erred when it failed to take into consideration the fact that the marriage of the parties was annulled by the Catholic Church.

Evidently, the conclusion of psychological incapacity was *arrived at not only by the trial court, but also by canonical bodies*. Yet, we must clarify the proper import of the Church rulings annulling the marriage in this case. They hold sway since they are drawn from a similar recognition, as the trial court, of the veracity of petitioner’s allegations. [Otherwise], the rulings of the Catholic Church on this matter would have diminished persuasive value.¹⁰⁰ (Emphasis supplied.)

Moreover, the grounds for legal separation include “physical violence ... to compel [a spouse] to change religious or political affiliation.” The Family Code provides that legal separation may be secured on the basis of:

Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;¹⁰¹

The Department of Social Welfare and Development has confirmed that women are typically the victims

of such abuse.¹⁰² Authoritative commentators have stated that when the purpose of the abuse is to compel a change in “religious or political beliefs,” one act of violence or pressure will suffice as a ground for legal separation. Such acts of violence are proscribed under both the Philippine Magna Carta of Women¹⁰³ which prohibits “discrimination against women in all its forms” and the Anti-Violence Against Women and Their Children Act of 2004.¹⁰⁴

b. Children

The child’s religious freedom is secured by the Constitution against state interference but not entirely from parental authority. The religious rights under the Bill of Rights are guaranteed to all persons, including children. The Child and Youth Welfare Code of the Philippines also provides that all children shall be entitled to the “rights of the child” without discrimination on the basis of religion, among other criteria.¹⁰⁵

On the other hand, the Constitution guarantees the “right of spouses to found a family in accordance with their religious convictions.”¹⁰⁶ The Civil Code, while stating that a minor’s capacity to act may not be limited on the basis of religious belief, allows limitations on account of age.¹⁰⁷ It further states that the father and mother shall jointly exercise parental authority over their unemancipated legitimate children.¹⁰⁸ Indeed, the Child and Youth Welfare Code more explicitly refers to religion and provides that the parents shall “extend to [the child] the benefits of moral guidance, self-discipline and

99 *Antonio v. Reyes* [2006] G.R. 155800.

100 *Antonio v. Reyes* [2006] G.R. 155800.

101 Art. 55, Family Code of the Philippines, *supra* n. 91.

102 E. A. Pangalangan, *supra*, n. 93, citing the Department of Social Welfare and Development.

103 Republic Act No. 9710 (2010).

104 Republic Act No. 9262 (2004).

105 Art. 3, Child and Youth Welfare Code, *supra* n. 64.

106 Art. XV, Sec. 3.1, Constitution, 1987 (Philippines).

107 Art. 39, Civil Code of the Philippines, *supra*, n. 62.

108 Art. 311, Civil Code of the Philippines, *supra*, n. 62.

religious instruction.”¹⁰⁹

c. Migrant workers

This is not applicable in Philippine milieu. The Philippines is a “sending state,” and does not host foreign migrant workers.

d. Persons deprived of their liberty

No law specifically governs the right of persons deprived of their liberty to religious freedom, but the Constitution provides guarantees to persons otherwise constrained from performing religious rituals due to lack of access to religious “officials,” e.g., soldiers in the field, prisoners, orphans and lepers. The provision on the use of public funds states:

No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.¹¹⁰

e. Refugees

The Philippines is party to the main instruments for the protection of refugees, namely, the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and the 1954 Convention Relating to the Status of Stateless Persons. In national law, refugees

are governed by the Philippine Immigration Act of 1940 and the administrative issuances of the Department of Justice.

SECTION 3. Basic Principles. - This procedure shall be governed by the following basic principles:

...

- c. Non-deprivation of refugee or stateless status, and non-discrimination in the application of the Conventions, on account of race, religion, political opinion, or country of origin.
- d. An applicant and/or his or her dependents during the pendency of his or her application, or a refugee shall not be expelled or returned to a country where there are valid reasons to believe that his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group or political opinion.¹¹¹

f. Minorities

All religious minorities are guaranteed the right to worship under the Free Exercise clause and state neutrality under the Establishment Clause. At the same time, the Muslim religious minority in the southern island of Mindanao has been granted regional autonomy under the 1987 Constitution and, in 2012, the Philippine Government signed a peace agreement with the Moro Islamic Liberation Front (MILF) which was embodied in a Framework Agreement to grant autonomy to what it called the Bangsamoro. This is sanctioned under the Constitution under Article X, Section 1, which states:

¹¹¹ Establishing the Refugees and Stateless Status Determination Procedure, Department of Justice Circular No. 058 (18 October 2012).

¹⁰⁹ Art. 46.2, Child and Youth Welfare Code, *supra* n. 64.

¹¹⁰ Art. VI, Sec. 29(2), Constitution, 1987 (Philippines).

The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

Thus, Section 15 of the same article provides:

There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

The legal and political arrangements for the autonomous regions are set out in the sections of the same article below:

Section 16. The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

Section 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and

legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws. The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favourably in such plebiscite shall be included in the autonomous region.

Section 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family, and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and

- (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Section 21. The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defence and security of the regions shall be the responsibility of the National Government.

The Congress implemented the autonomy clause in the Constitution through the 1989 Organic Act for Muslim Mindanao. As required by the Constitution, the Organic Act was submitted to a plebiscite in November 1989, in which only four provinces voted to join the Autonomous Region of Muslim Mindanao (ARMM).

After the 1976 Tripoli Agreement signed by the Marcos government with the Moro National Liberation Front (MNLF), the first of many peace agreements with Muslim rebels, Marcos issued a presidential decree (using his legislative powers then) toward “recognizing the system of Filipino Muslim laws [and] codifying Muslim personal laws.”¹¹²

Presidential Decree 1083, the Code of Muslim Personal Laws (CMPL) gives “the full sanction of the State” to the “legal system of the Muslims in the Philippines” and “codifies Muslim personal laws” as “part of the law of the land.”¹¹³ In case of conflict between the CMPL and national laws, the CMPL prevails.¹¹⁴ In case of “conflict in Islamic schools of law,” what prevails is the rule that is “in consonance with the Constitution ..., the [CMPL], public order, public policy and public interest.”¹¹⁵

¹¹² *Id.*

¹¹³ Art. 2, Code of Muslim Personal Laws, *supra* n. 51.

¹¹⁴ Art. 3(1) and (2), Code of Muslim Personal Laws, *supra* n. 51.

¹¹⁵ Art. 6, Code of Muslim Personal Laws, *supra* n. 51.

The CMPL is applicable only to Muslims¹¹⁶ and, more specifically, its marriage provisions apply when “both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.”¹¹⁷ Otherwise, the national laws on marriage, namely, the Philippine Civil Code¹¹⁸ and the 1987 Family Code,¹¹⁹ shall apply.¹²⁰

The CMPL exempts Filipino Muslims from the national laws on marriage that, in turn, reflect Roman Catholic doctrine. The Philippines has adopted the Catholic position on the sanctity and indissolubility of marriage, and accordingly there is no divorce in the Philippines, the only state in the world today apart from the Holy See that does not grant divorce decrees.¹²¹ Bigamous marriages are void,¹²² and bigamy is a crime.¹²³ However, “Muslim personal law” pertaining to “all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses”¹²⁴ carves out exceptions for Muslims.

Unlike the Civil Code and the Family Code which allow only legal separation, the CMPL allows the “formal dissolution of the marriage bond”¹²⁵ and recognizes divorce as a right of both husband and wife.¹²⁶ The Family Code itself contains a limited exception for “marriages among Muslims or among members of [] ethnic cultural communities,” namely, from the requirement of a marriage license “provided they are solemnized in

¹¹⁶ Art. 3, Code of Muslim Personal Laws, *supra* n. 51.

¹¹⁷ Art. 13(1), Code of Muslim Personal Laws, *supra* n. 51.

¹¹⁸ Republic Act No. 386 (The New Civil Code of the Philippines) (1949).

¹¹⁹ Family Code of the Philippines, *supra* n. 91.

¹²⁰ Art. 13(2), Code of Muslim Personal Laws, *supra* n. 51.

¹²¹ See E.A. Pangalangan, *supra* n. 93; see also Family Code of the Philippines, *supra* n. 91.

¹²² Art. 35, Family Code of the Philippines, *supra* n. 91.

¹²³ Art. 349, Revised Penal Code of the Philippines, *supra* n. 42.

¹²⁴ Art. 7(i), Code of Muslim Personal Laws, *supra* n. 51.

¹²⁵ Art. 45, Code of Muslim Personal Laws. See Chapter 3 (Divorce, Talaq), Arts 45-57, *supra* n. 51.

¹²⁶ Art. 34, Code of Muslim Personal Laws, *supra* n. 51.

accordance with their customs, rites or practices.”¹²⁷

Finally, the CMPL deviates from the national and international laws for the protection of minors. The Family Code sets the minimum age of consent for marriage at 18 for both men and women.¹²⁸ The ICCPR guarantees that “[n]o marriage shall be entered into without the free and full consent of the intending spouses.”¹²⁹ The CEDAW guarantees the right “freely to choose a spouse and to enter into marriage only with [one’s] free and full consent.”¹³⁰ Yet the CMPL provides for a lower age of marriageability for both men and women, and weakens, if it does not eviscerate, the protection against arranged marriages of child-brides.

The CMPL sets the minimum marriageable age at 15 years old for men and, significantly for Muslim women, the onset of puberty, which is statutorily presumed to be attained upon reaching the age of 15.¹³¹ Moreover, a female “who though less than 15 but not below 12 years of age, has attained puberty,” may be allowed to marry upon petition by a guardian.¹³² The CMPL even allows “marriage ... by a minor below the prescribed ages” provided it has been arranged by a guardian other than the father or grandfather of the child-bride, subject only to the qualification that the union “shall be regarded [only] as betrothal” and “may be annulled upon the petition of either party within four years after attaining the age of puberty, provided no voluntary cohabitation has taken place.”¹³³ This clause is significant in that it contemplates that a mere “betrothal” includes the possibility of “voluntary cohabitation,” and this, by a woman even below the age of 12.

Yet under Philippine law, a woman below that age is statutorily presumed to be incapable of giving genuine consent to sexual relations. The Revised Penal Code considers sexual relations with a woman below the age of

12 as “statutory rape” even if it is consensual.¹³⁴ The irony then is that the marriage of the child-bride is considered valid under the CMPL but, where the child-bride is younger than 12, the consummation of that marriage remains a crime under the Revised Penal Code. The reason is that the choice of law clause under the CMPL provides that the CMPL shall prevail over national law “in case of conflict between any [of their] provisions.”¹³⁵ Accordingly, the CMPL prevails over the Family Code when they clash as regards the age of marriageability. However, the CMPL does not have any provision that negates the Revised Penal Code punishment of statutory rape.

In contrast, the CMPL expressly exempts marriages under the CMPL from the Revised Penal Code punishment of bigamy.¹³⁶ The CMPL allows polygamy for men,¹³⁷ citing the “rule of Islamic law permitting a Muslim to have more than one wife [provided] he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases.”¹³⁸

Finally, this likewise demonstrates gender-based discriminatory treatment, because it allows multiple marriages for men but not for women. The requirements for divorce provide another example of asymmetric standards for men and women, e.g., the husband has the power to “divorce by *talaq*,”¹³⁹ but his wife may effect a *talaq* only when her husband delegates it to her “by *tafwid*.”¹⁴⁰

The CMPL establishes three main institutions – a Shari’a court system; the Agama Arbitration Council for amicable settlement of cases; and the mufti, or Islamic Jurisconsultant position in the Supreme Court. It establishes a three-tiered system of courts – Shari’a Circuit Courts (SCC) at the first instance level; Shari’a District Courts (SDC) to handle more serious cases and appeals from the

127 Art. 33, Family Code of the Philippines, *supra* n. 91.

128 Art. 5, Family Code of the Philippines, *supra* n. 91.

129 Art. 23(3), International Covenant on Civil and Political Rights.

130 Art. 16(1.b), Convention on the Elimination of Discrimination Against Women.

131 Art. 16(1), Code of Muslim Personal Laws, *supra* n. 51.

132 Art. 16(2), Code of Muslim Personal Laws, *supra* n. 51.

133 Art. 16(3), Code of Muslim Personal Laws, *supra* n. 51.

134 Art. 335(3), Revised Penal Code of the Philippines, *supra* n. 42.

135 Art. 3(1), Code of Muslim Personal Laws, *supra* n. 51.

136 Art. 180, Code of Muslim Personal Laws, *supra* n. 51.

137 Art. 27, Code of Muslim Personal Laws, *supra* n. 51.

138 *Id.*

139 Art. 46, Code of Muslim Personal Laws, *supra* n. 51.

140 Art. 51, Code of Muslim Personal Laws, *supra* n. 51.

Shari'a Circuit Courts; and, at the apex, the Supreme Court of the Republic of the Philippines for appeals from the SDCs. Hence, the Shari'a court system is not independent but part of the judicial branch of the Philippine government. The Shari'a courts are located only in areas with a high concentration of Muslims. Article 147 establishes five District Courts, covering Muslim majority areas of Mindanao. The SDCs rank equally with Regional Trial Courts in the regular court system. District Courts hear cases on custody, guardianship, legitimacy of children, paternity and filiation, as well as inheritance and customary contracts between Muslims.

Judges in the District Courts are required to have the same qualifications as their peers in the regular court system, as well as passing the Shari'a bar. Circuit Court judges, however, are only required to have a high school education and to have passed the Shari'a bar. Shari'a judges are appointed by the President. Salaries and conditions are set at the same level as Municipal and Regional Trial Court judges in the regular system.

Passage of the Shari'a bar examination is a precondition for lawyers appearing before the Shari'a courts. Applicants eligible to sit for the Shari'a bar must be lawyers admitted to the Integrated Bar of the Philippines who wish to practice in the Shari'a courts; non-lawyers who have passed a 45-day course on Islamic Law given by the National Commission on Muslim Filipinos (NCMF); or Muslim scholars with a degree in Islamic Law and Jurisprudence from abroad. A survey undertaken of Shari'a lawyers in the country indicated that over 80 per cent received their training through the NCMF course.¹⁴¹

141 Matthew Stephens, 'Islamic Law in the Philippines: Between Appeasement and Neglect', (2011) *Islam, Syari'ah and Governance Background Paper Series*, Melbourne Law School, 10-12.

In 2012, the Philippine Government signed a peace agreement—the Bangsamoro Framework Agreement to promote peace in Mindanao¹⁴²—with the Moro Islamic Liberation Front (MILF), an armed Islamic secessionist movement, to grant autonomy to the Bangsamoro, allowing for the expansion of the ARMM and providing for power- and revenue sharing.

Besides the need to accommodate Muslim minorities, there have also been incidences where the government has had to negotiate religious norms that conflict with national law. For instance, see the discussion on the government's response to a Moonies mass wedding in 1996 (see Part II.D).

C. Redress Mechanisms and Interpretation of Policies

1. Judiciary

Below are landmark cases addressing the principle of the separation of church and state under the Constitution, more specifically, the principle of free exercise and the non-establishment of religion. Note that in Philippine constitutional law, any violation of either the free exercise or the non-establishment clauses triggers the application of heightened standards of judicial review, which shift upon the state the burden of showing a "compelling state interest" to justify the police power measure and a narrowly tailored measure to advance that interest without unnecessarily burdening the religious rights.

142 <http://www.gov.ph/the-2012-framework-agreement-on-the-bangsamoro/>.

CONSTITUTION, ARTICLE VI, SECTION 29 (2). “NO PUBLIC MONEY...”	
<i>Aglipay v Ruiz</i> ¹⁴³	The postal service issued stamps commemorating the 33rd International Eucharistic Congress in Manila, but showing the image of a chalice. Faced with complaints on establishment violations, the stamp was redesigned to remove the chalice, replace it with a map of the Philippines as the central image, but still retaining text commemorating the Eucharistic Congress. The Supreme Court found no establishment violations, and recognized its practical purpose (namely, promotion of tourism) and the secular image (namely, the map of the Philippines) as the centrepiece of the stamp. It is significant that there was a market for the sale of the “Catholic” stamp only because the Philippines has a big Catholic population. The market-based argument for the issuance of the stamp actually ratifies the majoritarian power of the Catholic church.
<i>Garces v Estenzo</i> ¹⁴⁴	The Supreme Court held that the statue of the town’s patron saint belongs to the municipal government and not to the parish priest. The statue was purchased with funds raised for the annual fiesta by the town mayor from private donations. The funds thus became public in character, which was then used to purchase a religious icon. The Supreme Court found no establishment problem, because the image is used for the town fiesta which, though traditionally commemorating a saint, has become more of a socio-cultural and tourist event. A religious practice was embraced by the majority and “secularized” as part of its culture, and, parallel to <i>Aglipay, supra</i> , the government’s entanglement in a religious practice was ratified by appealing to the fact that Catholicism is the majority religion.
FREE EXERCISE CLAUSE	
<i>American Bible Soc. v City of Manila</i> ¹⁴⁵	Regulatory fees of the City of Manila do not apply to the dissemination of Bibles by missionaries. The police power of taxation cannot be used to prohibit or limit a person’s free exercise of religion. The distribution of Bibles and proselytizing are considered exercises of religion.
<i>Gerona v Sec of Education</i> ¹⁴⁶	Jehovah’s Witnesses refused to allow their children to participate in their schools’ flag ceremonies because their religion forbade them from worshiping religious symbols. The Supreme Court held that the flag is not a religious symbol, and the Jehovah’s Witnesses may be compelled to salute the flag because the ceremony is intended for the secular purpose of promoting nationalism.
<i>Ebranilag v Division</i> ¹⁴⁷	The Court reversed <i>Gerona</i> , and held it may not engage in the interpretation of a religion’s scripture and teaching because that is tantamount to excessive entanglement. The Court held that the Jehovah’s Witnesses are entitled to the free exercise right to be exempted from the flag ceremonies. It is significant that it took the Court all of 34 years to reverse <i>Gerona</i> , a case in which a Roman Catholic justice interpreted for the Jehovah’s Witnesses their own bible.

143 *Aglipay v Ruiz* [1937] G.R. No. L-45459.

144 *Garces v Estenzo* [1981] G.R. No. L-53487.

145 *American Bible Society v City of Manila* [1957] G.R. No. L-9637.

146 *Supra*, at n. 77.

147 *Supra*, at n. 78.

<i>Anucension v NLU</i> ¹⁴⁸	In a case involving labour unions, members of the Iglesia ni Cristo were exempted from the effects of a “closed shop” clause in the collective bargaining agreement. They invoked a passage of their scripture that they may not join organizations that included non-believers among their members. The Court held this to be within their free exercise rights. As stated earlier, the Iglesia ni Cristo is a small but politically powerful religion. Their compulsory non-membership in unions is considered a draw for employers.
<i>Pamil v Teleron</i> ¹⁴⁹	In 1971, a priest was elected mayor of a municipality, but was disqualified under the old American-era Administrative Code of 1917 which banned ecclesiastics from holding public office in municipal governments. Despite the fact the Constitution states that “[n]o religious test shall be required for the exercise of civil or political rights,” the Court could not muster enough votes to strike down the 1917 provision as unconstitutional, the justices citing the historical origins of the separation clause and the threats posed by religious participation in secular politics.
<i>German v Barangan</i> ¹⁵⁰	In this Marcos-era decision, anti-Marcos protesters wanted to hear mass at the church adjacent to the presidential palace, but were denied access by the police. The Court upheld the denial, saying this was political protest disguised as religious practice. Applying the test of good faith, the Court held that the protesters betrayed their true intentions by wearing the trademark yellow shirts of the anti-Marcos movement when they purported to worship in church.
CONSCIENTIOUS OBJECTOR	
<i>Imbong v Ochoa</i> ¹⁵¹	<p>The Reproductive Health Law requires the state to include contraceptive access and education in the state's health programs. It contains a “conscientious objector” clause which enabled conservative Roman Catholic doctors to refuse to give such “health care services and information.” However, it also imposes the duty to “refer the [patient] to another health care service provider within the same facility or one which is conveniently accessible.” The RH law also provides that the “conscientious objector” still has the duty to provide “appropriate initial medical treatment and support in emergency and serious cases.”</p> <p>The Court upheld the RH Law but struck down the “duty to refer” as insufficiently protecting the free exercise rights of health professionals. In other words, they may refuse altogether to render medical care even in emergency cases. The striking down of the “duty to refer” was a mere sop meant to appease the well-organized and well-publicized opposition of the Roman Catholic clergy, while preserving the core of the social programs that the RH law required.</p>

148 *Anucension v NLU* [1977] G.R. No. L26097.

149 *Supra*, at n. 56.

150 *German v Barangan* [1985] G.R. No. L-68828.

151 *Supra*, at n. 33.

BENEVOLENT NEUTRALITY DOCTRINE	
<i>Estrada v Escritor</i> ¹⁵²	<p>This is one of the recent high points in free exercise case-law, but it began as a mere administrative case to dismiss a court employee for immorality. She had cohabited and born a child with someone not her legal husband. She invoked her membership in the Jehovah's Witnesses, which validated her union based on a document which they called the "Declaration of Pledging Faithfulness."</p> <p>The Court held that to dismiss her for immorality was to adopt the standards specific to one religion, in this case the Roman Catholic majority's for whom the union was invalid, and to apply them to those from another religion for whom the union was legitimate. Thus a policy of "benevolent neutrality" and accommodation meant that she may not be forced to choose between practicing her religion and keeping her livelihood.</p>
POLITICAL PARTICIPATION OF LGBTs	
<i>Ang Ladlad LGBT Party v COMELEC</i> ¹⁵³	<p>The 1987 Constitution provided not just for representatives elected at the district level but likewise for party-list representatives coming from disadvantaged sectors. The party-list group Ang Ladlad represented the lesbians, gays, bisexuals and transgendered, but were refused accreditation by the election commission, which said that the homosexuality was immoral and that Ang Ladlad, when it filed its application saying they did not advocate illegal or immoral acts, had actually stated a lie. The Supreme Court reversed the ruling, saying that the election commission would have to cite a valid legal ground to exclude Ang Ladlad.</p>
RELIGIOUS SPEECH	
<i>Iglesia ni Cristo (INC) v CA</i> ¹⁵⁴	<p>The regulatory board governing broadcast networks censored the Iglesia ni Cristo for attacking the doctrines and practices of the Roman Catholics. The Supreme Court reversed the board, saying that the "remedy against bad theology is better theology" and the "bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas."</p>
<i>MVRS Publications v Islamic Da'Wah Council of the Philippines</i> ¹⁵⁵	<p>Muslim clerics sued a tabloid for damages arising from defamation. The tabloid reported that Muslims did not eat pork because they considered pigs sacred. The Court threw out the complaint, saying that an action for defamation must be filed by the actual injured parties. Note the strict application of rules against the Muslims, and the liberal application in favour of the Iglesia ni Cristo.</p>

152 *Estrada v Escritor* [2003] AM P-02-1651.

153 *Ang Ladlad LGBT Party v COMELEC* [2010] G.R. No. 190582.

154 *Supra*, at n. 59.

155 *MVRS Publications v Islamic Da'Wah Council of the Philippines* [2003] G.R. No. 135306.

<p><i>Manuel Dayrit v Emily Abrera, Mideo Cruz et al.</i>¹⁵⁶</p> <p>and</p> <p><i>Eusebio Dulatas, Jr. vs. Emily Abrera, Mideo Cruz et al.</i>¹⁵⁷</p>	<p>Mideo Cruz's <i>Poleteismo</i> was a collage intended to show the debasement of religion in the modern world, depicting an image of Jesus juxtaposed with condoms and other sexual objects. It was exhibited at the Cultural Center of the Philippines (CCP), the government's premiere venue for exhibits and performances. The entire exhibit was prematurely closed after Catholic leaders called it blasphemy, and their followers defaced and tried to burn down the exhibit. They also filed criminal complaints for "immoral doctrines, obscene publications and exhibitions, and indecent shows" and those that "offend any race or religion." All the charges were dismissed.</p> <p><i>Poleteismo</i> demonstrates the "heckler's veto" in Philippine law. The exhibit was cancelled because religious fanatics tried to burn it down. The official ground for cancellation was not the religious objection but the peace and order rationale. Yet the result is that the fanatics achieved in law what they failed to achieve in fact (that is, burn down the exhibit). Conversely, the heckler was able to convert his religion-based harassment of the artist into a law-based veto.</p>
RELIGIOUS PARTICIPATION IN ELECTORAL CAMPAIGNS	
<p><i>Velarde v Social Justice Society</i>¹⁵⁸</p>	<p>A group of law professors objected to the practice by the influential charismatic and Pentecostal preachers of endorsing candidates during national and local elections, citing the separation of church and state. The trial court obliged, but the Supreme Court set aside the ruling saying that the trial court should have conducted a fuller evidentiary hearing on the merits.</p>
<p><i>The Diocese of Bacolod and Bishop Vicente M. Navarra v Commission on Elections</i>¹⁵⁹</p>	<p>The election commission stopped a Catholic bishop from posting huge banners on church premises campaigning against pro-Reproductive Health candidates, branding them "Team Patay" (or Team of Death), and calling for a "conscience vote" against the RH bill. The bishop and his diocese sought relief from the Supreme Court, which obliged with a "temporary restraining order" stopping the election commission from carrying out its ruling. Accordingly, the explicit campaign banners unabashedly displayed by a Catholic bishop in the premises of a Catholic church remained through the campaign period for the May 2013 elections.</p>

¹⁵⁶ *Manuel Dayrit v Emily Abrera, Mideo Cruz et al.* [2011] OMB-C-C-11-0500-H.

¹⁵⁷ *Eusebio Dulatas, Jr. v Emily Abrera, Mideo Cruz et al.* [2011] OMB-C-C-11-516-H.

¹⁵⁸ *Velarde v Social Justice Society* [2003] G.R. No. 159357.

¹⁵⁹ *The Diocese of Bacolod, Represented by the Most Rev. Bishop Vicente M. Navarra and the Bishop Himself in his Personal Capacity v. Commission on Elections and the Election Officer of Bacolod City* [2013] GR No. 205728, Temporary Restraining Order dated 5 March 2013. See Oscar Franklin Tan, Are bishops above election laws?, Commentary, *Philippine Daily Inquirer* (13 March 2013), at <http://opinion.inquirer.net/48727/are-bishops-above-election-laws>.

2. *Administrative Bodies*

There is no specialized government agency regulating religion. The National Commission on Muslim Filipinos¹⁶⁰ (NCMF), formerly Office of Muslim Affairs, is the sole official representation of a religious community in government. The NCMF promotes the rights of Muslim Filipinos at both national and local levels through the development of culture, traditions, institutions and well-being of Muslim Filipinos.

3. *Independent Bodies*

The Philippine Commission on Human Rights¹⁶¹ (CHR) monitors and investigates issues on religious freedom. According to the Philippine Constitution, Article XIII, Section 18, the Commission on Human Rights has the power to investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights. It is also tasked with the function of monitoring the Philippine government's compliance with international treaty obligations on human rights. Under Section 19 of the same article, Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into accounts its recommendations.

However, CHR powers have been clipped by the Supreme Court in various cases. In *Cariño v Commission on Human Rights*,¹⁶² the Court confined the CHR's investigative and fact-finding powers in the case of 800 public school teachers who went on a protest mass leave, and struck down the CHR's "return-to-work order" as partaking of a judicial character beyond the scope of the CHR's constitutionally defined powers. Furthermore, in

Simon, Jr. v Commission on Human Rights,¹⁶³ the Court struck down the CHR's "cease and desist order" stopping the demolition of stalls and shanties, saying that the CHR's investigative and fact-finding powers are limited to "human rights violations involving civil and political rights," not to economic and social rights. The shanty dwellers had invoked their right to a decent livelihood.

In *Bautista v Salonga*,¹⁶⁴ the Court held that the appointment of the CHR Chairman is not subject to congressional confirmation, unlike appointments to full-fledged constitutional agencies expressly subjected by the Constitution to congressional checks and balances.

PART TWO: TRENDS IN RELIGIOUS RESTRICTION, PERSECUTION AND CONFLICT

This portion of the report relies on the Universal Periodic Review (UPR) Philippine Reports (1st and 2nd cycle), the Human Rights Watch World Reports in 2013 and 2014, and the US Department of State Annual Reports on International Religious Freedom (2000-2012). It was culled from both the UPR and Human Rights Watch Reports. Reports of persecutions were lifted from the US Department of State Annual Reports on International Religious Freedom and local news sources.

A. Significant Changes in the Law

The only significant new law has actually been a non-religious law, the Reproductive Health Law,¹⁶⁵ that was vehemently opposed by the Catholic clergy because it ensures access to contraceptives

160 National Commission on Muslim Filipinos Act of 2009, Republic Act No. 9997, 18 February 2010 (Philippines).

161 Art. XIII, Secs. 17-19, Constitution, 1987 (Philippines); Executive Order No. 163, 5 May 1987 (Philippines).

162 *Cariño v Commission on Human Rights* [1991] G.R. No. 96681.

163 *Simon, Jr. v Commission on Human Rights* [1994] G.R. No. 100150.

164 *Bautista v Salonga* [1989] G.R. No. 86439.

165 Republic Act No. 10354 (2012).

(all of which, the clergy says, are abortifacients)¹⁶⁶ and enables government to make contraceptives available to poor married couples. The law was upheld by the Supreme Court, but it struck down the “conscientious objector” clause (that protected conservative doctors who refused to render family planning advice) because it imposed upon them the “duty to refer” the patient to willing doctors.¹⁶⁷

B. Significant Changes in State Enforcement

There has been no record of the state singling out members of a religion for prosecution, except in the Moonies case discussed below, where their mass wedding was suspected of being a front for human trafficking. Apart from that, the only actual religion-based prosecution was in the case filed by a Catholic priest against celebrity tourist guide Carlos Celdran, who interfered with a religious event to protest the clergy’s opposition to the Reproductive Health bill.¹⁶⁸ Celdran was charged and convicted by a lower court under Article 133 of the Revised Penal Code for offending religious feelings. The case is currently on appeal.

C. Significant Changes in Religious Claims by Non-State Actors

There is no record of claims by non-state actors against believers of certain faiths. The closest case involved the persecution by Catholic clergy and their loyal followers of an artist Mideo Cruz, whose collage entitled *Poleteismo* was deemed “blasphemous” by conservative Catholics. The Cultural Center of the Philippines, a government

office, prematurely shut down the entire art exhibit. Cruz’s oppositors filed cases, but these were all dismissed.

In 2012, Pilar College of Zamboanga, a privately-run Catholic college in the southern Philippines, became controversial because of its “no hijab” school policy. Reliable reports confirmed that the school’s administrators had a long-standing prohibition against wearing the hijab and this was for the purpose of maintaining “uniformity” among the students and in order “to avoid discrimination” against Muslim students.¹⁶⁹

In 2013, Roman Catholic churches put up banners on the outer walls of the church discouraging Catholic Faithful from voting for Pro-RH Law Senatoriales, dubbed “Team Patay,” in the 2013 Senatorial Elections.¹⁷⁰

D. Significant Events of State Persecution

There has been no deliberate targeting by the state of any religious group. However, there have been episodes of state action that has the effect of seriously restricting religious freedom.

166 E. Aguiling-Pangalangan, *Parliamentary politics vis-à-vis judicial strategies: Promoting reproductive health in the Philippines*, in Z. Yongnian, L. Liang Fook and W. Hofmeister, *PARLIAMENTS IN ASIA: INSTITUTION BUILDING AND POLITICAL DEVELOPMENT* (Routledge, 2014), at 122-54.

167 *Imbong v. Ochoa*, *supra* n. 33.

168 *People v Carlos Celdran*, *supra*, n. 43.

169 Report on International Religious Freedom- Philippines, Bureau of Democracy, Human Rights, and Labor (United States Department of State, 30 July 2012) <<http://www.refworld.org/docid/50210593c.html>> accessed 15 April 2014; <http://www.rappler.com/nation/12497-muslims,-christians-agree-to-lift-veil-ban>.

170 Carla P Gomez, ‘Church won’t heed Comelec order on ‘Team Patay’ list.’ *Philippine Daily Inquirer* (25 February 2013). <<http://newsinfo.inquirer.net/tag/team-patay/page/2#ixzz2zalZXS4j>> accessed 10 April 2014.

1. 1986 EDSA People Power Revolution¹⁷¹

The Catholic clergy was influential in anti-Marcos opposition and Jaime Cardinal Sin, the Archbishop of Manila, and the Catholic Church's radio station, Radio Veritas, played a key role in the sequence of events leading to the ouster of President Ferdinand Marcos, the dictator who placed the country under martial law in 1972. Many Catholic radio stations were shut down during martial law. Included were the member stations of the Philippine Federation of Catholic Broadcasters (PFCB). Catholic radio stations were eventually allowed to broadcast again, but American priests who took part were deported and other priests were arrested. Priests, nuns, and laypersons suspected of subversion were also detained.

2. Moonies Wedding

On 26 January 1996, the Holy Spirit Association for Unification of the World of Christianity (HSA-UWC), known internationally as the Moonies, conducted a mass wedding at the Philippine International Convention Center between Filipina brides and South Korean grooms after being matched by a computer. The Bureau of Immigration banned the departure of all 984 Filipina brides after confirmed reports linking the Korean missionaries to massive recruitment of unwary Filipinas. The BID Travel Control Service Chief alleged that what happened was a "mail-order bride" in reverse, which is illegal in the Philippines, or human trafficking in disguise.¹⁷²

171 Isabel L. Templo, 'The truth shall set us free: The role of Church-owned radio stations in the Philippines.' *Center for Media Freedom and Responsibility* (25 February 2011). <<http://www.cmfr-phil.org/2011/02/25/the-truth-shall-set-us-free-the-role-of-church-owned-radio-stations-in-the-philippines/>> accessed 20 April 2014.

172 Bobby Timonera, "Mass wedding of 1,000 couples probed for recruiting prostitutes, nannies," *Inquirer* (n. d.). <<http://www.caic.org.au/biblebase/moonies/masswed2.htm>> accessed 7 January 2015.

The legal counsel and spokesman of the HAS-UWC called the charges against the HAS-UWC "a direct attack on the sacred procedure of 'blessing' which is central to the Unification Movement's faith and creed" and alleged that the government has discredited the system of religious right the Unification Church is founded. The HAS-UWC officers were charged with violating the Anti-Mail Order Bride Law. Chuk Hwan Kwak, who conducted the ceremony, was also charged for violating Article 177 of the Revised Penal Code for solemnizing a marriage without a license of authority from the Philippine government.¹⁷³ The believers of the HAS-UWC complained that the prosecution of their officers amounted to religious persecution because the police authorities did not respect their religious beliefs and characterized them as a front for human trafficking.

3. Muslim Economic Discrimination¹⁷⁴

Muslim religious leaders asserted that Muslims suffer from economic discrimination, which is reflected in the government's failure to provide money to stimulate southwestern Mindanao's sluggish economic development. They also cited the lack of proportional Muslim representation in the national government institutions. In 2000, there were no Muslim cabinet secretaries, senators, or Supreme Court justices. Nine Muslims held seats in the 222-member House of Representatives. Leaders in both Christian and Muslim communities contend that economic disparities and ethnic tensions, more than religious differences, are at the root of the modern separatist movement that emerged

173 Ana Montana, "Moonies undergoing religious persecution, says spokesman," *Manila Standard* (16 March 1996). <http://news.google.com/newspapers?nid=1370&dat=19960316&id=Iz8VAAAAIBAJ&sjid=1goEAAAAIBAJ&pg=1880,2442817> accessed 7 January 2015.

174 *Report on International Religious Freedom- Philippines*, Bureau of Democracy, Human Rights, and Labor (United States Department of State, 5 September 2000) <http://1997-2001.state.gov/www/global/human_rights/irf/irf_rpt/irf_philippi.html> accessed 15 April 2014.

in the early 1970's. Some employers have a biased expectation that Muslims will have lower education levels. Muslims reported that they had difficulty renting rooms in boarding houses or being hired for retail work if they use their real names or wear distinctive Muslim dress, and thus resorted to the use of Christian pseudonyms and Western clothing.

4. *PNP Proposes Identification System for Muslims*¹⁷⁵

In March 2004, Muslim leaders within the government and the private sector objected to the proposal of the Philippine National Police (PNP) to adopt an identification system exclusively for Filipino Muslims, which they regarded as discriminatory. PNP responded that a Muslim group voluntarily proposed the adoption of an identification system for all Muslim residents in Metro Manila as a means to identify suspected terrorists and criminals who are seeking refuge in Muslim communities. The proposal was abandoned for the national identification system proposal, which the Supreme Court later held unconstitutional.

5. *Denial of Party-List Accreditation to LGBT Party*

In 2010, the Commission on Elections (Comelec) denied party-list accreditation to Ang Ladlad LGBT Party on the grounds that the party advocates “sexual immorality” and “tolerates immorality which offends religious beliefs,” citing verbatim passages from the Bible. The Supreme Court later overturned the Comelec ruling and accredited Ang Ladlad.¹⁷⁶

175 *Report on International Religious Freedom- Philippines*, Bureau of Democracy, Human Rights, and Labor (United States Department of State, 15 September 2004) < <http://www.refworld.org/docid/416ce9d025.html> > accessed 15 April 2014.

176 *Supra*, at n. 153.

6. *Official Endorsement of Catholic Opposition to Same Sex Unions*

Another incident involved opposition of Catholic Bishops to same-sex unions celebrated publicly in Baguio City during the city's gay pride celebrations in 2011. Catholic bishops aired their opposition to holy union rites over national television. Baguio councillors supported the opposition and threatened to declare the officiating minister *persona non grata* in Baguio City.¹⁷⁷

E. Significant Events of Non-State Persecution of Religious Groups

There is no record of religious groups directly persecuting other religious groups.

F. Significant Events of Inter-Religious Conflict

The Muslim secessionist war has raged since 1973. Muslim Filipinos are concentrated in the southernmost island of Mindanao, which was never effectively occupied by the Spanish government, except for the colonial outpost of Zamboanga. The United States eventually brought Mindanao under effective occupation, encouraged the migration of Christian settlers, and governed the Muslim Filipinos as “Non-Christian Tribes.”

Although the Muslim population is divided into ethnic groups and royal families, the singular identity of the Bangsamoro nation was first asserted in 1973 by the secessionist group Moro National Liberation Front (MNLF), organized by a former political science lecturer at the University of the Philippines, Nur Misuari. The war led to a peace agreement between the Marcos government and the MNLF, the

177 Desiree Caluza, ‘Same-sex unions stir Baguio City,’ *Philippine Daily Inquirer* (25 June 2011). <<http://newsinfo.inquirer.net/18056/same-sex-unions-stir-baguio-city#ixzz2zaH2Mlca>> accessed 10 April 2014.

1976 Tripoli Agreement, granting autonomy to the remaining Muslim areas in Mindanao and brokered by the Organization of the Islamic Conference and by Libyan leader Muammar Khaddafi. This Agreement was never implemented.

When Marcos was ousted, Corazon Aquino resumed talks with Misuari. The 1987 Constitution provided for an Autonomous Region of Muslim Mindanao (ARMM), and the Philippine Supreme Court, in *Abbas v. Commission on Elections*,¹⁷⁸ held that the 1987 constitutional requirement of a plebiscite in the purported autonomous region prevails over the 1976 Tripoli Agreement which required no such plebiscite.

The ARMM is now in place, but the armed conflict persists. A new group, the Moro Islamic Liberation Front (MILF), an MNLF breakaway, has recently signed a peace agreement with the government of President Benigno Aquino III. The 2012 Framework Agreement will be discussed below (see Part II.J).

G. Significant Events of Terrorism and/or Terrorist Threats

The main terrorist group is the Abu Sayyaf, a breakaway faction of the Moro Islamic Liberation Front, but which has been involved in the kidnap-for-ransom of foreign tourists and missionaries. While those involved in the kidnappings have been prosecuted as common criminals, the Abu Sayyaf is still characterized by the International Committee of the Red Cross as an “armed group” for the application of the 1949 Geneva Conventions and the 1977 Additional Protocols, all of which have been signed by the Philippines.

H. Cross-Border Impact of Religious Persecution or Conflict

In the past, the main cross-border implication of the Muslim secessionist war is that it was supported by various patrons in the Middle East and in Malaysia. Today those patrons are gone and the only cross-border implication that remains is with Malaysia. The Philippines and Malaysia have a long-standing territorial dispute over Sabah, currently governed by Malaysia but where at least one million Filipinos reside, only half of whom have regular immigration papers.

The first consequence is the suspected role of Malaysia in initially fostering the secessionist movement, and Malaysia’s current role in brokering the peace negotiations with the MILF.

The second is that, while the territorial claim has long been maintained by the Philippine government, it has remained dormant in the past 40 years. However, the claim is actually based on succession by competing royal families, one of whom sent armed groups last year, in February 2013, to win back his “lost” estate.

I. Governmental Response

1. Legislative

a. Autonomous Region of Muslim Mindanao

In response to the Muslim secessionist movement, Muslim Mindanao is constitutionally recognized as an autonomous region. As stated above, Article X, Section 1 of the Constitution establishes that there shall be autonomous regions in Muslim Mindanao and the Cordilleras (see Part I.4.f).

The autonomous region would be governed by an organic act. Section 18 of Article X states that this shall be enacted by Congress with the assistance and participation of the regional consultative

¹⁷⁸ *Abbas v Commission on Elections* [1989] G.R. No. 89651.

commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. This organic act defines the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic act also provides for special courts with personal, family, and property law jurisdiction consistent with the provisions of the Constitution and national laws. The creation of the autonomous region is effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favourably in such plebiscite shall be included in the autonomous region.

On 1 August 1989, the Organic Act of the Autonomous Region in Muslim Mindanao¹⁷⁹ was signed into law by then President Corazon C. Aquino. On 17 November 1989, a plebiscite was conducted in the proposed areas of ARMM wherein only four provinces opted to join the area of autonomy. These are the provinces of Maguindanao, Lanao del Sur, Tawi-Tawi and Sulu.

The first election in ARMM was held on 17 February 1990. The first Regional Governor elect was Atty. Zacaria Candao who took his oath of office on 6 July 1990 and significantly started the formal operation of the ARMM. Succeeding set of officials took their terms of office on 2 April 1993, where Lininding P. Pangandaman was elected as the second Regional Governor, following the administration of Atty. Candao.

On 2 September 1996, the MNLF and the Philippine Government signed the final Peace Agreement which led to the election of MNLF chairman Nur Misuari as Regional Governor of ARMM. The Peace Agreement also paved way for the creation of the Special Zone of Peace and Development (SZOPAD)

179 Republic Act 6734 (1989), Organic Act of the Autonomous Region in Muslim Mindanao, Organic Act of the Autonomous Region in Muslim Mindanao (1989).

and Southern Philippines Council for Peace and Development (SPCPD) which were established by virtue of Executive Order No. 371 on 21 October 1996 by then President Fidel V. Ramos. Governor Misuari was named as the SPCPD Chairman.¹⁸⁰

Code of Muslim Personal Laws¹⁸¹ (CMPL)

As discussed above, pursuant to the 1976 Tripoli Agreement signed by the Marcos government with the Moro National Liberation Front (MNLF), Marcos issued a presidential decree (using his legislative powers then) “recognizing the system of Filipino Muslim laws [and] codifying Muslim personal laws.”¹⁸² Presidential Decree 1083 ordained and promulgated a code recognizing the system of Filipino Muslim laws, codifying Muslim personal laws and providing for its administration and for other purposes. It also establishes three main institutions – a Shari’a court system; the Agama Arbitration Council for amicable settlement of cases; and the mufti, or Islamic Jurisconsultant position in the Supreme Court.

National Unification Commission

The NUC was constituted to address concerns relating to the creation of a viable general amnesty program and peace process, and the problem of bringing back the rest of the rebels in Philippine society to the folds of the law. The government had determined that there is need to undertake a comprehensive and participative peace process which will involve all concerned sectors of society in order to generate the collective political will to attain peace with justice. The Commission’s authority and functions are as follows:

180 Office of the Regional Governor’s Information and Communication Technology Office, “ARMM History”, *Official Website of the Autonomous Region in Muslim Mindanao* (2013). <<http://armm.gov.ph/history/>> accessed 18 April 2014.

181 Presidential Decree No. 1083 (1977), Code of Muslim Personal Laws (Philippines).

182 *Id.*

- Formulate and recommend, after consulting with the concerned sectors of society, to the President within ninety (90) days from its formal organization a viable general amnesty program and peace process that will lead to a just, comprehensive and lasting peace in the country;
- Call upon any official, agent, employee, agency or instrumentality of the national or local government for any assistance that may be necessary to carry out the purposes of this Executive Order;
- Review and evaluate the existing National Reconciliation and Development Program (NRDP) pursuant to Executive Order No. 103 dated 24 December 1986 with the view to integrating the program into the general amnesty program and peace process;
- Prescribe the corresponding duties, functions and working procedures of the Technical Committee and Secretariat.¹⁸³

2. Prosecutions of perpetrators

Under Philippine law, any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity may seek the protection of the courts. This is done via a writ of Amparo.¹⁸⁴

183 Constituting the National Unification Commission and Prescribing its Authority, Functions, and for Other Purposes, Executive Order No. 19 (1992) (Philippines).

184 Rule on the Writ of Amparo, A.M. No. 07-9-12-SC (October 16, 2007) (Philippines).

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

Interfaith Dialogues

In 1988, a National Ecumenical Consultative Commission was organized under the auspices of Malacañang. The government's National Ecumenical Consultative Committee (NECCOM) fosters interfaith dialogue among the major religious groups, including the Roman Catholic Church, Islam, Iglesia ni Cristo, the Philippine Independent Church (Aglipayan), and Protestant denominations. The Protestant churches are represented in the NECCOM by the National Council of Churches of the Philippines and the Council of Evangelical Churches of the Philippines. Members of the NECCOM meet periodically with the President to discuss social and political issues. Amicable ties among religious groups are reflected in many non-official organizations.¹⁸⁵

The current administration continues to promote interfaith dialogue to build mutual trust and respect among various religious and cultural groups. The government participated in the sixth Asia Pacific Regional Interfaith Dialogue in 2012.¹⁸⁶

At the international level, the Philippines is at the forefront of interfaith initiatives. It advocates increased support for a resolution on the promotion of interfaith dialogue for peace at the United Nations General Assembly and has spearheaded the Tripartite Forum on Interfaith Cooperation for

185 *Report on International Religious Freedom- Philippines*, Bureau of Democracy, Human Rights, and Labor (United States Department of State, 18 December 2003) <<http://www.refworld.org/docid/3fe8154ae.html>> accessed 15 April 2014.

186 *Report on International Religious Freedom- Philippines*, Bureau of Democracy, Human Rights, and Labor (United States Department of State, 30 July 2012) <<http://www.refworld.org/docid/50210593c.html>> accessed 15 April 2014.

Peace (TFICP).¹⁸⁷

2008 Memorandum of Agreement on Ancestral Domain (MOA-AD)

Under the proposed memorandum of agreement on ancestral domain (MOA-AD) between the Philippine government and the Moro Islamic Liberation Front (MILF), the planned homeland also referred to as the Bangsamoro Juridical Entity (BJE) was to include the Autonomous Region in Muslim Mindanao (Sulu, Maguindanao, Lanao del Sur, Tawi-Tawi, Basilan and Marawi City); six municipalities in Lanao del Norte; hundreds of villages in the provinces of Sultan Kudarat, Lanao del Norte and North Cotabato, which voted in 2001 to become part of the ARMM; and parts of Palawan.

It was to have its own “basic law,” police and internal security force, and system of banking and finance, civil service, education and legislative and electoral institutions, as well as full authority to develop and dispose of minerals and other natural resources.

The agreement was scheduled to be signed on 5 August 2008 in Kuala Lumpur (the Malaysian government brokered the talks that led to the agreement), but the agreement met with strong public opposition, with groups claiming that the proposed Bangsamoro homeland could lead to the formation of an independent state. Some officials, lawmakers and interest groups took the issue to the Supreme Court.¹⁸⁸

187 U.N. General Assembly, 1st Session of the Human Rights Council Working Group on the Universal Periodic Review. ‘National Report submitted in accordance with paragraph 15(a) of the annex to human rights council resolution 5/1 – Philippines’ (A/HRC/WG.6/1/PHL/1), 7 March 2008 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/114/11/PDF/G0811411.pdf?OpenElement>> accessed 15 April 2014.

188 Inquirer Research, ‘What Went Before: The proposed MOA-AD.’ *Philippine Daily Inquirer* (9 October 2012). <<http://newsinfo.inquirer.net/285604/what-went-before-the-proposed-moa-ad#ixzz2zZRku4P>> accessed 18 April 2014.

In *The Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, the Supreme Court struck down the peace agreement with the Moro Islamic Liberation Front.¹⁸⁹ The Court held that the Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001 gives the newly created Bangsamoro Juridical Entity the “plenary power ... to revoke existing proclamations, issuances, policies, rules and guidelines, forest concessions, timber licenses, contracts or agreements in the utilization of natural resources, mining concessions, land tenure instruments.” The Court found that an undue delegation of executive power. “The President may delegate its executive power only to local government units or an administrative body attached to the executive department. The delegation of power to the BJE, on the other hand, is a delegation of executive power to an entirely different juridical entity that is not under its supervision or control.”

The Court stated further that the government’s cabinet secretary for peace negotiations “failed to carry out the pertinent consultation process [required by law]. The furtive process by which the MOA-AD was designed and crafted ... illustrates a gross evasion of positive duty and a virtual refusal to perform the duty enjoined. Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP and the BJE, are unconstitutional, for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence.”

189 *The Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain* [2008] G.R. No. 183591.

2012 Bangsamoro Framework Agreement

The latest Bangsamoro Framework Agreement,¹⁹⁰ signed 27 March 2014, envisaged a process of normalization “whereby communities can achieve their desired quality of life, which includes the pursuit of sustainable livelihood and political participation within a peaceful deliberative body.”¹⁹¹ It aims to ensure human security in the Bangsamoro. To achieve this end, various commissions were to be created for transition and collaboration, together with an International Monitoring Team. The primary function of implementing the plan is with a Joint Normalization Committee, a Joint Peace and Security Committee, and Joint Peace and Security Teams. This will be done by the gradual decommissioning of the MILF forces by an Independent Decommissioning Body and the redeployment of the Armed Forces of the Philippines, through the total ban on land mines, the disbanding of private armies, a social economic program, a Transitional Justice and Reconciliation Commission, mobilization of resources, and confidence-building measures.

In the meantime, a Bangsamoro Transition Commission (BTC) will be formed.¹⁹² A principal function of the BTC will be the drafting of the Bangsamoro Basic Law to be submitted to the President for him to certify to Congress as urgent. Once the basic law is enacted by Congress, it will be submitted to a process of popular ratification by the qualified voters in the core territory of the Bangsamoro. The ratification of the Bangsamoro Basic Law will repeal Republic Act No. 9054 and will create the Bangsamoro Transition Authority (BTA). The BTA shall perform the functions of governance

until a ministerial government is installed. The BTC will be composed of 15 members, all of whom are Bangsamoro. Seven of them shall be chosen by the Philippine government and the other eight members, including the chair, by the MILF. The BTC is to draft the Bangsamoro Basic Law that will be presented to President Aquino for him to certify to Congress as urgent. It will also work on proposals for a constitutional amendment should this be necessary. Thereafter, the basic law shall be submitted for ratification by the voters in the core territory of the Bangsamoro.

Another principal function of the BTA is to prepare for the transition to a ministerial form of government. The Bangsamoro Basic Law shall provide for the organization and composition of the BTA whose members shall be appointed by the President. The BTA shall be MILF-led.

The agreement also provides for power sharing between the national and regional governments. According to Annex 3 on Power Sharing, the powers are divided thus: reserved powers, i.e., powers retained by the central government; concurrent powers, i.e., shared powers between the two entities as set in the annex and provided in the basic law; and exclusive powers of the Bangsamoro government. The relationship between the two governments is described as “asymmetric,” a bit of a tricky concept. It is reflective of the recognition of the Bangsamoro identity and their aspiration for self-governance which makes it distinct from the regions and local governments. It is governed by a democratically elected assembly consistent with a ministerial form of government. Also, there is power-sharing on transportation and communication, mineral energy resources, taxation and others.

The Agreement also provides for revenue generation and wealth sharing. Annex 4 states:

The parties recognize that revenue generation and wealth sharing are important to the existence of the Bangsamoro, which is

190 Fr. Joaquin Bernas, ‘Four annexes: an overview,’ *Philippine Daily Inquirer* (31 March 2014). <<http://opinion.inquirer.net/73128/four-annexes-an-overview#ixzz2zZOVcsEf>> accessed 18 April 2014.

191 “Annex on Normalization,” *Framework Agreement on the Bangsamoro*, Annex 1.

192 “Annex on Transitional Arrangements and Modalities,” *Framework Agreement on the Bangsamoro*, Annex 2.

among the most underdeveloped areas in the country. Thus, the parties commit jointly to pursue measures to increase the Bangsamoro's wealth and capability for revenue generation. This will involve taxation and other sources of revenue and wealth.

In essence, the current 2012 Framework Agreement, together with its 2013/14 Annexes, is substantially the same as that in 2008, but has received more favourable press because it is sponsored by a more popular president.

K. Analysing the Trends

The most recurrent irritant to church-state separation in the Philippines has been largely symbolic and interstitial, namely, the almost casual assumption that the ways and practices of the dominant faith, that of the Roman Catholics, should be reflected in secular life and law. It has led to Supreme Court decisions and highly-politicized debates because, though symbolic, through them the religious majority flaunts its ascendancy and the minority is forced to "know its place."

The main threat therefore to the separation of church and state in the Philippines comes from the entrenched position of the majority religion and its invigorated position in the post-Marcos democracy which it was instrumental in restoring. However, the threat does not involve violence but rather the constant flexing of secular muscle, e.g., the 14-year stonewalling and filibustering in Congress against the Reproductive Health Law. Moreover, even when the Supreme Court eventually upheld the law, it paid homage to the anti-RH lobby by striking down as insufficiently deferential to "free exercise" the "conscientious objector" clause.

This has provoked a backlash from minority and non-mainstream groups. The Iglesia ni Cristo has engaged in "block" voting as a unified flock for their

chosen candidates and have been the swing vote in many elections. The charismatic and Pentecostal groups have formed their own party-list groups for Congress, and fielded their own candidates under the banner of these front organizations.

Strangely then, the fall of the dictatorship and the rise of a fledgling democracy has weakened church-state separation. On one hand, "one-person, one vote" enables the religious majority to act as well as a political majority, and to think they can codify religious biases into law. On the other, weak republican institutions enable religious elites and well-organized sects to project their voices as that of the majority, forcing religion-neutral state institutions to buckle under the weight of the "heckler's veto."

On the other hand, the legitimizing power of religion can be seen in the Islamic secessionist movement. The latest peace agreement with the Islamic rebels deal mainly with power- and revenue-sharing, and barely with religion-related matters, apart from a few clauses on the expansion of Shari'a courts which have been in place since the Marcos years. Significantly, the only religious portion of the peace agreement is its first line, "In the Name of God, the Beneficent, the Merciful." The armed conflict is based on religious identity, reflected in its name, Moro Islamic Liberation Front, *Moro* being the old Spanish term for the Muslim Moors, and *Islamic* of course being explicitly religious. However, religious identity serves as a proxy for long-standing political and economic grievances that, as the 2012 peace agreement shows, are best addressed through political and economic arrangements that have little to do with religion. Thus, it may be observed that in the secessionist war, religious identity, while central to the characterization of the armed groups, is not central to the grievance that pushes them to wage war. These grievances are more economic and political, and not religious in character. The purely religious grievances have been accommodated through the Shari'a courts, madrasah schools, etc.,

and the most glaring acts of discrimination and exclusion lie in access to their share in national resources and economic opportunities.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

The main negative contributing factor since the fall of Marcos in 1986 is the resurgence of the power of the Catholic clergy, and the in-your-face assertion of its power to mobilize its followers for or against political causes and personalities, coupled with weak republican institutions that could have stood against the rise of Catholic hegemony. The Catholic Bishop's Conference of the Philippines has marshalled the most conservative Filipino Catholics against the Reproductive Health Law, and thus a group which had for the past decades receded into the background were suddenly front and centre in public debate and were given both a platform and a rallying point. While the authoritative surveys and polls show that majority of Filipinos support the Reproductive Health Law (71% of the population in 2014¹⁹³ and 69% of Catholic Filipinos in 2010¹⁹⁴), it still took the Philippine Congress more than 14 years to pass the law because of the legislators' fear of losing the clergy's support.

This shows a dysfunction in Philippine democracy, where a well-organized and vocal minority (the clergy) can trump a dispersed majority. Indeed even the Supreme Court remains divided even as it upheld the Reproductive Health Law. That politicization

193 SWS Confirms Survey on RH Law for The Forum for Family Planning and Development (March 2014 Social Weather Survey), at <http://www.sws.org.ph/>.

194 SWS January 2010 Module for the Forum for Family Planning and Development: 38% will vote for candidates who favor the RH Bill; only 6% will vote for those who oppose it, at <http://www.sws.org.ph/>.

also affected the Supreme Court's position on the Muslim insurgency, when it struck down the 2008 peace agreement embodied in the Memorandum of Agreement on the Ancestral Domain. The current 2012 Framework Agreement, including its 2013/14 Annexes, is substantially the same as that in 2008, but has received more favourable press because it is sponsored by a more popular president.

The post-Marcos public flexing of Catholic muscle has provoked a backlash from the Iglesia ni Cristo (which practices block-voting during elections) and the charismatics/evangelicals (which endorse candidates during elections and, in the party-list system, have actually formed their own parties and fielded their own candidates).

B. Positive Contributing Factors

The most recent positive developments are the latest peace agreement with the Moro Islamic Liberation Front, which should defuse the religious character of the conflict and surface its economic and political roots, and the passage of the Reproductive Health Law, which was adopted by Congress and validated by a divided Supreme Court over the vehement opposition by the Catholic clergy and its followers.

At the same time, the 1987 Constitution contains the "establishment clause" and enough "free exercise" guarantees to protect believers from the smaller churches. The rhetoric of the liberal secular state is still ascendant in local discourse, and has allowed the entry and flourishing of other churches.

The Supreme Court upheld the Reproductive Health Law but also struck down some minor clauses (especially on conscientious objections by true believers among health professionals). Both the voting record and the clear affirmations of faith by some justices show a supposedly non-political court in thrall of a politicized clergy, but yet yielding to the primacy of a secular Constitution. In other words, the 1987 Constitution carves out enough space for

minority religions to flourish and some restraint to rein in the power of the Catholic clergy.

PART FOUR: CONCLUSION

The principal issue on religious freedom in the Philippines is the power of the Catholic Church, the majority religion, vis-à-vis the Islamic minority and the smaller Christian churches and charismatic/evangelical groups. We situate this issue in the context of the larger debate about republican norms and democratic politics, wherein the power of the Catholic clergy and its organized faithful prevails in secular politics over the preferences of the dispersed majority of Catholics, and the smaller Christian groups.

The separation doctrine is well established in Philippine law but has been most compromised in practice since the resurgence of the political power of the Catholic clergy after the fall of Marcos in which the clergy played a historic role. The principle of the secular state was most recently tested with the adoption of the Reproductive Health Law, which was legislated over the vehement protests by the Catholic clergy and was upheld recently by the Supreme Court.

In terms of membership, the numbers have not varied much in the principal religious groups. The census figures show no dramatic shifts except for the rise in the past three decades of the Catholic charismatics and the Protestant evangelicals, and the steady but slow rise of Mainline Protestant groups. The figures may be misleading though because the categories may reflect form more than substance. For instance, the charismatics may be officially affiliated with the Catholic Church but closer to the Protestant evangelicals in terms of ritual or focus. Both the charismatics and evangelicals wield their own separate power in secular politics and in civil society. The flourishing of non-Catholic groups suggests a congenial legal framework that carves out

enough space for smaller religions to proselytize and worship, and bodes well for both the “free exercise” and “establishment” clauses of the Constitution.

In terms of compromises of the separation doctrine, the examples are many. While they are largely symbolic (e.g., crucifixes in government offices, “ecumenical” prayers in courts, official observance of mainly Catholic holidays), they nonetheless erode the integrity of the doctrine.

However, the largest compromise is actually highly political and indeed constitutional, the grant of autonomy to Muslim Mindanao, including the codification into the national legal order of Shari’a law and courts. The grant of autonomy has been confirmed by the political and judicial branches of government, which recognize the historical grievances of the Muslim minority and the protracted secessionist war in Mindanao. The recent peace agreements remain pending, but they easily demonstrate that while the group identity of the rebels is defined in religious terms (e.g., Moro Islamic Liberation Front), the grievances are actually economic and political (e.g., power-sharing and wealth-sharing). Conceptually speaking, to classify the armed conflict as religious in character is itself a political act, a deliberate choice by both the rebel groups and the government negotiators.

Finally, if we are to strengthen religious freedom in Philippine law, the principal challenge is how to strengthen republican norms and institutions that embody the secular state, so that the principle of the separation of church and state is not hostage to political and religious majorities, or to elite organizations like the clergy that purport to speak in their behalf.

ANNEX 1:

Brief Overview of Religious Groups in the Philippines

Below are the description of various religious groups identified in the government's Census of Population and Housing. Note that some categories overlap. Roman Catholics will include Catholic charismatics, but Mainline Protestants do not include Protestant evangelicals. Indeed, Mainline Protestants are counted separately from other Protestant churches.

Roman Catholicism

Roman Catholicism was brought to the Philippines by Spain, when Ferdinand Magellan, a Portuguese explorer sailing under Spanish royal authority, landed in 1521. The archipelago soon became a Spanish colony for the next three hundred years. Roman Catholic leadership in the Philippines is held by the Catholic Bishops' Conference of the Philippines (CBCP).

Islam

The rise of Islamic political institutions in Southeast Asia in the early 15th century is viewed as the culmination of Islamization after about 200 years when the Arabs introduced Islam directly to the masses. The Philippine Muslims was once a dominant group in the country. During the colonization of Spain, Muslims in the south resisted Spanish rule. Philippine Muslims are now concentrated in the southernmost island of Mindanao.¹⁹⁵

Filipino Muslims are the only group today that has launched a religion-related armed uprising against the Philippine government. (The other armed uprising is by the Maoist rebel group, the

Communist Party of the Philippines and its New Peoples' Army.) The Moro National Liberation Front and its now more powerful breakaway group the Moro Islamic Liberation Front have been engaged in a secessionist war for a Bangsamoro homeland and have entered into their respective peace agreements with the Philippine government. While the group identity is based on Islam, the grievances actually pertain not to religion but to the sharing of political and economic power, as reflected in the peace agreements. (See Philippine Country Report at Part II.J and K.)

Mainline Protestants

"Mainline Protestant" is understood to refer to denominations with a "long standing history." The Pew Forum on Religion and Public life in its Report on Classification of Protestant Denominations in the United States¹⁹⁶ identifies three general classifications of protestants: Evangelical Protestant churches, Mainline Protestant churches, and the Historically Black Protestant Churches. While this study pertains to Protestantism in America, it details the "older" forms of Protestantism that draws its roots from the Reformation movement of the 1600s in Europe and was appropriated in their own history as European immigrants to North America. The American protestant denominations are historically recorded as the groups¹⁹⁷ that sent

195 Hannibal Bara, *'The History of the Muslim in the Philippines' National Commission for Culture and the Arts* (2011) <<http://www.ncca.gov.ph/about-culture-and-arts/articles-on-c-n-a/article.php?i=232&igm=4>> accessed 10 April 2014.

196 The Pew Forum on Religion and Public Life, *The Pew Forum on Religion and Public life in its Report on Classification of Protestant Denominations in the United States.*, *Pew Research Religious Landscape Survey* (2003). <<http://religions.pewforum.org/reports>> accessed 10 April 2014

197 Methodist Episcopal Church, the Evangelical United Brethren Church, the (Northern) Baptist Church, the Christian and Missionary Alliance, the Free Methodist Church, the British and Foreign Bible Society, and the American Bible Society, as well as the Presbyterian Church.

missions to the Philippines in the early 1900s. The wave of American Protestant missions in the Philippines led to a 1901 comity agreement¹⁹⁸ which laid out geographic boundaries for the “mission work” of the Mainline Protestant missionaries in the Philippine Islands.

The Philippine Council of Evangelical Churches¹⁹⁹ (PCEC) and the National Council of Churches in the Philippines²⁰⁰ (NCCP) are the Protestant umbrella organizations of member churches with ties to “mainline” Protestants pursuant to the 1901 comity agreement. It is difficult to differentiate the two umbrella organizations even for census purposes. They appear to be two major Protestant blocs in the Philippines that parallel those in the United States, namely, one having ties with the World Evangelical Alliance, and which maintains a conservative stance in its dealings with theology and social principles;²⁰¹ and the other having ties with the World Council of Churches,²⁰² and which engages in ecumenical work “by serving human need, breaking down barriers between people, seeking justice and peace, and upholding the integrity of creation.” The PCEC has affiliations with the World Evangelical Fellowship, while the NCCP with the World Council of Churches.

- **Pentecostals**

The Pentecostals are typically Protestant charismatics. Drawing from the biblical Pentecost narrative in Acts where the Apostles began “to speak in other tongues as the Spirit

enabled them” (Acts 2.4), the Pentecostals teach that all Christians should seek the same post-conversion religious experience called the Baptism of the Holy Spirit. All those who experience such conversion may receive one or more spiritual gifts such as the ability to prophesy or speak forth messages from God, the practice of physical healing, interpreting or speaking in tongues or spiritual languages. Pentecostalism has its roots in the 19th-century Holiness movement. Among the larger Pentecostal denominations are the Assemblies of God and the Church of God in Christ.²⁰³

- **Charismatics**

Charismatics are members of either the Orthodox, Catholic or Protestant denominations, who adhere to some beliefs and practices associated with Pentecostalism such as speaking in tongues, healing and prophesying.²⁰⁴ Following the CPH, this study assimilates the “charismatics” to the Catholics. The largest Catholic charismatic group is El Shaddai headed by a high profile and influential preacher, Brother Mike Velarde.

- **The Evangelicals and the “Born Again”**

The Evangelicals and the “Born Again” are the Protestant “charismatics.” “Born again” is, by and large, an Evangelical teaching upholding the centrality of the conversion or “born again” experience in receiving salvation; the belief in the Bible and its authority as God’s revelation to humanity; and a commitment to evangelism or sharing the Christian message. These are among the shared tenets of this “trans-denominational movement.”²⁰⁵

198 The Comity Agreement of April 1901 on regional mission work boundaries: Methodists (most of lowland Luzon, north of Manila); Presbyterians (Bicol, Southern Tagalog, parts of Central and Western Visayas); Baptists (Western Visayas); United Brethren (Mountain Province and La Union); Disciples of Christ (Ilocos, Abra, some Tagalog towns); Congregationalists (Mindanao except the Western part); Christian and Missionary Alliance (Western Mindanao and Sulu Archipelago).

199 See <http://pceconline.org>.

200 See <http://nccphilippines.org>.

201 See <http://www.worlddea.org/howeare/vision-mission>.

202 See <http://www.oikoumene.org/en/about-us>.

203 The Pew Forum on Religion and Public Life. ‘Christian Movements and Denominations.’ *PewResearch* (2003). <<http://www.pewforum.org/2011/12/19/global-christianity-movements-and-denominations/#defining>> accessed 10 April 2014.

204 *Id.*

205 *Id.*

- ***The United Church of Christ in the Philippines***

In 1948, the organic union of the United Evangelical Church in the Philippines, the Evangelical Church in the Philippines, the Philippine Methodist Church and other independent churches at the historic Ellinwood Malate Church formed what is today the United Church of Christ in the Philippines.²⁰⁶

- ***Iglesia ni Cristo (INC)***

The Iglesia ni Cristo also known as INC is an entirely indigenous Christian church in the Philippines. Founded in 1914 by a Filipino preacher, Felix Manalo, the INC is the largest religious organization that originated from the Philippine Islands and is the largest independent Christian Church in Asia.²⁰⁷ The INC marked its centennial in 2014, in a gathering that broke two Guinness world records. It was at the 55,000-seat Philippine Arena specifically built for the occasion, declared by Guinness as the world's "largest mixed-use indoor theatre" with the "largest gospel choir" performing at a single venue.²⁰⁸

- ***Iglesia Filipina Independiente (IFI)***

The Iglesia Filipina Independiente was formed in the beginning of the twentieth century as part of the independence revolution against Spanish colonialism. It traces its origin to the struggle of the Filipino clergy against racial discrimination and friar domination within the Roman Church in the 19th century. Its first leader, Obispo Maximo Gregorio Aglipay headed the revolutionary church from 1902 to 1940.²⁰⁹

- ***Seventh-day Adventist (SDA)***

Founded in the United States by Ellen White, James White and Joseph in 1863, Seventh Day Adventism was brought to the Philippines via Australia by Robert A. Caldwell in the mid-1900s. Since then, the church has a presence in almost all major cities and municipalities all over the country.²¹⁰

- ***Jehovah's Witnesses***

Jehovah's Witnesses began in the country in 1912, when the then-president of Watchtower Bible and Tract Society, Charles Taze Russell, gave a talk at the former Manila Grand Opera House. Jehovah's Witnesses, known to them as "publishers," have 3,174 congregations nationwide.²¹¹ Significantly, the conscientious objection cases involving Jehovah's Witnesses have reached the Philippine Supreme Court.

- ***Church of Jesus Christ of the Latter-Day Saints (LDS)***

The first attempt to introduce the Church in the Philippines was made in 1898 during the Spanish-American War by Willard Call and George Seaman, American servicemen from Utah, who had been sent as missionaries prior to their departure. As opportunity arose, they preached the gospel, but with no apparent success. Following World War II, Maxine Grimm, who came to the Philippines with the Red Cross in 1945, introduced the gospel to Aneleta Pabilona Fajardo, who was baptized in 1945. She was the first Filipino to join the Church in the islands.²¹²

206 See <http://www.uccphils.com>.

207 See <http://iglesianicristowebste.com>.

208 D. Cueto-Ybañez, *INC breaks 2 additional world records*, PHILIPPINE DAILY INQUIRER, page 1, at <http://newsinfo.inquirer.net/623886/inc-breaks-2-additional-world-records>.

209 See <http://www.ifi.ph>.

210 See <http://adventist.ph/history>.

211 See <http://www.jw.org/en>.

212 See <http://www.mormonnewsroom.ph/article/philippines--country-information>.

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Singapore

Singapore

Formal Name	Republic of Singapore
Capital City	Singapore
Declared Relationship between State and Religion	No declared relationship although secularism is widely used
Form of Government	Unitary, Parliamentary Democracy
Regulation of Religion	Regulation by the Executive branch primarily
Total Population	5.47 million (as at June 2014)
Religious Demography	Buddhism (33.3%), Christianity (18.3%), No religion (17.0%), Islam (14.7%), Taoism (10.9%), Hinduism (5.1%), Other religions (0.7%).
Changing Religious Demography	See Table 1.

**Table 1: Changing Religious Demography:
Percentage Distribution of Resident Population
Aged 15 and over by Religion, 1980-2010¹**

<i>Religion</i>	<i>1980</i>	<i>1990</i>	<i>2000</i>	<i>2010</i>
Buddhism	26.7	31.1	42.5	33.3
Taoism	30.0	22.4	8.5	10.9
Islam	16.2	15.4	14.9	14.7
Christianity	9.9	12.5	14.6	18.3
Hinduism	3.6	3.7	4.0	5.1
Other religions	0.5	0.6	0.6	0.7
No religion	13.1	14.3	14.8	17.0

¹ Saw Swee Hock, *The Population of Singapore*, Third Edition (Singapore: Institute of Southeast Asian Studies, 2012), 42. Saw, at p. 44, notes that “the close overlap of race and religion was cited in the 1947 Census Report as the reason for not collecting information on religion, and this was apparently the same reason for its exclusion in the 1957 and 1970 censuses”.

INTRODUCTION

This Singapore country study seeks to paint in broad-brush strokes the salient themes in Singapore's management of religious freedom in an age where increased piety and faith-inspired violent extremism pose national security concerns and anxieties to the authorities.

Singapore's Constitution allows every person the right to profess, practise, and propagate his religion. While faith-inspired views are not excluded from the public domain, the Singapore government has sought to keep the public square and the religious realm separate even if the walls between them are not always watertight. Although secularism is a cardinal principle of political governance, the separation of religion and state is not found in Singapore's Constitution. In Singapore's context, secularism is broadly understood as the governance principle of separating religion and state, and of the state being neutral vis-à-vis the various religious faiths and between religion and non-religion. There is no official religion in Singapore. At the same time, there is also no anti-establishment constitutional provision either. So fundamental is freedom of religion that even Emergency ordinances promulgated under Article 150 of the Constitution shall not validate any provision inconsistent with "the provisions of this Constitution relating to religion, citizenship or language".

It would be evident that secularism in Singapore should be construed as a desired though contested normative framework for governance and public policy making in a multi-religious society. There has been, in recent years, the subtle shift in the legal regime regulating religion from a coercive, hard law approach to one that actively promotes the conjunctive use of soft law, reflecting the awareness of the severe limitation of a coercive approach. More pointedly, the promotion of a rational secularism is probably better understood in Singapore's context as the state's limited involvement in the religious

realm that seeks to mould the behaviour of the faith communities in the public square that is conducive to the larger objectives of the state with regard to national security, stability and peace, and social cohesion.

The state's attempt to influence the citizenry's behaviour is alive and anxious not to conduct itself in a manner that is antithetical to established religious beliefs and practices. Ultimately, religious peace and harmony is obtained through societal understanding and appreciating the diversity and complexity that religion presents. The challenge, as the Singapore case demonstrates, is how to make a virtue out of an accepted fault-line that religion is treated as such, and to align the ethos in the religious realm to the institutional life of the state.²

The Singapore government treats religion as a persistent fault line in Singapore society. As such, emphasis is placed on ensuring that the exuberant expression of religious freedom does not become a source of tension, conflict, and violence. There are several key laws that provide a variety of options as part of the enforcement arsenal in dealing with individuals and groups in the religious realm that pose a public order threat.

In April 2014, Pew Research Centre ranked Singapore the world's most religiously diverse country or territory.³ Public policy and legislation in a multi-religious society like Singapore have to reflect the value- and belief- systems of citizens, including religious and secular ones. This task is fraught with difficulties, not least in trying to determine what the

2 For a wide-ranging study of religion in Singapore, see Lai Ah Eng (ed.), *Religious Diversity in Singapore* (Singapore: Institute of Southeast Asian Studies and the Institute of Policy Studies, National University of Singapore, 2008). See also my "Keeping God in Place: The Management of Religion in Singapore," in the same volume, 55-82.

3 Pew Research Centre, "Global Religious Diversity: Half of the Most Religiously Diverse Countries are in Asia-Pacific Region," April 2014, <<http://www.pewforum.org/files/2014/04/Religious-Diversity-full-report.pdf>> accessed 9 August 2014.

common base is. This embracing of religious values has to be inclusive, with no particular set of religious beliefs being discriminated or preferred. The pertinent policy question is no longer “why regulate” but “how to regulate” without overstepping the sometimes overlapping secular-sacred boundaries.

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

Singapore is a party to the following three major international human rights conventions tabulated below: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD). It is, however, not a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although it prides itself with an enviable record of the management of ethnic relations, Singapore is one of the minority of United Nations member states that have not signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁴ On 19 November 2012, Singapore, together with other ASEAN Member States, affirmed her commitment to advancing, promoting, and protecting human rights in the region by adopting the ASEAN Human Rights Declaration.

International Document	Year of Signature	Year of Ratification / Accession	Reservations / Declarations
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	NA	1995	Article 2, paragraphs (a) to (f), Article 16, paragraph 1(a), 1(c), 1(h) and paragraph 2, Article 11, paragraph 1, and Article 29, paragraph 1
Convention on the Rights of the Child (CRC)	NA	1995	Article 32 (subject to such employment legislation), and Article 28.1(a)
Convention on the Rights of Persons with Disabilities (CRPD)	2012	2013	Article 12 paragraph (4), Article 25, paragraph (e) and Article 29, subparagraph (a) (iii)

Singapore’s reservations to the CEDAW are primarily made on the basis of religious grounds, clearly spelling out that they are made “[i]n the context of Singapore’s multiracial and multi-religious society and the need to respect the freedom of minorities to practice their religious and personal laws”. For example, Singapore reserves the right not to apply the provisions of Articles 2 and 16 of CEDAW where compliance

⁴ On the CERD, see the website of the United Nations Office of the High Commissioner for Human Rights at http://www.unhcr.ch/html/menu3/b/d_icerd.htm. See also “Conventional wisdom: Why has Singapore not signed UN’s anti-racial discrimination treaty, Cerd?” *Today* (Singapore), 20 April 2004.

with these provisions would be contrary to religious or personal laws. Articles 2 and 16 require States Parties to take all appropriate means including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women.

However, Article 12(3) and Article 152 of the Singapore Constitution provide for the respect of the freedom of minorities in the practice of their personal and religious laws. The Singapore government's position is that these constitutional provisions are necessary to maintain the delicate balance in a multi-racial and multi-religious society. There are provisions under the Administration of Muslim Law Act (AMLA) (Cap. 3, 2009 Rev Ed) that may be inconsistent with the CEDAW. For example, the right is given to a Muslim man to marry up to four wives, and not vice versa. The government regards it as necessary to maintain Singapore's reservations to Articles 2 and 16 of the CEDAW "in view of the need to respect the right of Muslim citizens to practise their personal and religious laws".

The common themes of Singapore's multi-racial and multi-religious society, and the need to respect the freedom of minorities to practise their religious and personal laws is carefully observed. Thus, in response to calls for the withdrawal of the CEDAW reservations,⁵ the government's position as articulated is:

⁵ In considering Singapore's fourth CEDAW periodic report in 2011, the CEDAW committee urged Singapore to withdraw her remaining reservations. The committee was of the view that these reservations were "impermissible since these articles are fundamental to the implementation of all the other provisions of the Convention". See "Concluding observations of the Committee on the Elimination of Discrimination against Women," CEDAW/C/SGP/CO/4/Rev.1 of 5 January 2012, para 13.

<<http://app.msf.gov.sg/Portals/0/Files/CEDAW-C-SGP-CO-4.pdf>> accessed 9 August 2014.

My Government considers it necessary to continue to maintain a reservation against specific elements of articles 2 and 16 of CEDAW. There is general acceptance in our country, including our civil society, on the need for the Muslim minority community to practice their family and personal laws. We also recognize that the delicate balance of our multi-cultural, multi-religious society is not a given. It has to be actively maintained, and this is also a continuing endeavour on the part of my Government. However, we assure the Committee that we will continue to review our CEDAW reservations taking into consideration the needs of our society and our obligations.⁶

The Singapore government has always insisted that it does not accede to an international convention for appearance's sake. Its constant refrain, recently reiterated in Parliament, is that Singapore "takes its treaty obligations seriously and prefers to become a party to Conventions when we are sure that we are able to comply fully with all of the obligations. Our focus is on the *full and effective implementation* of treaty obligations. We study international human rights instruments closely to understand the obligations that they impose on States party to them. If we accede to a treaty and yet make reservations that detract from the object and purpose of the treaty as a whole, it becomes an exercise in mere optics. That is not our approach".⁷ The Law Minister also added that although Singapore is not a party to a particular treaty, "it does not mean that in practice, our policies are not already largely in compliance

⁶ Statement by Mdm Halimah Yacob, Minister of State for Community Development, Youth and Sports and leader of the Singapore delegation to the 49th CEDAW session, 22 July 2011 <http://www2.ohchr.org/english/bodies/cedaw/docs/statements/Singapore_CEDAW49.pdf> accessed 9 August 2014.

⁷ Written answer by Minister for Law, Mr K Shanmugam, to parliamentary question on human rights treaties and conventions filed by the author: *Singapore Parliament Reports*, vol. 92, 7 July 2014 (original emphasis).

with the substance of its provisions”⁸

Thus, entering reservations in lieu of enacting legislation to bring domestic laws in line with international treaties may be necessary to protect domestic concerns. Although Singapore has largely complied with Articles 2 and 16 of CEDAW, the government’s position is that the reservations are necessary to protect the rights of minorities in the practice of their personal and religious law so as to maintain the delicate balance of Singapore’s multicultural society.

B. Domestic Laws and Policies

In the above three Conventions, Singapore did not enact dedicated stand-alone legislation to incorporate the international obligations she had entered into. When acceding to these Conventions, Singapore’s approach is to ensure that her domestic laws are consistent with or even go beyond the treaty obligations requirements. To be more specific, Singapore has opted to embed the treaty obligations in various legislation. The three Conventions are implemented in Singapore by incorporating each Convention’s substance, rather than their specific wording, into existing Acts of Parliament. Thus, treaty obligations are given effect to by substantive provisions re-cast in separate legislative language.

This “indirect approach” approach has two advantages. First, the treaty will sit more harmoniously with domestic legislation. Language and construction in the treaty can be translated in drafting to achieve a sense of coherence between the law implementing the treaty and existing laws. Second, Parliament may enact provisions which expand the scope of the treaty obligations, as long as such provisions do not conflict with the obligations

imposed by treaty.⁹

Constitutional provisions on freedom of thought, conscience and religion

Article 15 of the Singapore Constitution guarantees every person the freedom of religion, encompassing the right to profess one’s religion, to practise one’s religion, and to propagate one’s religion. However, Article 15, as the freedom of religion clause, does not recognise religious freedom as an absolute and unqualified right. Specifically, Article 15(4) provides for limits to religious freedom where any act is “contrary to any general law relating to public order, public health or morality”. This broadly couched restriction to religious freedom conditions other legislation with regard to restricting freedom of religion. This is not surprising since absolute freedom is regarded by the government as a sure and potent recipe for conflict in a multi-religious society. The Singapore courts have also been prepared to afford a broad understanding of “public order”.¹⁰ The meanings of the terms *public health* and *morality* in

9 The preference to embed the treaty obligations in various Acts is grounded in pragmatism as well as philosophy. Within the Singapore government, different ministries are responsible for different subject matters and the respective Acts of Parliament. A treaty may cut across several subject matters and hence, administration of the obligations, including monitoring, reporting and enforcement, may involve several public agencies. Incorporating the substance of the treaty across the respective Acts allows the relevant public agency to administer obligations in the treaty which are within its purview. This provides for a seamless and well-coordinated administration of the treaty. There is also less risk of overlapping legislation and duplication of administration efforts. There may be concerns that once the amendments are incorporated into the various pieces of legislation, it may not be so obvious that these disparate pieces of legislation were enacted to comply with an international treaty and its international significance may be lost with the passage of time. However, this risk can be mitigated by referring to the treaty in the amendment Bill to reflect the international origins of the Bill.

10 See *Chan Hiang Leng Colin v PP* [1994] 3 SLR(R) 209, *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1995] 1 SLR(R) 388, and *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1996] 1 SLR(R) 294 at 302–306, [26]–[36].

8 *Id.*

Art 15(4) have not yet been judicially considered in Singapore. It is worth noting that Article 150 of the Constitution provides that religious freedom rights cannot be abrogated even in times of emergency as part of the overarching constitutional protection afforded to religion, citizenship, and language.

Article 15(2) provides that “(n)o 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 his own”. In similar vein, Article 16(3) states that “(n)o person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own”. For the purposes of Article 16(3), his parent or guardian shall decide the religion of a person under the age of 18 years: Article 16(4).

Article 15(3) states that every religious group has the right to manage its own religious affairs, to establish and maintain institutions for religious or charitable purposes, and to acquire and own property and hold and administer it in accordance with law. This is reinforced by Article 16(2) which provides that “(e)very religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law”.

Article 16(1) emphasizes the Singapore citizen’s constitutional right not to be discriminated against on the grounds only of religion, race, descent or place of birth in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees. It further provides that there be no discrimination on the grounds only of religion, race, descent or place of birth in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether

within or outside Singapore).

The Constitution does not define “religion”, and Articles 15, 16 and 12 as well as other constitutional provisions specifically refer to “religion”. “Belief”, “thought”, and “conscience” commonly found in major human rights documents, such as the Universal Declaration of Human Rights and the European Convention on Human Rights, are not found in the Singapore Constitution.¹¹ While, arguably, a definition of religion is neither feasible nor even possible, the Singapore Court of Appeal has described religion as “not about a system of belief in one’s own country but about a citizen’s faith in a personal God, sometimes described as a belief in a supernatural being”.¹²

What about the status of atheism and secular humanism, regardless of whether they are regarded as a type of “religious belief”? The issue of whether atheism and non-religion (such as secular humanism) is protected under Article 15 of the Constitution has not arisen in Singapore courts. There is no reason why such belief systems should fall outside the ambit of protection afforded by Article 15 of the Constitution which is concerned with freedom of religion. Freedom of religion ought to be expansive enough to include freedom *from* religion. Moreover, the governance principle of secularism in Singapore necessitates that the state must not prefer religion to non-religion. Put another way, freedom of religion must embrace freedom to believe in a faith as well as the freedom to not believe in any faith. This is significant in Singapore’s context as 17 per cent of the resident population claim not to believe in any religion in

11 Cf. Article 9(1) of the European Convention on Human Rights states: “Everyone has the right to freedom of thought, conscience and religion”.

12 *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR(R) 529, Court of Appeal, at [26].

the 2010 national census.¹³

Singapore laws do not provide for the offences of blasphemy, deviant behaviour, or heresy. However, Chapter 15 of the Penal Code (Cap. 224, 2008 Rev Ed) provides for criminal offences relating to religion including injuring or defiling a place of worship, disturbing a religious assembly, uttering words or sounds to deliberately wound religious feelings. Section 139 of the Administration of Muslim Law Act provides that: “Whoever shall teach or publicly expound any doctrine or perform any ceremony or act relating to the Muslim religion in any manner contrary to the Muslim law shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both”.¹⁴ This provision may well cover the offence of heresy for the Muslim faith.¹⁵

Singapore has also opted not to constitutionalise the ethos of accommodation of diversity, a hallmark of its multiracialism.¹⁶

13 I appreciate that this argument is controversial. For Professor Thio Li-ann, this argument “ignores the rationale for having religious freedom clauses and Singapore courts have not defined secular humanism as a religion (and some think it should not). Atheism may be protected by the general value of free conscience but atheism is better parked under Art 14 than 15”. I thank Professor Thio for pointing this out.

14 Section 139(2) of AMLA states that “In any prosecution for an offence under this section, where evidence is given by the President that any doctrine, ceremony or act is contrary to the Muslim law, the court shall presume that such doctrine, ceremony or act is contrary to the Muslim law”.

15 Heresy is understood here as a belief or opinion that does not agree with the official belief or opinion of a particular religion.

16 Canada has constitutionalized its commitment to multiculturalism. Article 27 of The Constitutional Act, 1982 reads: “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians”. On the Canadian experience in accommodating diversity, see Will Kymlicka, “Being Canadian,” (2003) 38(3) *Government and Opposition* 357-385.

Legal Pluralism

In recognition of the special position of the Malays as the indigenous people of Singapore, Article 152 of the Constitution provides that:

(1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore.

(2) The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

As alluded to above, limited legal pluralism is facilitated by Article 152 and embedded in Singapore’s British-based common law legal system through some degree of community autonomy for the indigenous Malay-Muslim community. In areas of Muslim personal law such as marriage, divorce and inheritance, Article 153 of the Singapore Constitution provides that, “The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion”.

In turn, the Administration of Muslim Law Act (AMLA) is the main legislation by which Muslim religious affairs are regulated, and by which the Islamic Religious Council of Singapore (MUIS), a statutory board, is constituted to advise the President and the government in matters relating to the Muslim religion. Article 153 is the only constitutional provision in which a religion is specifically mentioned.

Constitutionally recognized as the indigenous people of Singapore, 99.6 per cent of Malays are Muslims. The racial (Malay) and religious (Muslim) identities are often conflated and coterminous in official discourse, resulting in a top-down enforced reduction of individual and sub-group differences within the Malay-Muslim community, and the convenient tendency to treat it as a monolithic entity. In turn, this double bond of race and faith inevitably nurtures stronger Malay-Muslim community self-consciousness.

The (Malay-)Muslim community enjoys several privileges not accorded to the other races/religion. Besides being governed by *Sharia* law in personal matters,¹⁷ the community enjoys free tertiary education (qualified through means-testing in 1989), state support for various aspects of its religious life including the mosque-building programme and the *haj* (pilgrimage to Mecca), and the appointment of a Minister-in-charge of Muslim Affairs in the Cabinet.

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

There is absolute freedom for an adult person in Singapore to adopt, change, or renounce a religion or belief: Article 15(1) of the Constitution. There is freedom from coercion to embrace or leave a particular religion. This includes persons converting out of Islam. There are no laws against apostasy although community norms within the Muslim community strongly frown upon such out-conversions. Anecdotal accounts suggest that there is community pressure and resistance to conversions out of Islam with such converts being ostracized or isolated.

17 Since August 1999, following amendments to the Supreme Court of Judicature Act and AMLA, the (civil and secular) Family Court has concurrent jurisdiction in selected areas.

There are various forms of secularism.¹⁸ As highlighted earlier, the state is mindful that religious freedom encompasses freedom *of* religion and freedom *from* religion. As such, at one level, having a secular government would entail that government should not prefer religion to non-religion, as well as people of faith over people with no religion or who are atheistic in the making and implementation of public policies and laws.¹⁹ However, there is no requirement that secularism mandates metaphysical scepticism, and the Singapore government does not demonstrate such scepticism.²⁰ In Singapore, given that 17 per cent of the population aged 15 years and over declare that they have no religion, the need to be scrupulously even-handed vis-à-vis religion, non-religion, and atheism cannot be over-stated.²¹

Nonetheless, given that a vast majority (83 per cent) of the Singaporean population subscribe to a religion, it would not be surprising if non-religionists or atheists perceive the government's policies and laws to be inclined towards religionists. However, where the government is concerned, the matter is not so much of preferring one over another but rather one that requires the government and the state to tread carefully and to be even-handed. In this regard, the state regards itself as an arbiter in disputes between religions or between religion and non-religion. Thus, even-handedness in arbitrating in such disputes is not only prudent but of utmost necessity as a *sine qua non* and virtue in governance.

18 Hence, it is more accurate to speak of "secularisms" rather than "secularism".

19 Like in other countries, people inclined towards secular humanism are present in Singapore.

20 I thank Professor Thio for reminding me of this, and for clarifying that the real issue is not, "'They prefer religious values to ours' but 'they prefer value A to our value B'. It is a clash of public values as much as it may be seen by some to be a clash of 'religious' and 'secular' values which is an intellectually lazy distinction".

21 As Professor Thio points out, "neutrality is impossible and itself not neutral - so this is a misleading characterisation. The better term is 'even-handed' or the desire to be seen as such". I am happy to adopt Professor Thio's suggestion.

Under Part VIII of AMLA, the *Majlis*²² shall maintain a register of the names of all persons converted to the Muslim religion within Singapore, together with such particulars in respect of their conversion as may be prescribed by rule (section 126, AMLA). Section 127 stipulates that “(n)o person shall be converted to the Muslim religion otherwise than in accordance with the Muslim law and the provisions of this Act”. Under section 128, “(a)ny Muslim who converts any person to the Muslim religion shall forthwith report such conversion to the Majlis with all the necessary particulars”. There is, however, no similar legal requirement for the registration, control, and reporting of conversions for the other faiths.

As for a person who has converted or resolved to convert out of Islam in Singapore, such a person is usually requested to attend an interview at MUIS, followed by the completion of necessary paperwork and the making of a formal statutory declaration. This is an administrative process to clarify a person's religious conversion out of Islam. *Sharia* law would no longer apply to such a person once he has converted or resolved to convert out of Islam.

2. Right to manifest one's religion or belief

a) Freedom of worship

Article 15(1) of the Constitution provides for the triple constituent rights of freedom of religion:

- (a) the right to profess one's religion;
- (b) the right to practise one's religion; and
- (c) the right to propagate one's religion.

With the exception of the absolute right to profess one's faith, the right to practise one's religion and the right to propagate one's religion are not absolute rights, for which restrictions can be imposed under

²² Under section 4 of AMLA, the *Majlis* is a body corporate under the name of *Majlis Ugama Islam, Singapura* having perpetual succession and a corporate seal.

Article 15(4).²³

In the mid-1990s for example, there were several well-publicized cases involving Jehovah's Witnesses, a proscribed religious group in Singapore, regarding the ambit of religious freedom provided for under Article 15 of the Singapore Constitution.²⁴ These cases largely dealt with whether male Singapore citizens conscripted into the Singapore Armed Forces under the mandatory national service scheme could cite their religious beliefs for exemption from military service. In this line of cases, the Court of Appeal emphasised the belief-action distinction:

It is therefore not illegal to profess the beliefs of Jehovah's Witness per se, nor is it an offence to be a Jehovah's Witness. A citizen's right to profess, practice or propagate his religious beliefs, even as Jehovah's Witness, has not been taken away. It is the manner of carrying out these activities that is circumscribed by the relevant orders.²⁵

²³ Peter Krömer describes the internal and external dimensions of the freedom of religion in the following manner: “The right to freedom of religion (freedom of belief) covers first and foremost the so-called inner freedom of religion (forum internum), and sometimes also freedom of faith in the narrow sense of the term. It protects above all the freedom to hold an inner conviction in the face of any kind of ideological influence or investigation by the state, including notably the freedom to have a religion or philosophical conviction—or not to have one—or to change it. This inner freedom inevitably implies however the freedom to practice one's religion (forum externum), sometimes called freedom to worship. This freedom to practise a religion includes the right to freedom of private and public practice of one's religion or of a philosophical conviction and in that respect, to profess this faith (religion) or conviction in private or in public, on one's own or in the company of others”: See Krömer's essay, ‘The Fundamental Right to Freedom of Religion,’ Conference of European Churches - Church & Society Commission, (n.d.)

<http://csc.ceceurope.org/fileadmin/filer/csc/Human_Rights/Human_Rights_Training_Manual/HRTM_Fundamental_Right_to_Freedom_of_Religion.pdf> accessed 17 November 2014.

²⁴ The proscription relates to their being not recognized as a legally constituted organisation under the Societies Act. It is, however, not against the law to be a Jehovah's Witness.

²⁵ *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1996] 1 SLR(R) 294 at [18].

Prima facie, the religious beliefs of a proscribed group are not illegal. However, actions flowing from such religious beliefs are proscribed if they offend against the requirements of public order or public health or morality. Put simply, religious liberty in Singapore is subjected to the belief-action distinction: Religious beliefs are protected – every person in Singapore is entitled to believe in whatever religion or belief. However, actions motivated by such religion and/or beliefs that are contrary to Singapore’s laws are not protected under Article 15.

The Court of Appeal in *Chan Hiang Leng Colin* agreed that national service is “clearly a secular issue” and conscientious objection is not tolerated since “the whole system of universal National Service will become unstuck” (citing *Hansard*). It also agreed that “the sovereignty, integrity and unity of Singapore are undoubtedly the paramount mandate of the Constitution and anything, including religious beliefs and practices, which tend to run counter to these objectives must be restrained”.²⁶

The jurisprudence demonstrates two key principles: First, the right to practise and propagate one’s religion has to be balanced against the interests of the larger community, in line with the communitarian ethos that the Singapore government seeks to promote; and, second, the state’s central role in restricting any unbridled expression of the right to practise and propagate one’s religion.

That community interests take precedence over those of the individual even in the exercise of fundamental liberties was affirmed in *Nappalli Peter Williams v Institute of Technical Education*.²⁷ In this case, an employee of a government educational institution refused to take the national pledge or sing the national anthem because of his religious objections. It was held that his actions did not entitle him to constitutional protection since they

went against his employer’s policy of encouraging and instilling students’ allegiance to the nation. The Court of Appeal reiterated that in exercising one’s religious beliefs, a citizen’s constitutional right to freedom of religion can be circumscribed if, by the citizen’s actions, the exercise of the right becomes prejudicial to the common good. The Court stated that, “Article 15 taken as a whole demonstrates that the paramount concern of the Constitution is a statement of citizen’s rights framed in a wider social context of maintaining unity as one nation”.

Maintenance of Religious Harmony Act

The Maintenance of Religious Harmony Act (MRHA) has its genesis in 1986 when the Internal Security Department reported on over-zealous evangelical Christian proselytization and the impact that it had on religious communities competing for membership. This religious fervour was accompanied by the alleged mixing of religion with politics by some groups. Enacted in 1990, the MRHA seeks to legislate religious moderation and tolerance and to keep religion and politics separate.

The MRHA also established the Presidential Council for Religious Harmony, an advisory body comprising lay leaders and religious leaders to advise the President on matters affecting religious harmony.²⁸ Its main specific functions are to delineate conduct that are regarded as harmful to religious harmony, and to provide recommendations on the issuance of restraining orders by the government, with the President as a check against abuse, against any person inciting, instigating or encouraging any religious group or religious institution to feelings of enmity, hatred, ill-will or hostility between different religious groups. In recognising the power of the pulpit, the MRHA has its focus on religious leaders who “are viewed by the flock and their worshippers as having closer links to God and with an aura of holiness and divinity, make it all the more imperative that if religious leaders want to enter into politics,

²⁶ Chief Justice Yong Pung How in *Chan Hiang Leng Colin v PP* [1994] 3 SLR(R) 209 at [66].

²⁷ *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR(R) 529.

²⁸ See Part II of the MRHA.

they come down from the pulpit and participate as citizens”.²⁹

The MRHA widens the options the government can exercise in religious matters that present concerns to public order. The MRHA is less draconian than the Internal Security Act (Cap. 143, 1985 Rev Ed), which provides for detention without trial, and seeks to circumspectly deal with the threat away from the glare of open court proceedings that can inflame religious passion further.

What is evident in the government’s discourse on the regulation of religion is not so much the value of religious freedom (which the government is careful to remind the citizenry of its importance) but the need for religious harmony, especially how overt conflict premised on religion can undermine public order, and how the aggressive assertion of religious freedom can be detrimental to Singapore’s national security. In short, harmony is integral to order, and disharmony a threat to national security. Hence, religious harmony is a popular trope in public discourse. It is also useful because of the potentially didactic effect of underlining that religious freedom requires religious harmony. This “harmony ideology” is premised on the belief that Singapore’s cultural values can assist in the nation-building quest through the promotion of harmony, cohesion and stability in a multi-racial, multi-religious and multi-lingual society. The promotion of the ideology of harmony provides the ideational substratum for the state to reinforce the cherished ideals of social discipline, consensus and harmony.³⁰

The extensive efforts at mandating harmony, preferring civility over contentiousness, and prioritising responsibilities over rights, translates into the public narrative of consensus, harmony,

and order as desirable and necessary. Conversely, conflicts and contention are seen as social phenomenon against the common good which have to be avoided at all costs. As a political resource, the harmony ideology and culture can be utilised discursively to disarm any potential change movement favouring the over-indulgent pursuit of individual rights over community interests.

Public order is another key theme and priority in the management of religious freedom. Conflict is seen as anathema to public order. In the Singapore context, there is also the latent fear in the government that if public order is not robustly maintained, conflict would be part of the natural progression in a downward spiral from which Singapore would find it hard to recover from. This imperative towards public order is particularly pertinent since religion is seen as a potent source of conflict. For a small and young country, national security concerns loom large. Religious freedom cannot result in national security being undermined.

Internal Security Act

Where more draconian measures are needed, the government can resort to “pre-emptive” powers under the Internal Security Act (ISA) which was originally enacted by the British colonial government to deal with the communist insurgency in British Malaya after the Second World War. The ISA allows for preventive detention for renewable two-year periods where “it is necessary to do so” to prevent a person from acting in any manner prejudicial to the Singapore’s security and the maintenance of public order or essential services. The ISA has been applied to persons deemed to be agitating racial and religious discord, including the arrests of *Jemaah Islamiyah* (JI) and self-radicalized suspected terrorists from 2001. The ISA was also used in 1987 against alleged Marxist anti-state conspirators, which involved mainly activists in several Catholic Church organisations.

29 *Singapore Parliament Reports*, vol. 56, col. 613, 9 November 1990 (Prof. S. Jayakumar, Minister for Home Affairs).

30 For further analysis on the harmony ideology within Singapore’s governance ethos, see Eugene KB Tan, “Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore,” (2007) 9(1) *Australian Journal of Asian Law* 120-151.

Penal Code and Sedition Act

Furthermore, the right of others can limit the right to freedom of worship. Chapter 15 of the Penal Code (Cap. 224, 2008 Rev Ed) provides for criminal offences relating to religion including injuring or defiling a place of worship, disturbing a religious assembly, uttering words or sounds to deliberately wound religious feelings.

Under the Sedition Act (Cap. 290, 2013 Rev Ed), it is an offence, *inter alia*, to “to promote feelings of ill-will and hostility between different races or classes of the population of Singapore”. In 2005, three bloggers were convicted under the Sedition Act for posting web-blog comments that were anti-Muslim.³¹

The coercive legislative framework equips the government with a variety of measures to counter so-called faith-inspired threats. The legislative arsenal enables calibrated measures depending on the nature of the threat.

b) Places of worship

There is the general enjoyment of the freedom to worship in Singapore. Freedom of worship is generally not an issue so long as the worship does not infringe upon any law relating to public order, public health or morality. In land-scarce Singapore, planning rules and guidelines determine where stand-alone places of worship can be located. Generally, such land parcels that are released for use as places of worship, except for mosques, have to be bid for on a competitive tender basis. Such locations that are specially designated for worship/religious use by religious groups are zoned “Place of Worship”.

As the demand for places of worship exceeds the supply of stand-alone parcels of land, religious

groups, especially Protestant Christian churches, have resorted to the use of alternative premises for their weekly prayer services. This includes converting, with permission from the relevant authorities, former cinemas to churches. The use of hotel function rooms for prayer services is also common for small church communities. Commercial and industrial spaces have been resorted to as well to meet the demand for places of worship. Given the proliferation of such use, the government has laid down guidelines limiting the use of commercial and industrial spaces for religious purposes. This is to ensure that “the predominant use and character of commercial developments are not eroded, and that such places remain as secular spaces that can be enjoyed by people from all segments of society”.³²

Although religious activities are generally not allowed in commercial buildings, the government has exercised flexibility in allowing commercial premises to be used in a limited, non-exclusive way by religious groups that need venues for large gatherings, as long as it does not cause disturbances such as noise, traffic or parking problems. The concern is to ensure the character and secular nature of commercial premises are not eroded or displaced by religious activities. Some of the guidelines that religious organisations and property owners have to observe are:

32 “Guidelines on the non-exclusive use of commercial spaces for religious activities,” jointly issued by the Urban Redevelopment Authority (URA) and the Ministry of Community Development, Youth and Sports (MCYS), 20 July 2010,

<<http://app.msf.gov.sg/MSENews/CommercialSpacesReligiousActivities.aspx>> accessed 9 August 2014. See also “Guidelines on the non-exclusive and limited religious use in industrial premises,” jointly issued by the Urban Redevelopment Authority and the Ministry of Community Development, Youth and Sports, 12 June 2012, <<http://www.ura.gov.sg/circulars/text/dc12-07.pdf>> accessed 9 August 2014.

31 *PP v Koh Song Huat Benjamin & Anor* [2005] SGDC 272; *PP v Gan Huai Shi* (2005, District Court, unreported).

(i) Only existing approved auditoriums, function halls, convention halls and cinemas located within commercial and hotel developments can be considered for non-exclusive and limited religious use, so long as such uses are not likely to cause disamenities and traffic problems;

(ii) The maximum space within a commercial development that can be considered for non-exclusive and limited religious use shall not exceed a total Gross Floor Area (GFA) of 20,000 sqm or 20 per cent of total GFA of the development, whichever is lower. Each religious organisation is limited to use up to 10,000 sqm in any commercial space at any one time. This is to ensure that a single religious organisation does not dominate a particular commercial development by taking up a very large amount of space. The exact quantum of these caps have been determined with reference to existing usage patterns, but taking into consideration the need to ensure that the predominant use of these premises remain “Commercial”, and that different religious organisation have the opportunity to access these large venues for their activities;

(iii) The premises cannot be owned by or exclusively leased to religious organisations. The premises should be available to be rented out for other commercial events such as seminars, conferences and performances, etc.;

(iv) The use of the commercial space for religious activities shall not exceed two days a week including Saturday and Sunday;

(v) There shall be no display of signages, advertisements or posters of the religious use at the premises or on the exterior of the building. The premises should not be

furnished to resemble a worship hall and there shall be no display of religious symbols, icons or any religious paraphernalia at or within the venue when it is not in use by the religious organisation; and

(vi) The building owner and the religious organisation shall take appropriate measures to ensure that the activities do not cause disturbances to the public.

In addition, owners of convention centres must ensure that the religious use of such premises does not compromise the staging of events during weekends.

The Singapore government is committed to keeping secular public space as “common space” in which such spaces are kept, to the fullest extent possible, race- and religion- free so that Singaporeans are not unnecessarily concerned with such sub-national identities. This, the government argues, enables Singaporeans, regardless of their race, language or religion, to live together harmoniously. In turn, this provides Singaporeans with extensive freedom to practise their own religion. For this arrangement to work, the commitment to accommodating the common space requires compromise, give and take, and pragmatism. In addition, section 295 of the Penal Code provides for criminal offences relating to religion including injuring or defiling a place of worship.³³

In December 2014, the Ministry of National Development (MND) launched a Request For Information (RFI) inviting interested churches and Chinese temples to provide their views and suggestions on the development and management

³³ The provision reads: “Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with both.”

of a multi-user place of worship facility. This was in response to religious groups providing feedback that they require spaces much smaller than the typical place of worship sites, which are released on the Government Land Sales programme. The plans envisage smaller related groups (either churches or Chinese temples) being co-located in single facility with shared facilities such as car parks and restrooms.³⁴

c) Religious symbols

The use of religious symbols is generally not problematic within places of worship, religious schools such as the *madrasahs* and mission schools, and other facilities such as nursing homes run by religious organisations. The state's approach to the use of religious symbols is that they should primarily be used in the private domains. Here, the state endeavours to draw a distinction between public and private spaces. It advocates and urges the enlargement of "common spaces" as a means of ensuring that Singaporeans continue to interact in the public sphere without the identity markers of religion, language and race becoming hindrances.

Thus, national schools are common spaces and regarded as a key arena for value formation and national integration. As such, the government has insisted on a common school uniform policy. In the *tudung* controversy in 2002, the issue was whether the wearing of the *tudung* by Muslim girls in national

schools should be permitted.³⁵ The government's steadfast stand was explained thus: The government seeks to expand the common space Singaporeans share. Thus, national schools, as a common space, require pupils to wear uniforms, regardless of race, religion or social status. Allowing exceptions would fragment the common space and invite competing demands from different communities.³⁶

In essence, the government regards the wearing of the *tudung* in national schools primarily as a symbol of exclusiveness that prevents students from interacting and, consequently, is a threat to racial integration. Furthermore, allowing the *tudung* would risk competing demands from other religious groups. Nevertheless, in deference to sensitivities within the Muslim community, national schools continue to allow Muslim girls to don track pants (instead of shorts) for physical education classes and have long permitted Muslim pupils time-off to attend Friday mid-day prayers. There is no ban on the wearing of *tudung* at institutions of higher learning. However, the *tudung* is not permitted as part of women nurses' uniform in public sector hospitals, ostensibly for hygiene reasons. Except for frontline customs and immigration officers and the uniformed services, government employees (including teachers) are not prevented from wearing the *tudung*. It should be noted there is no evidence that *tudung*-clad government employees are isolating themselves in national schools and the workplaces.

34 The government is keen to develop the concept further given its potential to meet the needs of religious groups and to optimise Singapore's limited land. See MND's press release, "Request for Information (RFI) for Development and Management of Multi-user Place of Worship Facility for Church or Chinese Temple," 11 December 2014

<<http://app.mnd.gov.sg/Newsroom/NewsPage.aspx?ID=5764&category=Press%20Release&year=2014&RA1=&RA2=&RA3=>>. See also RFI documentation at:

<[http://www.hdb.gov.sg/fi10/fi10297p.nsf/Imageview/Request%20for%20Info%20-%20Eng/\\$file/RFI+Eng+Final\(final\)9.12.14.pdf](http://www.hdb.gov.sg/fi10/fi10297p.nsf/Imageview/Request%20for%20Info%20-%20Eng/$file/RFI+Eng+Final(final)9.12.14.pdf)>.

35 The *tudung* (*hijab* in Arabic) is a veil or headscarf that covers the head and chest as a manifestation of modesty. It is worn by a Muslim woman beyond the age of puberty in public and in the domestic settings in the presence of adult males outside of the immediate family.

36 See Lim Chee Hwee, Press Secretary, Singapore's Ministry of Education, in his reply captioned, "Malays in Singapore", *The New York Times*, March 16, 2002, to the article "By barring religious garb, Singapore school dress code alienates Muslims", *The New York Times*, 27 February 2002. Note, however, that Sikh boys in national schools are allowed to wear their turbans and Sikh males in the uniformed services can don their turbans as part of the uniform.

The issue had simmered since the controversy ended abruptly in 2002 when the parents of the *tudung*-clad girls decided to withdraw them from the schools. In January 2014, in a closed-door dialogue with the Malay-Muslim community on the *tudung* issue, the Prime Minister stated the following³⁷:

.... the issue fundamentally is not the *tudung* per se, and certainly not nurses' *tudung* as a narrow question, because it's a much broader question and that is, what sort of society do we want to build in Singapore. It's a question which we faced right from Independence. In fact it's a reason why we became independent, and that is, we are in Singapore to build a multi-racial society, where everybody has full and equal opportunities, where the minority community can live its own life, its own way of life, practice its faith to the maximum extent possible, and not be oppressed or to be marginalised by the majority community. Multi-racial, regardless of race, language and religion – that's why we became Singapore, and that's what the Government wants to achieve. In fact, wherever possible, we lean in favour of the minority communities in order to give them an extra help, in order that they can participate in the success of the nation and to be integrated. So whether it is education with Mendaki, whether it is mosque building programme, whether it is through other social programmes which we have, where many of the beneficiaries are Malay Muslims, this is what the Government has done.

But if we are going to do this, we have to do this in a broad and informal way. We

cannot take it issue by issue; we cannot take it in terms of rights and entitlements. We cannot go on basis of what is either the rules or the instruction manuals, or the laws or the Constitution, and try to find a legal interpretation on that issue and press that regardless, and to the possibility of detriment to the overall progress of the communities; of our harmony and of the overall space we have been able to carve out for the minority communities in Singapore, and create for the minority communities in Singapore. It's an approach which has worked for us. We are much more integrated than we were. ...

According to the Prime Minister, the *tudung* is not an issue that concerns the Muslims only; it would trigger demands from other religious communities:

You do not want to make precipitated changes, moves which can lead to either a push back from the other communities, which can lead to further demands from the other communities, which can lead to a weakening of our multi-racial ties which will mean really, a much unhappier society and I think the minorities will be considerably the losers. Because in a society like ours, it is most critical that we are comfortable with one another, then we can interact, we can work together – same work places, live together – same HDB estates, same school, serve together. And that's the way we have the maximum space for the minorities, so we must not take actions precipitously which can lead to unintended and unhappy consequences.

So I explained that the *tudung* in itself, from the Malay/Muslim point of view, is completely understandable and I fully appreciate the desire – good Muslims want to do this, although there are a range of views on what are the exact requirements. But we also have

37 Transcript of Prime Minister Lee Hsien Loong's remarks to the media after the closed-door dialogue with the Malay/Muslim community on 25 January 2014

<http://www.pmo.gov.sg/content/pmosite/mediacentre/speechesinterviews/primeminister/2014/January/transcript-of-prime-minister-lee-hsien-loong-s-remarks-to-the-me0.html#.U_2PCqMWHFw> accessed 9 August 2014.

to take into account the overall context and how this can interact and lead to different outcomes. ...

It shows how sensitive things can be. So when you put it the other side, and supposing you have a sudden change in the rules and you find all of the sudden many Malay nurses are wearing the *tudung*, well, from the Muslim point of point, it is completely reasonable. From the overall society point of view, I am not sure how people will react.

So therefore, if you look back over the last 10 years, the position has not been static. We have had more statutory boards, for example, have now quite commonly got the officers in uniform and the uniform has incorporated some form of the *tudung*. ...

Our society will change, attitudes will change, expectations, people get used to different norms. Over time, I think we will gradually move to a new balance. That's the most wise; that's the wisest thing to do; that's the way I think we can consolidate our multi-racial harmony and make sure that Singapore has another 50 years of stable, cohesive and harmonious society.

d) *Observance of holidays and days of rest*

Many of the gazetted public holidays in Singapore are associated with religious occasions or cultural events for the major racial groups. Of the 11 gazetted public holidays, six are for religious occasions:

- Islam: Hari Raya Puasa; Hari Raya Haji
- Christianity: Good Friday; Christmas
- Buddhism: Vesak Day
- Hinduism: Deepavali

For other religions such as Judaism, employers in the public and private sectors have the discretion to grant their employees unrecorded leave for their key religious events. Public sector employers also facilitate their Muslim employees to fulfil their Friday prayer obligations.

e) *Appointing clergy*

Article 15(3) of the Constitution provides for the right of every religious group “to manage its own religious affairs”. Thus, the selection, training, and appointment of clergy is left to each religious group.

Where the appointment of the *Mufti* is concerned, section 30(1) of AMLA provides that the “President of Singapore may, after consultation with the Majlis, appoint a fit and proper person to be the Mufti of Singapore”. Such an appointment shall be published in the government *Gazette*.

f) *Teaching and disseminating materials (including missionary activity)*

A key aspect of religious freedom is the right to propagate one's religion, which is provided for in Article 15 of the Constitution. As such, the law does not prohibit the dissemination of religious literature, as part of proselytization efforts, and other forms of proselytization. The relevant consideration is how proselytization is carried out. Article 15(4) is relevant as it circumscribes the manner in which Article 15 rights are practiced. Any proselytization effort can be restricted if it is “contrary to any general law relating to public order, public health or morality”.³⁸

Although it is not illegal for non-Muslims to proselytize to Muslims, there is the tacit understanding among the religious groups that there should not be specific efforts by non-Muslims to proselytize to Muslim adherents. This could

38 *PP v Ong Kian Cheong* [2009] SGDC 163.

reflect the concern that the Muslims constitute a significant minority faith in Singapore and in which Islamic affiliation is almost coterminous with Malay identity. Unlike in Malaysia, however, there is no constitutional or statutory definition of “Malay” in Singapore. Article 160(2) of the Malaysian Constitution defines a “Malay” as “...a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom”.³⁹

Missionary activity locally and foreign missionary activity carried out of Singapore are also not proscribed. Taking advantage of Singapore’s connectivity, many Christian missionary groups use Singapore as base for missionary work in Southeast Asia. Indeed, it is not uncommon to hear Singapore being described as the “Antioch of the East”, a strategic base for both missionary outreach and funding.⁴⁰ Within Singapore, over the last three decades, there is the perceptible shift towards increased religious consciousness. Thus, we see most, if not all, faiths enhancing their efforts to propagate their faith. This includes Muslims’ *dakwah* (proselytization) efforts directed at the substantial non-Singaporean population in Singapore.

g) *The right of parents to ensure the religious and moral education of their children*

Parents have the right to decide the appropriate religious and moral instruction of their children below 21 years of age. At the level of religious communities, Article 16(2) of the Constitution

39 On “Malays” and “Malayness”, see generally Anthony Milner, *The Malays* (Malden, MA: Wiley-Blackwell, 2008). See also Syed Muhd Khairudin Aljunied, ‘British Discourses and Malay Identity in Colonial Singapore,’ (2009) 37 (107) *Indonesia and the Malay World* 1-21.

40 Ancient Antioch was an important centre for the early Christians, playing a major role in the story of early Christianity. In its heyday, Antioch attracted Christian proselytizers. The Gospel of Matthew was written in Antioch, and Peter and Paul converted gentiles there. It was also in Antioch that followers of Christ were first called “Christians”. Antioch then was a big, cosmopolitan, wealthy city and was a major trade link.

protects the right of a religious group “to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law”.

h) *Registration*

Article 15(3) of the Constitution stipulates that every religious group has the right to manage its own religious affairs; establish and maintain institutions for religious or charitable purposes; and to acquire and own property and hold and administer it in accordance with law. However, registration of religious groups is not mandatory under Singapore’s laws. For most religious groups seeking a legal personality, registration is necessary for the many acts in connection with the legal right to manage religious affairs.

There are two main modes for the registration of religious groups: either as a corporate entity through the Companies Act (Cap. 50, 2006 Rev Ed), or – more commonly – as a society under the framework of the Societies Act (Cap. 311, 2014 Rev Ed). The former route might be deemed suitable by some religious groups as it can obviate some of the issues that might arise under the latter route, which is elaborated below.

In addition, there are also various private Acts and Ordinances giving various religious and ethnic charitable organisations legal identity: see *Statutes of the Republic of Singapore*, Part III (Caps. 355–383). This is uncommon today as new religious groups seeking to establish legal identity are advised to incorporate or register as a society. There are benefits to registration such the legal right to acquire and own property, and hold and administer it in accordance with law: Article 15(3). In this regard, “registered” religious groups can opt to establish and maintain charitable and humanitarian

institutions, which would, *inter alia*, enable them to solicit and receive funding.

Under the Societies Act, a society that represents, promotes, or discusses religious matters is a “specified society” and has to be registered by law. This means that the registration of such societies is not automatic and not of right, and may be subjected to inquiry by the Registrar of Societies. An unregistered society is deemed to be an unlawful society. This registration requirement provides a powerful mechanism by which the state can proscribe religious groups which are deemed to be “prejudicial to public peace, welfare or good order in Singapore”.⁴¹ As then Chief Justice Yong Pung How noted, “the basis for the de-registration clearly flowed from the danger of allowing absolute freedom of religion which might create a complete denial of a government’s authority and ability to govern individuals or groups asserting a religious affiliation.”⁴²

Further, for the Jehovah’s Witnesses (JWs), a proscribed entity, publications by the Watchtower Bible and Tract Society (the organisation that publish religious materials for the JWs) are designated as objectionable publications under the Undesirable Publications Act (Cap. 338, 1998 Rev Ed). As such, their publications may not be legally brought into Singapore.⁴³ For offences involving such objectionable publications, a person shall be liable on conviction to a fine not exceeding SGD

5,000 or to imprisonment for a term not exceeding 12 months or to both.

For religious groups that have de-registered, such as the JWs, they are unable to secure any legal places of worship. Any premises, whether residential, commercial or otherwise, that is used as a place of worship by a de-registered or un-registered religious group may be subjected to police raids. It should be noted that the police do not specifically seek out such premises.

i) *Communicate with individuals and communities on religious matters at the national and international level*

There are no laws that specifically regulate a religious group’s communications with individuals and communities on religious matters at the national and international level. Religious groups are at liberty to communicate with other parties without reference to the secular authorities. Generally speaking, however, such communication, even if connected with a religious nature, cannot run foul of Article 15(4) of the Constitution. This entails that such communication cannot be “contrary to any general law relating to public order, public health or morality” or any other laws. In this regard, religious speech is neither conferred specifically privileged nor protected status.

j) *Establish and maintain charitable and humanitarian institutions/solicit and receive funding*

Article 15(3) of the Constitution states that every religious group has the right to manage its own religious affairs, to establish and maintain institutions for religious or charitable purposes, and to acquire and own property and hold and administer it in accordance with law. This is reinforced by Article 16(2) which provides that “(e)very religious group has the right to establish and maintain institutions

41 The Christian Conference of Asia (CCA) was dissolved under s. 24(1) of Societies Act in 1987 for its alleged involvement in political activity and allowing its funds to be used for political purposes. The Jehovah Witnesses and the Holy Spirit Association for the Unification of World Christianity (Unification Church) are two well-known entities that have been deregistered.

42 *Chan Hiang Leng Colin and others v PP* [1994] 3 SLR(R) 209 at [78].

43 Informal queries suggest that while the JWs’ bibles are confiscated as a matter of course at the customs checkpoints, the Controller of Undesirable Publications may subsequently release them, with the bibles being stamped, “We have no objections with this shipment”. All other publications by the Watchtower Bible and Tract Society are banned in Singapore.

for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law". Such institutions may also be charities and institutions of public character – the latter are empowered by law to issue tax-exempt receipts for qualifying donations made by donors.

In Singapore, the public face of religion is evident and is regarded as part of associational life in the city-state. The government recognizes that the public and private spheres are increasingly fluid, porous and less definitive in an age of globalization, coupled with rapid scientific and technological advancements that result in moral, ethical, and religious issues acquiring a higher profile.

In tandem with the growing religious consciousness and piety, religion and religious groups continue to have a substantive presence in Singapore's associational life and demonstrate the extent to which religion can help develop social capital. Two examples suffice. The social welfare framework has an intimate public-private collaboration in which community organisations, such as religious groups, provide help to the needy and vulnerable, with the government providing the financial support and infrastructure. In receiving financial support from the government, these organisations are legally bound and commit to providing their services to the community regardless of the beneficiaries' religion, race, or language.

Secondly, Singapore's approach in managing the socio-economic and educational under-performance among the various races has a significant ethnic (racial) dimension through the formalization of the ethnic self-help groups. Additionally, for Malays/Muslims, the religious dimension is also significant in two other ethnic self-help vehicles that mainly cater to the Malays/Muslims: (i) MENDAKI (Council on Education for

Muslim Children),⁴⁴ the first ethnic self-help group, created in 1982, and (ii) Association of Muslim Professionals (AMP) set up in 1991. In contrast, the identities of the other three self-help groups for the Chinese (Chinese Development Assistance Council or CDAC), Indians (Singapore Indian Development Association or SINDA), and Eurasians (Eurasian Association) are premised on race and are avowedly secular in outlook and disposition. Again, this fusion of race and religion elements in many Malay-Muslim organisations reflects the centrality of and recognition accorded to the Islamic identity as part of the Malay identity.

k) Conscientious objection

Under the Enlistment Act, all Singapore citizens and Permanent Residents, are liable to perform full-time National Service (NS) for two years with reservist (operationally ready) duties up to the age of 40 and 50 for non-commissioned and commissioned officers respectively. Since 1967 when NS was first established, however, only males have been enlisted. Enlistees serve in the Singapore Armed Forces, or the Singapore Police Force, or the Singapore Civil Defence Force. A person liable for NS may be exempted for medical reasons based on professional assessment by an independent medical review panel.

The various legislation relating to national service, such as the Enlistment Act and the Singapore Armed Forces Act, do not explicitly provide for the right to refuse to perform national service on religious grounds. This has caused considerable problems for religious groups such as the Jehovah's Witnesses (see below). In the past 10 years, about a dozen national servicemen each year were court martialled and sentenced to detention for refusing to serve NS on religious grounds. Such servicemen

44 MENDAKI's logo incorporates a stylistic rendition of the Quranic term "Iqra" which means "Read": see <<http://www.mendaki.org.sg/about-mendaki/logo.aspx>> accessed 9 August 2014.

are typically detained for at least three years in military detention barracks.⁴⁵ Typically, such JW detainees are not subjected to the physical regime that other soldiers under sentence undergo.

The Singapore government's position in not recognising conscientious objectors in Singapore's NS framework is that "Allowing individuals to opt out or choose alternative forms of NS because of moral or religious reasons will weaken support for NS itself".⁴⁶

Although they remain technically liable for national service, servicemen who had been court martialled and sentenced to detention for refusing to serve NS on religious grounds typically are not called up for reservist duties. However, such persons do not have any form of legal documentation that officially discharges them from reservist duties. For those who had completed their full-time NS, and subsequently become conscientious objectors, they could be court martialled and sentenced to up to 40 days' detention each time for refusing to serve reservist NS.

In the education realm, as JWs do not take the National Pledge or sing the National Anthem, school-going children abstaining from these activities may be suspended from school. Similarly, jobs in the government sector or uniformed services remain out-of-bounds for JWs.

45 Under section 118(1)(f) of the Singapore Armed Forces Act (Cap. 295, 2000 Rev Ed), a court martial can sentence a soldier to a maximum detention period not exceeding 2 years. Conscientious objectors are typically charged and sentenced initially for 15 months' detention by a court martial. After the first sentence is served, this is followed by a second charge and a sentence of 24 months' detention.

46 Written answer by Minister for Defence, Dr Ng Eng Hen, to a parliamentary question on conscientious objectors filed by the author: *Singapore Parliament Reports*, vol. 92, 9 July 2014.

3. *Freedom from intolerance and discrimination*

The Singapore government is particularly sensitive to charges that state policy and laws practise discrimination, especially against the minorities. Thus, it is no surprise if the government is very scrupulous with regard to how the different religious communities are treated. It is also not a surprise if Islam is given special attention. One area that remains a contested source of unhappiness is the role of Malays/Muslims within Singapore's national security apparatus given that there is compulsory national service.

The Singapore Armed Forces (SAF) is a largely conscript defence force and is rigorously portrayed as one of the pillars of Singapore's multiracial ethos. The military is seen as an institution of nation-building through its efforts in racial integration.⁴⁷ Military service is seen as being central to full Singaporean citizenship.

Born of and sustained out of "a chronic sense of its [Singapore's] own vulnerability",⁴⁸ the SAF is promoted and celebrated by the government as an institution that is non-racial and one that bonds the servicemen regardless of their class, race, language or religion, in the defence of Singapore's sovereignty. Introduced in March 1967, all medically fit males of age 18 years are enlisted to serve national service for up to two years (previously, two and a half years). This is followed by reserve service until 40 years of age for non-commissioned officers and 50 years of age for commissioned officers.⁴⁹

In the official discourse, national service is portrayed as being integral to full, as opposed to formal, citizenship for Singaporean males. In the

47 See *Singapore: The First Ten Years of Independence* (Singapore: National Library Board and National Archives of Singapore, 2007), 79-81.

48 Tan Tai Yong, "Singapore: Civil-Military Fusion," in Muthiah Alagappa (ed.), *Coercion and Governance: The Declining Political Role of the Military in Asia* (Stanford, CA: Stanford University Press, 2001), 276-293 at 276.

49 See Enlistment Act (Cap. 93, 2001 Revised Edition).

publication, *Defending Singapore in the 21st Century*, the Ministry of Defence declares that “National Service remains the only viable option for building up a defence force capable and formidable enough to deter an external attack”.⁵⁰ National service is an important rite of citizenship for a “nation-in-arms... a garrison state with a garrison mentality to match”.⁵¹ Mandatory military service therefore provides a shared experience of Singaporean society. It has also become a traditional training ground for Singapore’s future leaders, especially in politics.⁵² For a society where the concerns of survivalism and vulnerability are ever present, compulsory national service is a key institution in the nation-building process. National service is undoubtedly a socio-political process in social and cultural homogenization in the civic sense.

From a largely ethnic Malay police force and defence force during the colonial period, the government upon independence in 1965 sought to recruit more Chinese and Indians into the police and newly created armed forces. In his memoirs, former Prime Minister Lee Kuan Yew wrote that “Independent Singapore could not continue the old British practice of having a city of three-quarters Chinese policed and guarded by Malay policemen and soldiers”.⁵³ The government’s quest for a more “mixed-race” SAF consequently led to the dual effort in ramping up the recruitment of more non-Malays and concomitantly reducing the Malay proportion in the SAF. By 2000, Huxley notes the predominance and over-representation of ethnic Chinese in the officer ranks today in contrast to the

1980s when there were more non-Chinese officers and in the 1960s when the Malays constituted the backbone of SAF’s predecessor.⁵⁴

The state’s and government’s sense of vulnerability is overriding and is attributed to the tumultuous political union of Singapore in Malaysia where racial concerns were central in the July and August 1964 riots and culminated dramatically in the failed merger with Malaysia and Singapore’s subsequent independence.⁵⁵ Furthermore, the security perspective of Singapore as a small, predominantly ethnically Chinese state in a Malay-Muslim world heightens the country’s entrenched sense of vulnerability. It was in this context that the SAF came into being, and whose influence on society and half of Singapore’s population is substantive. This state of perpetual vulnerability continues and sustains Singapore’s defence posture and policies.

The key hindrance to closer Malay integration in the defence force stems from the Singaporean political elites’ belief that primordial loyalties of ethnicity and religion will trump the civic and secular loyalties of the Singaporean nation. The tacit institutional ambiguity of their National Service role and their place within the larger national security apparatus are major issues that continue to gnaw at the Malay-Muslims, resulting in much angst, distrust, and misunderstanding between the Malay-Muslims and the government. The alleged loyalty dilemma is the “focal point of Malay dissatisfaction with if not

50 *Defending Singapore in the 21st century* (Singapore: Ministry of Defence, 2000), 41.

51 Tan Tai Yong, “Singapore: Civil-Military Fusion,” p. 277.

52 As of August 2014, seven of the 15 Cabinet Ministers, including the Prime Minister and one Deputy Prime Minister, are retired professional military officers. Of the seven, three were 2-star generals (including two Chiefs of Navy and one Chief of Army) and two were 1-star generals.

53 Lee Kuan Yew, *From Third World to First – The Singapore Story: 1965-2000, Memoirs of Lee Kuan Yew* (Singapore: Singapore Press Holdings and Times Editions, 2000), 31.

54 Tim Huxley, *Defending the Lion City: The Armed Forces of Singapore* (St Leonards, NSW: Allen & Unwin, 2000), 114-15. No precise figures were given by Huxley or are the figures available in the public domain.

55 Other areas of vulnerability often cited by the Singapore leadership: Singapore’s small size (and the resultant lack of strategic depth for defence), the lack of an economic hinterland, and the lack of natural resources. On the failed merger, see Albert Lau, *A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement* (Singapore: Times Academic Press, 1998). On the seeds of failure in the formation of the Federation of Malaysia in 1963, see Tan Tai Yong, *Creating ‘Greater Malaysia’: Decolonization and the Politics of Merger* (Singapore: Institute of Southeast Asian Studies, 2008).

alienation from the Singapore political system”.⁵⁶

When national service was introduced in 1967, politicians and citizens alike shared the explicit understanding that the new national service laws require every young Singaporean male citizen would be conscripted, irrespective of racial background. As it turned out, this was not the case. Between 1969 and 1973, universal conscription of Malays was not practiced in the quest to “racially balance” Singapore’s defence force from a predominantly Malay fighting force to a mixed-race one. Since 1985, however, all eligible Malays have been enlisted for national service.

Such a policy was perhaps not all that surprising. The Singapore government was motivated by a deep concern and abiding fear that in a crisis, Malay soldiers could not caught in a loyalty dilemma. It took a leaf from the racial disturbances in Singapore in 1964 and the 13 May 1969 riots in Malaysia where the Malaysian military and police personnel (who were overwhelmingly Malay in both situations) were partial in the conflict resulting in significant Chinese casualties. As Bedlington remarks, “The government cannot be expected to tolerate the domination of its military and police by an ethnic group which forms only 15 per cent of the population as a whole and whose loyalties can reasonably questioned”.⁵⁷

56 Stanley S. Bedlington, “Ethnicity and the Armed Forces in Singapore,” in DeWitt C. Ellinwood and Cynthia H. Enloe (eds.), *Ethnicity and the Military in Asia* (New Brunswick, NJ: Transaction Books, 1981), 259. Ismail Kassim notes in his *A Reporter’s Memoir: No Hard Feelings* (Singapore: Ismail Kassim, 2008), 59 that: “As part of the separation agreement, the Tunku [Abdul Rahman, Malaysia’s Prime Minister between 1957 and 1970] offered Singapore Malays land in Johore and the option of becoming Malaysian. Only a handful accepted; the vast majority preferred to take their chances with Lee [Kuan Yew] and the PAP”.

57 Bedlington, “Ethnicity and the Armed Forces in Singapore,” 260. See, generally, the insightful study of Cynthia H. Enloe, *Ethnic Soldiers: State Security in Divided Societies* (Athens, GA: University of Georgia Press, 1980). On security dilemmas involving ethnic issues that confront many post-colonial states in Southeast Asia, see Alan Collins, *The Security Dilemmas of Southeast Asia* (New York: St Martin’s Press, 2000).

Progress has indeed been made. In the 1990s and early 2000s, there were well-publicized exceptions of Malay deployment in the SAF in the mass media to highlight the integration of the Malay-Muslims in the defence force. For instance, Singapore’s first Malay air force pilot (commissioned in the early 1990s) was a poster boy of this integration. In 2002, Singapore had its first Malay combat fighter pilot.⁵⁸ In 2009, the military appointed its first Malay (one-star) general.⁵⁹

The Defence Minister in 2014 stated that:

National Servicemen are deployed to various vocations based on the SAF’s operational needs and the individual’s factors such as educational qualifications, skills, physical attributes and aptitude to adequately perform the requisite tasks and responsibilities. All vocations within the SAF contribute to and collectively strengthen the defence and security of Singapore.

The ethnic composition of servicemen in the SAF corresponds broadly to the ethnic profile of our population, with major ethnic groups represented in each Service. In the Army, where the bulk of full-time national servicemen are deployed, the ethnic compositions of the combat vocations (which include Infantry, Guards and Armour) and the support vocations (which include Signals, Engineers and Logistics) are again similar to that in the general population. Due to operational security considerations, MINDEF does not release detailed data within each specific vocation.

58 See “Childhood dream to fly comes true,” *The Straits Times*, September 7, 2003. See also Saat A. Rahman (ed.), *Goh Chok Tong, Portrait of a Leader: A Tribute from the Malay/Muslim Community of Singapore* (Singapore: Tribute to Mr Goh Chok Tong Organizing Committee, 2005), 60–61.

59 “A Malay general in the SAF? Why not, says DPM,” *The Straits Times*, November 24, 2003.

The selection of commanders (which include Officers, Warrant Officers, Specialists, and Military Experts) is based on similar criteria for deployment into vocations and merit. The ethnic composition of commanders is similar to that in the general population.”⁶⁰

Earlier in the year, the Defence Minister said in Parliament:

... Over the years, Malays have made significant strides in skills and educational attainment. So we now have Malays in all Services, whether as pilots in the Air Force, as Commandos, Combat Engineers, Artillery Men in the Army, and in the Navy ... The SAF has been doing it this quietly and progressively without fanfare, applying the principles of merit and aptitude. Which means that every Malay soldier who is posted to any vocation or unit got there on his own merit. ...

Many of these senior Malay commanders have been asked to profile themselves by the Malay community. The Malay community is proud of them. They want to erase some misconceptions, and they say, “We want to profile you.” But the Malay commanders tell me, they replied, “Why should I do so? Why should I push myself out? In the SAF, I have been promoted because of what I have accomplished and am capable of, not because I am Malay. As a commander, I lead my men, not Malay, Chinese, or Indian men, but all my men. And I am not their Malay, Chinese, or Indian commander but just their commander. No one purposely draws attention to my race within the SAF.” These Malay senior commanders want to keep it that way. I think these words from Malay

60 Written answer by Minister for Defence, Dr Ng Eng Hen, to parliamentary questions filed by Mr Pritam Singh and Mr Muhamad Faisal Bin Abdul Manap: *Singapore Parliament Reports*, vol. 92, 7 July 2014.

senior commanders, spoken in private, are the most eloquent public statement of how far we have come, and how we must continue to progress.

We will continue to expand the opportunities for all Singaporeans regardless of race and religion.⁶¹

The official position of irrelevance of a serviceman’s race and religion to his deployment sits uncomfortably with the earlier predominant view among the political elites that race and religion may trump civic, patriotic pulls. This position was never publicly enunciated until 1987, twenty years after the introduction of NS, when BG (NS) Lee Hsien Loong, then junior Defence Minister, stated first in a constituency tour and, later, in Parliament the government’s long-standing concern with the purported dual-loyalty conflict faced by the ethnic Malays resulting in the need for an exclusionary ethnic manpower policy in the national security apparatus:

If there is a conflict, we don’t want to put any of our soldiers in a difficult position where his emotions for the nation may be in conflict with his emotions for his religion... We don’t want to put anybody in that position where he feels he is not fighting a just cause, and perhaps worse, maybe his side is not the right side. ... The SAF is not only an institution for nation building; it also has an operational role. Its operational role is to defend Singapore against armed attack in case of war. We cannot post a soldier, a national serviceman, to the SAF, or for that matter post him to any particular post in the SAF, simply for purposes of nation building alone. He is there not just for his education but to fulfill a role, an operational role. We have to take this into account. We still have to remember that in a

61 Speech by Minister for Defence, Dr Ng Eng Hen, for the debate on the President’s Address, *Singapore Parliament Reports*, vol. 92, 29 May 2014.

multi-racial society, as was pointed out by Dr Goh [Keng Swee] 10 years ago but it is still true, “the ethnic distribution of soldiers is obviously an important yet delicate subject”.⁶²

Earlier on, in November 1986, Israel’s President Chiam Herzog’s state visit to Singapore incurred the displeasure of Malaysia. In the ensuing bilateral spat, the government questioned the loyalty of Singaporean Muslim organisations when they reacted to the visit in the same manner as the Malaysians. Then Prime Minister Lee Kuan Yew remarked that, “It is a reminder that in certain circumstances the Malay Singaporean reacts with the emphasis on Malay/Muslim rather than Singaporean.”⁶³ More than a decade later in 2001, Lee reaffirmed the government’s concern:

We must never put the person in a situation where he may face a conflict of loyalties. I said in answer to a question some nearly two years ago that it is a difficult matter to put a Malay Muslim of deeply religious family background in charge of a machine-gun. We should never have to ask this of anyone. Some of you were disturbed by my frankness. But when I faced crises in the 1960s I could not afford to be wrong. Was this discrimination or was it common sense - a policy of prudence? ... We uphold meritocracy, which means the most qualified and suitable person for the job. For nearly every job, a person’s race and religion are irrelevant. But in the security services, because of our context, we cannot ignore race and religion in deciding suitability. ...

Our concerns about conflicting loyalties are real. We know of at least one case where foreign intelligence agencies approached one of our senior officers because he was Malay.

62 *Singapore Parliament Reports*, vol. 49, col. 375, 17 March 1987.

63 As quoted in Michael Leifer, “Israel’s President in Singapore: Political Catalysis and Transnational Politics,” (1988) 1(4) *The Pacific Review* 341-352 at 349.

Fortunately, he reported the approach to his superiors. We had judged his loyalty correctly. So we are not just dealing with hypothetical situations. Potential adversaries see this as a fault line in our society, and they will exploit it whenever they can.⁶⁴

This is a tightrope situation for the Malay-Muslims and the government to tread. The rites and rituals of citizenship require that they perform compulsory national service yet their loyalty remains in some doubt. For the government, the security concerns are real. Lee Kuan Yew enunciated the government’s approach to and assessment of loyalty:

Loyalty is not something that can be measured quantitatively like height or weight. It is in the mind, in the heart. It is a question of our gut feelings. It depends on whether you and I feel we can trust each other. Arguments alone are unproductive. The loyalty of an individual is simpler to ascertain. But while we look at individuals, we cannot separate this from how groups of people may react, and different considerations apply. Under severe stress loyalty can change in unpredictable ways. How an individual reacts can be heavily influenced by how the group or community to which he belongs reacts.⁶⁵

Thus, the integration of the Malays into Singapore society is the pre-requisite for greater Malay participation in the SAF. Lee Kuan Yew had said:

64 Lee Kuan Yew, “Loyalty and the SAF,” speech at the dialogue session with the Association of Muslim Professionals and the *Majlis Pusat*, 2 March 2001 < <http://www.nas.gov.sg/archivesonline/speeches/view-html?filename=2001030503.htm> > accessed 9 August 2014. For a summary of the main points of the position paper prepared by Majlis Pusat and the AMP for the dialogue, see Ismail Kassim in his *A Reporter’s Memoir: No Hard Feelings* (Singapore: Ismail Kassim, 2008), 200-202.

65 Lee Kuan Yew, “Loyalty and the SAF”.

The Ministers in MINDEF have to be guided by the assessment of the commanders and the commanders in turn have to assess feelings between Chinese, Indian and Malay/Muslim NS men. If there is closer integration across the board between the communities, NS men will be comfortable with each other, and trust each other. It is not just winning over the leaders; it is more the question of whether inter-communal relations are such that we have trust and confidence between communities in the whole society.⁶⁶

However, the military, given its operational requirements and the *esprit de corps*, can catalyse the integration of Malays with non-Malay servicemen. It is well placed to set the pace for society in removing the stereotypes and prejudice against the Malays. At a minimum level, it can certainly set out and successfully integrate servicemen faster than what might be the pace of integration in the Singaporean society. Integrating the Malay-Muslims would certainly enhance the defence of Singapore. This is particularly so in a post 9/11 world. Conversely, discrimination, whether real or perceived, against the Malay-Muslims on security matters can only imperil Singapore's defence and social cohesion. As the government revealed in *The Jemaah Islamiyah Arrests and the Threat of Terrorism* White Paper, the Jemaah Islamiyah's principal terrorist plans entailed provoking "distrust and animosity between a 'Muslim Malaysia' and a 'Chinese Singapore' and cause ethnic strife in both countries".⁶⁷

66 *Ibid.*

67 *The Jemaah Islamiyah Arrests and the Threat of Terrorism*, Cmd. 2 of 2003 (Singapore: Ministry of Home Affairs, Singapore, 2003), 11.

4. *Right of vulnerable groups to freedom of religion and belief*

a) *Women*

As indicated earlier, Singapore's legal system officially provides for limited legal pluralism in personal law as they pertain to the indigenous Malay-Muslim community. In areas such as marriage, divorce and inheritance, Article 153 of the Singapore Constitution provides for legislation (viz Administration of Muslim Law Act or AMLA) in "regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion". It is in this context that Singapore has made reservations, on the basis of religious grounds, to Articles 2 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Specifically, Singapore reserves the right not to apply the provisions of CEDAW where compliance with these provisions would be contrary to religious or personal laws. For example, the right is given to a Muslim man in Singapore to marry up to four wives, but not vice versa. The government regards the reservations to Articles 2 and 16 of the CEDAW as necessary in view of the need to respect the right of Muslim citizens to practise their personal and religious laws".

However, in the areas of Islamic family law such as those governing marriage, divorce and inheritance, *Sharia* law has been said and perceived to operate partially in favour of Muslim men over women. Such laws, which have a religious basis, appear to discriminate against women. For example, in terms of inheritance rights and the division of matrimonial assets in a divorce, Muslim women are placed in a subordinate position vis-à-vis their Muslim male counterparts.

While Muslim family law has been regarded by many outside the community as being unequal and discriminatory towards Muslim women, the

government is of the view that there is general acceptance “on the need for the Muslim minority community to practice their family and personal laws”. It is clear that Islamic personal law poses challenges where international human rights standards are concerned. However, this is one area where the government is unlikely to be an agent of change. The pace of change, if any, will very much be influenced by the Muslim community itself.

b) Children

There is no known litigation on major issues where children and religion are concerned. The age of majority in Singapore is 21 years. Parents have the right to decide on the religion for their children who are minors: Article 16(4) of the Constitution.

There are no known cases of litigation over the unilateral conversion by one parent of their child(ren) without the consent of the other parent. Like in all matters concerning the child, the courts are guided by what is in the best interest of the child. Article 16(2) of the Constitution states that every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law. Article 16(3) reinforces the importance of no compulsion in matters of religion: “No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own”.

c) Migrant workers

The right of freedom of religion under Article 15 of the Constitution applies to all persons in Singapore. Thus, migrant workers can enjoy such rights and are also subject to the same laws as Singapore citizens and permanent residents.

There are more than 200,000 foreign women domestic workers (FDWs) in Singapore. They come from several Asian countries such as the Philippines, Indonesia, Sri Lanka. There have been no official complaints from the sending countries about their nationals not being able to practise their faith while working in Singapore. However, there are anecdotal accounts suggesting there may be a lack of sensitivity on the part of some employers on the religious requirements of their domestic workers such as domestic workers, who are Muslims, having to prepare pork dishes and asked to attend church services.

Since January 2013, employers are required to provide their FDWs with a mutually agreed weekly rest day, with the option for compensation in lieu. Compensation is fixed at at least one day’s wage for each rest day forgone. FDWs may use their rest days to attend to their religious needs and obligations. Arrangements for FDWs to fulfil their religious obligations on their work-days are subject to the employers’ agreement.

d) Persons deprived of their liberty

Prisoners are not denied their religious freedom rights while in custody. The various faiths’ prison ministries are given access to prisoners. Under the Prisons Regulations (Cap. 247, Rg 2, 2002 Rev Ed), reg 114 requires that “Every facility consistent with security and discipline shall be afforded for the holding of religious services and for visits by ministers of religion”. Under reg 140(a), prisoners sentenced to confinement in cells for breaches of prison discipline shall see no one, “save the officers of the prison in the execution of their duty, a minister of religion and the medical officer”. Religion is accepted as having the potential to contribute to a prisoner’s rehabilitation. The prisoner will, of course, have to consent to receiving such visits and participating in such activities.

Reg 103(2) stipulates that Jewish prisoners “shall not be compelled to work on Saturdays if they claim exemption and they may also keep such festival days as may be allowed by the Government”. Similarly, reg 103(3) provides that “All Muslim prisoners shall be allowed to observe the fast of Ramadan and during the fast may be required to labour at such reduced task as the medical officer considers proper”.

Reg 110 states that prisoners shall receive diet according to the scales set out in the schedule. Although the schedule provides for various types of diets, broadly along ethnic origins, there appears to be some recognition for diets on religious grounds. For example, the “A” diet is for “Asian Prisoners other than Northern Indians, Sikhs and Brahmins”, the “B” diet for “Northern Indian, Pathan and Sikh Prisoners”, and the “D” diet for Brahmin vegetarian prisoners. What is not listed is that *halal* diet is available as well.

e) Refugees

Singapore is not a signatory to the 1951 Convention relating to the Status of Refugees, which is the key international law treaty defining who is a refugee, their rights and the legal obligations of states. Although there are no specific laws governing the rights of refugees, should they be legally allowed to land in Singapore, Article 15 of the Constitution and other relevant laws regarding religion will presumably apply to them equally.

f) Minorities

Religious minorities are not discriminated against on the basis of their religious affiliation or lack thereof. In the official narrative, Singapore’s steadfast commitment to the multiracial ethos contributed to its failed political merger with Malaysia between September 1963 and August 1965. Singapore’s rigorous objections to the federal government’s goal of an ethnic-based Malay-Malaysia translated into a merger marked by mutual suspicion, political

manoeuvring and confrontation culminating in Singapore’s independence in 1965. In the fledgling nation-building efforts in the aftermath of separation, the government consciously sought to develop a “Singaporean Singapore” identity, while symbolically recognizing the special position of the indigenous Malays.⁶⁸ This was necessary “[b]ecause we, the Chinese majority in Singapore, suffered communal bullying and discrimination during the two years we were a part of Malaysia, the first-generation leaders vowed that we would never bully or discriminate our bullies”.⁶⁹

The centrepiece of the Singapore state’s attempt at inclusive citizenship for the minorities, and especially the Malays, can be found in Article 152 of the Singapore Constitution. Article 152(1) states that: “It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore”. In particular, Article 152 recognises the “special position of the Malays” by virtue of their being the indigenous people of Singapore.⁷⁰ The Singapore Constitution does not define who a Malay is. Article 152(2) states that:

The Government shall exercise its functions in such manner as to recognize the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

68 Lee Kuan Yew, *The Singapore Story: The Memoirs of Lee Kuan Yew* (Singapore: Times Editions and The Straits Times Press, 1998), 540-663; Albert Lau, *A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement* (Singapore: Times Academic Press, 1998).

69 Speech by Lee Kuan Yew at the People’s Action Party 50th anniversary celebrations, 21 November 2004.

70 In contrast, Article 160(2) of the Malaysian Constitution defines a “Malay” as “...a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom.”

Article 152 of the Singapore Constitution enables and legitimises minority claims to cultural diversity and autonomy in Singapore. This is in sync with the Singapore government's approach to the management of ethnic relations. The commitment to equality was manifested in the principle and requirement of the government of the day having a responsibility to care for the interests of racial and religious minorities. Article 152 predates Singapore's independence. This commitment to minority protection was agreed to between the British colonial government and the All-Party delegation from Singapore, and was incorporated into the preamble of the constitution of the colony of Singapore that granted internal self-government to Singapore. In 2009, Singapore's founding and former Prime Minister Lee Kuan Yew rebutted the notion of racial equality in the Singapore Constitution and stated robustly:

We explicitly state in our Constitution a duty on behalf of the Government not to treat everybody as equal. It [racial equality] is not reality, it is not practical, it will lead to grave and irreparable damage if we work on that principle. So this was an aspiration. ... You suggest to the Malays that we should abolish these provisions in the Constitution and you will have grave disquiet. ... The American Constitution does not say that it will treat blacks differently but our Constitution spells out the duty of the Government to treat Malays and other minorities with extra care. ... It is completely untrue. It has got no basis whatsoever. And I thought to myself, perhaps I should bring this House back to earth and remind everybody what is our starting point, what is our base, and if we do not recognise where we started from, and that these are our foundations, we will fail. ... Today, 44 years later, we have a Malay community, I believe, at peace, convinced that we are not discriminating against them, convinced that

we are including them in our society.⁷¹

Scholars and politicians alike have interpreted Article 152 as being directory and non-justiciable, rather than mandatory and rights bearing.⁷² Jaclyn Neo describes Article 152 as being “paradigmatic” for its precluding rights-based protection. In turn, this deliberate approach entails a “judicious balancing approach” and non-adversarial methods of engagement to resolve differences and diffuse hostilities between the different ethnic groups.⁷³ Although it has yet to be judicially interpreted, then Chief Justice Chan Sek Keong likens Article 152 to the Indian Constitution's Directive Principles of State Policy.⁷⁴ The legal effect of such a provision is that it elevates the principle of minority protection into one of salutary constitutional importance but not amounting to a constitutional guarantee with the force of law. More importantly, as an enabling provision, it facilitates the government to safeguard the interests of the minorities. Article 152 can be likened to being a shield, rather than a sword, that the minorities can assert collectively against the government of the day if it fails to care adequately for the minorities.

71 Lee Kuan Yew, speech for the parliamentary debate on “Nation-Building Tenets” motion, *Singapore Parliament Reports*, vol. 86, 19 August 2009.

72 See Kevin YL Tan, “The Legal and Institutional Framework and Issues of Multiculturalism in Singapore,” in Lai Ah Eng (ed.), *Beyond Rituals and Riots: Ethnic Pluralism and Social Cohesion in Singapore* (Singapore: Institute of Policy Studies and Eastern Universities Press, 2004), 98-113 at 102-104.

73 Jaclyn Ling-Chien Neo, “The Protection of Minorities and the Constitution: A Judicious Balance?” in Li-ann Thio and Kevin YL Tan (eds.), *Evolution of a Revolution: Forty Years of the Singapore Constitution* (London: Routledge, 2008), 234-259.

74 “Culture and Legal Practice,” keynote speech by Chief Justice Chan Sek Keong, at the International Bar Association conference, Singapore, 15 October 2007. Although the Directive Principles of State Policy are not enforceable by any Indian court, the Indian state is duty-bound to apply the principles in making laws: see Article 37 and Part IV, generally, of the Indian Constitution.

Notwithstanding the official commitment to multiracialism, Singapore eschews a rights-based approach when it comes to matters pertaining to ethnicity (such as race, language, and religion). While there are fundamental liberties provided for under the Constitution, these liberties proceed on the premise that the individual, rather than a community, is the bearer of such rights.⁷⁵

As the Prime Minister articulated recently on the development of a multi-racial society, “where everybody has full and equal opportunities, where the minority community can live its own life, its own way of life, practice its faith to the maximum extent possible, and not be oppressed or to be marginalised by the majority community”⁷⁶:

But if we are going to do this [a multiracial society], we have to do this in a broad and informal way. We cannot take it issue by issue; *we cannot take it in terms of rights and entitlements*. We cannot go on basis of what is either the rules or the instruction manuals, or the laws or the Constitution, and try to find a legal interpretation on that issue and press that regardless, and to the possibility of detriment to the overall progress of the communities; of our harmony and of the overall space we have been able to carve out for the minority communities in Singapore, and create for the minority communities in Singapore. It’s an approach which has worked for us. We are much more integrated than we were. I think compared to many other societies, we are doing much better. But it

is an approach which we have to continue to work at maintaining. And if we are going to have anything happen which can change the status quo, we want to make sure that the change takes place gradually and for the better. ... So it’s best that we evolve as we go forward, take it gradually, step by step.

Indeed, Article 152 does not use “right(s)”. Instead, the key word adopted is “interest(s)”. While found in a legal document, the Constitution no less, Article 152 ought to be construed as being political, rather than legal, in substance. The special position of the Malays does not amount to special rights for them, as is the case in Malaysia. Likewise, the constitutional exhortation to the government to care for racial and religious minorities does not adopt the language of or call to affirmative action. As such, Article 152 has not been a source of significant contestation or disaffection. In part, this may reflect the even-handed approach in the management of ethnic relations in Singapore. It also suggests that the government’s consistent approach towards Article 152 from the throes of independence has not only managed the expectations of the various communities but have also set the tone for ethnic relations in Singapore.

Furthermore, given the centrality of “interests” in Article 152, the management of ethnic relations in Singapore has cohered around the careful policy of balancing interests without resorting to a language of rights entitlement. The interests of the minorities have to be balanced against the interests of the majority ethnic Chinese community, and vice-versa. In turn, this entails responsibility on the part of all key stakeholders in not pushing excessively for their community’s interests, and for the government to always remain impartial.

While Singapore adopts an ostensible civic conception of citizenship, it also urges a conscious formation and sustenance of distinctive ethnic identities of the majority and minority

75 Cf. discussion on Singapore in Joshua Castellino and Elvira Dominguez Redondo, *Minority Rights in Asia: A Comparative Legal Analysis* (Oxford: Oxford University Press, 2006), 193-236.

76 Prime Minister Lee Hsien Loong’s remarks to the media after the closed-door dialogue with the Malay/Muslim community on 25 January 2014

<http://www.pmo.gov.sg/content/pmosite/mediacentre/speechesinterviews/primeminister/2014/January/transcript-of-prime-minister-lee-hsien-loong-s-remarks-to-the-me0.html#.U_2PCqMWHFw> accessed 9 August 2014 (emphasis mine).

communities. This is amplified by Article 12(3)(a) of the Constitution which states that Article 12 (the equal protection provision) does not invalidate or prohibit any provision regulating personal law. There are a number of primary and subsidiary legislative provisions relating to personal law. While most of them relate to Islamic law, there is also recognition of the religious sensitivities and requirements of other minority communities.

Indeed, the government cannot legislate against the interests of the racial and religious minorities without being subjected to scrutiny under either Article 12 or Part VII of the Constitution. Put simply, multiracialism is a *de facto* constitutionally entrenched obligation. The various groups' ethnic identities, cultures and religions are neither explicitly encouraged nor are they suppressed. There is also a semblance of preferential treatment extended to the Malay-Muslim community although these tend not to have any distorting effect on national policy.

As mentioned earlier, Article 153 also reinforces the special position of the Malays by providing that the legislature "shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion". Consequently, the Administration of Muslim Law Act was enacted in 1966 to regulate Muslim religious affairs and to constitute a council to advise the government on matters relating to the Muslim religion in Singapore, and provides for the establishment of the Sharia Court. This Act provides for a limited degree of legal pluralism for the Muslim community. Muslims in Singapore are governed by Islamic law in matters of personal law such as marriage, divorce, and succession. There is no similar provision for the other religions.

Although the linkage with Article 152 of the Singapore Constitution was never asserted by the government, the Malay-Muslim community enjoy several privileges not accorded to the other races such as free tertiary education (qualified

in 1989), state support for the mosque-building programme, and the appointment of a Minister in-charge of Muslim Affairs to assist in the governance of a significant and important minority.⁷⁷ The Presidential Council of Minority Rights (PCMR), a constitutional organ, was also established as a commitment to the multiracial ethos.⁷⁸

C. Redress Mechanisms and Interpretation of Policies

1. Judiciary

On matters concerning the infringement of the fundamental liberty of religious freedom, the courts—as the guardian of the Constitution and the counter-majoritarian check—are vital in enabling aggrieved parties to seek redress against the state. This is done via judicial review either under constitutional law and/or under administrative law.

Criticisms of the jurisprudence relating to religious freedom cohere around the argument that the judiciary is unduly deferential to executive determinations and perspectives of the extent of religious freedom and the appropriate restrictions. This arguably could have the effect of stifling the jurisprudential development vis-à-vis the substantive content of the Article 15 rights and constitutional freedoms generally. Or as Thio Li-ann puts it, where secular concerns compete or conflict with the sacred ones, the former is often given greater weight than the latter.⁷⁹ In short, a better balance is needed between the concerns of public order, public health, or morality and the religious freedom rights.

77 On the mosque-building programme, see Anthony Green, *Continuing the Legacy: 30 Years of the Mosque Building Fund in Singapore* (Singapore: Majlis Ugama Islam Singapura (MUIS), 2007).

78 See, generally, Part VII of the Constitution of the Republic of Singapore (1999 Reprint Edition).

79 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Singapore: Academy Publishing, 2012), para 15.032 at p 888.

Another set of criticisms revolves around the lack of a rigorous balancing exercise undertaken by the courts. So while it is accepted that religious freedom rights are not unfettered as is recognised in Article 15 itself, the legal test used by the courts thus far presents a low hurdle for the executive to surmount. Curtailment to Article 15 rights are generally accepted by the courts so long as they fall within the ambit of the restrictions spelt out in Article 15(4) – that is, one’s religious freedom rights do not justify any act contrary to any general law relating to public order, public health or morality.

The jurisprudence suggests that Article 15(4) is satisfied once the court is satisfied that a validly passed law that curtails religious freedom falls within one of the enumerated restrictions in the provision. The courts seem, thus far, reluctant to introduce proportionality analysis in some form or other.⁸⁰ While the wording of Article 15 does not envisage any proportionality analysis, the key question is whether the courts should, however, read in the requirement that the restrictions must be reasonably required in that they can be demonstrably justified in a free and democratic society.⁸¹

In both arguments, the fact that the fundamental liberty of religious freedom, while clearly not an absolute right, is affected and negated by an ordinary law is an important consideration that must be accorded due weight in the balancing exercise that must necessarily take place between competing, if not conflicting, interests. Thus, the Singapore

courts’ approach in balancing the enjoyment of a fundamental liberty against permitted restrictions to its enjoyment can be described as one where the focus is to directly balance the right against the reason for interfering with it. The courts do not seek to balance the nature and extent of the interference against the reasons for interfering.

2. *Administrative Bodies*

Thus far, no administrative body has been established to deal with complaints of violation of freedom of religion rights. There is, however, the Presidential Council of Minority Rights (PCMR), a constitutional organ, which was established in 1969 as a constitutional safeguard.⁸² The PCMR has the general function of considering and reporting on “matters affecting persons of any racial or religious community in Singapore” as may be referred to the Council by Parliament or the government. Its particular function is to draw attention to any Bill or to any subsidiary legislation if the Council deems them to be a differentiating measure.

“Differentiating measure”, as defined in Article 68 of the Constitution, is “any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage

⁸⁰ Proportionality analysis refers to a particular legal technique of resolving conflicts between human/constitutional rights and public interests through a process of balancing the competing rights and interests. The aim of the analysis is to enable a judge to determine whether an executive/legislative measure has gone beyond what is required to attain a legitimate goal, and whether its claimed benefits exceed the costs.

⁸¹ This tracks closely to section 1 of the Canadian Charter of Rights and Freedoms which reads: “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

⁸² The President, on the advice of the Cabinet, appoints the Chairman and Members of the Presidential Council for Minority Rights. Apart from permanent Members who are appointed for life, the Chairman and other Members are appointed for a period of 3 years. Under the Constitution, the Council shall consist of a Chairman, not more than 10 permanent Members and not more than 10 other Members. In November 2014, the Singapore Parliament passed the Constitution of the Republic of Singapore (Amendment) Bill (No 35 of 2014) to amend the composition of the PCMR by: (1) removing the limit on the number of non-permanent members; and (2) retaining the cap of 10 permanent members and the aggregate cap of 20 members apart from the Chairman.

to persons of another community”.⁸³ Under Article 78(6)(c) of the Constitution, notwithstanding the PCMR’s opinion that some specified provision of a Bill would, if enacted, be a differentiating measure, Parliament may proceed to present the Bill to the President for his assent if such a motion has been passed by the affirmative vote of not less than two-thirds of the total membership of Parliament.

Besides ensuring that the minorities are not discriminated against, the PCMR also plays a key role in the appointment of members of the Presidential Council for Religious Harmony (PCRH). The PCRH is established under the Maintenance of Religious Harmony Act (MRHA). The President of the Republic of Singapore appoints the PCRH chairman and members. The PCRH advises the Minister for Home Affairs on matters affecting the maintenance of religious harmony in Singapore which are referred to it by the Minister or by Parliament. It also considers and makes recommendations to the President on restraining orders issued under the MRHA.

3. *Independent Bodies*

There are no independent bodies that have a mandate to deal with complaints of violation of freedom of religion rights. There is no national human rights commission or its equivalent in Singapore.

However, Inter-Racial and Religious Confidence Circles, better known as IRCCs, were created as government-affiliated grassroots organisations which function as local-level inter-faith platforms in every constituency to promote racial and religious harmony. The IRCCs were created post-9/11 and are an integral part of the enhanced mechanism of community engagement. The primary concern was

that Islam and Muslims could be targeted should there be a terrorist attack ostensibly inspired by faith considerations.

As “networks of trust”, the para-political IRCCs “serve as important bridges between religious, ethnic and community groups at the local level. Leaders from various religious, ethnic and other community organisations have come together to join the IRCC networks to build friendships and trust. The IRCCs also aim to deepen people’s understanding of the various faiths, beliefs and practices through inter-faith and inter-ethnic themed activities such as inter-faith heritage trails, inter-faith talks and dialogues and various ethnic and religious celebrations. The IRCCs are also primed to respond quickly to incidents with racial and religious tensions and to project solidarity on the ground during crises.”⁸⁴ In this regard, IRCCs function as informal redress mechanisms to ensure that relational disputes do not flare up to increase tensions.

The work of the IRCCs is instrumental to strengthening social cohesion and it supports the Community Engagement Programme (CEP). The CEP seeks to strengthen the understanding and ties between people of different races and religions, and aims to develop Singaporeans’ skills and knowledge in coping with emergencies, in particular, terrorist attacks.⁸⁵ Although presented as a matter of social cohesion, the abiding concern is of religion being a source of tension and conflict in Singapore. As the CEP website observes:

The 11 September 2001 attack in the United States and other attacks after that have shown that terrorism is now largely linked to religious extremism. The terrorists use religion as a reason to commit violence against

83 See, generally, Part VII of the Constitution of the Republic of Singapore (1999 Reprint). Since the establishment of the PCMR in 1969, the PCMR has not issued a single adverse report of a provision of a Bill would, if enacted, be a differentiating measure.

84 See, generally, <<http://www.ircc.sg/about.php>>.

85 On the CEP, see Asad-ul Iqbal Latif, *Hearts of Resilience: Singapore’s Community Engagement Programme* (Singapore: Institute of Southeast Asian Studies, 2011). See also the CEP’s “Singapore United” portal, at <www.singaporeunited.sg>.

others. The arrests of Jemaah Islamiyah (JI) members for plotting bombings in Singapore in 2001 showed that Singapore can be a target of these terrorists as well. It also showed us that there were Singaporeans who have been misled by these terrorists.... Terrorism is a long term threat to Singapore, so we have to prepare ourselves to prevent attacks and to manage the consequences should there be an attack.... If terrorists successfully launch an attack in Singapore, they will not just want to kill people and destroy property. Their true intention is to create suspicion, tension and strife between the different racial and religious groups in Singapore.⁸⁶

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

The last significant legislation enacted in Singapore relating to religion was the Maintenance of Religious Harmony Act in 1990. In 2007, section 298A of the Penal Code was added to provide for an offence where there is the promotion of enmity between different groups on grounds of religion or race and doing acts prejudicial to maintenance of harmony. Acts could include words, either spoken or written, or by signs or by visible representations or otherwise that could result in feelings of enmity, hatred or ill will between different religious or racial groups. The punishment provided is imprisonment for a term of up to three years, or fine, or both.

B. Significant Changes in State Enforcement

The state acknowledges Singaporeans' religious faith as a major part of Singapore's cultural ballast and Singaporeans' individual identities and value system. It appears that the secularization theory—understood here as a social phenomenon in which modernization results in the decline in religious belief and the downgrading of importance of religious institutions—is not borne out in Singapore. Given the global phenomenon of religious resurgence amidst globalization and rapid social change, Singapore is affected by the rise of the triumvirate of religious fundamentalism, powerful transnational associational pulls of renewed religiosity, and new forms of post-traditional/new age spirituality.

The government operates from the cautious and realist premise that racial and religious harmony cannot be taken for granted and that efforts have to be continually exerted to ensure that moderation and social responsibility prevails in the practice of one's faith. It is acutely aware that religion (with Islam and Christianity holding comprehensive

⁸⁶ See <[http://www.singaporeunited.sg/cep/index.php/web/About-CEP/Why-the-need-for-CEP/\(language\)>](http://www.singaporeunited.sg/cep/index.php/web/About-CEP/Why-the-need-for-CEP/(language)>).

world-views) is a powerful instrument to rally faith communities as well as a potential tool of protest and rebellion against socio-economic and political injustices, perceived or real. The underlying premise asserted is that religious radicalism is a fundamental threat to Singapore's multiracialism ethos.

In response, the Singapore government maintains a watchful eye on external influences and is prepared to move pre-emptively against any threat to social cohesion and harmony.⁸⁷ In the 1980s, liberation theology was closely watched. From the 1990s onwards, radical and militant Islam—alongside aggressive evangelization by any faith—is closely monitored. Post 9/11, the overriding concern is with terrorism and its impact on inter-ethnic relations.

The Singapore state has always recognized the power of the pulpit, and has taken various measures to ensure that religious harmony is maintained. It is worth noting, however, that, in recent years the state has increasingly had to adapt the regulatory framework in the interest of preserving the common space. This has been primarily in response to the resurgence of Christianity, both in terms of numbers as well as the expansion of Christian places of worship and the establishment of “mega-churches”. These mega-churches have thousands of followers, and often use commercial premises, including commercial premises in shopping malls, hotel function rooms and convention centres, to conduct their services.

Regulation of use of commercial space for religious purposes

As discussed earlier, in 2010, the government provided guidelines on the use of commercial spaces by religious organisations for their activities and services. The government's guidelines outlined

that religious groups can use commercial spaces for their activities in a “limited and nonexclusive” way. A religious group is allowed to use up to 10,000 sq m in a commercial space for their activities, whereas a commercial development can only allocate up to 20,000 sq m or 20 per cent of its gross floor area, whichever is lower, for religious activities. Such activities may only be held up to two days a week, and religious symbols should also not be displayed at the venues.⁸⁸

Engagement of civil society in combating religious extremism

Increasingly, there is appreciation of the need for greater interaction, grassroots support and participation to develop inter-religious understanding and appreciation especially at the mass level in order to counter religious entrepreneurs. While Singaporeans' increased religiosity per se purportedly is not a concern, the fact that Singaporeans, specifically Muslims, are interacting less with Singaporeans of other faiths is of concern to the government. The overarching fear and vulnerability, made more pronounced since the post-September 11th “war on terror”, ensure that close scrutiny, interventionist surveillance, and ultra-sensitivity to internal security concerns are hallmarks of the government's policy towards religion.

The hitherto conspicuous absence of an engaged civil society in Singapore's model of secularism pre-9/11 was apparent. Against the backdrop of security and terrorism as signature concerns in the post-9/11 era, new initiatives were introduced that consciously seek to induct elements of civil society in the quest to maintain religious harmony in Singapore. This includes various initiatives specifically targeted at the Muslim community (a putative “Muslim civil society” if you will) in combating religious extremism.

87 Michael Hill, “The Rehabilitation and Regulation of Religion in Singapore,” in James Richardson (ed.), *Regulating Religion: Case Studies from Around the Globe* (New York: Kluwer Academic/ Plenum Publishers, 2004), 343-358.

88 See “Guidelines on use of mall space for religion,” *The Straits Times*, 21 July 2010.

More recently, the government has become more conscious and responsive to civil society's role in strengthening inter-faith engagement and understanding, and the thickening of social fabric. In countering the terrorist threat, the approach has evolved rapidly from a "whole-of-government" to a "whole-of-society" approach, a significant recognition of terrorism as being "by far the most serious [security problem] that we have faced since the communist problem". This is a tacit acknowledgement that the security of the state, government, and society are all inter-linked. The terrorism threat requires not just a security response but a holistic one, one which seeks to align the hearts and minds of the faith communities to the societal objective of harmony and peace.

In the immediate aftermath of the initial rounds of JI arrests, the government had adopted a privatized approach to what is essentially a mutual existential threat. The collective security approach, which hitherto had laid the substratum for stable ethnic relations in Singapore, was sidelined. Instead, the Malay-Muslim community was expected to shoulder the brunt of the concern and responsibility. It was, to all intents and purposes, held solely responsible for the radicalization of a small minority of Muslims, and for any terrorist act and its subsequent fallout. The government had expressed its fears of the Muslim community's perceived exclusion and self-segregation from Singaporean society on religious grounds. Unfortunately, this was accompanied by unrelenting and uninformed public scrutiny over the tenability of Islamic practices and increased religiosity in Singapore. There were concerns and questions over the overt symbols and signs of Muslim identity and beliefs, which hitherto did not arouse concern. This led the Minister in-charge of Muslim Affairs to remark that, "Observing religions practices became a shorthand for hovering at the edge of terrorism".

Muslim civil society efforts to counter radical and violent Islamist ideology are also more evident

in the last few years. Of note is the Religious Rehabilitation Group (RRG) formed in April 2003 and comprising 30-odd *ustaz* (Islamic scholars) and *asatizahs* (religious teachers) who have provided voluntary religious and rehabilitation counselling, as part of the overall rehabilitation process, to the JI detainees (detained under the Internal Security Act) and their families to correct their misinterpretation of Islam. For the JI detainees, this rehabilitation by a non-state entity is crucial as the process seeks to correct the offender's misinterpretation of religious concepts and way of thinking by those with the requisite authority, knowledge, and legitimacy.⁸⁹ As the RRG articulates, "In other words, the rehabilitated detainee is expected, not only to refrain from committing criminal acts, but also to recognize and accept that their understanding of Islam has been misled. In addition, since the JI's ideology have affected their family members, their family need (sic) to be guided, so as to avoid and disrupt such a violent cycle."⁹⁰

Alongside MUIS and other Muslim organisations, the RRG also reaches out to the public to explain the misuse and abuse of Islamic teachings and concepts by terrorists. To counter the extremist exploitation of religion, governmental efforts are grossly inadequate. The Muslim religious elites with their authority, scholarship, and standing are assiduously inducted in the effort not to cede the middle ground to the radicals. Such outreach seeks to convey anti-extremist messages, to provide and articulate counter-narratives to explain why certain interpretations, which could lead people towards violent extremism, are not the correct teachings, and to guide the wider community along the right path. Such efforts aim to marginalise militant and/

89 As of 9 July 2014, more than four-fifths of those detained under the Internal Security Act for their involvement in terrorism-related activities since January 2002 have since been released after they were assessed to have been rehabilitated. Information provided by the Ministry of Home Affairs, Singapore, on 24 September 2014 (correspondence on file with author).

90 See the RRG's website at <<http://rrg.sg/>>.

or extremist ideas and prevent them from gaining a foothold among the wider community. In this regard, the salience of “moderation” in the practice of Islam is subtly impressed upon.

The Singapore Muslim Identity (SMI) project is a key plank in the effort to engage the Muslim-Singaporean population in the aftermath of 9/11 and the arrest of home-grown terrorist suspects. MUIS embarked on the SMI project in early 2005 to impress upon Muslim-Singaporeans on the need for an autochthonous Muslim-Singaporean identity and way of life. A core part of the SMI is the “Ten Desired Attributes” of Singapore’s “Muslim Community of Excellence” (see Figure 1). These attributes seek to help Muslim-Singaporeans understand their dual roles and identities as Muslims and citizens.

1. Holds strongly to Islamic principles while adapting itself to changing context
2. Morally and spiritually strong to be on top of the challenges of modern society
3. Progressive, practices Islam beyond forms/rituals and rides the modernization wave
4. Appreciates Islamic civilization and history, and has good understanding of contemporary issues
5. Appreciates other civilizations and is self-confident to interact and learn from other communities
6. Believes that good Muslims are also good citizens
7. Well-adjusted as contributing members of a multi-religious society and secular state
8. Be a blessing to all and promotes universal principles and values
9. Inclusive and practices pluralism, without contradicting Islam
10. Be a model and inspiration to all

Figure 1: Ten Desired Attributes of Singapore’s Muslim Community of Excellence (with respect to socio-religious life)

The SMI draws a distinction between a Muslim’s religious duties and socio-political obligations, and proposes that the ideal Muslim posture as one that does not require trade-offs or sacrifice of the core religious identity. The SMI stipulates that it is possible to traverse two distinct realms of purpose and justification. The SMI project is as much an affirmation of the Muslim-Singaporean loyalty to Singapore even as the community seeks to assert its own sense of its values and ideals. Through the SMI, MUIS promotes the practice of Islam in Singapore as one that is cognizant of the place of Islam, and religious pluralism within the context of a secular state.

By concretizing the virtues and aspirational norms of a Muslim-Singaporean, the SMI is an endeavour to craft a desired Islamic-Singaporean identity that will not be easily overwhelmed by the appeals of competing and disparate Muslim ideas and identities imported from overseas, notwithstanding Islam’s Arabic roots and its continuing Arabization of beliefs, practices and influence. The nuanced message is that Muslims are not being forced into a false choice between being Muslims and Singaporeans. This conscious amplification of a unique Singaporean-Muslim identity asserts that there is no fundamental incompatibility of the civic Singaporean- and the religious Muslim- identity.

Even then, the promotion of the SMI has to be balanced against the government’s effort to grow the common space, an initiative that predates 9/11. At that time, the government noted that growing Muslim religiosity could pose problems if it resulted in its segregation and exclusion from the larger society. The SMI seeks to pre-empt the inevitable contestation and doubts within the Muslim community over national identity and religious identity by asserting that both identities are complementary and not mutually exclusive. Such exhortatory efforts are to be welcomed although the messaging needs to be extended to the non-Muslim community.

Terrorism as a “national problem”

Before the launch of the Community Engagement Programme in February 2006, the public discourse of the terrorist threat was inflected with a moral panic, which linked increased Islamic religiosity and perceived Malay-Muslim separateness with increased susceptibility towards terrorism. These developments demonstrated that sole reliance on coercive legislation to deal with the terrorism threat was woefully inadequate.⁹¹

Although the government intended to rally the Muslim community into action, this privatised approach had the unintended effect of isolating the mainstream community, thereby threatening mutual security and undermining ethnic relations. The government quickly realized that such a privatised, finger-pointing approach would neither help to isolate the terrorists nor ensure that the terrorist ideology did not acquire wider support. Given the nature of the terrorist threat and its dependence on a sympathetic constituency to draw support and recruits to the cause, the non-discriminating, clamping down strategy more often than not marginalizes, if not alienates, the very bedrock of the Muslim community that is depended upon to form the bulwark against creeping radicalization. Furthermore, given that people rather than governments defeat terrorism, policy-makers have to fortify and prepare society by having all communities work together in ensuring that society does not unravel in the aftermath of a terrorist strike through mutual suspicion and distrust. Hence, the privatised approach gave way to a community-wide or a “whole-of-society” approach.

Isolating the terrorists, both politically and on religious grounds, is the dominant approach now. Consequently, the overwhelming hard law emphasis has conceded space for a soft law approach,

91 Eugene K.B. Tan, “From Clampdown to Limited Empowerment: Hard and Soft Law in the Calibration and Regulation of Religious Conduct in Singapore,” (2009) 31(3) *Law and Policy* 351-379.

recognizing that the terrorism threat needs a collective and holistic response from governments and societies alike. The previous, narrow framing of terrorism as being a “Malay-Muslim problem” was abandoned. Terrorism is now being framed as a “national problem”, requiring a solution in which all Singaporeans, regardless of their racial and religious allegiance, have a role to play. The Prime Minister issued this timely corrective when he launched the Community Engagement Program (CEP), the centrepiece of Singapore’s social cohesion and counter-terrorism endeavours:

... [W]e must know that this is not a Malay-Muslim problem. This is a national problem and non-Muslims also have to play your part, for example, by preserving the space for minorities in the majority-Chinese society by upholding the ideals of meritocracy and equal opportunity and treatment, regardless of race, language and religion and by clearly distinguishing the small number of extremists who are a threat to us from the majority of moderate, rational, loyal Muslim Singaporeans with whom we work together to tackle a shared problem. And this way, we can build confidence and trust between the different communities and the best time to do that is now when we don’t have a crisis. This is because building trust takes time....⁹²

The CEP aims to mobilize Muslim and non-Muslim communities to work together in tackling the terrorist threat. In this regard, the tolerance mode, manifested in the oft-mentioned “live and let live” dictum, is inadequate. While draconian legislation may be apt in the event of a crisis, they do not assist in the building of inter-ethnic ties during peaceful conditions. Nor do they help society to get back on its feet in the aftermath of a terrorist attack. Enforcing draconian legislation is reactionary with little didactic and normative value.

92 Speech by Prime Minister Lee Hsien Loong at the Community Engagement Programme Dialogue, Singapore, 9 February 2006.

To be sure, the Singapore government believes in the utility and necessity of coercive legislation. It also continues to insist that the Muslim community practices its faith in the context of a multiracial society with moderation as the defining attribute. But the government is also convinced that legislation alone is insufficient to keep the deleterious effects of radicalism and social consequences of a terrorist attack at bay. Singapore's then Foreign Minister George Yeo put it aptly: "There is a limit to what laws can do. We can legislate against extremism but we can't legislate harmony". It is indeed highly questionable if governments can ever out-law extremism.

The trouble with the primacy of a hard law approach is that it abrogates to the state and policy-makers the power to control and define the "problem". It obfuscates the reality and the urgency of building ties between a devout Muslim minority and a non-Muslim majority within a political structure that sanctions secular political governance. Hard law also denies the socio-political and religious dimensions present in religious extremism and terrorism. Ironically, hard law can secure the state but its over-emphatic use ultimately impoverishes the very security of the state and society. With soft law, a putative mechanism of norms, institutions, and structures can buttress the framework to sustain religious harmony.

The focus of Singapore's response to terrorism post-9/11 has been to reach out to the "moderate, mainstream" Muslims as a bulwark against societal implosion. This broad-based endeavour pivots on "religious moderation". While coercive draconian legislation remain the mainstay against extremists and radicals, the mobilisation of soft law, aspirational norms and values are consciously woven into the state's endeavours to enhance society's resilience and cohesion.

C. SIGNIFICANT CHANGES IN RELIGIOUS CLAIMS (BY NON-STATE ACTORS)

The government has consistently sought to maintain a division between the public realm and the religious realm to ensure and maintain religious peace and harmony. In recent years, with growing piety and greater political openness, there appears to have been a slight increase in religious claims by certain religious groups.

In general, where some Christian churches and Muslims are concerned, they relate to concerns that public morality, especially sexual mores, is on the decline. While these concerns should not be seen as resulting in religious claims, they certainly give rise to expectations that the government does more in rising to the challenges of a society that is seen as being increasingly liberal in social mores and lax in moral tone. For these Singaporeans, this nihilistic or godless social context is epitomized in the perceived social acceptability of gay and lesbian chic, the apparent official nonchalance of homosexuality in the face of quest for the "pink dollars" and Singapore's aspiration to a global "happening" city, as well as the perceived increasing popularity of homosexuality resulting in its normalisation, especially among the younger people, in Singapore. For some, there has to be a moral backlash or blowback as a result of the moral laxity in society. For them, the declining morality in the public domain necessitated a resurgence of public morality.

These contestations on sexuality norms can be viewed from different perspectives. One perspective is that of the "LGBT minority" and the "defence of family values majority". Another perspective is that of religious conservatives and the liberals. Yet another is that of "religion versus secularism". The contention and contestation of competing and perhaps, conflicting, worldviews have resulted in such values discussions taking more prominence in the public space in the last few years.

It needs to be recognised that the labels used above are woefully inadequate. For example, there are non-religious social conservatives who see the promotion of the LGBT rights and interests as undesirable on account of public morality. Religious groups and individuals have also steadfastly objected to the characterisation of the issue as one of “religion versus secular” regarding it as a blatant attempt by an anti-religious brand of secularism to silence faith-inspired voices by invoking the argument that such views have no place in the secular, public domain. Regardless of the contending perspectives, the dispute is in essence over public values. This clash of values will likely persist and grow more strident in the years ahead.

Muslims and the *tudung* issue

For the Muslim community, in addition to the above general concern about the moral tone of society, the *tudung* issue remains an important one. As discussed earlier, the 2002 *tudung* controversy arose over whether female Muslim students should be allowed to wear the headscarf to school. At the time, the government did not allow it on the grounds that the headscarf could be viewed as a symbol of exclusiveness that could pose an obstacle to racial integration and harmony.

However, the debate over the *tudung* was re-opened once more in 2013, highlighting the persistent, abiding concern of Muslims over the right to manifest their religious beliefs. The debate was initially prompted by the question whether Muslim women in front-line occupations, such as nurses, should be allowed to wear the *tudung*. An online petition championing the cause garnered over 12,000 signatures. The Singapore Islamic Scholars and Religious Teachers Association (Pergas) also called on the government to review their position on the issue and allow the *tudung* to be worn in uniformed public sector jobs.⁹³ The Prime Minister

93 “Pergas urges govt to review stand on tudung,” *The Straits Times*, 11 November 2013.

and several of his Cabinet colleagues had a closed-door dialogue on this issue with the Malay-Muslim community in January 2014.

Constitutional ambit of a religious group’s management of its own affairs

The extent to which a religious organisation can manage its own affairs in opposition to civil law is now the subject matter of a judicial review case brought by the Faith Community Baptist Church (FCBC) against the Minister of Manpower. FCBC had terminated the employment of a pregnant female employee in 2013 on the grounds that she had breached the church’s code of conduct by entering into an adulterous relationship with a divorced male colleague. She complained to the Ministry of Manpower (MOM) in September 2013. The Manpower Minister determined that the employee in question was dismissed without sufficient cause. Under powers granted to him under the Employment Act, the Manpower Minister ordered FCBC to compensate the pregnant employee SGD7,000 for loss of salary and maternity benefits. FCBC paid the compensation ordered but subsequently sought a quashing order of the Manpower Minister’s decision, declaring the administrative decision unconstitutional for interfering with how the church manages its own affairs in the religious domain.⁹⁴

When FCBC disclosed publicly that it would seek judicial review of the Minister’s decision, the Manpower Ministry was reported remarking that the church was “embarking on a confrontational approach”. Expressing disappointment, the MOM spokesman said: “We live in a secular society where laws have been put in place to protect individuals while not depriving religious organisations and

94 “FCBC’s bid for judicial review: AG gets permission to appeal,” *The Straits Times Online*, 27 October 2014.

individuals of the space to carry out their practices”.⁹⁵

The National Council of Christian Churches (NCCS), a grouping of Protestant churches and organisations, stated that, “We wish to make clear that from our perspective, this course of action is not to be framed as a Church versus State matter. Rather, we see the case as one of employer’s employee’s obligations and duties under the [E]mployment Act and the common law in this area. Since the application for judicial review has already been filed, we have confidence that the courts will shed light on the matter and decide what is right in the interpretation and application of the law of the land in such instances”.⁹⁶

Homosexuality and family values

In recent years, there has been more assertive activism by LGBT advocacy groups and religious groups to contentious issues such as homosexuality. Some religious groups see the promotion of the LGBT causes as an affront to morality and family values. The Pink Dot event, organized annually since 2009, has attracted increasing number of participants over the years. The 2014 edition attracted a record crowd estimated at 26,000 participants as well as corporate sponsors in multinational companies such as Goldman Sachs, Google, BP, Barclays, and JP Morgan.⁹⁷

In response, a Muslim religious teacher started the “WearWhite” initiative in 2014 urging Muslims not to take part in the Pink Dot event, and to wear white garments to prayers on that night as they usher in the holy month of Ramadan. This was the

first organized and explicit form of protest against the Pink Dot event: “The [Pink Dot] movement’s genesis was from our observations of the growing normalization of LGBT (lesbian, gay, bisexual and transgender) in Singapore”.⁹⁸ Some Christians, as part of the LoveSingapore network of churches, encouraged co-religionists to wear white to church the same weekend as the Pink Dot event.⁹⁹

Earlier in January 2014, controversy erupted over the FAQs on sexuality and sexual health posted online in November 2013 by the Health Promotion Board (HPB), a statutory board under the Health Ministry. Concerns were raised that the FAQs answers effectively condoned same-sex relationships and promoted homosexuality as something normal. In Parliament, the Health Minister affirmed the family as “the basic building block of our society. This means encouraging heterosexual married couples to have healthy relationships and to build stable nuclear and extended family units. There has been no shift in the government’s position on this. HPB takes reference from this consistent position in its health promotion activities”.¹⁰⁰

On a FAQ that was identified as encouraging same-sex relationships, the Health Minister explained that “The FAQs also provide specific information to young people at risk of engaging in sexual behaviours which expose them to STI and HIV. The statement that ‘A same-sex relationship is not too different from a heterosexual relationship’ and the statement that follows: ‘Both require the commitment of two people’ should be taken together. They highlight that relationships require commitment, and it is possible to remain faithful to one’s partner, regardless of one’s sexual orientation. This drives

95 Quotes taken from “Church wants review of order to compensate axed employee,” *Singapolitics*, 2 October 2013 <<http://www.singapolitics.sg/news/church-wants-review-order-compensate-axed-employee>> accessed 9 August 2014.

96 See 10 October 2013 letter by Bishop Terry Kee, NCCS President, <<http://info.nccs.org.sg/joom837/index.php/m-statements/78-fcbc>> accessed 9 August 2014.

97 On the Pink Dot event, see its website at <<http://pinkdot.sg/>>.

98 Press statement of 20 June 2014 by Ustaz Noor Deros, available at <<http://www.wearwhite.sg/>>.

99 See also the strongly worded Facebook post of 20 June 2014 by Pastor Lawrence Khong of FCBC at <<https://www.facebook.com/lawrence.khong.fcbc/posts/769499513094165>> accessed 9 August 2014.

100 Minister for Health Mr Gan Kim Yong, *Singapore Parliament Reports*, vol. 91, 17 February 2014.

home a key STI and HIV prevention message to 'Be faithful' to one's partner, rather than to have multiple partners. This helps to protect individuals from STIs and HIV, minimize transmission risks, and thereby safeguarding public health".¹⁰¹

In 2009, in what has been dubbed the "AWARE saga", a dispute started quite innocuously with initial indications being that of an internal spat that occurs once in a while in the nascent civil society space.¹⁰² The Association of Women for Action and Research (AWARE) is a leading non-government organisation in Singapore with a focus on feminism and gender equality work in Singapore. The dispute was precipitated when a group of relatively new and unknown members (the "new guard") assumed control of AWARE at the annual general meeting. The installation of the new leadership in AWARE set in motion a series of events, culminating in the hot-tempered May 2009 extraordinary general meeting (EGM) called by the old guard. The dispute had by then quickly transmogrified into an apparent existential contest by the protagonist camps to get as many supporters signed up as members and to attend the EGM.

At one level, the AWARE saga was fundamentally about the soul of the organisation. In seeking control of AWARE, the new leadership was deeply concerned that AWARE was effectively advocating the normalization of homosexuality in Singapore society and promoting a less than wholesome attitude towards sexuality through its sexuality education programme it conducted in some schools. It insisted that the dispute had everything to do with wholesome family values, feminism, and

the vibrancy and health of AWARE as the leading women's organisation in Singapore.¹⁰³ The new guard insisted that it had nothing to do with religion entering the secular sphere, and saw the invocation of the religion card by the old guard leadership as an attempt to silence debate. For the old guard leadership, who regained control of AWARE after the EGM, one characterization of the ousted new guard leadership was that their actions were grounded in fundamentalist Christian religious values and they sought to influence and mould Singapore society through those Christian values and teachings.¹⁰⁴

This contested characterisation of the key issues and motivations of the protagonists in the AWARE saga points to the on-going contestation within civil society over the role of religion in the public square. More specifically, what is the role of faith-inspired views in public discourse? It could be argued that the protagonists largely agreed that the dispute was about public values although both differed on the legitimacy of religious versus secular origins of ideas in the public square. Thus, "where there is a contest over public values, often two, not one fundamentalisms are at play".¹⁰⁵ Shorn of the labels, which often generate more heat than light, the AWARE saga was very much an ideological struggle at heart. This divide continues to plague civil society with each side accusing the other of militancy. It remains to determine the impact of the bitter, bruising dispute on Singapore's secularism.¹⁰⁶

101 See *Singapore Parliament Reports*, vol. 91, 17 February 2014.

102 In essence, civil society is the voluntary associational life that lies between the family and institutions of the state. The metaphorical space that civil society occupies is one that is voluntary and plural in nature. It represents the citizens' associational freedom vis-à-vis the state. Conventionally, civil society is conceptualized in relation to the state – it is apart from the state but not necessarily on antagonistic terms with the state.

103 It should be noted that there were also social conservatives, not motivated by religious concerns, who saw the so-called homosexual agenda as undesirable and a decline of public morality.

104 See further Terence Chong (ed.), *The AWARE Saga: Civil Society and Public Morality in Singapore* (Singapore: NUS Press, 2011). See also my chapter "Who Dragged Christianity into the AWARE Saga? Perceptions, Observations and Responses," in the same volume (pp. 51-73).

105 I gratefully adopt Professor Thio Li-ann's evocative description of the tension.

106 I thank Professor Thio Li-ann for encouraging me to give further thought to the contested claims and characterisations of secularism in Singapore.

Section 377A of the Penal Code

Another issue that has engendered religious claims by non-state actors is the debate over whether section 377A of the Penal Code should be repealed. In 2007, the government completed a major review of the Penal Code and introduced Penal Code (Amendment) Bill, which proposed significant changes to the law. The Bill proposed the repealing of the former section 377, which prohibited oral and anal sex between consenting adults.¹⁰⁷ However, the Bill retained section 377A which prohibited similar acts between consenting adult men.¹⁰⁸ This decision was a hotly contested one inside and outside of Parliament. Those who supported decriminalization of male homosexual sex asserted that the provision was discriminatory against male homosexuals. Those who supported the retention of section 377A were convinced that societal norms and the values of the majority required the criminalization of consensual sex between male adults.

Parliament decided to retain section 377A. The Senior Minister of State for Home Affairs Associate Professor Ho Peng Kee stated that Singapore was still a conservative society and the majority of the people regarded homosexual behaviour unacceptable. Hence, the government had opted to maintain the status quo vis-a-vis section 377A. Prime Minister Lee Hsien Loong also spoke on the issue.¹⁰⁹ He recognized that “section 377A has become a symbolic issue, a point for both

opponents and proponents to tussle around”.¹¹⁰ He gave the assurance that section 377A would not be proactively enforced.¹¹¹ He noted the strong views on the matter on both sides and said that discussions would not bring the views of the two groups any closer, and hence it was better to maintain the legal status quo and “to accommodate homosexuals in our society, but not to allow or encourage activists to champion gay rights as they do in the West”. The Prime Minister urged a “we live and let live” attitude, that “it is better to accept the legal untidiness and the ambiguity”:

If you try and force the issue and settle the matter definitively, one way or the other, we are never going to reach an agreement within Singapore society. People on both sides hold strong views. People who are presently willing to live and let live will get polarised and no views will change, because many of the people who oppose it do so on very deeply held religious convictions, particularly the Christians and the Muslims and those who propose it on the other side, they also want this as a matter of deeply felt fundamental principles. So, discussion and debate is not going to bring them closer together.¹¹²

The Prime Minister also indicated his government’s approach to such matters of potential divide on the basis of values, whether religiously motivated or not:

[A]s a matter of reality, the more the gay activists push this agenda, the stronger will be the push back from conservative forces in our society, as we are beginning to see already in this debate and over the last few weeks and months. And the result will be counter-productive because it is going to

107 The repealed s 377 read as follows: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animals, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.”

108 Section 377A reads: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.”

109 The Prime Minister’s speech can be found at *Singapore Parliament Reports*, vol. 83, cols. 2396-2407, 23 October 2007.

110 *Ibid.*, col. 2402.

111 *Ibid.*, col. 2402.

112 *Ibid.*, col. 2405.

lead to less space for the gay community in Singapore. So it is better to let the situation evolve gradually. We are a completely open society. Members have talked about it - the Internet, travel, full exposure. We cannot be impervious to what is happening elsewhere. As attitudes around the world change, this will influence the attitude of Singaporeans. As developments around the world happen, we must watch carefully and decide what we do about it. When it comes to issues like the economy, technology, education, we better stay ahead of the game, watch where people are moving and adapt faster than others, ahead of the curve, leading the pack. And when necessary on such issues, we will move even if the issue is unpopular or controversial. ...

On issues of moral values with consequences to the wider society, first we should also decide what is right for ourselves, but secondly, before we are carried away by what other societies do, I think it is wiser for us to observe the impact of radical departures from the traditional norms on early movers. These are changes which have very long lead times before the impact works through, before you see whether it is wise or unwise. Is this positive? Does it help you to adapt better? Does it lead to a more successful, happier, more harmonious society? So, we will let others take the lead, we will stay one step behind the frontline of change; watch how things work out elsewhere before we make any irrevocable moves.¹¹³

D. SIGNIFICANT EVENTS OF STATE PERSECUTION OF RELIGIOUS GROUPS

There is no overt or outright violent or non-violent persecution of particular religious groups by the Singapore state. However as mentioned in the earlier section, there are pockets of dissatisfaction amongst the Malay-Muslim community over their discrimination and under-representation in the officer ranks of the Singapore Armed Forces. Despite the official stance of no discrimination, the inequitable representation and treatment of Malay-Muslim servicemen is not accidental and cannot be attributed solely to the operation of meritocracy. Instead, it is the real fear, on the part of the government, that the “primordial loyalties” of race and religion will triumph that of the overarching, secular national identity.

Another instance that may be perceived as persecution by the state of particular religious groups is with regard to the refusal to allow conscientious objection from military service for Jehovah’s Witnesses. On the centrality of national service to Singapore, the judiciary and the executive are *ad idem*. The courts’ position can be put forth as follows:

- That national service is a key institution for the conscript army;
- National service is “clearly a secular issue”;
- Conscientious objection is not tolerated since it would severely undermine national service;
- Conscientious objection can impact upon national security; and
- That “the sovereignty, integrity and unity of Singapore are undoubtedly the paramount mandate of the Constitution and anything, including religious beliefs and practices, which tend to run counter to these

113 *Ibid.*, cols. 2405-2407.

objectives must be restrained”.¹¹⁴

Putting aside the religious dimension, the JW cases also point out to the abiding belief that community interests take precedence over those of the individual even in the exercise of fundamental liberties.

E. SIGNIFICANT EVENTS OF NON-STATE PERSECUTION OF RELIGIOUS GROUPS

There are no known events of overt non-state persecution of religious groups. This includes schisms or alleged deviant groups within the established faiths such as Society of St Pius X (Catholicism) and the Ahmadiyyas (Islam).¹¹⁵

F. SIGNIFICANT EVENTS OF INTER-RELIGIOUS CONFLICT

There have been no significant events of inter-religious conflict in the reporting period. However, it is worth noting the constant refrain of ethno-violence in Singapore's history, with the reiteration of race and religion as fault-lines in Singapore society. Racial Harmony Day (21 July), which is commemorated in national schools, often sees the re-enactment of the few violent episodes (such as the Maria Hertogh riots in 1950 and the race riots of 1964) in Singapore's otherwise peaceful past. Both these riots involved race but religion was also implicated. There is also constant referencing to violent conflicts in other societies, emphasizing the need for draconian measures in managing a multiracial society. Ironically, this constant rendition of and recollection of ethno-violence in Singapore after more than 40 years of ethnic peace

tends to position violence as a consequence of ethnic diversity, and ethnic conflict as an inevitability of a multiracial society.

G. INCIDENCES OF TERRORISM AND/OR TERRORIST THREATS

Although there is no violent religious conflict connected with terrorist activity in Singapore, the Singapore government has indicated that threat posed by faith-inspired terrorist groups remain a real one. Since the September 11th 2001 attacks in the United States, Islam has come under very close scrutiny globally. In Singapore, there were several rounds of arrests and detention of *Jemaah Islamiyah* (JI) and “self-radicalized” terrorist suspects in Singapore. These arrests of “home-grown” terrorist suspects had unsettled the Singapore polity, with anecdotal evidence suggesting that ethnic relations were strained, if not shrouded in suspicion in the initial crackdown between 2001 and 2004. The Malay-Muslims were themselves confronted by self-doubt and ambivalence. The backdrop of the government's apprehensions over the loyalty of Muslim-Singaporeans to Singapore is a long-standing issue that gnaws at the relationship between the community and the government.

The government has found it useful to employ “pre-emptive” powers under the Internal Security Act (ISA) (Cap. 143, 1985 Rev Ed) to address the terrorist threats. The ISA was originally enacted to deal with the communist insurgency in British Malaya after the Second World War. The ISA allows for preventive detention for renewable two-year periods where “it is necessary to do so” to prevent a person from acting in any manner prejudicial to Singapore's security and the maintenance of public order or essential services. The ISA has been applied to persons deemed to be agitating racial and religious discord, including the arrests in 2001 and 2002 of the *Jemaah Islamiyah* (JI) suspected terrorists. The ISA was also used in 1987 against alleged Marxist

114 Chief Justice Yong Pung How in *Chan Hiang Leng Colin and others v PP* [1994] 3 SLR(R) 209 at [64].

115 MUIS had ruled in 1997 that the Ahmadiyya were not Muslim.

anti-state conspirators, which involved mainly Catholic Church activists.

Writing extra-judicially, Singapore Chief Justice Sundaresh Menon notes that the ISA, when used against suspected terrorists, is “philosophically entirely different from the conventional criminal law – it is first preventive and prophylactic, next rehabilitative and redemptive”.¹¹⁶ He added that the “counter-terrorism efficacy of the ISA has rarely been questioned” and urged for the ISA to be “assessed for the balance it has sought to achieve between the right to security and the right to liberty”.¹¹⁷ The consistent use of the ISA since 9/11 against suspected Islamist terrorists has obviated the need for public trials. In “the context of a history of delicate racial and religious relations” between Singapore’s non-Muslim majority and its Muslim’s minority, Michael Hor argues that:

[T]he spectacle of a public trial against alleged Malay Muslims accused of extremism and terrorism might polarize the different communities in Singapore to an unacceptable degree. People are bound to take sides and the side that they take is likely to follow the racial and religious divide. It would also be an uphill task to try to persuade the Malay Muslim minority that the majority are not oppressing them out of racial or religious prejudice. Also, it would not be fanciful to predict that a public trial might feed existing racial or religious prejudice on the part of the majority, or even create prejudice where it did not exist before.¹¹⁸

116 Sundaresh Menon, “International Terrorism and Human Rights,” (2014) 4 *Asian Journal of International Law* 1-33 at 28.

117 Sundaresh Menon, “International Terrorism and Human Rights,” (2014) 4 *Asian Journal of International Law* 1-33 at 25-26.

118 Michael Hor, “Terrorism and the Criminal Law: Singapore’s Solution,” [2002] *Singapore Journal of Legal Studies* 30-55 at 49.

Hence, the imperative is for the government to use the ISA judiciously. It is also important to note that the use of the ISA to detain suspected Islamist terrorists since 9/11 could also give rise to fears that the ISA can be a tool for religious repression.

Cognisant of Singapore as a staunch US partner in the “war against terror”¹¹⁹ and the Muslim ambivalence and resentment in Southeast Asia and globally towards America, Singapore has urged the United States to appreciate and respond to the deeply felt feelings of the *ummah* on America’s Middle East policies which are perceived to be pro-Israel. Singapore believes that a balanced approach by the US towards the Israeli-Palestinian conflict, a perennial bugbear in relations between the US and the Islamic/Arab world, can dampen the ability of that conflict to be a rallying cause of Islamist terrorism.¹²⁰ Singapore Prime Minister Lee Hsien Loong’s congratulatory message of 12 January 2005 to the Palestinian National Authority President Mahmoud Abbas acknowledged that, “The Middle East conflict is no longer a regional problem, but has global implications. Even in Southeast Asia, it looms large in the consciousness of significant segments of the population”.¹²¹

Although Singapore is under no illusion that the resolution of the Israel-Palestinian problem will make Islamist extremist ideology redundant, it is alive to the reality that transnational developments within the *ummah* can impact upon the anxieties of the local Muslim community vis-à-vis the perceived

119 “Singapore reaffirms its firm support for US-led war on terror,” *The Straits Times*, 22 April 2004 where the then Deputy Prime Minister and Coordinating Minister for Defense and Security said, “Singapore supports wholeheartedly the war on terror led by the US.”

120 “Beyond Madrid: Winning Against Terrorism,” Prime Minister Goh Chok Tong’s address to the Council of Foreign Relations, Washington, D.C., 6 May 2004, available at <<http://www.cfr.org/asia-and-pacific/beyond-madrid-winning-against-terrorism/p7004>> accessed 9 August 2014.

121 A copy of the letter can be found at <<http://www.nas.gov.sg/archivesonline/data/pdfdoc/20050113-PM.pdf>>, accessed 9 August 2014.

injustice and fear suffered by their co-religionists elsewhere. Singapore is alive to the reality that militant Islamists draw connections between local issues and global politics involving the Muslim world, and that threats perceived by the *ummah* can create potential support for terrorism.

In declaring itself “an iconic target”, Singapore is gearing itself for the inevitability of a terrorist attack on its soil. In the aftermath of a terrorist attack, especially by home-grown perpetrators, the policy-makers’ primary concern is the potential backlash against the minority Muslim community and the unravelling of Singapore’s social fabric.

While it is misleading to equate the increased religiosity of the Muslim-Singaporean community as sympathy with or support for the violent strand of Islamism, the government has always been concerned that primordial loyalties of faith and ethnicity would take precedence over civic and secular loyalties to the Singapore nation-state. In particular, the government’s concern with the perceived, growing exclusivity of the Malay-Muslim community was amplified with the discovery of home-grown Islamist terrorist suspects post-9/11.

H. SIGNIFICANT CROSS-BORDER INCIDENCES

There have been no significant cross-border incidences in the reporting period.

I. GOVERNMENTAL RESPONSE

The Singapore government has always sought to respond to and manage religious issues in a careful manner. While cautious against appearing to be anti-religion (which it is not), the state has nevertheless also consistently underscored that the assertion of freedom of religion should not override more fundamental goals, including national defence and

racial and religious harmony. Where ground issues may involve religion, the government’s approach has always been to “nip the problem in the bud”.¹²² The taking of pre-emptive measures, if necessary, is enabled by the legislative framework which affords the authorities to calibrate their response accordingly.

At the same time, the government is also mindful of perceptions by mainstream religious groups of unnecessary restrictions to religious freedom. The state’s perspective is apparent in its response to the *tudung* petition in 2013. After a dialogue with Muslim religious leaders, Prime Minister Lee Hsien Loong, in a Facebook post, said that:

I told the group that I fully appreciate their desire to allow Muslim women in uniform to wear the tudung. But a larger issue is at stake: the sort of society we aspire to be. Singapore is a multi-racial, multi-religious and harmonious society. Minorities are fully integrated into the mainstream, but have full opportunities to maintain their identities and practise their faiths. So I am also mindful how crucial it is for us to strengthen our cohesion, and maintain the relaxed confidence and trust that benefits us all, especially the minorities.¹²³

However, the Prime Minister also affirmed that the government’s position on the issue was not static, and could change in the future.

In June 2003, the government unveiled the Declaration on Religious Harmony (DRH), a non-

122 See, for example, S. Jayakumar, “Order and Law? Lee Kuan Yew and the Rule of Law,” in Shashi Jayakumar and Rahul Sagar (eds.), *The Big Ideas of Lee Kuan Yew* (Singapore: Straits Times Press, 2014), 70-85.

123 Robin Chan, “Govt position on tudung not static,” *Sunday Times* (Singapore), 26 January 2014.

legislative, non-enforceable document.¹²⁴ Available in four official languages, this was a government-led initiative to educate and engage civil society on the acceptable norms in the practice of one's faith. It also outlines the perimeters of religious conduct that is deemed moderate and non-threatening. By having the religious leaders come together to craft and endorse the DRH as a code of conduct for religious harmony, the government hopes that the boundaries of acceptable religious conduct would gain wider acceptance and buy-in. Rather than a *diktat* from an overbearing, security-conscious state, the DRH is an attempt to exert moral suasion on the religious leaders and their followers alike to practice their faith fully sensitive to the multi-religious realities and secular imperatives within the Singapore polity.

The DRH is an example of how the Singapore government is increasingly moving from a hard law approach towards a greater emphasis on soft law. Particularly with regard to dealing with the threat of terrorism, the overwhelming hard law emphasis has conceded space for a soft law approach, recognizing that the terrorism threat needs a collective and holistic response from governments and societies alike. The previous, narrow framing of terrorism as being a "Malay-Muslim problem" was abandoned. Terrorism is now framed as a "national problem," requiring a solution in which all Singaporeans, regardless of their racial and religious allegiance, have a role to play.

CODE ON RELIGIOUS HARMONY (14 October 2002)	DECLARATION ON RELIGIOUS HARMONY (9 June 2003)
"We, the citizens of Singapore,	"WE, the people in Singapore, declare that religious harmony is vital for peace, progress and prosperity in our multi-racial and multi-religious Nation. We resolve to strengthen religious harmony through mutual tolerance, confidence, respect and understanding. We shall always
acknowledging that we are a secular society;	Recognize the secular nature of our State,
enjoying the freedom to practice our own religion; and	<i>[similar sentiment captured in DRH preamble]</i>
recognizing that religious harmony is a cornerstone of our peace, progress and prosperity;	
hereby resolve to practice our religion in a manner that:	
promotes the cohesion and integration of our society;	Promote cohesion within our society,
	Respect each other's freedom of religion,
expands the common space of Singaporeans;	Grow our common space while respecting our diversity,
encourages mutual tolerance, understanding, respect, confidence and trust;	<i>[similar sentiment captured in preamble]</i>
fosters stronger bonds across religious communities; and	Foster inter-religious communications,
prevents religion from ever being a source of conflict."	And thereby ensure that religion will not be abused to create conflict and disharmony in Singapore."

"Relational Constitutionalism and the Management of Inter-Religious Disputes: The Singapore 'Secularism with a Soul' Model," (2012) 2 *Oxford Journal of Law and Religion* 1-24.

Figure 2. Comparison of the draft and final version of the DRH

124 For further analysis, see works by Thio Li-ann, especially her "Constitutional 'Soft' Law and the Management of Religious Liberty and Order: The 2003 Declaration on Religious Harmony," (2004) *Singapore Journal of Legal Studies* 414-443, and "Relational Constitutionalism and the Management of Inter-Religious Disputes: The Singapore 'Secularism with a Soul' Model," (2012) 2 *Oxford Journal of Law and Religion* 1-24.

The DRH represents a fledgling attempt at concretizing the guiding principles from which consensus-building and norm building can evolve (see Figure 2). On closer scrutiny, the DRH's prescription of some "dos" also lays out the ground rules that have sustained multi-religiosity as a virtue rather than a vice. In the preamble, it reiterates religious harmony as a *sine qua non* for peace, progress and prosperity. It underscores the need for "mutual tolerance, confidence, respect and understanding". The prescriptive part of the DRH emphasizes the long-standing secular state, the need to promote cohesion, the respect for freedom of religion (a fundamental liberty), and the importance of inter-religious communication. The most substantive prescription is the call to grow the "common space", a term which only entered into Singapore's ethnic relations lexicon in 1999. The fear of home-grown terrorism unravelling Singapore society galvanized the government's commitment to enhance interactions between the different communities by enlarging the overlapping common area (common space) as a pre-emptive and absorptive measure.

Prior to the DRH, the principles of responsible religious conduct were not made explicit. In the late 1980s, the government had decided against a similar guidelines approach as it felt that it would be ineffective against a minority who would disregard a list of do's and don'ts. Instead, it preferred a hard law approach and proceeded to enact the MRHA. In contrast, the DRH lays out the principles in general terms without being unduly prescriptive. Indeed, one could argue that the DRH could do with more "do's" and "don'ts". However, bearing in mind the purpose of the soft law approach, the avoidance of formalistic rules in preference for overarching principles and guidelines is a more enlightened approach and more reassuring. In comparing the draft and final versions of the DRH, one can discern the different views and the nuanced contestation between the government and the religious elites on the appropriate religious conduct. This implicit

contestation should not, however, be over-stated. Given that inter-racial and inter-religious relations have been on an even keel since independence, there was a healthy measure of mutual trust and confidence between the government and the religious elites.

Three points are worth mentioning in the context of the divergent views on the draft. The first is the religious elites' reluctance to describe Singapore as a "secular society". The preference was to describe "the secular nature" of the Singapore state. This distinction is important in that it brokers and acknowledges a role for religion in Singapore society even as secularism is a core governance philosophy assiduously subscribed to by the government. Secondly, the final version removed "integration" from the draft. Integration is subjected to varying interpretations, including assimilation into the majority culture. The minority faiths were also articulating their concern with having to integrate into the majority faith (Buddhism and Taoism) or the faiths commonly embraced by the ethnic Chinese majority (especially Buddhism, Christianity and Taoism). Finally, the draft spoke of practicing religion in a manner that "expands the common space of Singaporeans". This was amended to "grow our common space while respecting our diversity". The use of "expansion" was perceived to entail a concomitant reduction in the private spaces for the religious groups. The final version addressed this concern by replacing "expands" with "grow" in which the latter verb does not connote a zero-sum situation vis-à-vis the growth of the common space.

The drafting process had the salutary effect of assuring the various faith communities of their role and presence in Singapore society. To its credit, the government accommodated the amendments and ensured that the DRH was not a pseudo-executive fiat.¹²⁵

125 See further Eugene K.B. Tan, "Norming Moderation in an 'Iconic Target': Public Policy and the Regulation of Religious Anxieties in Singapore," (2007) 19(4) *Terrorism and Political Violence* 443-462.

J. DEVELOPMENTS IN ADVANCING RELIGIOUS FREEDOM, DIALOGUE, AND CONFLICT MEDIATION

Following 9/11 and the discovery of a home-grown terrorist cell in Singapore, the government rolled out the Community Engagement Programme and initiated the move to develop the Declaration on Religious Harmony. While these initiatives do not directly advance religious freedom, they do contribute to promoting dialogue. The government has been paying more attention to promoting inter-faith dialogue as a mode of conflict mediation. How does this work? The belief is that inter-faith dialogue and understanding promotes the building of trust and confidence among stakeholders. When an issue involving religion arises, the trust and confidence enables the various religious leaders to communicate with each other directly. This dialogue and the keeping of open communication lines are also practised between the government and the individual major religious communities. As the Deputy Prime Minister and Home Affairs Minister reported in Parliament recently:

Government and religious leaders meet regularly on public occasions such as community functions, religious events and activities under our Community Engagement Programme. Government and religious leaders also regularly meet privately, individually or in groups. Both Government and religious leaders know that when sensitive issues arise that they wish to discuss in confidence, they can do so candidly behind closed doors. This approach has worked well. These interactions help to build mutual understanding and trust, and have enabled our religious leaders to become valued and vital partners of the Government in maintaining religious harmony in Singapore.¹²⁶

Following the adoption of the DRH, the Inter-Religious Harmony Circle, consisting of representatives of all major faiths involved in the DRH consultation process, was formally established to build on the inter-faith dialoguing established in the earlier consultations and discussions. The retention of this grouping of religious elites as a consultation forum to guide efforts to promote the spirit of the DRH underlines the belief that the DRH needs to be a living document in which the norms and values are practiced in form and substance. The government has also urged religious bodies and schools to recite the DRH annually on Racial Harmony Day (21 July).

The government is convicted that the advancement of religious freedom in a multi-religious society like Singapore requires the need to balance competing, if not conflicting, concerns among religious groups. The need for give-and-take, live and let live, mutual understanding and tolerance is taken seriously. In a recent articulation in response to a parliamentary question on keeping politics and religion separate, the Deputy Prime Minister and Home Affairs Minister Teo Chee Hean said:

[T]he separation of religion and politics is a long established principle in Singapore. Every citizen, regardless of his religious beliefs, has the same rights to express his views on public issues. In doing so, a citizen who belongs to a particular religion will often be guided by his own religious beliefs and personal conscience. However, like other citizens, he should always be mindful of the sensitivities of living in a multi-religious society and the bounds of the law.

Singapore is a multi-religious society. The different religious groups have their own deeply-held beliefs and precepts. While we accept and respect this diversity of religious teachings, we have seen many examples of other countries where religious differences have caused deep social divides and conflict.

¹²⁶ *Singapore Parliament Reports*, vol. 89, 15 October 2012.

If one religion pushes hard to have its tenets and views adopted by society at large beyond its own adherents, others will push back, sometimes even harder.

This dynamic is accentuated if a religious group engages in politics, or if a political group uses religion to further its cause. Other religious groups will feel compelled to also enter the political arena to further their own causes or rival claims. Tensions will arise and social harmony can break down.

Hence, we need to maintain a clear line between politics and religion in Singapore. Our politics and policies must serve all Singaporeans, regardless of race, language or religion. The Government must not take sides with any religious group when making policies. If politicians use the religion card for their own political purpose and agenda, and seek to sway voters through religious appeals, it will sow the seeds of division in our society, and undermine the inter-religious and social harmony we have painstakingly built.¹²⁷

In the AWARE saga of 2009, while the government apparently adopted a generally hands-off approach, it was nonetheless keenly interested in the larger ramifications of the AWARE dispute and ensuring the maintenance of a state of equilibrium vis-à-vis religion in the public square. It certainly saw religion as a key player in the dispute. In the lead-up to the EGM, the government treated the AWARE saga as an internal dispute, and consciously refrained from making any substantive comments to avoid giving rise to perceptions that it was partial. However, Deputy Prime Minister (DPM) and Home Affairs Minister Wong Kan Seng made the government's first substantive observations on the AWARE

dispute on 15 May 2009.¹²⁸ Wong's remarks were carefully calibrated and addressed to the different stakeholders in the AWARE dispute. They were widely reported in the local media, and highlighted the complexities of faith-inspired activism, and their place in civil society.

DPM Wong first reiterated the government's position on homosexuality which, in essence, was a pragmatic live-and-let-live attitude given that the issue was inherently polarising and that consensus would not be reached "for a very long time to come". Wong painted the context of Singapore society as "basically a conservative society and the conventional family, a heterosexual stable family, is the norm and the building block of our society". But DPM Wong also added, "homosexuals are part of our society. They have a place in our society and are entitled to their private lives".

DPM Wong stressed that the government's position on homosexuality was not going to change regardless of which group helmed AWARE. He also reminded the homosexual community that to maintain their space in Singapore, homosexuals should "accept the informal limits which reflect the point of balance that our society can accept, and not to assert themselves stridently as gay groups do in the West". DPM Wong also warned against importing the "culture wars between the extreme liberals and conservatives that are going on in the US".

The government was of the view that the new guard protagonists were motivated by their faith, and the way the so-called battle lines were drawn pointed to an ostensible cultural war involving homosexuals

128 Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE", 15 May 2009, available at <http://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3d%3d-H1a1kdI4Ksw%3d>. All quotes in this section attributed to DPM Wong are taken from his comments to the media. See, further, Eugene K.B. Tan, "Keeping Politics and Religion Separate in the Public Square: The Regulatory State 'Managing' Religion in Singapore," in Ishtiaq Ahmed (ed.), *The Politics of Religion in South and South East Asia* (London & New York: Routledge), 195-224.

127 *Singapore Parliament Reports*, vol. 89, 15 October 2012.

and a group of Christians. According to DPM Wong, the government:

was worried about the disquieting public perception that a group of conservative Christians, all attending the same church, which held strong views on homosexuality, had moved in and taken over AWARE because they disapproved of what AWARE had been doing. This raised many qualms among non-Christians, and also among Christians who believed that this was an unwise move in a multi-racial, multi-religious society. It was much more dangerous because now religion was also getting involved, and it was no longer just the issue of homosexuality.

DPM Wong also took the opportunity to spell out three key “rules of engagement”. The first is that “[r]eligious individuals have the same rights as any citizen to express their views on issues in the public space, as guided by their teachings and personal conscience. However, like every citizen, they should always be mindful of the sensitivities of living in a multi-religious society. ... This calls for tolerance, accommodation, and give and take on all sides”.

Secondly, DPM Wong reiterated the need to keep religion and politics separate. “If religious groups start to campaign to change certain government policies, or use the pulpit to mobilise their followers to pressure the government, or push aggressively to gain ground at the expense of other groups, this must lead to trouble”.

Thirdly, the political arena must always be secular. DPM Wong noted that even as religious groups and individuals “set the moral tone of our society, and are a source of strength in times of adversity”, “our laws and policies do not derive from religious authority, but reflect the judgments and decisions of the secular Government and Parliament to serve the national interest and collective good”. He rationalized that in applying the laws and public

policies equally, the system generates confidence if it provides “equal treatment and protection for all, regardless of which group one happens to belong to”.

These rules of engagement are soft law in nature. It would be hard to couch them as workable legislation (hard law) but it is precisely their being guidelines and rules that enable the state and religious groups to engage and develop the boundaries of permissible action.

Subsequently, Prime Minister Lee Hsien Loong used the platform of the annual National Day Rally (NDR) in August 2009 to make his first remarks on the AWARE dispute. PM Lee made racial and religious harmony the focal point of his speech to the nation. He viewed the actions of the new guard as “an attempt by a religiously motivated group who shared a strong religious fervour to enter civil space, take over an NGO it disapproved of and impose its agenda. And it was bound to provoke a push back from groups who held the opposite view which happened vociferously and stridently as a fierce battle”.¹²⁹

The Prime Minister identified three potential risks of religious fervour: Aggressive proselytisation, intolerance and disrespect of the religious beliefs of others, and exclusiveness through not interacting with people of other faiths. He pointed out that intolerance could be a source of deep division – not just in society but also within families. PM Lee went on to reiterate the four basic rules for religious harmony: (1) All groups to exercise tolerance and restraint; (2) Keep religion and politics separate; (3) The government must remain secular; and (4) Preserve the common space that all Singaporeans share regardless of affiliations.

129 Transcript of part three of the Prime Minister’s National Day Rally 2009 speech, which dealt with religious harmony, can be found at <http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/pmo/transcript/T-20090816-2.html>, accessed 9 August 2014.

These ground rules are not new – they are found, for instance, in the Declaration on Religious Harmony. The challenge is to enable these rules to embed the norms and values so that they entrench the shared commitment to religious harmony while also providing for common rules of engagement and conduct. Indeed, laws by themselves do not foster inter-faith understanding and engagement and may provide a false sense of security.

The sense of the political leadership's heightened concern and worry over the AWARE saga was revealing for it suggests that religion remains an active fault-line in Singapore society. Both the Prime Minister's and Home Affairs Minister's remarks on the AWARE saga alluded to the urgent imperative and need for the management of race and religion to evolve from a "whole-of-government" to a "whole-of-society" approach. Governments alone cannot maintain sustainable peace and harmony. This collective action challenge is compelling in that as Singapore is multi-religious, how does it ensure religion does not become a source of friction, discord, and violence? How can such societies fortify themselves against the forces that seek to divide and destroy in the name of God?

Maintaining a strict separation of the secular and religious realms is not only hard to achieve but also privileges rationality and public reason. Such a discourse and policy orientation does not hold for people of faith, in particular Christians and Muslims, with millenarian aspirations. After all, religious groups are an integral part of civil society too. A normative function of civil society is the discretionary shaping of the home/host society. For religious groups, this normative function makes it unlikely that such groups will diverge too greatly from their faith-driven vision of and aspirations for what the target society should be like. In particular, the pursuit of one's private conscience will manifest itself in the public domain through informing a person's perspective on issues that impact upon one's sense of moral self-worth and purpose.

In short, one cannot expel religion from the public space. To be sure, shaping the future of a society, whether by religious or secular groups, is an enterprise that is heavily value-laden. The turmoil exposed by the AWARE saga reflects the evolving complexity in Singapore society. The divisive and ugly divide exposed by the saga reflects the putative battle ground that Singapore potentially would encounter in the years ahead. The chasm, at its core, is about a keen—almost existential—contestation over values pertaining to morality.

In the AWARE dispute, both sides accused each other of bigotry, closed minds, and intolerance. Accusations of marginalization and suppression of views, identities and rights were hurled fast and furious. This raises the important question of whether, in a diverse society like Singapore, it is possible to talk, define and assert one's rights without taking a stand on the moral, and often religious, convictions that citizens bring to the public square. The religious groups would argue that liberalism, because of its non-judgmental tendencies with regard to competing moral and religious conceptions, is flawed. Such a neutral stance, the religious groups argue, smacks of moral cowardice and intolerance. We probably will see, in the aftermath of the AWARE saga, a conscious articulation for public reason that is friendly to religious perspectives. In making heterosexuality the non-negotiable norm of family life and society in Singapore, the state and its agents cannot not avoid debating the morality of sexual identities and rights, even if the preference is to avoid a rights discourse in such matters.¹³⁰

The more assertive emergence of religion, sexuality issues, and rights in the public domain means that the management and regulation of differences, competing and often conflicting interests and values, will have to be managed adroitly. Closed minds and exclusive communities will be threats in

130 See, for example, Phil C.W. Chan, "Shared Values of Singapore: Sexual Minority Rights as Singaporean Value," (2009) 13(2-3) *The International Journal of Human Rights* 279-305.

these sensitive and inherently divisive issues. Even as faith-inspired morality arguments and perspectives have an ambivalent role in governance and policy-making, the reality is that they increasingly have traction within Singaporean society. With the vast majority of Singaporeans professing to belong to a faith, religious-inspired views cannot be consigned to the public policy outfield. It remains to be seen if the evolving rules of engagement will provide an adequate and principled process to accommodate the diversity and complexity in society. For religion to be a viable means of engendering social cohesion, the imperative is on Singaporean society and its leaders to mobilise faith and cohesion to good ends.

Another trope closely linked with unbridled heightened religiosity is public security. In April 2010, Deputy Prime Minister and Home Affairs Minister Wong Kan Seng raised the “public security concern” of religiosity manifesting itself “in a highly public and assertive manner in a multireligious setting like Singapore, with all our attendant sensitivities”. Three observations of the “rise in religious assertiveness” were cited.¹³¹

The first was self-righteous, aggressive and insensitive proselytisation that disregarded the feelings of believers from other faiths. It noted that, “devotees of the different faiths today appear to be less tolerant over perceived slights to their religion, and are more ready to retaliate”. The second example was of religious groups that, in publicly articulating their views on public policies and issues, go “too far in advocating their cause and make unfounded allegations, whip up the emotions of their followers, or mobilise them”. The concern here was that “they could heighten tensions between the religious community and the State”. The third example cited was that religious groups were becoming “more visible in the public sphere” as “religious worship was no longer confined to traditional places of

worship”. The specific concern here was with inter-faith competition as “The success charismatic churches have had in organizing mega-sermons outside purpose-built church buildings have inspired other religious groups to organize similar large-scale worship events at commercial venues such as shopping centres and exhibition halls. Recently, there has also been discussion about the involvement of religions in business”. All these trends “are of concern to Singaporeans as they are seen to be a further encroachment of religion into the common space”.¹³²

131 Speech at the ISD Intelligence Service Promotion Ceremony, 14 April 2010, available at <http://www.mha.gov.sg/news_details.aspx?nid=MTcwNQ%3D%3D-Q9CJuc52SKk%3D> accessed 9 August 2014.

132 In July 2010, guidelines on the use of commercial spaces for religious activities were issued. This was followed in June 2012 with the guidelines on the non-exclusive and limited religious use in industrial premises. See Part One, B2 of the report.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

Despite the diversity, the state of religious and racial group relations was positive pre- and post-11 September 2001, as attested to by the 2001 and 2002 *Survey on Social Attitudes of Singaporeans*.¹³³ This diversity along racial, linguistic and religious lines contributes to the tendency to view everyday phenomenon in ethnic terms. This is reinforced by the saliency of ethnic consciousness in popular and official discourse. It reflects a norm of socialization, reinforcing racial stereotypes and differences between the various races. Where the Malay community is concerned, racial and religious identities are not only prominent but also conflated.

As 99.6 percent of Malay-Singaporeans profess Islam, Malays are regarded synonymously as Muslims, and Muslim identity is treated as an integral part of Malay identity. In the last two decades, the religious identifier for Malays has become more prominent. This double affiliation, Malay-Muslim (or “Malay/Muslim” in official Singapore discourse) is of fairly recent vintage – it was not used in the ascription of the Malay community prior to the 1980s – is an indication of the centrality of Islam as an integral marker of being Malay in Singapore.

Within the community itself, such an identity nurtures a greater community self-consciousness of the double bond of race and faith. This resort to the “Muslim” identifier is in part a legacy of the state’s encouragement of recourse to religion as a bulwark against the effects of cultural and moral enervation in the modernization process. By the late 1970s,

133 David Chan, *Survey on Social Attitudes of Singaporeans 2002: Attitudes on Race and Religion* (Singapore: Ministry of Community Development and Sports, 2003), and David Chan, *Survey on Social Attitudes of Singaporeans 2001: Attitudes on Race and Religion* (Singapore: Ministry of Community Development and Sports, 2002).

the government’s concern with the Malay-Muslim community’s “3D” problem of drugs, divorce, and delinquency was palpable. Malay civil society, Islamic organisations, and the Islamic faith were mobilized to help counter the social and moral decline.¹³⁴ As Malay and Muslim identities are deemed coterminous, this has resulted in the Malay-Singaporeans’ Islamic identity being more sensitive and less negotiable. As two sociologists astutely point out the implications:

[T]he tightly drawn “community” boundaries, doubly marked by a sense of “Malayness” and the religious injunctions of Islam, appear to have the effect of reducing individual and sub-group differences within the Malay-Muslim community itself, or at least, not to allow the differences within to be aired outside the community.... [T]he term *the Malay community* with the Islamic faith as its chief characteristic is used in Singaporean public discourse without any reservation about the referent’s presumed “unity.” One of the consequences of these tightly drawn boundaries is that a general conservatism prevails among Malay-Muslims in Singapore. But the conservatism is fraught with ambivalence, torn between the desire to preserve “traditions” and the need to open the community to new bodies of knowledge and economic opportunity.¹³⁵

At the same time, global developments after September 11 have encouraged an affirmation of Muslims’ Islamic identity in solidarity with

134 Ibrahim Ismail and Elinah Abdullah, “The Singapore Malay/Muslim Community: Civic Traditions in a Multiracial and Multicultural Society,” in Gillian Koh and Ooi Giok Ling (eds.), *State-Society Relations in Singapore* (Singapore: Oxford University Press, 2000), 50-60.

135 Chua Beng Huat and Kwok Kian Woon, “Social Pluralism in Singapore,” in Robert W. Hefner (ed.), *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia* (Honolulu: University of Hawai’i Press, 2001), 86-118 at 116.

their co-religionists elsewhere within the global Muslim *ummah*. Malay-Muslim Singaporeans have generally been unsettled and discomforted by the negative coverage on Islam in the international media, as well as by the non-Muslim perception that Islam condones violence committed in its name. As a minority community, Malay-Muslims have become more self-conscious as Muslims and insecure at the suspicion that they may be sympathetic to Islamic extremism, and have responded by stressing Islamic “moderation”.

Even if it reflects social reality, conflating Malay and Muslim identities can be uncondusive to deeper social cohesion since it reinforces racial and cultural difference with the religious cleavage. Thus, problems afflicting the Malay community are almost always simultaneously profiled as racial, cultural, and religious. Although it would be misleading to equate increased religiosity of the Malay-Muslims with Islamism (understood here as Muslim political activism), the government’s concern with the Malay-Muslim way of life in recent years is evident. Indeed, it is this conflation of race and religion that constraints the closer integration of Malay/Muslims in the Singapore Armed Forces (SAF). The government is concerned that primordial loyalties of ethnicity and religion may trump the civic and secular loyalties to the Singaporean nation. In 2002, 122 Muslim organisations came together, as “a matter of conscience and national concern” and publicly condemned terrorism as being at odds with Islam.¹³⁶

Increased religiosity across all major faiths in Singapore is a key challenge. The more spiritual orientation in and of itself is not necessarily a problem. Instead, how and what Singaporeans make of the increased piety is the key concern.

136 See “Singapore Muslim Organizations Decry Terrorism in Name of Islam: Oct. 9 (2002) statement urges Singaporeans to unite against terrorism,”

<<http://iipdigital.usembassy.gov/st/english/texttrans/2002/10/20021011151324larocque@pd.state.gov0.9141504.html>> accessed 9 August 2014.

Will a rigid religious identity lead to exclusionary practices and undermine integration? If so, this could very well result in self-segregation, an isolated “micro-community” and the unilateral closing of common space. Alternatively, will the concern with the state of public morality lead to a more muscular canvassing of religious values in the public sphere? This could result in confrontation with those who oppose such a movement.

B. Positive Contributing Factors

Building societal resilience

As the US State Department’s 2012 Report on International Religious Freedom notes, the government-initiated Interracial and Religious Confidence Circles (IRCC) gave racial and religious group leaders “a forum for promoting racial and religious harmony at the municipal level”.¹³⁷ Under the auspices of the Ministry for Culture, Community and Youth, the IRCCs conducted local interreligious dialogues, counselling and trust-building workshops, community celebrations, and similar activities.

In addition, the government also introduced the Community Engagement Programme (CEP) in 2006 primarily to foster social cohesion and minimize ethnic or religious discord in the event of a terrorist attack or other civil emergency. The CEP is supported by the work of the IRCCs and other local “clusters” of participants. The government trained community leaders involved in the CEP in emergency preparedness and techniques for promoting racial and religious harmony. The CEP also conducted youth outreach activities and engaged local celebrities, such as radio disk jockeys and television personalities, to reinforce messages of communal harmony.

137 US Department of State 2012 *Report on International Religious Freedom*, <<http://www.state.gov/j/drl/rls/irf/2012/eap/208264.htm>> accessed 9 August 2014.

The Singapore government also believes in its engagement with religious community leaders as part of the overall effort to build trust and confidence. This is done through regular, closed-door dialogues between political leaders and religious leaders. This enables all stakeholders to be involved in issues of mutual concern.

Use of soft law

Singapore's use of a coercive legal framework to deal with threats to public order has been crucial in the maintenance of peace and stability as well as enabling a relatively high degree of religious freedom. However, this hard law approach tends to elicit reasoning and responses that are primarily egocentric, denominated in self-centred terms of avoiding punishment, compliance with an authority, and group norms. For example, anti-terrorism legislation stipulate—in varying degrees of clarity and precision—the proscribed acts of commission and omission (obligations and compliance), the imposition of legally binding duties and obligations (accountability), and the punishment for transgression (sanctions). The coercive powers of hard law are useful in clamping down real and present dangers. However, they also impose severe costs and unintended consequences. The reality is that hard law is often reactionary. It is also grossly inadequate as a means of pre-emptive, adaptive socialization and social learning.

As indicated earlier, the use of a coercive framework has its limitations and needs to be balanced against the trust- and confidence-building efforts to set normative standards of conduct in exercising one's religious freedom rights. Hard law is not equipped to promote such social learning since its focus is often on deterrence, compliance, and sanctions.

Singapore has increasingly used soft law mechanisms such as the Declaration on Religious Harmony to nurture and sustain regulative, practical effects similar to hard law. Soft law's discursive power

is primarily through its facilitative effort to set normative standards and enable social learning. This is particularly useful in situations of flux where persuasion and reflexive adjustment, rather than rigid adherence or enforcement, are needed. Soft law also has the benefit of being facilitative of efforts to internalize the norms embedded in hard law. For instance, the ideational standards or expectations first enunciated in soft law mechanisms can subsequently form the basis on which the practical application of the hard law can subsequently acquire effectiveness, efficacy, and legitimacy. In this regard, soft law can help knowledge, norms and values to be framed strategically and dovetail with existing normative frameworks. Specifically, soft law mechanisms in dealing with the terrorism threat can be adapted for the purposes of winning the “hearts and minds” of people by persuading the relevant stakeholders that violence and conflict are not the solutions. In Singapore's context, this means the government can use soft law to attract, socialize and co-opt the citizenry, especially the minority Malay-Muslim community, on the imperative of ensuring that religion is not abused to sow discord, conflict, and violence. These attributes of soft law may facilitate the socialization, the formation of consensual knowledge and a shared understanding of the terrorist threat and the desired conduct to counter it.

Legislation alone cannot deal with all aspects of religious radicalism, bigotry, and nihilism. This is particularly so when the battle is not about law enforcement but one that is fundamentally concerned with winning the hearts and minds of believers. Although we should not view hard and soft law in binary or antithetical terms in dealing with the terrorism threat, it is crucial nonetheless to distinguish between (a) laws that seek to prevent terrorist acts from taking place, and (b) laws that seek to prevent a multiracial society from imploding after a terrorist attack. The objectives of law and policy differ for both courses of action even though both are interdependent and highlight the ideal of

society as a cooperative effort. For laws that seek to prevent terrorist acts from taking place, a hard law approach focusing on deterrence and sanctions would cohere with the preventative, and command-and-control objectives targeted at a recalcitrant few. For laws that seek to prevent a multiracial society from imploding after a terrorist attack, it becomes imperative to emphasize a cooperative values-based culture and norms to engender ethical conduct of the masses, grounded in self-regulation, civic responsibility, and social resilience.

In terms of enforcement, there is strong judicial support for the government's pre-emptive approach in national security matters:

[The] submission that it must be shown that there was a clear and immediate danger was misplaced for one simple reason. It cannot be said that beliefs, especially those propagated in the name of "religion", should not be put to a stop until such a scenario exists. If not, it would in all probability be too late as the damage sought to be prevented would have transpired.... [A]ny administration which perceives the possibility of trouble over religious beliefs and yet prefers to wait until trouble is just about to break out before taking action must be not only pathetically naïve but also grossly incompetent.¹³⁸

Government's vigilance

Not surprisingly, the state invests utmost care, concerted effort, and pre-emptive prudence in nurturing multi-religiosity as an integral part of Singapore's multi-racialism framework. This stability is jealously guarded by the state especially since rapid modernization has neither resulted in the decline of religious belief nor the downgrading of importance of religious institutions among Singaporeans. Religious faith is a "major part of

Singapore's cultural ballast" and exerts a tremendous pull on Singaporeans (Shared Values 1991, p. 8; Tong 2002).

In a post 9/11 world, religion and national security are now even more intimately linked. In some respects, 9/11 and its aftermath have driven home the message that to manage "religious-inspired" threats to Singapore's national security, the better approach is to ensure that the citizens' religious identities remain secure. Looking at religion solely as a security threat is manifestly inadequate in keeping both state and society safe. This perspective also entails civil society being inducted into playing a bigger, if at times ambivalent, role in ensuring that the state and religion are both secure.

As such, the government is now more conscious and responsive to civil society's role in strengthening inter-faith engagement and understanding, and the enhancement of social capital. In countering the terrorist threat, the approach has evolved rapidly from a "whole-of-government" to a "whole-of-society" approach, a significant recognition of the threat posed by terrorism to national security, public order, and social cohesion. This is a tacit acknowledgement that the security of the state, government, and society are all inter-linked. The terrorism threat requires not just a security response but a holistic one, one which seeks to align the hearts and minds of the faith communities to the societal objective of harmony and peace.

¹³⁸ Chief Justice Yong Pung How in *Chan Hiang Leng Colin and others v PP* [1994] 3 SLR(R) 209 at [59].

PART FOUR: CONCLUSION

Beyond the constitutional and legal framework, the overarching policy paradigm in Singapore is of a pragmatic and strategic secularism that seeks to engage and co-opt religion towards the goal of state- and nation-building. Nonetheless, the fundamental law and policy challenge remains: Can Singapore's social cohesion withstand the onslaught of the contested forces of value pluralisms that deliberately or unwittingly seek to divide and perhaps even destroy? Singapore demonstrates that the protection and promotion of religious freedom paradoxically requires "keeping God in place" – unbridled freedom in the name of exercising one's fundamental liberty to religious freedom is viewed as a recipe for the eventual curtailment of religious freedom and a threat to public order and national security. In this regard, this work of maintaining and ensuring religious freedom is always a work-in-progress given the subtleties and complexities in which religion has impacted on public life and, in turn, is being affected by public life. The transnational characteristic of religion, embodied in a global imagined community of faith believers, coupled with the revival tendencies in all major faiths are critical developments that impinge upon Singapore's quest to maintain ethnic and religious harmony.

Singapore's earlier focus on dichotomizing the moderate and radical elements of Islamic faith perhaps exaggerated the image and perception of Muslim-Singaporeans as being susceptible to religious radicalism. Fortunately, this discourse has now taken a backseat and a more inclusive approach adopted. Had the government persisted in putting the terrorist threat at the feet of the Muslim community, it would have marginalized the "moderates" who are needed to form the bulwark in the proverbial battle for the hearts and minds of Muslims.

In dealing with the threat of extremism of any religious hue in Singapore's context, the role of civil society, as a hitherto untapped resource, is increasingly critical and appreciated. The tendency of governments to "know it all" and focus on the relevant target community can have detrimental policy implications.¹³⁹ Equally important is the patent need to engage civil society. By their very nature, religiously inspired ideas cannot be hemmed in by military threats and action, draconian laws, and coercive rhetoric. Given their potential appeal to the faithful, the strategy is to challenge those ideas head on in the marketplace of ideas. This requires the equally important vanguard action of strengthening society that terror entrepreneurs seek to fragment, if not to impose their nihilism. Post-9/11, a civil society engaged and manifested through greater citizenry involvement and trust of fellow citizens and the government can play a critical role in combating the destructive ideas and heinous acts that mislead, threaten, and divide our societies.

Increasingly, public policy and legislation in a multi-religious society like Singapore have to reflect the value- and belief- systems of citizens, including religious ones. For the state to remain neutral (if this is possible in the first place) and secular in a multi-religious polity, the state must paradoxically regulate the religious realm in a way that is acceptable to all stakeholders. The discourse of managed pluralism is strong and there is no doubt that the Singapore state has a larger say on the extent of religion in the public square as compared with religious bodies being able to influence the limits of the state. Given that Singapore is a multi-religious society, the overarching philosophy underpinning the legal and policy thrusts is encapsulated in the belief that religious freedom intimately requires a thoughtful and calibrated intersection of rights, regulation, and responsibility. This "3R" approach may well be the

139 See, for example, John L. Esposito and Dalia Mogahed, "Battle for Muslims' Hearts and Minds: The Road Not (Yet) Taken," (2007) XIV(1) *Middle East Policy* 27-42; Natasha Hamilton-Hart, "Terrorism in Southeast Asia: Expert Analysis, Myopia and Fantasy," (2005) 18(3) *The Pacific Review* 303-325.

best approach for Singapore in ensuring religious freedom in a society that seeks to be governed by the rule of law.

Today, religious freedom and national security are now even more intimately linked than ever. Religion and national security are taken seriously in Singapore although there has been no overt religious conflict since its hurried independence in August 1965. The terrorism threat post-9/11 has driven home the message that “religious-inspired” threats to national security are best dealt with by not indiscriminately clamping down on religion.

Even as national security comes under threat, the prudent and better approach is to ensure that the citizens’ religious identities remain strong and secure. Such a policy imperative also entails that a multi-stakeholder approach is essential, especially with a civil society that plays a bigger role in ensuring that the state and religion are both secure. Similarly, the political will to entrench religious freedom is crucial. Ultimately, looking at religion merely as a security threat is manifestly inadequate in keeping both state and society safe. The Singapore case strongly suggests that religious freedom and its continual growth and development are integral to the wellbeing of the state, government, and society.

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Thailand

Thailand

Formal Name	The Kingdom of Thailand
Capital City	Bangkok
Declared Relationship between State and Religion	The 2007 Constitution of Thailand, Buddhist Era 2550, does not declare a state religion, but indicates that the state shall patronize and protect Buddhism and other religions, promote good understanding and harmony among followers of all religions, and encourage the application of religious principles to develop virtue and quality of life.
Form of Government	Parliamentary model with a constitutional monarchy. Currently, however, Thailand is under a military rule.
Regulation of Religion	The regulation of Buddhism and other religions, through the Department of Religious Affairs and the National Buddhism Office, is a constitutional duty of the national government.
Total Population	65,981,660 (as of 2010)
Religious Demography	Buddhist (official), 93.6%; Muslim, 4.9%; Christian, 1.2%; Other, 0.2%; None, 0.1%. (2010 est.)

Changing Religious Demography:¹

Year	Buddhism ¹	Islam	Christianity	Others ³	Unknown
1960	93.6	3.9	0.6	N/A	N/A
1970	95.3	3.9	0.6	0.1	0.1
1980	95.0	3.8	0.5	0.1	0.5
1990	95.1	4.1	0.5	0.2	0.1
2000	93.8	4.6	0.8	0.2	0.4
2010	93.6	4.9	1.2	0.2	0.1

¹ The National Statistical Office

² In 1960, a definition of Buddhism did not include Confucians, which are included in subsequent censuses except in 2000.

³ Including Hinduism and Atheism.

INTRODUCTION

Thailand has long been open to all religions and sects. In the Ayutthaya period, Muslims and Christians were granted residencies and allowed to manifest their beliefs as long as they did not pose any treat to the Kingdom.⁴ Some members of these religious minorities were appointed to high-ranking positions in the Siamese court.⁵ Hindu Brahmin priests also performed royal ceremonies alongside Buddhist monks. The Siamese kings were obliged to patronize all religions within their kingdom. This duty was transferred to the government after the revolution in 1932.

Thailand has historically proclaimed itself a secular state. Despite heavy pressure from several extremist Buddhist groups, the Constitution Drafting Committee of both the 1997 and the 2007 Constitutions refused to declare Buddhism the state religion.⁶ However, Thailand is built on the triadic ideology of *Chat*, *Sat-sa-na*, and *Pra-ma-ha-ka-sat*—or the Nation, the Religion, and the King—so the Thai government has always deeply involved itself in the administration of religions⁷; it has never been neutral or tried to distant itself from religion. The state has a constitutional obligation to patronize, promote, and protect Buddhism and other religions as well as encourage followers of all religions to live in harmony and apply their religious principles to

develop virtue and quality of life.⁸ The state does not only passively allow the practice of all religions, it actively urges followers to practise their religions in ways that promote the above-mentioned goals.

It is the duty of the Ministry of Culture's Department of Religious Affairs to facilitate the activities of all religions and promote understanding among the different religions.⁹ The Department helps organize, accommodate, or subsidize various religious activities, but it does so only if the religion is officially recognized. So far, there are five recognized religions: Buddhism, Christianity, Islam, Hinduism, and Sikhism. Other religions may apply for official recognition.

Certain requirements must be satisfied for a religion to be officially recognized.¹⁰ First, the theology of the religion must be distinguishable from that of other recognized religions. Second, the religion must have more than 5,000 followers, according to the national census. Third, its activities and teachings must not be contrary to the Thai Constitution and laws. Fourth, the religion must have no hidden political agenda. Once the religion is recognized, the Department of Religious Affairs shall provide help, including the extension of visas for its officials, tax exemption, access to state subsidies, and settlement of any disputes.¹¹ In turn, the Department must be notified of changes to the religion's organization and the religion has to promote the good morals of the nation.¹² The profession of belief in unrecognized religions, however, is neither outlawed nor discouraged.

4 Yoneo Ishii, Thai Muslims and the Royal Patronage of Religion, (1994) 28, Law and Society Review, 453-455.

5 *Ibid*, 454.

6 Monk on the March, (*The Economist*, 3 May 2007) <<http://www.economist.com/node/9118682>> accessed 1 November 2014; Thongtong Chandransu. 'การบัญญัติให้พระพุทธศาสนาเป็นศาสนาประจำชาติในรัฐธรรมนูญ. (Proposal to Declare Buddhism the State Religion)' (15 May 2014). <<http://www.law.chula.ac.th/>> accessed 15 May 2014.

7 Bjorn Dressel, 'When Notion of Legitimacy Conflict: The Case of Thailand' [2010] 38 Politics and Policy 445, 449; Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation*, (Hawaii: University of Hawaii Press, 1997); and Peter A. Jackson, *Buddhism, Legitimacy, and Conflict: The Political Function of Urban Thai Buddhism*, (Institute of Southeast Asian Studies 1989) 11-14.

8 Article 79, Thai Constitution, B.E. 2550 (2007) (Thailand)

9 Department of Religious Affairs. <<http://www.dra.go.th/main.php?filename=a2>> accessed 15 May 2014.

10 Article 4, The Department of Religion Affairs regulation, B.E. 2512, (Thailand)

11 Article 6, The Department of Religion Affairs regulation, B.E. 2512, (Thailand) and *Thailand 2012 International Religious Freedom Report*, United States Department of State Bureau of Democracy, Human Rights and Labor, 3.

12 Article 7, The Department of Religion Affairs regulation, B.E. 2512, (Thailand)

It should be noted that the state does not guarantee equal treatment to all formally recognized religions. The *Sat-sa-na*, or the triadic ideology of the modern Thai state, should not be read as referring to all religions, as it implicitly refers to Buddhism.¹³ Thus, Buddhism usually receives preferential treatment and special attention from the state. Other religions might draw the state's particular attention for other reasons.

There are two sects of Buddhism in Thailand: Theravada and Mahayana. The mainstream sect, Theravada, is stricter in its interpretation of the teachings of the Buddha. It highlights the importance of monks and of attaining enlightenment for oneself. Mahayana believes that every individual can reach Nirvana without becoming a monk, and that enlightenment is attained by helping others and not just one's self.¹⁴

Theravada Buddhism in Thailand has always incorporated Hinduism and animism into its practices.¹⁵ It is the *de facto* national religion due to its long history and popularity. As a result, Buddhism enjoys a number of privileges, but its status means it does not have the flexibility that other religions may have in the administration and interpretation of their teachings.

Buddhism in Thailand is highly and strictly organized. The state delegates the duty of regulating Buddhism to the Sangha Council, which was established by the Buddhism Brotherhood Act B.E. 2505, and is the supreme body overseeing Buddhist monks of all sects.¹⁶ The Sangha Council is

presided over by Sangha Raja, the Patriarch, who is appointed by the King.¹⁷ The Sangha body is divided by geographical districts, each of which is under a Chao-Ka-Na or senior abbot, who oversees the monks in his district.¹⁸ Although it is run by Buddhist monks, the Council was established by statute and functions as a government agency. Monks must follow the Council's rule and guidelines.

One important power that the Sangha Council has is that of granting recognition to the various sects and creeds of Buddhism in Thailand.¹⁹ Although many extreme creeds are tolerated, the Santi-Asoka creed has been denounced. Santi-Asoka claimed to offer a stricter and purer version of Buddhist teaching compared to that provided by the Sangha Council. The leader, Bodhiraksa, declared himself a saint, a claim that was denounced as arrogant by the Sangha community.²⁰ The reason for the denunciation owed more to Santi-Asoka's aggressiveness towards the Council than to the content of the former's claim.²¹ The sect had also accused the Council of corruption, self-indulgence, and laxity.²² By comparison, another extreme fundamentalist and materialistic sect, Dhammagaya, survived persecution because it pledged allegiance to the Sangha Council.²³ Santi-Asoka's Bodhiraksa was defrocked and forbidden from wearing a conventional yellow robe. Members of Santi-Asoka were expelled from the

13 Frank E. Reynolds, 'Dhamma in Dispute: The Interaction of Religion and Law in Thailand,' (1994) 28, Law and Society Review, 433-452.

14 'นานาชาติเกี่ยวกับพุทธศาสนา' (Things to Learn about Buddhism). Mahidol University College of Religious Studies. <<http://www.crs.mahidol.ac.th/thai/mahayana07.htm>> Accessed 18 June 2014.

15 Thailand 2012 international religious freedom report, United States Department of State Bureau of Democracy, Human Rights and Labor, 1.

16 Section 15 and 20, The Buddhism Brotherhood Act. B.E. 2505 (Thailand)

17 *Ibid*, section 7.

18 *Ibid*, section 20b.

19 *Ibid*, section 15/3.

20 *Supra* note 13, 447.

21 Suraphod Thaweesak. 'ศาสนากับการเมืองแบบสันติโคโธ (Religion and Politics from Santi-Asoka's Perspective).' *Prachatai*, (26 November 2013) <<http://prachatai.com/journal/2013/10/49423>> accessed 15 May 2014 and Phinyaphan Photchanalawan. 'บทวิเคราะห์ธรรมกายกฎหมายเป็นศาสนาและอำนาจศักดิ์สิทธิ์ที่ซ่อนรัฐ (Analysis of Dhammagaya, Blasphemy, the Sacred Power beyond the State).' *Prachatai*, (6 April 2012) <<http://prachatai.com/journal/2012/04/39991/>> accessed 15 May 2014

22 Suraphod Thaweesak. 'ศาสนากับการเมืองแบบสันติโคโธ (Religion and Politics from Santi-Asoka's Perspective).' *Prachatai*, (26 November 2013) <<http://prachatai.com/journal/2013/10/49423>> accessed 15 May 2014

23 *Supra* note 13, 446.

official Buddhist community. However, no further sanctions have been imposed upon the leader of the Santi-Asoka creed, which still recruits a significant number of followers.²⁴

In addition to the Department of Religious Affairs, the Sangha Council works closely with the National Buddhism Office of the Prime Minister's Office, which exerts indirect but very effective control over the Council. The National Buddhism Office acts as the secretariat office of the Sangha Council, facilitating communication between the government and the Sangha Council, funding projects to promote Buddhism, and approving the Buddhist teaching curriculum for all temples and educational institutions.²⁵

Although Buddhist monks receive numerous benefits from the state, their political rights are severely limited. The Constitution denies monks the right to vote, which is the basic requirement for other political activities such as initiating a bill, petitioning for impeachment, or voting in a referendum.²⁶ Nonetheless, in reality, there are several monks who successfully utilize their revered status to mobilise the masses and advocate for political campaigns despite stirring controversy regarding the role of Buddhism in the public sphere.²⁷

Islam is currently the second largest religion in Thailand, and four per cent of Thais are Muslims living in various parts of the country. However, there are many different groups of Muslims and different sects of Islam, each with its own unique ethnic and historical background. There are Chinese, Cambodian, Indian, and Malay followers of Islam.²⁸ The diversity of Islamic sects has limited the state's

success in regulating Islam.²⁹

History and politics have pushed the state to try to regulate Islam. The expansion of the modern Thai state has led to clashes with Muslim communities in the southern region.³⁰ Military mutinies, social unrest, and separatist movements are common. In response, the state has tried to centralize the control of Islam in Thailand. The Islamic Administration Act B.E. 2540 named the Central Islamic Council of Thailand, which is presided over by Chula-raj-montri, the supreme body overseeing Islam in Thailand.³¹

The Central Islamic Council of Thailand has the power to interpret the Koran, issue *fatwas*, regulate the administration of mosques, announce the date of Ramadan, organize the *hajj* to Mecca, and certify halal food manufacturers.³² The Council controls an Islamic Council in each province, which has a Muslim population and at least three mosques.³³

Christianity arrived in Thailand in 1511.³⁴ Historically, this has been associated with the Western attempt to conquer or colonize Siam; thus, the Christian movement had been viewed with distrust by the authority.³⁵ At the beginning of the Second World War, seven Catholics were killed on the suspicion that they were French spies. Later, they received martyr status. Christianity, both

24 *Supra* note 22; Peter A. Jackson, *supra* note 7, 95-100.

25 *Supra* note 15, 1.

26 Article 100, Thai Constitution B.E. 2550 (2007). Article 142 (4), Article 163, Article 271 para 3,

27 See Suluck Lamubol, Understanding Thai-style Buddhism, *Prachatai*, (28 February 2014) <<http://www.prachatai.com/english/node/3883>> accessed 31 October 2014.

28 *Supra* note 15, 2 and Michel Gilquin, *The Muslims of Thailand*, (Silkworm Books, 2005), 33-34.

29 Duncan McCargo, *Tearing Apart the Land*, (New York: Cornell University Press, 2008), 33-34 and *supra* note 4, 459-460.

30 *Report of the National Reconciliation Commission: Overcoming Through the Power of Reconciliation*, National Reconciliation Commission (Thailand: The Secretariat of the Cabinet, 2006)

31 Section 6 and 8, The Islamic Administration Act, B.E. 2540 (1997) (Thailand)

32 Michel Gilquin, *The Muslims of Thailand*, (Silkworm Books, 2005), 43.

33 Section 16 and 18, The Islamic Administration Act, B.E. 2540 (1997) (Thailand)

34 Bantoon Boon-It, *A Study of the Dialogue between Christianity and Theravada Buddhism in Thailand*, (Thesis Ph.D.: St' John's College, Nottingham, 2007), 33.

35 *Ibid*, 40-41.

Catholicism and Protestantism, also contributed greatly to the development of this country. Christian missionaries brought with them Western knowledge and technology to Siam.³⁶ They founded several private schools and hospitals across the country.³⁷ They are heavily engaged in *pro bono* activities. Despite these contributions, Christianity has remained the minority as the third largest group in Thailand.

Due to their small size and contribution, the state prefers to leave them alone. There is no agency overseeing administration of Christianity. Thailand currently recognizes five organizations: Church of Christ in Thailand,³⁸ the Evangelical Fellowship of Thailand,³⁹ the Thailand Baptist Convention,⁴⁰ the Catholic Bishops' Conference of Thailand,⁴¹ and the Seventh-day Adventist of Thailand.⁴² There are also other Christian bodies operating in Thailand without official recognition.⁴³ Over a thousand Christian missionaries are allowed to disseminate their belief in the country.⁴⁴

Although Christianity is currently welcomed, some Buddhists might still perceive it as a threat. In 2004, a Christian organization ran an advertisement of a book “Palung-heang-chee-vit” (The Power for Living). The campaign was so successful that a Buddhist group immediately asked the government to investigate and suspend the distribution of the book.⁴⁵

36 *Ibid*, 42.

37 *Ibid*, 41.

38 The Church of Christ in Thailand, <<http://www.cct.or.th/>> accessed 1 November 2014.

39 The Evangelical Fellowship of Thailand, <<http://www.eft.or.th/>> accessed 1 November 2014.

40 The Thai Baptist Convention, < www.baptist-tbc.com/> accessed 1 November 2014.

41 The Catholic Bishops' Conference of Thailand, < http://www.cbct.net/en_index.html> accessed 1 November 2014.

42 The Seventh-day Adventist of Thailand, < <http://www.adventist.or.th/>> accessed 1 November 2014.

43 For example, The Church of Jesus Christ of Latter-day Saints, < <http://lds.or.th/>> accessed 1 November 2014.

44 Thailand 2013 International Religious Freedom Report, 5-6.

45 ‘พลังแห่งชีวิตหนึ่งสื่อคริสตในสังคมพุทธ’ (Power for Living: A Christian Book in the Buddhist Society), *Manager Online*, (25 November 2004), <<http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9470000087390>> accessed 3 November 2014.

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

Convention	Date of Ratification	Reservation
International Covenant on Civil and Political Rights (1966)	29 October 1996	Article 2, paragraph 1 (Right to self-determination); Article 6, paragraph 5 (Death penalty); Article 9, paragraph 3 (Arrest and detention on a criminal charge); Article 20, paragraph 1 (Propaganda for war)
Convention on the Elimination of All Forms of Racial Discrimination (1965)	28 January 2003	Article 4 (Requiring a party to the Convention to adopt measures); Article 22
Convention on the Elimination of All Forms of Discrimination Against Women (1981)	8 September 1985	Article 16 (Marriage and family relations); Article 29 (International Court of Justice jurisdiction)
Convention on the Rights of the Child (1990)	12 February 1992	

One important treaty that Thailand has ratified is the International Covenant on Civil and Political Rights, which protects the right to freedom of thought, conscience, and religion, the right to choose and manifest one's religion or belief through worship, observance, practice, and teaching, as well as freedom from coercion.⁴⁶ Furthermore, Thailand is also party to the International Convention on the Elimination of All Forms of Racial Discrimination, under which it is obligated to prohibit and eliminate racial discrimination in all its forms and to guarantee the right to freedom of thought, conscience and religion for everyone, regardless of race, colour, or national or ethnic origin.⁴⁷ Thailand is also obliged to protect the rights of women and children as a party to the Convention on the Elimination of All Forms of Discrimination against Women⁴⁸ and the

Convention on the Rights of the Child (CRC).⁴⁹

Except for the CRC, Thailand made reservations when it ratified these treaties. None of the reservations were made on religious grounds, and none of the reservations were regarding provisions relating to religious freedom.⁵⁰

As Thailand is a dualist state, a statute is required before obligations under international law can be applied to domestic laws. However, there is no specific statute to implement these international obligations. Instead, freedom of religion is guaranteed in the Constitution and other legislation, including the Civil and Commercial Code.

⁴⁶ Article 18, International Covenant on Civil and Political Rights (1966) (United Nations).

⁴⁷ Article 5, The International Convention on the Elimination of All Forms of Racial Discrimination (1965) (United Nations)

⁴⁸ The Convention on the Elimination of All Forms of Discrimination Against Women (1981).

⁴⁹ Article 14, 20, 29, and 30, The Convention on the Rights of the Child (1990) (United Nations).

⁵⁰ Reservations and Declarations to CCPR, Thailand. <http://www.bayefsky.com/html/thailand_t2_ccpr.php> accessed 15 May 2014. Declarations, Reservations and Objections to CEDAW, UN Women, <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 15 May 2014. Declarations and Reservations to CERD, United Nations Treaty Collections. <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en#EndDec> accessed 15 May 2014.

B. Domestic Laws and Policies

1. *Freedom to adopt, change or renounce a religion or belief; and freedom from coercion*

After the coup d'état on 22 May 2014, the 2007 Constitution was abolished. However, article 4 of the 2014 Interim Charter confirms that rights, liberties, equality, and human dignity, according to international obligation and Thailand's democratic convention, shall be protected in the Interim Charter.⁵¹ As a result, all guarantees of rights and liberties, including freedom of religion, in the 2007 Constitution remain mostly unchanged. The only possible cause for concern is that article 44 of the Interim Charter vests in the National Council of Peace and Order (NCPO), who seized power in May, the overriding power to give an order or act for the public's interest.⁵² Thus, the NCPO can constitutionally limit freedom of religion at will without any restrictions.

Thailand's Constitutions have always protected freedom of religion, which appeared in the first Thai Constitution in 1932 and has been protected in all subsequent democratic Constitutions.⁵³ Section 37 of the 2007 Constitution guarantees a person's right to enjoy not only the full liberty to profess a religion, but also the liberty to profess according to one's religious sect and creed.⁵⁴ This freedom includes the freedom to not profess any religion as well. Atheism is not criminalized in Thailand. The only person who is not permitted this freedom is the King, who

has to be a Buddhist, according to Section 9 of the Constitution. The King is, however, also required by the Constitution to be the patron of all religions.⁵⁵

Article 79 of the Constitution requires the state to patronize and protect Buddhism and other religions, promote good understanding and harmony among followers of all religions, and encourage the application of religious principles to develop virtue and quality of life.⁵⁶ Article 79 is not legally binding because it is only a policy guideline. The language in the Constitution is so broad and open to interpretation that the government may decide whether and how to implement the policy. The policy is not judicially enforceable but failure to honour such a duty might lead to political sanctions.⁵⁷ In practice, however, the state encourages or discourages certain beliefs through various forms of subsidies offered by the Department of Religious Affairs.

2. *Right to manifest one's religion or belief*

a. *Freedom to worship*

Article 37 of the 2007 Constitution also protects the right to manifest one's belief.⁵⁸ The state can intervene in the manifestation of religion only if such manifestation is contrary to the duty of citizens or to public order and morals. Article 29 of the 2007 Constitution states that any intervention or restriction of the right to manifest one's belief shall be carried out via a statute that is general in application and that does not materially affect the important substance of such a right.⁵⁹ The right to manifest one's belief is also indirectly protected by Section 66, which recognizes the right of an individual and a community to conserve or restore

51 Article 4, the Interim Charter, B.E. 2557 (2014) (Thailand)

52 *Ibid*, article 44.

53 Article 13, the Constitution, 1932 (Thailand); Article 13, the Constitution, 1946 (Thailand); Article 28, the Constitution, 1949 (Thailand); Article 26, the Constitution, 1968 (Thailand); Article 30, the Constitution, 1974 (Thailand); Article 25, the Constitution, 1982 (Thailand); Article 27, the Constitution, 1991 (Thailand); Article 38, the Constitution, 1997 (Thailand); and Article 37, the Constitution, 2007 (Thailand)

54 Article 37, Thai Constitution, B.E. 2550 (2007) (Thailand) The original document is in Thai. The English translation by IFES and the US Embassy is used as a guide. See <<http://english.constitutionalcourt.or.th/dmdocuments/Constitution2007byIFES.pdf>> accessed 28 June 2014.

55 *Ibid*, article 9.

56 Article 79, Thai Constitution, B.E. 2550 (2007) (Thailand)

57 Vissanu Krue-ngam, กฎหมายรัฐธรรมนูญ (Constitutional Law), (Bangkok: Nitibannakarn, 1987), 661-663.

58 Article 37, Thai Constitution, B.E. 2550 (2007) (Thailand)

59 *Ibid*, article 29.

the custom or good culture of the community and nation.⁶⁰

In general, there is no systematic discrimination against the manifestation of any particular religion. However, the state does subtly obstruct as well as promote certain religions. For example, every morning in every public school in Thailand, all students, regardless of religious affiliation, must attend a flag salutation and Buddhist morning prayer before classes begin. Another round of Buddhist prayer is required on Friday afternoons, and students in boarding schools must pray before going to bed.⁶¹ The Buddhist prayer is prepared by the Ministry of Education.⁶² Students of other religions are recommended to remain silent throughout prayer.

However, if non-Buddhist students constitute the majority of a student body, the school may provide a forum for their prayer too.⁶³ For example, one public school that accepts mostly Muslim students has Islamic prayers according to the Koran in the morning while Buddhist students pray at noon together.⁶⁴ Students at a Catholic convent school pray according to their religion in the morning.⁶⁵ As the Catholic school is a private one, students are not required to perform Buddhist prayers, unlike their counterparts in public schools.

The requirement of morning Buddhist prayers discriminates against the manifestation of other religions, and also against Buddhists as every Buddhist student is forced to pray, regardless of whether or not the student is willing to do so. Moreover, the prayer must strictly adhere to the verses from the Buddhist Theravada sect, as dictated by the Ministry of Education.

⁶⁰ *Ibid*, article 66.

⁶¹ Section 4, The Ministry of Education on Student Prayer, B.E. 2503 (Thailand)

⁶² *Ibid*, section 5.

⁶³ *Ibid*, section 8.

⁶⁴ Sawatdee, Chatuporn, Online interview, 28 April 2014.

⁶⁵ Waithanomsat, Phatthraphon, Online interview, 4 April 2014.

Many government agencies also often include a visit to a Buddhist temple or making merit, which includes activities like praying, donating money and goods, receiving blessings, as part of their annual seminar. Although no constitutional challenge of such practices has been raised, it has sometimes led to criminal convictions. The National Counter-Corruption Commission indicted the then-Auditor General, Jaruwan Menthaka, for misusing the public budget. The Auditor General's Office had organized a seminar outside of Bangkok, but went to make merit at a nearby Buddhist temple instead.

b. Places of worship

In order to build a *Wat* or Buddhist temple, a person has to obtain permission from the National Buddhism Office.⁶⁶ Building, transferring, or demolishing a mosque must also be approved by the Ministry of Culture.⁶⁷ There is no similar requirement for a Christian church.

After the building of a *Wat*, the premises are no longer within the scope of legal execution, which means the *Wat* and its premises cannot be sold to settle the debt of the holding entity.⁶⁸ Transfer of estate ownership must be executed by statute.⁶⁹ Such protection is absent for Islamic and Christian places of worship.

c. Religious symbols

Some religions, such as Sikhism and Islam, require a dress code. The administration of Marshall Pibun Songkram stirred up controversy when it forced southern Thai-Muslims to assimilate by forbidding them from dressing according to Islamic principles, which includes the wearing of the hijab

⁶⁶ Section 3, The Ministry of Education Ministerial Regulation number 1, B.E. 2507 (Thailand)

⁶⁷ Section 12, The Islamic Administration Act, B.E. 2540 (1997) (Thailand)

⁶⁸ *Ibid*, section 35.

⁶⁹ *Ibid*, section 34.

for women.⁷⁰ The requirement by Marshall Pibun's administration was part of a nationalistic scheme to build civic identity in 1940s. It caused deep resentment among the southerners. There are, however, signs of improvement as the state has become more accommodating over the years.

Student uniforms are one of the main concerns when it comes to religious symbols, as uniforms are required in all public and most private schools from elementary school to university. The uniform for male students is usually a white, short-sleeved shirt and shorts in dark colours, such as black, navy blue, or khaki. A female student also wears a skirt in the same dark colours. The required length of the skirt falls between the knees and heels. However, the Ministry of Education allows students to dress according to their religious dress code.⁷¹ Thus a female Muslim student may wear a long-sleeved shirt and cover her head with a white scarf. Most universities also allow female Muslim students to wear long-sleeve shirts and cover their heads with scarves.⁷²

The Civil Service Commission permits female civil servants to dress according to their religious beliefs. A cap is replaced by a veil of the same colour as the shirt and the length of the skirt may reach the heels.⁷³

Another example of an exemption from the rules allows priests and individuals to ride motorcycles without wearing helmets because of their religious

restrictions.⁷⁴ A male Sikh who wears a turban can be exempted from wearing a helmet.

d. Observance of holidays and days of rest

There are sixteen public holidays in each calendar year, according to a cabinet resolution.⁷⁵ These public holidays mark historical and traditional events: New Year's, Chakri Dynasty Day, Song Kran (Thai New Year festival), Coronation Day, the King's and the Queen's birthdays, King Rama V Memorial Day, and Constitution Day. Three Buddhist holidays have also been declared public holidays: *Visakha Bucha*, *Magha Bucha*, and *Asalha Bucha*, which are the Lord Buddha's birthday, Sangha day, and Dharma day, respectively. Only in the southern provinces, where a significant portion of the residents are Muslim, does the Cabinet allow Hari Raya (Eid al-Fitr) and Hari Raya Hajji (Eid al-Adha) to be declared public holidays.⁷⁶

Before the reign of King Rama IV, most royal and state ceremonies were a combination of Hinduism and Animism. Buddhism was later adopted by King Rama IV, who had spent 15 years as a monk prior to his accession to the throne. Since then, Buddhist monks and Hindu Brahmins have jointly conducted the royal and state ceremonies. For example, the Royal Ploughing Ceremony begins with Buddhist prayers after which a Brahmin priest predicts that year's harvest.⁷⁷ Thrice a year, the King or a representative of the King performs a ceremony to change the cloak of the Emerald Buddha statue in the Emerald Buddha Temple. The temple is located within the premises of the Grand Palace and the statue is the national symbol.

70 Ibrahim Syukri, *The Malay Kingdom of Patani*, (Bangkok: Silkworm Books, 1985), 87-88.

71 Section 11, 12 and 16, The Ministry of Education Regulation on Student Uniforms, B.E. 2551 (2008) (Thailand)

72 Section 7(1), Chulalongkorn University Regulation on Student Uniforms, B.E. 2553 (2010) (Thailand)

Section 4B, Thammasat University Regulation on Student Uniforms, B.E. 2549 (2006) (Thailand)

Section 8, Kasetsart University Regulation on Student Uniforms, B.E. 2553 (2010) (Thailand)

73 See The Office of Prime Minister Regulation number 94, B.E. 2553 (2010) (Thailand)

74 Section 122, The Land Traffic Act, B.E. 2522 (1979) (Thailand)

75 The Cabinet Resolution on Public Holidays for the year B.E. 2557 (2014) (Thai.).

76 Pattani, Yala, Narathiwat, and Satun were granted these public holidays by the Cabinet resolution of B.E. 2517 (1974) while Songkla was granted these public holidays in 2013. See the Office of Prime Minister's Regulation on Public Holiday, B.E. 2517. The Cabinet's Resolution 13 August 2013.

77 Jayabhorn, Chatchabhorn. Online interview, 10 April 2014.

It should be noted that while they will never be made public holidays, the festivals of other religions are recognized and sometimes facilitated by the state. Ramadan for Muslims, Navaratri for Hindus, and the Vegetarian festivals for Taoists are all encouraged although some are intended to promote tourism rather than religious freedom. State facilitation includes road closures and royal and state subsidies.

Male civil service employees have long been permitted to take leave from work to enter into monkhood.⁷⁸ The length of the leave is at the discretion of the employee's supervisor. There is no official limit on the number of days allowed. Only recently have female employees received the equivalent of this privilege. A female worker is allowed to take leave to practise Dhamma for one to three months as long as she practises at a location approved by the National Buddhism Office.⁷⁹

A Muslim civil service employee of either gender may take leave to go on the Hajj.⁸⁰

The Labour Protection Act does not require employers in the private sector to provide their employees with such religious leave, but if employers would like to, they must not discriminate between the genders.⁸¹ However, the Act does not prohibit discrimination based on religion. Thus, an employer may legally allow Buddhist employees to take religious leave but not Muslim employees.

e. Appointing clergy

All Buddhist monks must be ordained, according to the Sangha Council regulations. The Council certifies senior monks who can perform ordinations.⁸² The Council or the regional leader can terminate the monkhood of any monk accused of violating the Buddhist discipline.⁸³ Because the Sangha Council receives an agency status, violation of its orders results in imprisonment of no more than one year.⁸⁴

An imam need not be registered as he is not regarded as a priest. But if he wishes to be appointed to a mosque administration committee, he must acquire qualifications in accordance with the Islamic Organization Act and be approved by the Central Islamic Council.⁸⁵ One of the qualifications required is competency in reading and teaching the Koran.⁸⁶

By law, a Christian priest does not need to register, but a missionary from abroad who would like to teach Christianity is required to register with the Department of Religious Affairs. Registration helps the state monitor the activities of the missionary and also results in a more favourable visa status. Many foreign missionaries do not comply, however, and the Department of Religious Affairs does not strictly monitor or enforce the requirement.⁸⁷

f. Teaching and disseminating materials (including missionary activity)

There is no law regulating the teaching and disseminating of religious materials, or the conducting of religious activities. The state runs

78 Section 29 and 30, Office of Prime Minister's Regulation on Civil Servant Leaves, B.E. 2555 (2012) (Thailand)

79 Section 1&2, National Buddhism Office's Guideline on Female Employees Taking Leave to Profess Dhamma, B.E. 2550 (2007) (Thailand)

80 Section 29 and 30, Office of Prime Minister's Regulation on Civil Servant Leaves, B.E. 2555 (2012) (Thailand)

81 Article 15, Labor Protection Act, B.E. 2543 (2000) (Thailand)

82 *Ibid*, section 15d and The Sangha Council's Regulation No. 17, B.E. 2536 (1993) (Thailand)

83 Sec 27, The Buddhism Brotherhood Act. B.E. 2505 (1962) (Thailand)

84 *Ibid*, section 42 and 43.

85 Section 30, The Islamic Administration Act, B.E. 2540 (1997) (Thailand)

86 *Ibid*, section 30 (2) (3) (4).

87 *Supra* note 15, 7.

two public universities dedicated to Buddhist education: Mahamakut Buddhist University and Mahachulalongkorn Buddhist University.⁸⁸ They offer Buddhist and other types of modern education to monks and persons of all religions.

There is also an Islamic College of Thailand, which offers high school education to students of all religions. The course includes the study of Islam and the Arabic language in addition to regular subjects.⁸⁹

g. The right of parents to ensure the religious and moral education of their children

Parents are free to educate their children on religions and morals. However, at school, every student must take a religious studies course, which was designed by the Ministry of Education. Concerns regarding compulsory religious study are discussed in the following chapter on freedom from intolerance and discrimination.

h. Registration

As previously mentioned, there are currently five officially recognized religions, according to the Department of Religious Affairs. This means that only these five religions receive favourable treatment in terms of funding, promotion, and tax exemption. Other unrecognized religions remain free to manifest their beliefs.

i. Communicate with individuals and communities on religious matters at the national and international level

Thailand has no laws or policies prohibiting individuals and organizations from communicating on religious matters within and outside the country.

⁸⁸ The Mahamakut Buddhist University Act, B.E. 2540 (1997) (Thailand) and The Mahachulalongkorn Buddhist University Act, B.E. 2540 (1997) (Thailand)

⁸⁹ See The Islamic College of Thailand, <http://www.islamiccollege.ac.th/islamiccollege/index.php/tmn_curriculum> accessed 9 July 2014.

j. Establish and maintain charitable and humanitarian institutions

The Hajj pilgrimage for Muslims is regulated by the Ministry of Culture, which receives recommendations from the Central Islamic Council of Thailand. Any operators wanting to transport Thai pilgrims to Saudi Arabia must obtain a license from the Hajj Committee of Thailand, which consists of representatives from the Ministry of Culture, the Ministry of Public Health, the security forces, and the Central Islamic Council.⁹⁰ Failure to obtain this license will result in imprisonment or a fine.⁹¹

k. Conscientious Objection

Conscription is provided for in Article 73 of the Constitution of 2007.⁹² It is further regulated by the Military Service Act B.E. 2497 (1954). Every Thai male is required to enlist in the military reserve force at the age of 18, and may be recruited on a demand basis for two years of military service from 21 to 30 years of age.⁹³ Buddhist monks who pass the state Dhamma exam are exempted.⁹⁴ Priests of other religions are exempted too if they are permitted by the provincial governor.⁹⁵ However, the number of non-Buddhist priests who could be exempted is limited to no more than three priests per one mosque and no more than four priests per one Christian church.⁹⁶ With regard to conscientious objection on religious grounds for conscripts, a source notes that “[t]here is no known legal

⁹⁰ Section 5 and 6, The Hajj Promotion Act, B.E. 2524 (1981) (Thailand)

⁹¹ *Ibid*, section 15, 16, 17 and 18.

⁹² Article 73 states that “Every person shall have a duty to serve in armed forces...”

⁹³ “Country reports and updates: Thailand,” *War Resisters International*, 18 November 2009, <http://www.wri-irg.org/programmes/world_survey/country_report/en/Thailand#sdfootnote10anc> accessed 16 December 2014.

⁹⁴ Section 14(1), The Military Service Act, B.E. 2497 (1954) (Thailand)

⁹⁵ *Ibid*, section 14(2).

⁹⁶ Ministerial Regulation Number 7 B.E. 2497 (1954) (Thailand)

provision for conscientious objection.”⁹⁷ There are also no known provisions relating to conscientious objection of professional soldiers and the rules for terminating a service contract prematurely are not known.⁹⁸

3. *Freedom from intolerance and discrimination*

Religious discrimination is not a major concern in Thailand. There is no systematic discrimination against one particular religion. The state provides basic protection to all religions and sects, but Buddhism always receives special attention.

The equality clause in Section 30 of the 2007 Constitution forbids discrimination on the basis of religious beliefs, unless such discrimination eliminates unfair treatment or promotes a more equal exercise of rights.⁹⁹ In other words, affirmative action is allowed by the supreme law of the land. Government officers are able to enjoy their rights and liberties as much as other citizens, unless they are prohibited by law because of politics, efficiency, discipline, or ethics.¹⁰⁰ Thus, persons of all religions are welcome to work for the government. Many non-Buddhists have been appointed to high-ranking positions, such as that of Army Commander and President of a university.¹⁰¹

a. *Contempt of Religions*

The Penal Code provides every religion with protection from harm to their objects of worship, places, and priests. A person who causes damage to a religious building or place of worship shall be

imprisoned from one to seven years or fined from 2,000 to 14,000 THB, or both.¹⁰² If a person disrupts a lawful gathering, worship, or ritual of any religion, he shall be imprisoned for no more than one year or fined no more than 2,000 THB, or both.¹⁰³ A person who dresses or displays a symbol in attempts to deceive the public into believing that he is a priest or a monk of any religion shall face up to one year of imprisonment or a fine of up to 2,000 THB, or both.¹⁰⁴

However, the Penal Code provides protection only to objects, places, and priests. There is no protection for the spiritual leader of any religion, except Buddhism: slander, contempt of, or a threat to the Supreme Patriarch or Sangha Raja results in up to one year imprisonment or up to 20,000 THB fine, or both.¹⁰⁵ A person who causes disgrace to or disunity within the Sangha, or formally recognized Buddhism bodies, shall face the same punishment as a person who is found to be in contempt of the Supreme Patriarch.¹⁰⁶ Prosecution based on these charges is uncommon. Most convictions are of cases of defrocked monks, who insist on wearing the saffron robe, thereby deceiving the unsuspecting public into believing they are legitimate monks.¹⁰⁷

Contempt or perceived contempt of Buddhism, especially of the image of the Buddha, is not tolerated in Thailand. The Ministry of Culture warns foreign visitors to learn about Thai culture and to be respectful of images and statues of the Buddha. Visitors should not climb on the statue of the Buddha, nor should they pose inappropriately in photos with statues of the Buddha. Visitors are also requested not to buy the image of the Buddha for purposes other than for worship. The image of

97 “Country reports and updates: Thailand,” citing Eide, A., C. Mubanga-Chipoya 1983. Conscientious objection to military service, report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Subcommission of Discrimination and Protection of Minorities. United Nations, New York.

98 *Ibid.*

99 Article 30, Thai Constitution, B.E. 2550 (2007) (Thailand)

100 *Ibid.*, article 31.

101 General Sonthi Boonyaratanaklin and Prof. Dr. Somkit Lertpaitoon respectively.

102 Section 206, the Penal Code, B.E. 2499 (1956) (Thailand)

103 *Ibid.*, section 207.

104 *Ibid.*, section 208.

105 Section 44B, the Buddhist Brotherhood Act, B.E. 2505 (1962) (Thailand)

106 Section 44C, the Buddhist Brotherhood Act, B.E. 2505 (1962) (Thailand)

107 See Supreme Court Judgement No. 4499/2539, 1798/2542.

the Buddha should not be displayed on commercial products, such as sweets, drinks, and especially alcoholic drinks, shoes, or swimming suits.¹⁰⁸ Although not entirely prohibited, permission from the Department of Fine Arts is required should one wish to export or import a Buddha statue.¹⁰⁹ If the Buddha statue is considered an antique, an importer or exporter must clarify the purpose of his action in order to obtain a permit or risk imprisonment of up to seven years or a fine of no more than 700,000 THB.¹¹⁰

Such intolerance can exceed acceptable boundaries. The Ministry of Culture will immediately condemn any allegedly inappropriate use of the Buddha image, even if it occurs outside of Thailand.¹¹¹ The interpretation of what constitutes inappropriate use is very broad, and ranges from using the image in a bar to printing it on t-shirts to exhibiting it in an art exhibition.¹¹²

Intolerance can also be observed in the use of censorship laws to limit the interpretation of religious matters. The Ministry of Culture once told the director of the movie, *Syndrome and a Century*, to delete scenes that the Ministry claimed would create negative perceptions of Buddhism. The scenes show a monk playing a guitar and a monk playing with an RC aircraft. The movie had won the Best Editor award at the Hong Kong International Film Festival and the Lotus du Meilleur Film-Grand

108 Ministry of Culture, *The Do's and Don'ts According to Thai Culture*, <http://webhost.m-culture.go.th/culture01/photonews/photonews-detail.php?photoneWSCategory_id=1&photoneWS_id=17&lang=th> accessed 28 June 2014.

109 The Custom Department, Regulation on Travel to and from the Kingdom of Thailand, <<http://internet1.customs.go.th/ext/Traveller/TravellerInfo.jsp#1>> accessed 31 October 2014.

110 Section 22 and 38, The Antique Act, B.E. 2504 (1961) (Thailand); Section 6, The Ministry of Education Ministerial Regulation Number 5 B.E. 2539 (1996) (Thailand).

111 dpa. 'Thais protest German Buddha 'art''. (2 July 2013): <<http://www.bangkokpost.com/most-recent/357980/thais-protest-buddha-statue-in-munich/>> accessed 15 May 2014.

112 For example, see <<http://talk.mthai.com/topic/18758>> and <<http://www.thairath.co.th/content/edu/321867>> accessed 18 June 2014.

Prix award at the 9th Deauville Asian Film Festival in France. The director refused to cut the scenes and was denied a permit for a local release.¹¹³

b. Religious Study

The most obvious form of religious discrimination is perpetuated through the state-mandated school curriculum, which all schools have to comply with. In the latest curriculum, religion is part of the Social, Religion, and Culture study cluster of requirements. The objective of this cluster is to promote harmonious, peaceful living in Thai and global societies, good citizenship, faith in religious teaching, the value of natural resources and the environment, and Thai patriotism.¹¹⁴ Students must be able to satisfy two criteria. First, they have to correctly understand the history, importance, and teachings of popular religions in Thailand, in particular Buddhism, to be able to promote harmonious living in society. Second, they must profess to be a good follower of and promote Buddhism, or a religion of their choice.¹¹⁵

The curriculum prescribes detailed standards and guidelines for teaching Buddhism. The course starts with the fundamentals at the elementary level before becoming more advanced. Regardless of their personal beliefs, students are expected to learn Buddhist teachings, to appreciate the role of Buddhism in promoting better understanding between neighbouring nations, and in creating civilization in and bringing peace to the world community.¹¹⁶ Students must also be able to pray, and to meditate at levels that range from that of beginners to intermediate.¹¹⁷

113 Kong Rithdee, 'Thai Director Cancels Film's Local Release,' *Bangkok Post*, 2006, <<http://celinejulie.blogspot.com/2007/04/syndromes-and-century-is-censored-in.html>> accessed 15 June 2014.

114 The Ministry of Education, The Basic Education Core Curriculum, B.E. 2551 (2008), p. 151. (Thailand)

115 *Ibid.*

116 *Ibid.*, 155-164.

117 *Ibid.*, 165-166.

Thus, although the subject is titled Religious Studies, it is a *de facto* course in Buddhism. The subject aims more to indoctrinate students, both Buddhists and non-Buddhists, with Buddhist teachings than to examine the many religions present in Thai society in a neutral manner.

Nonetheless, for those who wish to study Islam, the Ministry of Education has collaborated with Islamic experts and prepared the Islamic Education Core Curriculum B.E. 2551. It is an addition to the existing Basic Education Core Curriculum for schools that decide to provide Islamic education.¹¹⁸ It teaches the Koran, the history of Islam, and Arabic or Bahasa.¹¹⁹

The Ministry of Education also officially incorporates a dhamma course into its operations. It runs the project, “Rong Rien Nai Faan” or Dream School. Principally, it acts as a lab, experimenting with new methods of teaching to improve the quality of Thai education.¹²⁰ The Ministry requires teachers and students of the Dream School to attend a dhamma course for five days.¹²¹ Recently, the Ministry made a controversial decision to sign a memorandum of understanding appointing the Dhammagaya sect to instruct the dhamma course.¹²² The sect is well-known for its deep connection to politicians and its extreme wealth. It has been accused of radically interpreting Buddhist teaching and of violations

of law. The decision led to protests by Buddhist advocates and intellectuals.¹²³ The signing of the memorandum was postponed but Dhammagaya is still teaching these courses.¹²⁴

It is also common practice for government agencies to offer dhamma courses. A course includes adhering to *sila* or precepts that require refraining from certain behaviours, such as having a meal after noon, killing, stealing, and swearing, meditation in many forms, and praying. The course is usually held in a Wat or dhamma center.

One branch of government that is heavily involved in this activity is the judiciary. Incoming judges in the Court of Justice are required to attend a course, regardless of their personal religion or belief.¹²⁵ The course is believed to strengthen new recruits’ moral standards and improve their behaviour. Such courses are also incorporated into a training program for mid-career and advanced-career judges.¹²⁶ In addition to the dhamma course, the Court of Justice sometimes arranges pilgrimages to India and Nepal to visit the places where the Buddha was born, attained enlightenment, gave the first sermon, and departed, as well as to ordain their personnel into monkhood.¹²⁷

118 *Ibid.*

119 The Ministry of Education, The Islamic Education Core Curriculum, B.E. 2551 (2008), p. 9 (Thailand).

120 The Office of Basic Education Commission, *หนึ่งทศวรรษ โรงเรียนในฝัน (A Decade of Dream School)*, 7 September 2013, p 7-8 (2013).

121 See the Office of Basic Education Commission, การพัฒนาคุณธรรมนำวิชาการ โครงการสัมมนาเชิงปฏิบัติการธรรมโรงเรียนในฝัน (Virtues before Knowledge: Dhamma Practice Seminar for the Dream School Project), 15 July 2013.

122 Matichon Online, ปัญญาชน-เอ็นจีโอจี้มาร์คฯระงับควนลงนามฯธรรมกาย-สพฐ.» ให่ทุนพันล.อ้างอบรมนร.-ครู10.7ล้านคน. (Intellectuals, NGOs asked PM to halt signing MOU with Dhammagaya, Scholarship for Training 10.7 Millions Students and Teachers)’ Matichon online (10 May 2010): 57–61.

<http://www.matichon.co.th/news_detail.php?newsid=1273395040&grpid=10&catid=19/> accessed 15 May 2014.

123 ASTV Manager Daily, *จับพริฐMOU งบพันล้านบักขรก.สู้ “วัดธรรมกาย” (Irregularities in Billions THB MOU-Senior Government Officers Defended Dhammagaya).* ASTV manager (10 May 2010): <<http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=9530000063917>> accessed 15 May 2014.

124 *Ibid* and Siamrath Newspaper, ครูอุบลฯยืนหนังสือไม่ขอเข้าอบรมจริยธรรมที่ทางกระทรวงศึกษาธิการจัดให้ (Ubol Teachers Say No to Dhammagaya Training) *Kapook* (4 September 2013): <<http://education.kapook.com/view70396.html>> accessed 14 May 2014.

125 Judicial Training Institute, Operational Plan on Training and Developing Judicial Personnel for the Fiscal Year 2014, p 7.

126 *Ibid.*

127 Office of the Commission for Judicial Service, Title of Article, (2011) Volume 6 (Issue 2), *Court of Justice Newsletter*.

4. Right of vulnerable groups to freedom of religion and belief

a. Women

There is concern over the discrimination against female Buddhist monks and nuns.¹²⁸ Women are great supporters of Buddhism,¹²⁹ but their right to enjoy all that their religion has to offer is surprisingly limited. They can make donations and attend Buddhist rituals, but because of their gender, they are not allowed to be ordained as monks, an honour that is regarded as the highest form of merit in Buddhism.

Traditionally, the Buddha allowed men to enter monkhood as Bikkhu (male monk) and women as Bhikkhuni (female monk). However, in Thailand, there has never been a female monk—until recently. A woman can become a nun, wear an all-white robe, shave her head, and accept the ten *sila* (precepts). A nun, however, has a much lower social status than a male monk and is not regarded as a priest, and is hence offered less protection and privilege under the law.¹³⁰ Nuns do not receive tax exemption and free public transport privileges as male monks do.¹³¹ Female government officials cannot take leave to be ordained as a nun.¹³² Unlike male priests, nuns are not protected by criminal law from contempt,

128 Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined fourth and fifth periodic report of States Parties, 2006, Thailand. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/267/79/IMG/N9726779.pdf?OpenElement>> accessed 15 June 2014.

129 Linda Peach, “Sex or Sangha?: Non-normative Gender Roles for Women in Thai Law and Religion”, in Amanda Whiting and Carolyn Evans (ed.), *Mixed Blessings: Laws, Religions, and Women’s Rights in the Asia-Pacific Region*, (Leiden: Brill Academic Publishers, 2006), 32.

130 *Ibid*, 53-54.

131 Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined fourth and fifth periodic report of States Parties, 2006, Thailand. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/267/79/IMG/N9726779.pdf?OpenElement>> accessed 15 June 2014.

132 *Ibid*.

do not receive funding from the government, and have no right to vote.¹³³ This discrimination makes becoming a nun unfavourable for women who wish to practice Buddhism.

In 1959, a Thai lady, Bhikkuni Vorami Kabilsingh, decided to become a female monk. She was ordained by a group of female monks in Sri Lanka before returning to Thailand. The Sangha Council, which was and remains all-male, refused to acknowledge her ordination.¹³⁴ Since then, there have been more women entering into monkhood including Bhikkuni Vorami Kabilsingh’s daughter, Chatsumarn Kabilsingh. None of them are recognized by the Council despite a recommendation from the Senate Committee on Female Affairs.¹³⁵ The Council refuses to recognize the legitimacy of the body of female monks in Sri Lanka because the line of succession from the age of the Buddha was allegedly lost. Since the ordination of a female monk requires the presence of both male and female monks, a broken line of succession means the possibility of officially recognised female monkhood has become extinct. The Council claims that the group has no legitimacy to ordain a woman.¹³⁶ Thus, the Council avoided rejecting the idea of female monks *per se*. It based its rejection on technicality issue.

Without acceptance from the Sangha Council, female monks cannot attend formal ceremonies nor receive aid from the government. However, there have been no attempts to prosecute them, and they are still allowed to practice within their group.¹³⁷

133 *Ibid*.

134 *Supra* note 129, 55.

135 *Ibid*, 56.

136 Read arguments and counterarguments in Bhikkhuni Dhammananda, *Bhikkhuni: The Reflection of Gender in Thai Society*, Virada Somswadi (eds) (Chiang Mai: Chiang Mai University, 2004), 54-55.

137 See Thairath Online. หลวงแม่ธีรมานันทายันไทยบวชภิกษุณีได้ 58. (Female Monks Insists They Can Ordain Female Monks by 2015) *Thairath Online* (26 Nov 2014): <<http://www.thairath.co.th/content/385123>> accessed 15 May 2014

b. Children

Children are free to choose or change their religions. There are no laws or policies limiting their religious freedom. In the southernmost part of Thailand, however, the lack of religious teachers and proper curriculum (details of which are discussed in the section on Islamic Schools) makes it difficult for children to fully enjoy religious freedom.

c. Migrant workers

Thai society is very diverse and waves of immigration have seen various ethnic groups joining the society. Most migrant workers in Thailand now are from Myanmar, Cambodia, and Laos.¹³⁸ Most of them are Buddhists. The mainstream sect of Buddhism in Thailand has never been of the purest form because it was combined with local beliefs regarding spirits and supra-natural beings as well as beliefs from other sects and even other religions. Thus migrant workers assimilate into the community without much difficulty. Migrant workers are free to practise in accordance to their beliefs at a Wat or other places of worship.

d. Persons deprived of their liberty

The Correction Department conforms to the Standard Minimum Rules for the Treatment of Prisoners: regular religious services, pastoral visits, and other practices as far as practicable.¹³⁹ Buddhist inmates must pray every night, using the verse provided by the Correction Department.¹⁴⁰ Inmates who follow other religions have separate regulations

138 See the Office of Foreign Workers Administration Report, 2014. <<http://wp.doe.go.th/wp/images/statistic/labor/57/se0657.pdf>> accessed 9 July 2014.

139 Section 41, The Standard Minimum Rules for the Treatment of Prisoners, 1977 (United Nations). https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf. Accessed 9 July 2014.

140 The Correction Department Regulation, 23, B.E. 2483 (1940) (Thailand) <<http://www.correct.go.th/lawcorrects/lawfile/12012.pdf>> accessed 9 July 2014.

for their prayers.¹⁴¹ Each prison has to provide the services of one Buddhist chaplain and allow regular visits by a Christian priest and a Muslim imam.¹⁴²

e. Refugees

The recent controversy regarding the Rohingya is over the Navy's abusive treatment of these refugees, but not over their religious freedom. Further details are given in the section below.

f. Southern Thai-Muslim Minority

Muslims reside in every part of the country and suffer several forms of discrimination, but the Muslim community in southern Thailand deserves particular attention as a vulnerable group. The southern Thai-Muslim community retains a strong Malay identity, which distinguishes them from other citizens of the country. They speak Yavee, a language that is more similar to Standard Malay (Bahasa Malaysia) than to Thai. The region also has a history of forced assimilation and resistance. The community is suspicious of the policies of the Thai government as they perceive them as attempts to abolish their traditional Islamic customs. The outcome of these differences is on-going violence, which shall be discussed in the following chapter. The government has tried to address these concerns in the following ways:

(i) Sharia Law

The Civil and Commercial Code governs marriage, family, and wills and succession proceedings, except in the four southern provinces of Pattani, Narathiwat, Yala, and Satun where these proceedings are governed by Sharia law—a result of one of the earliest attempts at compromise with the southern

141 Chartrapee Kanthason. Online interview, 2 April 2014.

142 *Ibid.*

Thai-Muslim community.¹⁴³ In a dispute in which both parties are Muslim, the 2489 B.E. Act allows Sharia law to be applied instead of the Civil and Commercial Code.¹⁴⁴ A Datoh Yuttitham (*qadi*), or certified Muslim cleric, sits in a trial together with judges in the Court of First Instance.¹⁴⁵ His role is that of an expert who adjudicates disputes over the interpretation of Sharia law. The Datoh or *qadi* is appointed by the Judicial Commission of the Court of Justice.¹⁴⁶

The *qadi* has a role not only in the Court of First Instance, but also in the Juvenile and Family courts, which belong to a specialized branch of the Court of First Instance that has jurisdiction over certain family issues. To allow more southern Muslims to avail themselves of Sharia law, the Judicial Commission of the Court of Justice appointed a *qadi* to each of the Juvenile and Family Courts in all four of the southern provinces in October 2012.¹⁴⁷

(ii) Islamic School

The Universal Periodic Review of Thailand's human rights situation found that the religious education of children in the southern provinces needs to be improved.¹⁴⁸ Parents in the south are suspicious of the national curriculum provided by the Thai government. They accuse mainstream public schools of trying to divert their children to a non-Islamic way of life by teaching them the Thai language and

Buddhism.¹⁴⁹ These parents choose to send their children to Islamic schools, which teach the Koran and the Arabic language. In doing so, however, they flout the Ministry of Education's requirement that children have 12 years of compulsory education. The Islamic schools are said to often fail to equip students with skills necessary for the job market, such as basic competency in Thai and English.¹⁵⁰

The Thai authorities are worried that these schools might become training grounds for insurgents, and have forcibly closed some Islamic schools.¹⁵¹ The state tries to regulate Islamic schools, requiring that they compromise by offering the conventional curriculum and certifying the schools which are willing to do so.

Currently, there are four types of Islamic schools. The traditional pondok school has no planned curriculum. Students of all ages live within the residential compound belonging to an Imam, or teacher, and can leave whenever they want to.¹⁵² A pondok school teaches the Koran and Arabic. The second type of school is an Islamic private school that is registered with the government and which may offer non-Koranic curriculum.¹⁵³ Graduates from these two types of school may pursue higher education if they take and pass the state comparability examination.¹⁵⁴

The third type of school is the most formalized: a private school that incorporates Islamic studies into the national curriculum. As a result, it is certified and subsidized by the state. Classes are taught in Thai. Students can automatically further their education upon graduation.¹⁵⁵

143 Prasobsook Boonyadech, ทำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ครอบครัว (Family Law), (Bangkok: Winyuchon, 2004), 20-21.

144 Section 3, Application of Islamic Law in Pattani, Narathiwat, Yala, and Satun Act, B.E. 2489 (1946) (Thailand)

145 *Ibid*, section 4.

146 Section 6 and 52, The Court of Justice Personnel Administration Act, B.E. 2543 (2000) (Thailand)

147 The Minutes of the Meeting of Court of Justice Commission 20/2555, 2012.

148 National Report Submitted in Accordance with Paragraph 15(A) of the Annex to the Human Rights Council Resolution 5/1, 2011, Ministry of Foreign Affairs, 12.

149 The Contested Corner of Asia: Subnational Conflict and International Development Assistance, the Case of Thailand, Adam Burke & Pauline Tweedie & Ora-on Poocharoen, (The Asia Foundation, 2013), 21.

150 *Ibid*.

151 *Ibid*. 22

152 *Supra* note 15, 4.

153 *Ibid*.

154 *Ibid*.

155 *Ibid*, 3.

The last type of school is a tadika school, or a day school, which offers Islamic classes for young children from Grades One to Six. It provides after-school courses, which are often held in a mosque.¹⁵⁶

Permitting Islamic schools and utilising Sharia law are demonstrations of how the Thai government has tried to facilitate the religious beliefs of the southern Muslim community. However, there are many other religious issues to be resolved, one of which is whether to allow Friday to be a holiday as it is the day when all Muslims are expected to pray at the mosque, and thus not considered a business day. The southern Muslims demand that Friday be a holiday, which departs from the norm in the rest of the country where Saturday and Sunday are holidays.

C. Redress Mechanisms and Interpretation of Policies

There is no agency directly in charge of redressing violations of freedom of religion. The National Buddhism Office and the Department of Religious Affairs facilitate but provide no means of redress. Nonetheless, there are several constitutional mechanisms that redress the violations of the basic rights and liberties that are protected by the Constitution. These mechanisms provide remedies only for violations by public agencies. Apart from the Court of Justice, there is no agency in charge of redressing violations by private parties.

Although most of these constitutional mechanisms have been in operation since 1997, it appears that there has never been any complaint regarding the violation of the freedom of religion. Nonetheless, the executive government has contributed to interpretation or application of policy in the past. The Council of State, the legal advisor of the Cabinet, had stated in an Opinion that, in cases where a patient is still conscious and the illness is not life threatening, a doctor has to respect the

wishes of a patient who is a member of Jehovah's Witnesses Church to reject blood transfusion, which is contrary to his/her religious belief. However, if that illness is life threatening and the patient is unconscious, the doctor has the duty to save his/her life, including transfusing blood, or face criminal charges for manslaughter.¹⁵⁷

1. Judiciary

a. The Constitutional Court

The Constitutional Court was established by the 1997 Constitution. Its main duty is to review the constitutionality of legislative acts so the object for review must be a draft bill or a statute. There are four channels via which to petition the court to review the constitutionality of a legislative act.

First, the initial court shall submit a petition to the Constitutional Court if a party or the court itself questions the constitutionality of the statute that applies to the case during a trial. The case shall continue but the verdict will be withheld, pending the decision of the Constitutional Court.¹⁵⁸

Second, a person may petition the Constitutional Court directly, should he believe that his right or liberty was violated by any provisions of a statute.¹⁵⁹ However, a person must have exhausted all other remedies before being able to directly petition the Court, so this channel, which was introduced in the 2007 Constitution, is not as convenient as it seems.

Third, a person may submit a complaint to the Office of the Ombudsman. If it agrees that the complaint concerns the constitutionality of the law, it shall refer the case to the Constitutional Court.¹⁶⁰

The fourth channel is to submit a petition to the National Human Rights Commission. If the

156 *Ibid*, 4.

157 The Council of State Opinion No. 250/2546 (2003).

158 Article 211, Thai Constitution, B.E. 2550 (2007) (Thailand).

159 *Ibid*, article 212.

160 *Ibid*, article 245(1).

Commission agrees that there was a violation of the human rights guaranteed by the Constitution, it may refer the case to the Constitutional Court.¹⁶¹

b. The Administrative Court

The Administrative Court was established by the 1997 Constitution. There are nine Courts of First Instance and one Supreme Administrative Court. The Administrative Court reviews the constitutionality and legality of an administrative act. It can review the constitutionality and legality of an agency's adjudication, rules, and physical actions.¹⁶² It may review an agency's omission of duties as well.¹⁶³ The court may remand or order the agency to act or pay damages to a claimant.¹⁶⁴ An individual might file a lawsuit himself or ask the Office of the Ombudsman or the National Human Rights Commission to act on his behalf.¹⁶⁵

2. Independent Bodies

These independent agencies are established by the Constitution, and their appointments to office and budgets are not under the executive control.¹⁶⁶ Such independence is expected to result in greater neutrality in these agencies' operations.¹⁶⁷

a. The Office of the Ombudsman

The Office of the Ombudsman hears complaints regarding agency operations. It need not wait for

a complaint from a person before launching an investigation if it believes that a matter is detrimental to public interest.¹⁶⁸ Once a year, the Office of the Ombudsman publishes its annual report in which it makes recommendations to the Cabinet and the National Assembly.¹⁶⁹

The Ombudsman's jurisdiction is more general and broader than the judiciary's. It also plays a more active role as it can initiate an investigation without being accused of partiality. However, it has limited power as it cannot sanction an agency that chooses not to comply. The Ombudsman can only act as a facilitator, signalling concern from the people to the agency. Using the name-and-shame technique, it can notify the National Assembly and the Cabinet to take further action. Or it may refer a case to the Constitutional Court or the Administrative Court if it believes the complaint falls within their jurisdictions.

b. The National Human Rights Commission

The National Human Rights Commission is an independent agency consisting of seven experts in human rights protection. The experts are academics and activists who have been granted the power to investigate violations or omissions of human rights, or non-compliance with international obligations that Thailand is party to.¹⁷⁰ Similar to the Office of the Ombudsman, the National Human Rights Commission has broad jurisdiction but limited power. It may make a recommendation to the National Assembly, petition the Constitutional Court or Administrative Court, or petition the Court of Justice on behalf of the injured party.¹⁷¹

¹⁶¹ *Ibid*, article 257(2).

¹⁶² Section 9 (1), Administrative Court Procedure Act, B.E. 2542 (1999) (Thailand)

¹⁶³ *Ibid*, section 9 (2).

¹⁶⁴ *Ibid*, section 72.

¹⁶⁵ Section 42, Administrative Court Procedure Act, B.E. 2542 (1999) (Thailand) and Article 245 (2) and 257 (3), Thai Constitution, B.E. 2550 (2007) (Thailand)

¹⁶⁶ Borwornsak Uwanon, *คำอธิบายกฎหมายรัฐธรรมนูญ (Constitutional Law)* (Bangkok: Thai barrister, 2013) 42-44.

¹⁶⁷ *Ibid*.

¹⁶⁸ Article 244 (1) and 244 para 2, Thai Constitution, B.E. 2550 (2007) (Thailand)

¹⁶⁹ *Ibid*, article 244 (4).

¹⁷⁰ *Ibid*, article 256.

¹⁷¹ *Ibid*, article 257.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

There have been no significant changes to the statutes. However, the coup d'état on 22 May 2014 brought an end to the Constitution, and hence the legal guarantee of the freedom of religion. In 2006, after the 1997 Constitution was abolished, the interim Constitution was implemented quickly to guarantee that the rights and liberties of the people, according to democratic principles and international obligations, would be protected.¹⁷² The 2014 Interim Charter followed the norm by providing the same protection of the freedom in article 4.¹⁷³

B. Significant Changes in State Enforcement

State enforcement of laws and policies on religions remain unchanged.

C. Significant Changes in Religious Claims (by Non-State Actors)

Recently, Buddhist activists have become more involved in shaping the state's public policies. In 2005, a network of Buddhists led by General Chamlong Srimuang, a well-known member of the Santi-Asoka sect, pressured the Stock Exchange of Thailand not to list Thai Beverage PCL on the stock market. The company is one of the biggest producers of alcoholic drinks in Thailand. By going public, Chamlong argued, the company would be incentivized to promote drinking in order to boost profit for its shareholders. Refraining from drinking alcohol is one of the most basic *sila* or precepts for Buddhists. After a year-long protest by the group, the company decided to list on the Singapore

Exchange instead.¹⁷⁴

Not satisfied with the existing preferential treatment of Buddhism and Buddhists, extreme Buddhists proposed a bill in 2014 to establish a Buddhist Bank and a bill on Buddhism Protection, reflecting their intolerance and lack of understanding of other religions.¹⁷⁵

The Buddhist Bank was proposed as a state enterprise that provides special loans to temples and Buddhist organizations for religious purposes. All its executives must be Buddhists. It is to have representatives from the Sangha Council and the National Buddhism Office.¹⁷⁶ The Ministry of Finance opposed the plan, pointing out that the project was not economically feasible.¹⁷⁷ Many senior abbots and followers have vowed to fight on until the bill is passed.¹⁷⁸

The Buddhism Protection Bill's two goals are to promote and protect Buddhism. The bill proposes setting up a fund to provide financial aid to all Buddhist activities. The bill also proposes imposing stricter criminal sanctions on any attempts to

174 'เบียร์ช้าง»รับเทียบเชิญเข้าตลาดหุ้นสิงคโปร์.' (ThaiBev Invited to Singapore Exchange) *ASTV Messenger online*, (3 January 2006) <<http://www.manager.co.th/iBizchannel/ViewNews.aspx?NewsID=9490000000199>> accessed 15 May 2014 and Ukrist Pathmanand, 'A Different Coup Detat' [2007] 38 *Journal of Contemporary Asia* 124, 134-135.

175 In 2002, the government established the Islamic Bank as a state-owned enterprise to assist Thai-Muslims whose financial transactions must be in accordance with Islamic principles. The existence of the Islamic Bank might have worried some groups of Buddhists. See the Islamic Bank of Thailand Act B.E. 2545 (2002) (Thailand).

176 The Sangha Council Resolution, No 12/2554, 29 April 2011 (Thailand).

177 Tanet Nunmun. 'กฎหมายสะกดธนาคารพุทธศาสนาจะหัก' (Buddhist Bank Law Halted). *Post today Newspaper*, (18 October 2013). <<http://www.posttoday.com/>> accessed 15 May 2014.

178 'พระสืบทอด !โพสต์พวงพริกด่านธ.พุทธเจ้าคุณประสารยันเดินหน้าไม่ถอยแน่.' (Angry Monks, Posting a Funeral Wreath for Opponents of Buddhist Bank, Abbott Prasarn Won't Back Off), Wat Thai Las Vegas, (17 October 2013). <<http://www.alittlebuddha.com/News%202013/October2013/029%20October%202013.html>> accessed 15 May 2014

172 Article 3, The Interim Constitution, B.E. 2549 (2006) (Thailand)

173 Article 4, The Interim Charter B.E. 2557 (2014) (Thailand)

defame the religion, monks, nuns, or novices.¹⁷⁹ The bill is pending consideration in Parliament.

Amid the latest political crisis, the main People's Democratic Reform Committee branch has also emphasized the need to find a person of good moral standing to run the country.¹⁸⁰ Its rhetoric reflects the growing demand among mainstream Buddhists for governance to consider religious factors. One branch of PDRC, led by the radical and outspoken monk, Abbott Buddha Isara (The Independent Buddha), went so far as to propose a bill to establish a Moral Council. While it is proposed that the council have six representatives from each major religion in Thailand, its goals are focused on promoting Buddhism by imposing further education, indoctrination, and training on students and government officials. The bill proposes that a person who fails a moral standard test be demoted or reprimanded.¹⁸¹

D. Significant Events of State Persecution of Religious Groups

There was a report of the Thai police arresting *Fa Lun Gong* members for trespassing and causing nuisance while distributing leaflets in 2011.¹⁸² The

179 See the draft bill at mira (pseudonym), *เปิดร่างพระราชบัญญัติอุปถัมภ์และคุ้มครองพระพุทธศาสนา* (Bill on Promotion and Protection of Buddhism) (20 April 2008) <<http://www.yuwasong.com/webboard/show.php?Category=news&No=14774>> accessed 9 July 2014 and 'แจ้งร่างพ.ร.บ.อุปถัมภ์พุทธออกกฎหมายพิจารณา.' (Buddhism Protection Bill Await Council of State Consideration), *KaoSod Newspaper*, (23 February 2012). <http://www.khaosod.co.th/view_news.php?newsid=TUROaWRXUXdNVEI6TURJMU5RPT0%3D§ionid=TURNd053PT0%3D&day=TWpBeE1pMHdNaTB5TXc9PQ> accessed 9 July 2014.

180 See Merisa Skulsuthavong, 'Suthep's Romantic Tale,' *New Mandala*, (14 February 2014). <http://asiapacific.anu.edu.au/newmandala/2014/02/14/sutheps-romantic-tale/> accessed 15 May 2014 and "A Moral Fight Requires Patience" quoted from Akanat Prompan, PDRC spokesperson on 14 December 2013.

181 See the draft bill at <http://www.alittlebuddha.com/html/Special%20Event/Moral_law.html> accessed 20 June 2014.

182 *Supra* note 15, 4-5.

Ministry of Interior has refused to register *Fa Lun Gong* as an association, but it is still legally allowed to practice in Thailand.¹⁸³ *Fa Lun Gong* tried to challenge the Ministry of Interior's refusal but the case is still pending in the Supreme Administrative Court.¹⁸⁴

E. Significant Events of Non-State Persecution of Religious Groups

There is no report of significant persecution of religious groups by non-state actors. Most of the casualties arising from religious conflict are reported in the following section.

F. Significant Events of Inter-Religious Conflict

Southern Thailand has been known for violently resisting the Thai government since the modernization of the Siam nation-state during the reign of King Rama V. The Siamese government considered the resistance by the southern Thai communities mutiny, but locals regarded their actions as fighting against an invader. Violence subsided in the 1990s due to political compromises, but re-emerged in 2001 when a marine base was raided and guns stolen.¹⁸⁵ The authorities chose to ignore the incident until a full-scale attack broke out in 2004.¹⁸⁶ In the early morning of 4 January 2004, a group of insurgents broke into an army base in Narathiwat, killed four soldiers and escaped with more than 400 assault rifles.¹⁸⁷ Since then, lives of servicemen and civilians have been lost to roadside bombing, target killing, arson, and other forms

183 See 'ฝ่าฟันคำผิดในประเพณี' (Fa Lun Fa Da in Thailand). *Falun Thai*. <<http://www.falunthai.org/falunthai/file.html>> accessed 15 May 2014

184 *Supra* note 44, 4.

185 *Supra* note 30, 82-83.

186 *Supra* note 29, 3.

187 *Report of Southern Thailand: Insurgency, Not Jihad*, Crisis Group Asia Report No 98, (International Crisis Group 2005), 17.

of violence. The three provinces of Pattani, Yala, Narathiwat and four districts in Songkla province have been declared a “red zone” under martial law and, later, an emergency decree.¹⁸⁸

Counting the number of casualties sparked by insurgents’ attacks is not easy as the motives behind many suspected incidents are inconclusive. Some attacks might actually have arisen from personal conflicts. The official death toll from 4 January 2004 to 3 January 2014 was given as 5,352 while the number of injuries was given as 9,965.¹⁸⁹ The Isara News Agency, an independent news agency, reported 3,705 deaths and 9,076 injuries over the same period.¹⁹⁰

The period of 2005 to 2007 saw the greatest violence with approximately more than 2,000 incidents per year. The number dropped to 1,370 in 2008 and remained stable until 2012 when it rose again. The number of improvised explosive device (IED) attacks corresponded with the trend of overall incidents, which reached their peak between 2006 and 2007. The number went up slightly in 2013. The number of “red villages,” which were regarded by security forces as being under heavy insurgent influence, dropped from 319 in 2004 to 136 in 2014.¹⁹¹

From 2004 to 2012, the Deep South Watch reported that 2,996 local Muslims and 1,951 local Buddhists

were killed.¹⁹² According to an official report from the Internal Security Operational Command (ISOC), up until 31 December 2013, there were 2,431 Buddhist deaths in comparison to 3,461 Muslims deaths, excluding security personnel.¹⁹³ There were 6,694 injured Buddhists compared to 3,761 injured Muslims.¹⁹⁴ Most of them had been attacked by Muslim insurgents.

A caveat should be added that the motivation for the southern conflict is unclear as no individuals or organizations have claimed responsibility for the violence. Many people agree that although jihadist language is used, it is as much a conflict between Malay and Thai identities as it is a conflict between Buddhism and Islam.¹⁹⁵ It has been suggested that one way to resolve the conflict is for the government to acknowledge the religious and cultural differences in the Deep South.¹⁹⁶

Freedom of religion was not limited on purpose, but happened as part of the collateral damage. Religious leaders were murdered. Some of these murders were attributed to government attempts at terrorizing locals, but other murders occurred because the victims had tried to promote peace and reconciliation. For example, Ustaz Jacob Raimanee was killed during Ramadan in 2013. His murder was seen as an attempt to disrupt the on-going talks between the BRN-C leadership and the Government, as he was the Imam of the prestigious Pattani

188 See ‘กรม.มิตตออาชพ.ร.ก.ถูกเงินในพื้นที่3 จังหวัดชายแดนภาคใต้ ออกไปอีก3 เดือน’ (Cabinet Extended Emergency Law in the South for Three Months). *National News Bureau of Thailand*, (11 May 2014). <http://thainews.prd.go.th/centerweb/News/NewsDetail?NT01_NewsID=WNPOL5703110020019> accessed 15 May 2014

189 ‘กองอำนวยการรักษาความมั่นคงภายในภาค4ส่วนหน้าชี้แจงครบรอบ๑๐ปี สถานการณ์ความรุนแรงชายแดนใต้’ (ISOC brief on a Decade of Southern Violence). *South peace*, (January 2003) <<http://www.southpeace.go.th/th/News/explain/new-570103-2.html>> accessed 15 May 2014

190 ‘เจาะสถิติ10 ด้านในวาระ10 ปีไฟใต้10 ปีปัดปืน!’ (A Decade after Arms Raid: Facts and Figures). *Isra news agency*, (7 January 2014). <<http://www.isranews.org/south-news/stat-history/item/26389-10subjects.html>> accessed 15 May 2014

191 *Ibid.*

192 *Southern Violence January 2004 to February 2012*, the Deep South Watch Center for Conflict Studies and Cultural Diversity, Prince of Songkla University. <http://www.deepsouthwatch.org/sites/default/files/southern_violence_from_jan2004_to_feb2012english.pdf> accessed 18 June 2014.

193 ‘ก.รมน.ภาค4 สน.สรุปยอดความสูญเสียจชค.รัฐเสียดนท.กว่า5 พันเจ็ดหมื่นหมื่น’ (ISOC Tolls: More than 5,000 Deaths and Ten Thousands Injured). *ASTV Manager Online*, (2 January 2014). <<http://www.manager.co.th/South/ViewNews.aspx?NewsID=9570000000657>> accessed 15 May 2014

194 *Ibid.*

195 See Joseph Chinyong Liow, *Muslim Resistance in Southern Thailand and Southern Philippines: religion, ideology, and politics* (Washington, D.C.: East-West Center, 2006), 25.

196 *Supra* note 32, 89-94.

Central Mosque, and had long been an advocate of the peaceful path of Islam.¹⁹⁷ The security forces also sometimes raid or even shut down pondok and tadika schools because such schools are seen as training grounds for insurgents.¹⁹⁸ Due to ignorance or a lack of proper understanding, the way raids are conducted sometimes violate Islamic customs, for example, by not taking shoes off before entering a mosque or bringing a dog into a mosque.¹⁹⁹ Religious teachers, or ustaz, were apprehended during raids.²⁰⁰

Buddhist attacks on Islam have come to be symbolised by the Krue Sae incident. On 28 April 2004, armed Muslims carried out a series of organized attacks at several security checkpoints. Some of the attackers later escaped into the Krue Sae Mosque, an ancient mosque sacred to the southern Muslims. After a few hours of laying siege to the mosque, the security forces decided to storm the mosque, killing 32 people; it has been claimed that some of those killed were innocent people trapped inside the mosque during the Friday prayer.²⁰¹ Rockets and small arms were used during the raid of the Krue Sae mosque, which the southern Muslims regard as a grave show of contempt. The insurgency has since used the Krue Sae incident in its propaganda to encourage upset Muslim brethren to fight against the Siamese government for the sufferings inflicted during the incident.²⁰²

Since the start of a new round of violence in 2004, southern Buddhists have sometimes been targeted

because of their religion. Buddhists are the minority in the Deep South at only 20% of the population.²⁰³ Monks and temples are seen as symbols of the Siamese invasion so insurgents sometimes deliberately murder monks in a gruesome manner, such as by decapitation. Insurgents attack monks and Buddhists while they make merit or collect alms.²⁰⁴ As a result, many temples have been deserted because monks felt insecure or the Buddhists living nearby no longer visited the temples to make merit.²⁰⁵ As of 16 January 2014, 16 monks have been killed in the conflict.²⁰⁶ The government has set up a special taskforce to guard monks while they beg for food and collect alms in the morning, but even the taskforce has been subjected to shootings and bombings.²⁰⁷ While the death toll for Buddhists is lower than that for Muslims, Buddhists constitute only 20% of the whole population in southern Thailand so the percentage of Buddhist casualties is relatively high.

One scenario that highlights the nature of this conflict is what happens when Buddhist soldiers marry local Muslim girls. Even if the grooms convert to Islam, most of them end up murdered by insurgents.²⁰⁸

203 *Supra* note 32, 26.

204 See 'Four Killed, Five Hurt in Deep South Violence,' *Bangkok Post Newspaper*, 25 January 2014.

205 Somboon Bunrith et al. "การศึกษาผลกระทบต่อการปฏิบัติศาสนกิจของพระภิกษุสามเณรในจังหวัดยะลาปัตตานีและนราธิวาสจากเหตุการณ์ความไม่สงบใน๓จังหวัดชายแดนภาคใต้" (Study on Impact of Southern Violence on Monk's Practice in Yala, Pattani, and Narathiwat). *Mahachulalongkornrajavidyalaya University*, (2013). <http://www.mcu.ac.th/site/articlecontent_desc.php?article_id=1664&articlegroup_id=152> accessed 15 May 2014

206 Fifteen deaths were reported in *supra* note 190 and another monk was murdered in late January.

207 See problem of this security force in *supra* note 29, 100-101 and a report of attacks on the security patrol at *supra* note 204 and at <<http://www.oknation.net/blog/print.php?id=712631>> accessed 20 May 2014.

208 'ทหารมูฮัลลิฟ...ปัญหาใหญ่กองทัพกับเรื่องราวละหว่างรบ' (Converted Soldiers: Love and War). *Isra news*, (11 July 2012). <<http://www.isranews.org/south-news/documentary/item/7616--qq-sp-123277223.html>> accessed 15 May 2015

197 Pakorn Puengnetr. 'Death of Imam Yakob a Blow to Peace-building.' *The Nation Newspaper*, (7 August 2013). <<http://www.nationmultimedia.com/national/Death-of-Imam-Yakob-a-blow-to-peace-building-30212042.html>> accessed 15 May 2014

198 *Supra* note 192, 26 and Waedao Harai. 'Dilapidated school cries out for help.' *Bangkok Post*, (31 August 2012). <<http://www.bangkokpost.com/news/security/310065/dilapidated-school-cries-out-for-help>> accessed 15 May 2014.

199 *Supra* note 32, 30.

200 *Supra* note 192, 32.

201 *Ibid*, and *supra* note 29, 108-109 and 135-142.

202 *Supra* note 29, 109-110.

G. Significant Events of Terrorism and/or Terrorist Threats

The use of Jihadist language, Improvised Explosive Device attacks, and cruel killings might suggest that the southern insurgency is linked to terrorism networks in other countries. This insurgency, however, is widely regarded as a home-grown product that stemmed from a long period of local resentment against the Thai government.²⁰⁹ There is no evidence that the insurgency movement receives aid from foreign terrorists although it may have been inspired by foreign movements and their ideology.²¹⁰

H. Significant Cross-Border Incidents

a. Southern Conflict

The violence in the south of Thailand has never crossed over into Malaysia, but because many southern Muslims hold dual citizenship and have relatives living in Malaysia, they flee across the border.²¹¹ Most Muslim refugees from the southern Thai provinces reside in the northern Malaysian states. Although the Malaysian government does not approve of such movements, Malaysians sympathise with their Muslim brothers from the other side of the border.²¹²

Many well-known leaders of the former Thai separatist movement are residing in Malaysia.²¹³ This has put the Malaysian government in an awkward position.²¹⁴ Once, the Thai government

209 Jayshree Bajoria and Carin Zissis. 'The Muslim Insurgency in Southern Thailand' *Council on Foreign Relations*, (10 September 2008). <<http://www.cfr.org/thailand/muslim-insurgency-southern-thailand/p12531>> accessed 15 May 2014

210 *Supra* note 198, 46.

211 Ian Storey, 'Malaysia's Role in Thailand's Southern Insurgency,' *Terrorism Monitor* 5(5), (2007), <http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=1043&tx_ttnews%5BbackPid%5D=182&no_cache=1#.U5F4JnJ_uSo> accessed 15 May 2014.

212 *Ibid.*

213 *Ibid.*

214 *Supra* note 198, 44.

requested that the Malaysian government deport 131 southern Thai-Muslims who had fled to Malaysia, but the Malaysian government rejected the request because the Thai government could not guarantee their safety. Angered by the Malaysian response, the Thai public has accused Malaysia of secretly supporting the insurgency.²¹⁵ Sometimes, Malaysian flags are displayed at sites of attacks, worsening the ties between the two countries.²¹⁶

There is no evidence that Malaysia is supporting the separatist movement in the Deep South. The Malaysian government has tried to restore peace and stability in the region.²¹⁷ It recently tried to broker a talk between the leader of the BRN-C, Hassan Taib, and the representative of the Thai government.²¹⁸ The outcome does not look promising due to several factors, but Malaysia remains committed to the task.

b. Rohingya Exodus

Since 2012, the violent, inter-religious conflict in Myanmar has resulted in a mass exodus of Rohingya people from the Rakhine state.²¹⁹ Most of them hope to reach Malaysia or Australia, but thousands land on Thai shores instead.²²⁰

215 *Supra* note 211.

216 Sumeth Panpetch. 'Flags Burning Amid Attacks in Thai Deep South,' *The Irrawaddy*, (3 September 2012) <http://www.irrawaddy.org/z_thailand/flags-burnt-amid-attacks-in-thai-deep-south.html> accessed 15 May 2014.

217 *Supra* note 211.

218 See 'ซัมซามิน»มั่นใจBRN ยังร่วมโต๊ะเจรจารับได้ไว้ปัญหาภาคใต้ได้ประโยชน์' (*Sumsamin Believe BRN still Wants Dialogue, Admit Malaysia Benefits from Southern Peace*). *Isra news*, <<http://www.isranews.org/south-news/special-talk/item/27394-zanzamin.html>> accessed 15 May 2014

219 *The Human Rights of Stateless Rohingya in Thailand*, (The Equal Rights Trust and The Institute of Human Rights and Peace Studies, 2014), 3.

220 From October 2012 to February 2013, the Thai government recorded 5,899 Rohingyas but the real number might be much higher. See Amy Sawitta Lefevre. 'After Myanmar violence, almost 6,000 Rohingyas arrive in Thailand.' *Reuters*, (7 February 2013) <<http://www.reuters.com/article/2013/02/07/us-thailand-rohingya-idUSBRE91609W20130207>> accessed 15 May 2014

There is little Thailand can do for these immigrants. Myanmar does not want them back and if Thailand pressures Myanmar to stop the on-going persecution, it could hurt Thailand's investments in Myanmar.²²¹ Neither Malaysia nor Australia will welcome the Rohingya.²²² Most Rohingya in Thailand are thus left stranded in four refugee camps in Songkhla, Ranong, Prachuab Kirikan in the south and Nong Khai in the northeast, and may end up falling victim to the international human trafficking network.²²³

I. Governmental Response

1. Legislative

Three prominent legislative solutions have been enacted in attempts to address the problem of Islamic insurgency in southern Thailand. The first was the passing of emergency laws, reflecting a hard-line approach. The second was to recreate a special administrative body. The third and last solution is to grant the southern provinces more autonomy, which reflects a more compromising approach compared to the first solution.

a. Emergency Laws

The Cabinet had initially declared martial law throughout the Deep South in 2004, granting great power to the army. Later, the Cabinet passed the Emergency Decree B.E. 2548 in place of martial law. The Emergency Decree was later ratified by the Parliament and received statutory status.

Unlike martial law, the Decree allows a civilian agency to be in charge of the situation—not the

army.²²⁴ An agent can issue a curfew that would seriously restrict the rights and liberties of the citizens in the areas where the Emergency Decree is in effect.²²⁵ A curfew may include a ban on travelling, a ban on communication, or an evacuation of the area.

The most troubling clause of the Decree is one that allows the agent to arrest a suspect and detain him for a period of no more than seven days. The arrest can be extended by the court but shall not exceed 30 days. After 30 days, normal criminal procedural law will apply.²²⁶ Under the Decree, the standard of proof required to obtain a writ of arrest is more lenient. An agent is also exempted from civil and criminal liability if he acts in good faith. However, the injured party is able to file for damages from the acting agency.²²⁷

After the coup d'état in 2006, the National Assembly passed another special law, the Internal Security Act B.E. 2551 (2008), which is deemed to be less draconian than the Emergency Decree.²²⁸ All three laws are now applied to different parts of the Deep South region, depending on the seriousness of threat perceived in the area.

These special legislations allow the abuse of power, as there is insufficient accountability.²²⁹ The laws were much criticized for leading to the violation of human rights and worsening public trust in agencies,²³⁰ but they are still in effect in most areas of the Deep South.

221 *Thailand's Clandestine Rohingya Policy Uncovered*, Jason Szep & Andrew R.C. Marshall, (Reuters, 2013), 5.

222 *Ibid.*

223 *Ibid.*, 6-8 and see Human Rights watch, 'Thailand: Release and Protect Rohingya 'Boat People', *Human Right Watch*, 20 August 2013, <<http://www.hrw.org/news/2013/08/20/thailand-release-and-protect-rohingya-boat-people>> accessed 9 July 2014.

224 Section 5-7, the Emergency Decree, B.E. 2548, (2005), (Thailand)

225 *Ibid.*, section 9.

226 *Ibid.*, section 11-12.

227 *Ibid.*, section 17.

228 *Thailand, the Evolving Conflict in the South*, Crisis Group Asia Report No 241 (International Crisis group, 2012), 11 and the Internal Security Act, B.E. 2551 (2008) (Thailand)

229 *Supra* note 29, 91.

230 *Supra* note 228, 11-12.

b. The Southern Border Provinces Administration Centre

The Southern Border Provinces Administration Centre (SBPAC) was established in 1981 as a special body to oversee the Deep South region. It consisted of representatives from the army, the police, and local politicians, but was later disbanded by the then-Prime Minister Thaksin Shinawatra, who no longer perceived southern unrest as a threat. The disbanding of the SBPAC was one of several mistakes that led to a new round of violence.²³¹

The SBPAC was later re-established by the Southern Border Province Administration Act B.E. 2553. This time around, it received a higher status—that of an independent agency operating under the Prime Minister. The SBPAC is the main administrative body dealing with violence in the southern provinces.²³² It invites local leaders, religious leaders, academics, and civil servants to participate on the advisory board committees.²³³

c. Southern Autonomy

While the government regards secession of the Deep South from Thailand as unacceptable, it appears open to granting some level of autonomy to the Deep South. Currently, Thailand is divided into 76 provinces and 2 autonomous areas. The two areas are Bangkok and the Pattaya district located in Chonburi province. The governors of all 76 provinces are appointed by the central administration. The governor of the Bangkok Metropolitan Authority is elected by the residents of Bangkok. An autonomous south would allow locals to choose their own governor. Granting autonomy means that the Thai government is ready and willing to address any differences as long as it does not threaten the security of the nation. More autonomy might help improve its ties with the local community as local

religious practices will be formally recognized and supported. Potential proposals include declaring Malay as the region's official language together with Thai, declaring Friday a holiday so local Muslims could attend Friday prayer, and legalizing the local Islamic schools and curriculum.²³⁴

The Constitution states that Thailand is one inseparable kingdom.²³⁵ Fears of secession have blocked the proposal of Parliamentary bills granting autonomy to any region other than Bangkok.²³⁶

d. Budget

In general, the government budget for addressing the violence in the southern provinces has increased over the years. In 2004, the first year that violence broke out, the annual budget was 13,450 million THB. The budget peaked at 27,547 million THB in 2009. It dropped to 16,507 million THB in 2010, but then climbed again. For 2014, the budget is 25,921 million THB, the second highest amount in a decade.²³⁷ This tends to indicate that the situation in the southern provinces will continue to be the same or worsen. Previous attempts to pacify the area have failed and there is no end in sight to the on-going crisis.

2. Prosecutions of perpetrators

Violence in the southern provinces has resulted in 131,960 criminal cases, 9,362 of which are security cases. A security case is one in which a person is charged under emergency law. Of all the security cases, only 685 were decided. More than half of the cases (421 cases) were dismissed. The outcome of the other cases included death sentences in 264 cases, life imprisonment in 73 cases, and imprisonment of less than 50 years in 145 cases.²³⁸ One explanation

²³¹ *Ibid*, 9.

²³² *Ibid*, 8-9.

²³³ Section 6, The Southern Border Province Administration Act B.E. 2553 (2010) (Thailand).

²³⁴ *Supra* note 32, at 68, 83, and 91.

²³⁵ Article 1, Thai Constitution B.E. 2550 (2007) (Thailand).

²³⁶ *Supra* note 30, 62-63.

²³⁷ *Ibid*.

²³⁸ *Supra* note 190.

for the low conviction rate is the pressure security forces face to hasten investigations.²³⁹

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

The Yingluck administration's decision to publicly and officially start a dialogue with the BRN-C leadership in Malaysia was a breakthrough because dialogues were confidential for many years.²⁴⁰ Previous governments had been reluctant to acknowledge the existence of these dialogues because of concerns that political opponents might utilize the knowledge of such talks to attack the government's credibility.²⁴¹ Making the dialogues public has sent a strong signal that the government is serious about solving the problem.²⁴² It implies that the government recognizes and understands that the insurgents are not just criminals, but separatists fighting for self-determination.

Since 28 February 2013, Thai government representatives have been meeting with Hassan Taib, the representative of BRN-C, which claims to be the commander and the political wing of the insurgents, in Kuala Lumpur, Malaysia.²⁴³ The

Malaysian government has acted as a mediator.²⁴⁴ Three meetings have been held since the first one.

The first dialogue turned sour when both sides could not deliver what the other party had asked for. The number of attacks increased after news of the first round of dialogues was released. To test BRN-C's claims of leadership, the Thai government requested that the insurgents stop attacking civilians, or soft targets, during Ramadan. The insurgents failed to do so. At the same time, the Thai government could not comply with the requests of BRN-C, which included the release of all prisoners and suspects in detention for security cases.²⁴⁵ Hassan Taib expressed his wish that the Thai government discuss requests from BRN-C in Parliament.²⁴⁶ As the government was then occupied with street protests in Bangkok, BRN-C's request was not considered.

Most importantly, both parties struggle with their own internal difficulties. BRN-C cannot prove its

239 *Supra* note 29, 90.

240 See Conflict Management and Resolution in Asia: The Role of Civil Societies in Thailand's Deep South, 2012, Director of Foreign Relations, Don Pathan, 3-4.

241 *Supra* note 228, 21.

242 See *supra* note 240, 5.

243 'เลขาธิการไทยลงนามเจรจาสันติภาพกับโจรใต้แล้ว' (National Security Council Signed Peace Agreement with Southern Separatists). *Dailynews*, (28 February 2013). <<http://www.dailynews.co.th/Content/politics/132726/%E0%B9%80%E0%B8%A5%E0%B8%82%E0%B8%B2+%E0%B8%AA%E0%B8%A1%E0%B8%8A.%E0%B9%84%E0%B8%97%E0%B8%A2+%E0%B8%A5%E0%B8%87%E0%B8%99%E0%B8%B2%E0%B8%A1%E0%B9%80%E0%B8%88%E0%B8%A3%E0%B8%88%E0%B8%B2%E0%B8%AA%E0%B8%B1%E0%B8%99%E0%B8%95%E0%B8%B4%E0%B8%A0%E0%B8%B2%E0%B8%9E%E0%B8%81%E0%B8%B1%E0%B8%9A%E0%B9%82%E0%B8%88%E0%B8%A3%E0%B9%83%E0%B8%95%E0%B9%89%E0%B9%81%E0%B8%A5%E0%B9%89%E0%B8%A7>> accessed 15 May 2014.

244 See Pavin Chachavalpongpun. 'Malaysia in 2014 – A perspective from Thailand,' *New Mandala*, (28 February 2014). <<http://asiapacific.anu.edu.au/newmandala/2014/02/28/malaysia-in-2014-a-perspective-from-thailand/>> accessed 15 May 2014.

245 'ทางสองแพร่งBRN ปรับทีมพูดคุยกับ5 เหตุผลรัฐไม่กล้าคุยรับ5 ข้อเรียกร้อง' (A Crossroad: BRN's Change of Talk Strategy and Five Reasons Why Thailand Cannot Accept Five Proposals). *Isra news*, (3 October 2013). <http://www.isranews.org/south-news/scoop/item/24181-%E0%B8%97%E0%B8%B5%E0%B8%A1%E0%B8%82%E0%B9%88%E0%B8%B2%E0%B8%A7%E0%B8%AD%E0%B8%B4%E0%B8%A8%E0%B8%A3%E0%B8%B2_24181.html>

246 'ฮัสซันคอฮิบแถลงเข้าไทยต้องรับข้อเสนอBRN และการเจรจาต้องเป็นวาระแห่งชาติ' (Hassan Tabib insisted the Dialogue is the National Agenda). Deep South Journalism School, (1 December 2013). <http://www.deepsouthwatch.org/dsj/5005>> accessed 15 May 2014

claim to be the representative of all the insurgents.²⁴⁷ The insurgency is actually made up of a loose network of *juwae* or warriors. Each cell operates without knowing the chain of command and each cell is autonomous enough to decide its own actions. An increase in the number of attacks after the first dialogue was regarded as a signal from local fighters that they disapprove of the dialogue and do not regard BRN-C as representing their interests.²⁴⁸ The success of future negotiations will depend on the Thai government's ability and willingness to include more insurgent groups in the forum.

Not every member of BRN-C wants to engage in dialogue. Some extremists in the group will not accept anything except the full independence of the Pattani state.²⁴⁹ Recently, Hassan Taib was dismissed by his peers who accused him of being too compromising. So far, he has not been replaced.²⁵⁰

From November 2013 to May 2014, the Thai government suffered a political crisis. The Supreme Administrative Court ruled that the government had unlawfully transferred Tawin Pliansri, the

former Secretary of the National Security Council, from his position, and that the government must reinstate him.²⁵¹ This halted the operations of the National Security Council, which is the main agency responding to the violence in the southern provinces.

On 22 May 2014, General Prayuth Chan-Ocha staged a coup d'état and ousted the civilian government. The army has long been known for its hard-line stance, such as prohibiting any discussion on autonomy so the future of the negotiation remains uncertain.²⁵² The latest development confirmed such fear. While the peace dialogue under Malaysian brokerage has been inactive for months,²⁵³ ISOC resolved to establish the new ranger regiment in the south and distributed 2,700 assault rifles to village volunteers.²⁵⁴ The rifles were meant for self-defence only. Locals and rights groups have said that more rifles and rangers in the area would only aggravate the conflict.²⁵⁵

247 See *supra* note 240, 5-6, and Murray Hunter, 'Finding a Solution in Thailand's Deep South.' *New Madala*, (21 July 2013). <<http://asiapacific.anu.edu.au/newmandala/2013/07/21/finding-a-long-term-solution-in-thailands-deep-south/>> accessed 15 May 2014 and 'เสียงจากแนวร่วม... 5 เหตุผลหยุดยิงล้มเนะเจรจากันข้างใน' (Thai). *Isra news*, (4 August 2013). <<http://www.isranews.org/south-news/scoop/item/22784-%E0%B9%80%E0%B8%A%E0%B8%B5%E0%B8%A2%E0%B8%87%E0%B8%88%E0%B8%B2%E0%B8%81%E0%B9%81%E0%B8%99%E0%B8%A7%E0%B8%A3%E0%B9%88%E0%B8%A7%E0%B8%A1-5-%E0%B9%80%E0%B8%AB%E0%B8%95%E0%B8%B8%E0%B8%9C%E0%B8%A5%E0%B9%83%E0%B8%95%E0%B9%89%E0%B8%9B%E0%B9%88%E0%B8%A7%E0%B8%99%E0%B8%AB%E0%B8%99%E0%B8%B1%E0%B8%81-%E0%B9%81%E0%B8%99%E0%B8%B0%E0%B9%80%E0%B8%88%E0%B8%A3%E0%B8%88%E0%B8%B2-%E0%B8%84%E0%B8%99%E0%B8%82%E0%B9%89%E0%B8%B2%E0%B8%87%E0%B9%83%E0%B8%99.html>> accessed 15 May 2014

248 See *supra* note 2455.

249 Patani was the old name of the ancient Islamic kingdom while Pattani is the modern Thai name for the province.

250 'The mysterious "disappearance" of Hassan Taib.' *Isra news*, (25 January 2014). <http://www.isranews.org/south-news/english-article/item/26813-disappear_26813.html> accessed 15 May 2014

251 Supreme Administrative Court decision 33/2557.

252 'หวั่นบิอาร์เอ็นไม่ร่วม»โต๊ะเจรจา» หลังมีข่าวไทยห้ามถกปกครองตนเอง' (BRN Might Not Join Talk as Thailand Rules Out Talks on Autonomy). *Isra news*, (21 June 2014) <<http://www.isranews.org/south-news/other-news/item/30623-brn.html>> accessed 22 June 2014.

253 Pakorn Puengnetr, 'เสนอ»คณะทำงาน10คน»พูดคุยดับไฟใต้ฝ่ายกบฏเดือนมกราคม1ร.ค.ลิกออฟสันติสุข' (New Commission for Peace Dialogue, PM to visit Malaysia on December to Return Happiness), *Isra News*, (14 November 2014), <<http://www.isranews.org/south-news/documentary/item/34373-kick.html>> accessed 14 November 2014.

254 "เพิ่มฝ่ายมั่นคงตั้งกรมทหารพรานใหม่-ส่งปืนให้อส.เข้าบ้านหามายดูแลประชาชน" (New Regiment, More Guns for Locals' Security), *Isra News*, (14 November 2014), <http://www.isranews.org/south-news/other-news/item/34185-clear_34185.html> accessed 14 November 2014.

255 "คอร์เียะ»ทนไม่ไหวคสช.ปล่อยไฟใต้ได้ชน! (Local angered, NCPO Set Up More Blasts), *Isra News*, (4 November 2014), <<http://www.isranews.org/south-news/talk-with-director/item/34134-koreeyoh.html>> accessed 5 November 2014; Thai military distributes rifles to fight insurgents in south, *BBC*, (4 November 2014), <<http://www.bbc.com/news/world-asia-29892629>> accessed 5 November 2014.

K. Analysing the Trends

Although the insurgency has several times proven itself capable of attacking larger targets, such as the business town of Sa-Dao,²⁵⁶ the town of Hat Yai, and Hat Yai International Airport,²⁵⁷ it has limited most of its operations to the Deep South.

In addition to drive-by shootings and targeted killings, the insurgency has shown that it can carry out large-scale coordinated attacks and can target hotels and department stores in downtown Songkla if they want to.²⁵⁸ The latest incidents show an escalation of violence. The insurgents had planned to detonate bombs at several convenience stores in both Pattani and Narathiwat. They were able to hit a navy ship in the dock with grenades, causing slight physical damage but great embarrassment.²⁵⁹ Another worrying attack was the explosion in a car park at Khok Pho hospital, which indicated that the insurgents might become more reckless as they were attacking soft targets.²⁶⁰ In light of Thailand's current political crisis, there appears to be no end

256 See Wassayos Ngamkham and Patsara Jikkham. 'Sadao rocked by bombs.' *Bangkok post*, (22 December 2013). <<http://www.bangkokpost.com/news/local/386157/bombs-explode-in-sadao>> accessed 15 May 2014. Former militias expressed doubt if the car bomb attack in Sa-Dao was carried out by the separatist movement. In their opinion, the local fighters lacked the capacity to do so and the area is full of illegal business conflicts.

257 'เปิดผลวิเคราะห์ระเบิดกลางเมืองศก.ใต้และย้อนรอยคืนร้ายที่หาดใหญ่' (Analysis on Bombing in Hat Yai, the South's Business Town). *Isra news*, (7 May 2014). <<http://www.isranews.org/south-news/scoop/item/29189-police-station.html>> accessed 15 May 2014 and Beth Jinks. 'Thailand Says Bombings in Hat Yai Targeted Tourists (Update3)'. *Bloomberg*, (18 September 2006). <<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=avmDzBaUUm64&refer=asia>> accessed 15 May 2014.

258 'Car bomb attack hits Pattani hotel.' *Bangkok Post*, (31 July 2012) <<http://www.bangkokpost.com/news/local/305308/ramadan-attacks-continue>> accessed 15 May 2014.

259 'Three hurt in 7-11 double blast' (24 February 2013). <<http://bangkokpost.com/lite/topstories/337413/three-hurt-in-7-11-double-blast>> accessed 15 May 2014.

260 'Bomb targets Pattani hospital.' *Bangkok Post*, (28 May 2014). <<http://www.bangkokpost.com/news/local/412253/motorcycle-bomb-injured-10-people-damaged-50-vehicles-in-pattani>> accessed 30 May 2014.

to the violent conflict in the Deep South in the foreseeable future.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCE

A. Negative Contributing Factors

a. Historical and Cultural Background

The Deep South was once an ancient Patani sultanate. Patani was the center of Islamic learning and culture in the Malay Peninsula until it was annexed to Siam sometime between 1785 and 1902.²⁶¹ Many residents in the Deep South are thus proud to identify themselves as Malay Muslims—not Thais—who speak Malay Bahasa. The insurgents incorporate the history of the Patani sultanate in their propaganda to pressure the locals into resisting the presence of Thai authorities in the form of educational bodies or security forces. Such propaganda creates distrust and increases the unwillingness of the locals to cooperate with governmental authorities.

Differences in cultural and historical backgrounds have led to an identity crisis for the locals of the Deep South. They feel like they are being threatened by the outside world. News of a Muslim girl having a relationship with a Thai soldier can easily spark anger and resentment.²⁶² Security forces who are oblivious to the local customs and religious nuances sometimes enter places of worship during service or bring dogs with them, insensitive actions that delegitimize the Thai government in the eyes of the locals.

261 *Supra* note 32, 32-33.

262 'คลิปพลทหารอนาจารสาวมุสลิมกับความจริงของสังคมชายแดนใต้' (Sex Clip and the Truth in the Deep South). *Isra news*, (7 May 2012) <<http://www.isranews.org/south-news/documentary/item/5771-2012-03-07-08-14-29.html?pop=1&tmpl=component&print=1>> accessed 15 May 2014

b. Poverty

Economic growth in the Deep South is significantly lower than that of other areas in the country.²⁶³ Even before violence broke out in 2004, the economic growth of the Deep South was just 1.8 % compared to 3.44% in the other southern provinces and 5.16% for the rest of the country.²⁶⁴ One cause of poverty in the Deep South may be its reliance on agriculture.²⁶⁵ Locals are not qualified for jobs requiring higher skills as they did not attend Thai schools that adhere to the national curriculum. Students in the Deep South have an average of 8.3 years of education compared to 9.5 years elsewhere.²⁶⁶ Only two per cent of the population in the Deep South attain college-level education.²⁶⁷ The lack of necessary education exposes the youth to higher unemployment rates and the resulting dissatisfaction among young unemployed men may lead them to join the insurgent movement.²⁶⁸

c. Law and Enforcement

The problems with law and enforcement include draconian laws, rogue law enforcement forces, lack of accountability, and delays in the delivery of justice.

Martial Law, the Emergency Decree, and the Internal Security Act, all of which are still in use in the area, have been criticized for facilitating the violation of human rights. These laws vest in the security forces greater power to detain a person for a longer-than-usual period. The security forces keep the detention location secret and do not allow visits from relatives or attorneys. Security force personnel are exempt from legal liability, and have been accused of torture

and other human rights abuses.²⁶⁹

The security forces are comprised of the military, the rangers, and the police. Rangers are paramilitary personnel recruited from among the local men and women. They are not as rigorously trained as the professional military and are ill-disciplined. Their drinking, sexual harassment, and inappropriate behaviour have led to conflicts with the locals.²⁷⁰ The use of a paramilitary force can hurt the legitimacy of the Thai authorities in the long term. The locals also dislike the law enforcement units for their abusive behaviour.²⁷¹ The police or the army have been suspected of being responsible for forced disappearances, which have been confirmed in some cases.²⁷²

Two incidents that demonstrate the lack of accountability for the actions of the security forces are the Krue Sae incident, in which security forces stormed the holy ancient mosque, and the Tak Bai incident, in which negligence during transportation resulted in 79 suspects suffocating to death and leaving many others crippled for life.²⁷³ Despite efforts to investigate these incidents, no commanders have ever been convicted. The then-Prime Minister Surayuth Chulanonda later made a

²⁶³ *Supra* note 149, 18-20.

²⁶⁴ *Supra* 30, 23.

²⁶⁵ *Ibid*, 24.

²⁶⁶ *Ibid*, 25.

²⁶⁷ *Ibid*.

²⁶⁸ *Ibid*.

²⁶⁹ 'Thailand must repeal or reform emergency legislation immediately,' *Amnesty International*, (30 September 2010). <<http://www.amnesty.org/en/news-and-updates/thailand-must-repeal-or-reform-emergency-legislation-immediately-2010-09-30>> accessed 15 May 2014 and Renewed Emergency Legislation Leaves Southern Thailand in Human Rights Limbo, <<http://www.amnesty.org/en/news/renewed-emergency-legislation-leaves-southern-thailand-human-rights-limbo-2012-12-21>> accessed 18 June 2014.

²⁷⁰ *Supra* note 228, 13-14.

²⁷¹ *Supra* note 29, 115 and *supra* note 30, 17-19.

²⁷² Human Rights Watch, *Enforced Disappearances in Thailand's Southern Border Provinces*, p 3-4, (2007). The most famous case is of Somchai Neelapaijit, a Muslim lawyer and advocate against the government's abuses, see 'UNOHCHR statement on 10years Somchai Neelapaijit disappearance,' *The Voice from Thais*, (12 March 2014). <<http://voicefromthais.wordpress.com/2014/03/12/unohchr-statement-on-10years-somchai-neelapaijit-disappearance-12mar2014/>> accessed 15 May 2014.

²⁷³ See *supra* note 187, 22-25 and 27-29.

public apology and compensations were paid to the victims or their families.²⁷⁴ But these attempts came too late. The two incidents are imprinted deeply in the memories of locals and are regularly mentioned by the insurgency.²⁷⁵

The justice system has been inefficient at delivering much-needed justice. Although the court has dismissed many cases because of insufficient evidence for conviction, suspects were still subject to abuses in the process, including inhumane interrogations, wrongful accusations of scapegoats, or a low standard of proof required for security forces to make arrests.²⁷⁶

d. National Politics

Since 2005, Thailand has been through many national political crises. Months of Yellow-shirt demonstrations culminated in a military coup d'état and the formation of a Red-shirt movement in 2006. Another Yellow-shirt demonstration happened in 2008 followed by Red-shirt uprisings in the summers of 2009 and 2010. From November 2013 to May 2014, the People's Democratic Reform Committee campaigned to shut down Bangkok and reform the country, which ended with a coup d'état and the establishment of military rule.

All of the above events drew the public's attention from the Deep South where violence has been normalized. Political stability is needed to solve a complicated conflict, but the government is distracted by protests. Most administrations are short-lived, which means that Thai governments are unable to propose a long-term policy for the problem. Moreover, the violence in the Deep South is highly politicized. When political parties bring up the Deep South in their electoral campaign, it is to attack the government for negotiating with

the southern separatists and endangering the sovereignty of the nation.²⁷⁷ Such accusations are especially serious when the government is already suffering a crisis of legitimacy.

On 22 May 2014, General Prayuth Chan-Ocha declared a coup d'état, bringing an end to the Yingluck administration and the protest. However, there has been no clear direction regarding the solving of the southern conflict.

B. Positive Contributing Factors

Despite the above setbacks, the dialogue with insurgents might still continue. The locals are supportive of the attempt and Malaysia, the mediator, appears intent on persuading both parties to return to the table.²⁷⁸

274 'ผมขอกล่าวคำขอโทษด้วยใจจริง' ปากคำประวัติศาสตร์เพื่อเหยื่อตากใบของนายกรัฐมนตรี (I sincerely apologize, a historical remark from PM to Tak Bai's victims). *Deep South Watch*, (2 November 2006). <<http://www.deepsouthwatch.org/node/39>> accessed 15 May 2014

275 *Supra* note 29, 15.

276 *Ibid*, 90, 92, and 95.

277 See Murray Hunter, 'Finding a Solution in Thailand's Deep South.' *New Mandala*, (21 July 2013). <<http://asiapacific.anu.edu.au/newmandala/2013/07/21/finding-a-long-term-solution-in-thailands-deep-south/>> accessed 15 May 2014.

278 Isra news team. 'อนาคตเจรจาดับไฟใต้ถื่นขึ้นสู่ฟาก5 ท่าถามถึงซัมซัมมิน.' (The Future of Southern Peace: Five Questions from Thailand to Malay Representative) *Isra news agency*, (2 May 2014). <<http://www.isranews.org/south-news/south-slide/item/27630-akanit.html>> accessed 15 May 2014

PART FOUR: CONCLUSION

Thailand has adopted several international and regional documents that guarantee and promote religious freedom for everyone equally. Freedom of religion includes the freedom to be an atheist without any negative consequences as well as the freedom to manifest one's belief. However, the manifestation of beliefs can be restricted on legitimate grounds by national laws. Such protections of religious freedom are contained in the Constitution, the Penal Code, and other laws and policies. The judiciary and independent agencies provide redress mechanisms should one decide that his freedom has been infringed upon. However, there has never been a case filed in court.

Despite the worrying trend of growing Buddhist extremism, the Constitution tries to maintain the principle of secularism, but this has been compromised by the special status bestowed on Buddhism due to its history and popularity, making it the *de facto* state religion. Such preferential treatment might be seen as enabling intolerance of other religions. The state is also obliged to actively accommodate the ability of other religions to exercise freedom. Islam is another religion that has received special attention from the state, which has tried to regulate as well as facilitate the practices of Thailand's second-largest religion.

The biggest area of concern in terms of religious discrimination is in the field of education, which is compulsory for twelve years for all citizens. The state shows clear preference for Buddhism by requiring morning Buddhist prayers and teaching Buddhism in the national curriculum. Such regulations not only discriminate against other religions, but also have a coercive effect on Buddhist students who might belong to Buddhist sects other than *Theravada* or who do not wish to practise Buddhism. The state decides on the content of Buddhist teachings for students. However, a curriculum is also provided for Islamic studies.

There is no religious persecution by the state itself. The most worrisome persecution occurs in the context of the worsening of violence in the Deep South, which has been on-going since 2001 with no apparent end in the near future. In the south, ethnicity, culture, and religion are deeply intertwined so the problem is more complicated than just that of a religious conflict between Buddhists and Muslims, which is how many perceive it. The conflict may not directly affect the religious freedom of the Muslims of the southern provinces, but most Muslims have suffered from it due to collateral damage. Buddhists in the southern provinces have suffered even greater harm to their freedom of religion as they are more often targeted by the insurgents for their belief. Although geographically limited, the conflict is serious. The impact of the unrest goes beyond the borders of Thailand.

In addition to more freedom of religion, solutions might have to include economic development, the improvement of southern-style education, governmental recognition of cultural differences between the southern provinces and other regions, and more accountable law enforcement and justice systems. Additionally, political instability at the national level and internal rifts within the insurgent group currently hinder any attempt to solve the conflict.

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Vietnam

Vietnam

Formal Name	Socialist Republic of Vietnam
Capital City	Hanoi
Declared Relationship with Religion	The Constitution does not declare Vietnam as a secular state nor a state based on a particular religion
Form of Government	Unitary state; socialist republic with a single communist party
Regulation of Religion	The Ordinance on Belief and Religion requires religious organizations to be officially recognized and registered, and their activities registered or approved
Total Population	85,846,997 (2009 census) ¹

Religious Demography: (2009 census)

Religion	Percentage
Non-religious	81.69%
Buddhism	7.93%
Roman Catholic	6.62%
Hoa Hao ²	1.67%
Cao Dai ³	1.01%
Others	0.22%

¹ The figure is from the last official Census in 2009, which can be found on the website of the General Statistics Office <http://www.gso.gov.vn>

² Hoa Hao is a Buddhist-based religion founded in 1939 by Huỳnh Phú Sổ, a native of the Mekong Delta region of southern Vietnam.

³ Cao Dai - literally "High Channel" - is a syncretist, monotheistic religion, established in 1926 in the city of Tây Ninh, southern Vietnam.

INTRODUCTION

The issue of religious freedom is highly controversial in Vietnam. While domestic commentators and officials tend to paint an optimistic picture, international observers, who are mostly Westerners, tend to offer a Stygian one, liberally employing terms such as “depression” and “harassment” to describe the situation. This report adopts the principle of charity in examining the state of religious freedom in Vietnam, arguing that it is neither paradisiacal nor Stygian.⁴ The goal is to provide a balanced and objective account based upon the available data.

The principle of charity requires us to listen to the way that a speaker from a society uses particular ideas, and interpret his or her words in their most reasonable light.⁵ This report seeks to provide the internal perspective on how social and governmental speakers from the Vietnamese society understand and use particular ideas associated with religious freedom. Most of the data in this report are from Vietnamese material, including domestic legal documents, reports, books, and articles. Reference to international reports will also be made to highlight certain reported claims and to take into account international and critical perspectives.

However, it is useful first to provide the background of the evolution of the state-religion relationship and religious freedom in Vietnam. The evolution can be divided into three periods, namely imperial, French colonial, and communist-socialist.

Ancient Vietnam had indigenous religious practices which are animistic and totemic in nature. During the millennial period of Chinese dependency (“*Bắc thuộc*,” 111 BC- AD 905), Confucianism was introduced in Vietnam by Chinese governors and hundreds of Han Confucian scholars, but its

influence was limited. The fact that “Chinese officials occupied only the district level positions, leaving Vietnamese in village posts,”⁶ allowed the local people to follow their own habits, and customs, and faiths.⁷ During the independent period, successive dynasties of Ngô (938-967), Đinh (968-980), Former Lê (980-1009), Lý (1009-1225), and Trần (1225-1400) witnessed the coexistence in harmony of Buddhism, Confucianism, and Daoism. Under the reign of Lý and Trần dynasties, Buddhism prevailed and inserted considerable influences on political and legal life, but these dynasties also promoted other traditions, especially Confucianism. Particularly, the Lý dynasty constructed the *Văn Miếu* (Temple of Confucius) in 1070 to honour Confucius and other major Confucians.⁸

From the Lê dynasty in the 15th century to the Nguyễn dynasty in the 18th century, Confucianism played a dominant ideological role. Imperial governments adopted “thick modes of regulation” of religious expression, and imperial laws legalized Confucian values.⁹ Gatherings conducting religious ceremonies must be licensed by authorities.¹⁰ However, Confucianism, Buddhism, and Taoism continued operating in harmony under the famous tradition of “*Tam giáo đồng nguyên*” (Unity of Three Religions). During the 16th century, a new religious source—Catholicism—was introduced in Vietnam by Jesuit missionaries. After initial welcome, the imperial government in Vietnam began to suppress this religion because of its association with French

4 The “Principle of Charity” was first named by Neil L. Wilson and is celebrated in the works of Donald Davidson. Donald Davidson, *Inquiries into Truth and Interpretation (Philosophical Essays of Donald Davidson)* (New York: Oxford University Press; 2 edition, 2001). See also Michael W. Dowdle, “Constitutional Listening,” (2012) 88 (1) *Kent-Chicago Law Review* 126.

5 Dowdle, “Constitutional Listening,” 126.

6 Tạ Văn Tài, “Confucian Influences in the Traditional Legal System of Vietnam, with Some Comparisons with China: Rule by Law and Rule of Law,” (2009) 1 *Vietnamese Social Science Review* 14-5.

7 Vũ Văn Mẫu, *Cổ luật Việt Nam và Tư pháp sử Dẫn giảng, Quyển Thứ nhất [The Explanation of Vietnamese Ancient Law and History of Private Law, Volume One]* (Saigon: 1975), 132.

8 Trần Trọng Kim, *Nho Giáo [Confucianism]* (Hanoi: Culture and Information Publishing House, 2001), 724.

9 John Gillespie, “Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam,” (2014) 27 *Harvard Human Rights Journal* 118.

10 Tạ Văn Tài, *The Vietnamese Tradition of Human Rights* (Berkeley: University of California Press, 1988), 180-85.

colonial aspirations.¹¹

Under French colonialism (1962-1945), Catholicism escaped the chastisement of the imperial power and spread in Vietnam. As a component of their anti-colonial campaign, the Vietnamese patriotic Confucianists criticized Catholicism as “heterodox teachings” (*ta giao*) opposed to Confucianism—the “orthodox doctrine” (*chinh dao*).¹² Meanwhile, the Vietnamese communists contended that while the French committed to implement in Vietnam liberal ideals, including the ideal of religious freedom, colonial law’s draconic implementation contradicted these lofty ideals. Consequently, French colonial regulation of religious expression was not very much different from the imperial one.¹³

The August 1945 revolution under the leadership of the Indochina Communist Party (presently, Communist Party of Vietnam) brought an end to French domination in Vietnam. The Communist Leadership of the Democratic Republic of Vietnam and later Socialist Republic of Vietnam accepted Marxism-Leninism as formal ideology. Under the influence of the anti-colonial tradition and new Marxist-Leninist secularism, the communist government practiced micro-management of religious activities. However, to mobilize public support against foreign invaders in order to gain complete national independence and unification, the government also committed itself to religious freedom during the war-time. All constitutions enacted under the communist regime in 1946, 1959, 1980, 1992, and recently 2013 provide guarantees for religious freedom.

The implementation of the Renovation program (*Doi moi*) initiated in 1986 by the Sixth Congress of the Communist Party of Vietnam resulted in significant changes in Vietnam. Despite its

original economic focus, nearly three decades of *Doi moi* have transformed the Vietnamese society comprehensively. The changes driven by *Doi moi* include not only socio-economic development but also the state’s micro-management and legal reforms. Additionally, more liberal concepts which often go in tandem with market economy, such as human rights and rule of law, have influenced the process of transformation in Vietnam. In the 21st century, Vietnam has deeply been integrated into the global market, and this further puts pressure on reformation of the legal system and public governance. It is in this context of internal renovation and external globalization that the legal framework and practice of religious freedom in Vietnam witness new changes, as described and discussed below.

11 Ibid, 149.

12 Mark W. McLeod, “Nationalism and Religion in Vietnam: Phan Boi Chau and the Catholic Question,” (1992) 14(4) *The International History Review* 663.

13 Gillespie, “Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam,” 118-19.

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations

Vietnam has acceded to several major international human rights treaties, including ICCPR (1982), ICESCR (1982), ICERD (1981), CEDAW (1981), and CRC (1990).¹⁴

International Document	Year of Signature	Year of Ratification / Accession	Reservations
ICCPR	1982	1982	26(1), 48(1)
ICESCR	1982	1982	
ICERD	1981	1981	17(1), 18(1), 22
CEDAW	1981	1982	29(1)
CRC	1990	1991	

Formally, therefore, Vietnam has committed to international standards of human rights in general and religious freedom in particular. Vietnam made a reservation upon acceding to the ICCPR, but the provisions regarding religious freedom were unaffected. In 2013, Vietnam was elected to the United Nations Human Rights Council (HRC) for a period of three years beginning on 1 January 2014.¹⁵

B. Domestic Laws and Policies

The internationalization of constitutional law is a global phenomenon that has affected Vietnam. The nation has formally incorporated international human rights into its Constitution. Vietnam has had five Constitutions under the leadership of the Vietnamese Communist Party. The four previous Constitutions of 1946, 1959, 1980, and 1992 all had separate chapters on fundamental rights, including

that of religious freedom.¹⁶

The new Constitution of Vietnam, which was enacted in late 2013 and replaced the 1992 Constitution, also has a separate chapter on human rights and citizen's rights that includes the right to religious freedom. The 2013 Constitution enumerates general human rights in accordance with international human rights law. However, the Constitution is presented

as an autochthonous document characterised by its adoption of a communitarian and statist human rights regime, which affects the laws and policies regarding religious freedom.

The Vietnamese official position and practice of human rights are communitarian and statist in nature. This is due to the influence of Confucianism, the official ideology of the imperial government which still holds sway today, and Communism, the official ideology of the present government. Communitarian and statist thought is discernible in several party and government documents on human rights¹⁷ and was recently re-affirmed in the new Constitution of 2013 in the following provisions:

Article 14

Human rights and citizen's rights shall only be restricted by statutes in imperative circumstances for the reasons of national defence, national security,

¹⁴ "Vietnam has accepted most covenants on human rights," <http://baodientu.chinhphu.vn/The-gioi-va-Viet-Nam/Viet-Nam-tham-gia-hau-het-cac-Cong-uoc-ve-quyen-con-nguoi/184765.vgp> accessed 28 April 2014 (website of the Vietnamese Government).

¹⁵ "General Assembly elects 14 members to UN Human Rights Council." <https://www.un.org/apps/news/story.asp?NewsID=46476&Cr=human+rights&Cr1=#.U1pi2CjpZUQ>, accessed 24 April 2014.

¹⁶ Article 10, 1946 Constitution of Vietnam; Article 26, 1959 Constitution of Vietnam; Article 68, 1980 Constitution of Vietnam; Article 70, 1992 Constitution of Vietnam.

¹⁷ Vietnamese Government. *White Paper on Protection and Promotion of Human Rights in Vietnam (2005)*. <http://tuoitre.vn/Chinh-tri-Xa-hoi/94557/toan-van-sach-trang-ve-tinh-hinh-nhan-quyen-tai-viet-nam.html>, accessed 26 April 2014.

social order and security, social morality, and the health of the community.

Article 15

1. Citizen's rights are inseparable from citizen's duties.
2. Every one has the duty to respect the rights of others.
3. Citizens are responsible for fulfilling their duties to the state.
4. The practice of human rights and citizen's rights cannot infringe upon national interests, and the legal and legitimate rights of others.

There are several important features of this constitutionally-entrenched, communitarian, statist human rights regime in Vietnam. First, human rights are held to be positive rights provided and regulated by the state, not natural rights which impose restraints on the state. Second, human rights must be balanced with duties to other individuals, the state, and the community. Third, communitarian and statist priorities, namely "national defence, national security, social order and security, social morality, and the health of the community," make it possible to restrict human rights via legislative laws. These restrictions also apply to religious freedom.

1. Freedom to adopt, change or renounce a religion or belief; freedom from coercion

Article 24 of the Constitution of 2013 protects the freedom to adopt, change or renounce a religion or belief, and freedom from coercion, but also states that this freedom should not be used to "violate the laws":

Article 24

1. Every one shall enjoy the freedom of belief and of religion; he or she can follow any religion or follow none. All religions are equal before the law.

2. The state respects and protects freedom of belief and of religion.
3. No one has the right to infringe on the freedom of belief and religion, or to take advantage of belief and religion to violate the laws.

Article 70 of the Constitution of 1992 similarly guaranteed religious freedom, but it contained a broader limitation: The provision stated that no one should take advantage of religious freedom to violate laws and "state policies."¹⁸ Notably, Article 70 was criticized by the U.N. Special Rapporteur for prioritizing "state policies" over religious freedom.¹⁹ The current Constitution retains the limitation whereby the practice of religious freedom may not contravene laws, but removes its application to "state policies."

Important legal documents²⁰ which regulate the practice of religious freedom in Vietnam include the Ordinance on Belief and Religion (Ordinance No. 21 of 2004 of the Standing Committee of the National Assembly)²¹ and the government's Implementing Decree 92 of 2012 on "Specific provisions and measures for the implementation of the Ordinance on Belief and Religion," which

¹⁸ Article 70, 1992 Constitution of Vietnam.

¹⁹ Kevin V. Tu, "Extreme Policy Makeover: Re-Evaluating Current US-Vietnam Relations Under the International Religious Freedom Act," (2005) 14 *Pacific Rim Law & Policy Journal* 778-779, 780.

²⁰ For a collection of legal documents about religious freedom in Vietnam, see Government Committee of Religious Affairs, *Vietnamese Legal Documents on Belief and Religion* (Hanoi: Religious Publishing House, 2008). For the legal development of religious freedom in Vietnam, see Dương Văn Biên, "The Right to Freedom of Belief and Religion in Vietnamese Law Since 1945 to Today," (2011) 4 *Journal of Human Resource Development* 58; Nguyễn Thị Định, "Introduction to the Generation and Development of Law on Religion in Vietnam Since 1945 to Today," (2011) 4 *Journal of Religious Affairs* 6.

²¹ Ordinance on Belief and Religion, 21/2004/PL-UBTVQH11, 2004, (Vietnam) (hereinafter, Ordinance 21). English translation available at <http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7818> accessed 21 December 2014.

replaced the former 2005 Decree.²² The Ordinance and the Decree reaffirm that religious freedom in Vietnam is guaranteed. Article 1 of the Ordinance states, “The state guarantees citizens’ right to belief and religious freedom. Nobody can infringe upon that right. All religions are equal before the law.”²³ Article 2 of Decree 92 re-states this commitment in similar terms.²⁴

The Ordinance sets out the aim and ambit of the practice of religious freedom: “The state guarantees the right to conduct belief activities and religious activities according to the provisions of the law; respects cultural values and religious ethics; preserves and promotes the positive values of the tradition of ancestral worship, commemoration and honouring of persons who have been of service to the country or communities, so as to consolidate the great national unity bloc and satisfy the people’s spiritual needs.”²⁵ The Ordinance prohibits the abuse of the right of belief and religious freedom as follows:

“It is prohibited to abuse the right of belief and religious freedom to undermine peace, national independence and unification; incite violence or propagate wars, conduct propagation in contravention of the state’s laws and policies; divide people, nationalities or religions; cause public disorder, infringe upon the life, health, dignity, honour and/or property of others, or impede the exercise of civic rights and performance of civic obligations; conduct superstitious activities or other acts in violation of the law.”²⁶

The Ordinance ensures that “believers and followers can freely show their faith, practice worship or praying rites, join ritual activities or services and

religious rites, and learn tenets of the religions that they believe in.”²⁷ However, the document also states that belief or religious activities shall be suspended if they infringe upon national security; seriously affect public order or the environment; adversely affect the unity of the people and the national cultural traditions; infringe upon life, health, dignity, honour or property of other persons; and result in serious violations of the law.²⁸ This is reaffirmed in Article 2 of Decree 92.²⁹ The Penal Code establishes penalties for “attempting to undermine national unity” by promoting “division between religious believers and non-believers, and between religious believers and the people’s government and social organizations.”³⁰

2. *Right to manifest one’s religion or belief*

a. *Freedom to worship*

The Ordinance on Belief and Religion guarantees that “believers and followers can freely show their faiths, practice worship or praying rites, join ritual activities, or services and religious rites, and learn tenets of the religions which they believe in.”³¹ At the same time, the Ordinance requires that, in conducting belief or religious activities, believers and followers “must observe regulations of belief or religious establishments or rituals as well as village codes and communal conventions.”³²

b. *Place of worship*

The Ordinance on Belief and Religion ensures that pagodas, churches, chancels, sanctuaries, communal houses, temples, head offices, training establishments, other lawful belief or religious establishments, canons and worshipping objects

22 Implementing Decree, 92/2012/NĐ-CP, 2012, (Vietnam) (hereinafter, Decree 92). English translation available at <http://www.fait-religieux.com/images/documents/ordonnances/nd92_englishtranslation.pdf> accessed 21 December 2014.

23 Article 1, Ordinance 21

24 Article 2, Decree 92.

25 Article 5, Ordinance 21.

26 Article 8, Ordinance 21.

27 Article 9, Ordinance 21.

28 Article 15, Ordinance 21.

29 Article 2, Decree 92.

30 Article 87, Penal Code, 15/1999/QH10, 1999, (Vietnam) (amended in 2009).

31 Article 9, Ordinance 21.

32 Article 10, Ordinance 21.

shall be protected by law.³³ It provides that lawful assets belonging to belief or religious establishments shall be protected by law and strictly prohibits infringing upon such assets.³⁴ In particular, the Ordinance ensures that religious establishments have stable and long-term use of land that they have utilized, including land on which they have constructed pagodas, churches, sanctuaries, chancels, monasteries, schools; establishments for training/professional/religious activities; and head offices of religious organizations.³⁵

c. Religious symbols

The Ordinance on Belief and Religion has no provision on religious symbols. In general, the use of religious symbols is not problematic in the religious places.

d. Observance of holidays and days of rest

Of six of the gazetted public holidays, two have to do with religious or belief events: the Lunar New Year holiday and the Hùng Kings' Temple Festival. During the time of the Lunar New Year holiday, many religious and belief activities, mostly associated with indigenous popular faiths and Buddhism, are observed. The Hùng Kings' Temple Festival is organized annually from the 8th to the 11th days of the third lunar month when the Vietnamese people pray to their ancestors Hung Kings. The main ceremony takes place on the 10th day of the month.

e. Appointing clergy

The Ordinance on Belief and Religion stipulates that the ordainment, bestowal of orders, appointment, election or honorary nomination in religions shall be effected according to the charters or statutes of

religious organizations. However, it also requires that, to be recognized by the state, the persons who are ordained, bestowed orders, appointed, elected or honourably nominated by the religious organizations must satisfy certain conditions, including: being Vietnamese citizens, having good ethical qualities, having spirit of national unity and harmony, and strictly observing the law.³⁶ To monitor whether the persons appointed by religious organizations satisfy these conditions, the Ordinance requires organizations to register persons who have been ordained, had orders bestowed, been appointed, elected or honourably nominated, and to notify the relevant state management agencies of the dismissal or discharge of religious dignitaries.³⁷

f. Teaching and disseminating materials

Religious organizations may establish training institutions or start development classes for professional religious activities with the approval of the Prime Minister. Vietnamese history and Vietnamese law are compulsory subjects in the curriculum of religious schools.³⁸ The publication of religious books and materials is managed by the Government Committee for Religious Affairs. The Committee established the Religious Publishing House to publish religious books and materials.³⁹ Religious books and materials can also be published by other state-approved publishing houses, and can be sold freely in all bookstores. The establishment of private publishing houses, however, is not permitted in Vietnam, according to the Law on Publication.⁴⁰

³³ Article 4, Ordinance 21.

³⁴ Article 26, Ordinance 21.

³⁵ Article 27, Ordinance 21.

³⁶ Article 22, Ordinance 21.

³⁷ Article 22, Ordinance 21.

³⁸ Article 24, Ordinance 21.

³⁹ Decision on the Organization of the Government Committee for Religious Affairs, 134/2009/QĐ-TTg, 2009 (Vietnam).

⁴⁰ Law on Publication, 19/2012/QH13, 2012 (Vietnam).

g. The right of parents to ensure the religious and moral education of their children

The Ordinance on Belief and Religion guarantees the freedom of persons to “enter into religion at religious establishments” at one’s own free will without being compelled or obstructed by any other person. Minors under 18 years old who wish to adopt a religion must however have the consent of their parents or guardians.⁴¹

h. Registration

Under the Ordinance on Belief and Religion, religious activities and organizations in Vietnam must be officially recognized and registered. Decree 92 lays out detailed procedures for applying for recognition and registering religious activities and organizations. Unrecognized organizations can conduct religious activities with the approval of the local government.

To be recognized, a religious organization must meet certain conditions, including:

- Being an organization of persons with the same belief, religious tenets, principles and rites, which do not contravene the nation’s traditions, customs and interests;
- Having a charter or statute stating the organization’s guidelines, objectives and form of religious practice, which have to be closely associated with the nation and in keeping with the law;
- Having already registered religious activities and conducting regular religious activities;
- Having a head office, organizational structure and lawful representative;
- Having an appellation not identical to that of another religious organization already recognized by the relevant state agency.⁴²

⁴¹ Article 21, Ordinance 21.

⁴² Article 16, Ordinance 21.

The Prime Minister grants official recognition to religious organizations which operate in many provinces and/or centrally-run cities, while the presidents of the People’s Committees of provinces or centrally-run cities grant official recognition to religious organizations that operate mainly within a province or centrally-run city.⁴³

Relevant state authorities must sanction the activities of recognized religious organizations, which must have their annual agendas approved by the local government. Conferences or congresses organized by grassroots religious organizations must be approved by the People’s Committees of districts where the conferences or congresses will take place; conferences or congresses organized by religious organizations at the central level or involving entire religious sects must be approved by central-level agencies in charge of state management of religions.⁴⁴ Rites performed by religious organizations outside of religious establishments must be approved by relevant local governments.⁴⁵

i. Communicating with individuals and communities on religious matters at the national and international level

A mention should be made of the role that the Vietnam Fatherland Front (VFF) and its socio-political member organizations have with regard to religious matters at the national level. A distinctive body in the Vietnamese political system, the VFF is defined by the Constitution as “a political alliance and a voluntary union of political organizations, socio-political organizations, social organizations and individuals.” It is the political base of the people’s government and has a particular responsibility for rallying the people, promoting greater national solidarity and enhancing social consensus.⁴⁶

⁴³ Article 16, Ordinance 21.

⁴⁴ Article 18, Ordinance 21.

⁴⁵ Article 25, Ordinance 21.

⁴⁶ Article 9, 2013 Constitution of Vietnam.

The Ordinance on Belief and Religion states that the VFF and its member organizations are responsible for rallying people with and without beliefs or religions to build greater national unity and to construct and defend the Fatherland. They are also required to promptly report people's opinions, aspirations and requests on matters related to beliefs and religions to the relevant state agencies. It is also the responsibility of the VFF and its member organizations to propagate the legal provisions on belief and religion among dignitaries, priests, monks, followers, believers, religious organizations and people, and mobilize them to observe these provisions. The VFF and its members are to participate in the formulation and supervision of the implementation of policies and laws on belief and religion. For their part, the state agencies are to take the initiative in coordinating with the VFF Central Committee and the VFF's member organizations in propagating, mobilizing and implementing policies and laws on beliefs and religions.⁴⁷

At the international level, the Ordinance on Belief and Religion states that religious organizations, followers, priests, monks and dignitaries may conduct activities that promote international relations according to the provisions of their charters, statutes or principles and in compliance with Vietnamese law. In conducting such activities, religious organizations must be "on equal footing, respect one another, and respect the independence, sovereignty and internal affairs of the countries."⁴⁸

The Ordinance requires central-level agencies that are in charge of state management of religions to approve any 1) invitations to foreign organizations or foreigners to Vietnam, or organization of activities on behalf of foreign religious organizations in Vietnam, and 2) participation in overseas religious activities or sending of persons overseas to join religious training courses.⁴⁹ Foreign dignitaries, priests or monks may preach at Vietnamese religious establishments with the approval of the central-level

agency in charge of state management of religions, and they must observe the regulations of Vietnamese religious organizations and Vietnamese law.⁵⁰

Foreigners in Vietnam are allowed to possess religious publications and other religious articles for their personal use, according to the provisions of Vietnamese law. Like Vietnamese followers of religions, their daily religious activities can be carried out at religious establishments. Foreigners are allowed to invite Vietnamese religious dignitaries to perform religious ceremonies for them. However, the foreigners must observe the internal regulations of Vietnamese religious organizations.⁵¹ Decree 92 requires that the religious activities of foreigners be approved by provincial governments.⁵²

j. Establishing and maintaining charitable and humanitarian institutions; soliciting and receiving funding

The Ordinance on Belief and Religion states, "belief establishments (such as communal houses, temples, small temples, small pagodas, ancestral worship altars) and religious organizations may raise funds or receive assets voluntarily donated by organizations and individuals at home and abroad, according to the provisions of the law." Fundraising efforts by belief establishments and religious organizations must be organized openly, have clear and charitable purposes, and be made known in advance to the local governments that have jurisdiction over the fundraising venue.⁵³ Decree 92 prohibits fundraising for individual interests or illegal purposes.⁵⁴

According to the Ordinance on Belief and Religion, the state encourages dignitaries, priests or monks to organize educational, healthcare, charitable or humanitarian activities legally.⁵⁵ The Ordinance

47 Article 7, Ordinance 21.

48 Article 34, Ordinance 21.

49 Article 35, Ordinance 21.

50 Article 36, Ordinance 21.

51 Article 37, Ordinance 21.

52 Article 40, Decree 92.

53 Article 28, Ordinance 21.

54 Article 28, Decree 92.

55 Article 33, Ordinance 21.

expresses the state's commitment to encourage and create the conditions for religious organizations to take part in raising and educating disadvantaged children, and to help develop pre-school educational institutions. Religious organizations are also encouraged to provide assistance to healthcare institutions that serve the poor, the disabled, HIV/AIDS-infected persons, lepers, mental health patients as well as to take part legally in other activities for charitable or humanitarian purposes.

k. Conscientious objection

The Constitution and the laws in Vietnam do not recognize conscientious objection. The Constitution provides that: "Citizens must fulfil their military obligation and join in the all-people national defence."⁵⁶ The Law on Military Obligation requires citizens between the ages of 18 and 27, regardless of religion, to be liable for military service.⁵⁷

3. Freedom from intolerance and discrimination

The Ordinance on Belief and Religion formally guarantees freedom from intolerance and discrimination. It states:

"Citizens must respect one another, regardless of whether they have beliefs or not, follow religions or not, and if their beliefs or religions differ from others."⁵⁸

The Ordinance prohibits discrimination based on belief or religion.⁵⁹ It requires believers and followers to "respect other people's right to belief and religious freedom and their right to not have beliefs and to not follow any religion."⁶⁰ The Penal Code provides penalties for those whose actions obstruct

citizens from exercising their right to freedom of belief and religion as well as their right to not follow any religion.⁶¹ Other laws regarding elections, civil relations, marriage, labour, and education all prohibit discrimination based on religion.⁶²

4. Rights of vulnerable groups to freedom of religion and belief

Vulnerable groups are generally free to choose and practise their religions and beliefs, and are protected from violence and discrimination inflicted in the name of religion.

a. Women

The Constitution prohibits discrimination against women based on religion.⁶³

b. Children

The Law on Protection and Care of Children prohibits discrimination against children based on religion.⁶⁴

c. Migrant workers

The Law on Labour prohibits discrimination against workers, including migrant workers, based on religion.⁶⁵

⁵⁶ Article 45, 2013 Constitution.

⁵⁷ Article 3, Law on Military Obligation, 30/12/1981, 6-LCT/HĐNN7, 1981 (Vietnam).

⁵⁸ Article 1, Ordinance 21.

⁵⁹ Article 8, Ordinance 21.

⁶⁰ Article 9, Ordinance 21.

⁶¹ Article 129, Penal Code, 15/1999/QH10, 1999 (Vietnam).

⁶² Article 2, Law on Election, 01/1997/QH9, 1997 (Vietnam) (amended, 2010); Articles 8, 35, 45, Civil Code, 33/2005/QH11, 2005 (Vietnam); Article 8, Law on Labour, 10/2012/QH13, 2012 (Vietnam); Article 10, Law on Education, 38/2005/QH11, 2005 (Vietnam).

⁶³ Article 5, 26, 2013 Constitution of Vietnam

⁶⁴ Article 4, Law on Protection and Care of Children, 25/2004/QH 11, 2004 (Vietnam).

⁶⁵ Article 8, Law on Labour, 10/2012/QH13, 2012 (Vietnam).

d. Persons deprived of their liberty

Respect, on the part of government authorities, for the right of persons deprived of their liberty to religious freedom varies. The 2013 US Department of State report states that:

“Authorities have denied religious prisoners and detainees the right to worship, and, in principle, prisoners do not have the right to practice their religious beliefs or rites in communal prison spaces. There are, however, confirmed reports of some prisoners being allowed to read the Bible and practice their beliefs while incarcerated. Notably, Father Thaddeus Nguyen Van Ly, incarcerated because of his political activism, has been able to celebrate Mass and distribute communion to fellow prisoners.”

e. Refugees

There is no particular information regarding refugees.

f. Minorities

Vietnam has 54 nationalities with the Kinh as the majority. The Constitution recognizes that the nation of Vietnam is “the unified nation of all nationalities living on the territory of Vietnam,” and prohibits all acts of discrimination against different nationalities including minority groups.⁶⁶

Diverse Appraisals

In Vietnam, government officials and official spokesmen often cite the national Constitution and specific legal documents to show that the Vietnamese legal framework fully protects freedom of religion. The official position is that the Vietnamese Constitution and laws protect religious

freedom in line with international standards.⁶⁷ Official reports and mainstream commentaries, however, do concede that there are certain limits in the laws and policies governing religious freedom, which need to be addressed. It has been suggested that the legal status of the religious organizations be recognized, making them “juridical persons.” This may allow them to enter contracts and even sue the authorities. In addition, it is proposed that as the petitions and disputes regarding land used for religious purposes are complex and controversial, the laws on religious freedom should provide mechanisms for mediation and dialogue as ways to handle these cases rather than simply relying on judicial litigation.

International observers, however, are more critical of Vietnam’s legal framework for protecting religious freedom, pointing out for instance that it “is filled with substantial restrictions.”⁶⁸ Human Rights Watch, for instance, has criticized the Ordinance on Belief and Religion because it “bans any religious activity deemed to threaten national security, public order or national unity.”⁶⁹ The critics also contend that Decree 92 “constitutes a further restriction of religious practice” because its articles “increase the number of approvals required, which will mean more local and national government involvement

67 Dương Văn Biên, “The Right to Freedom of Belief and Religion in Vietnamese Law Since 1945 to Today”; Minh Anh, “Freedom of Belief and Religion in Vietnam: From Policies to Reality.” http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=28340705&cn_id=638054 accessed 26 April 2014; Nguyễn Thị Diệu Thuý, “Freedom of Belief and Religion in International Law and the Consistence of Vietnamese Law.” http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/240/0/1451/Quyenn_tu_do_tin_nguong_ton_giao_trong_cac_van_ban_phap_luat_quoc_te_va_su_tuong_thich_cua_phap_luat, accessed 26 April 2014; Duy Hạnh, “Freedom of Belief and Religion in Vietnam Constitution.” http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/240/0/4881/Quyenn_tu_do_tin_nguong_ton_giao_trong_Hien_phap_Viet_Nam, accessed 26 April 2014.

68 Tu, “Extreme Policy Makeover,” 780.

69 “Human Rights Watch slams Vietnam over Religious Repression.” http://www.asiademocracy.org/content/view.php?section_id=1&content_id=5, accessed 26 April 2014.

66 Article 5, 2013 Constitution of Vietnam.

in religious activities.”⁷⁰

Vietnam’s legal framework for religious freedom should be understood in the context of the nation’s communitarian and statist human rights regime. Religious freedom is subject by certain laws to restrictions for communitarian and statist reasons. Vietnamese laws on religious freedom not only regulate the right of people to exercise their freedom but also allow the state to administer people’s right to exercise their religious freedom. In particular, the regulations on recognition and registration of religions, religious activities, and religious organizations represent the state’s efforts to manage the practice of religious freedom. Thus, while formally providing guarantees of freedom for many aspects of religious practice and belief, the legal administrative structure also provides for the comprehensive regulation of religious organizations and activities by subjecting them to state scrutiny and requirements for approval by officials. Apart from bureaucratic regulations and mechanisms for registration and approval, the overarching requirement of operating within certain political and ideological boundaries provides a framework for complete state control of all aspects of the exercise of organized religion.

C. Redress Mechanisms and Interpretation of Religious Freedom

Vietnam is a polity under single-party rule. There is no special institution of constitutional review to interpret the Constitution and the laws, and to check if the laws are consistent with constitutional norms. Ordinary courts in Vietnam are not allowed to interpret the Constitution and the laws. A national human rights institution is also absent in Vietnam. A potential avenue for social checks on the laws and policies on religious freedom is the Vietnam Fatherland Front, which, according to the new

Constitution of 2013, is vested with the function of “social supervision and criticism.”⁷¹ Petitions by non-governmental actors, like the Fatherland Front, can help revise the law and policies on religious freedom.

Public discourse is allowed by the Constitution,⁷² but all media channels are state-owned or state-approved, and the creation of private media entities is not allowed.⁷³ In this context, the legal framework for religious freedom in Vietnam is described and explained by the official media in a mostly favourable manner. In theory, popular criticisms of Vietnam’s law and policies on religious freedom may possibly be conducted in unofficial venues, but it should be noted that there are legal restrictions on speech. For instance, the Penal Code states that it is a crime to “make, store and/or circulate documents and/or cultural products with content against the Socialist Republic of Vietnam.”⁷⁴

70 US Department of State’s Vietnam 2012 *International Religious Freedom Report*. <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid#wrapper>, accessed 26 April 2014.

71 Article 9, 2013 Constitution of Vietnam

72 Article 28, 2013 Constitution of Vietnam. Some social-political organizations, which have close relationships with the State, can create media entities with state approval.

73 Revised Law on Press, 12/1999/QH10, 1999 (Vietnam).

74 Article 88, Penal Code, 15/1999/QH10, 1999 (Vietnam).

PART TWO. TRENDS IN RELIGIOUS FREEDOM

A. Significant changes in the law

The Vietnamese government is reviewing and revising a number of laws in order to implement the new Constitution, which was adopted in late 2013. Among other things, the new Constitution features new provisions regarding human rights.⁷⁵ To put these new constitutional provisions into practice, a number of laws were reviewed,⁷⁶ and proposals made to revise the Ordinance on Belief and Religion in accordance with the relevant provisions in the new Constitution. The Ministry of Internal Affairs has prepared a draft of amendments to the Ordinance, and the National Assembly's Standing Committee is expected to approve the amendments in 2015.⁷⁷

The new Constitution legitimizes the possible restriction of human rights on the basis of national security, social order, and social morality. The proposed amendments to the Ordinance on Belief and Religion are on-going and underline the prioritisation of these public goals over that of human rights. To illustrate, one of the proposed changes requires religious dignitaries, priests and monks to regularly educate their followers in patriotism, including the exercise of their civic rights, the performance of their civic obligations, and the observance of the law "so as to build a happy and stable Vietnamese nation."

75 Thu Hằng, "Bảo đảm Thực hiện Quyền Con người trong Hiến pháp 2013" ["Protection of Human Rights in the 2013 Constitution," http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=28340715&cn_id=643453, accessed 18 June 2014.

76 The Ministry of Justice has reviewed 155 legal documents regarding human rights and proposed that 29 documents should be revised. Lê Sơn, "Còn 'Nợ' 50 văn bản pháp luật" [50 Legal Documents in 'Debt'], <http://baodientu.chinhphu.vn/Hoat-dong-Bo-nganh/Chi-con-no-50-van-ban-phap-luat/201402.vgp>, accessed 18 June 2014

77 The draft of amendments is available at the website of the Government at: datafile.chinhphu.vn

New provisions regarding "heresy" present a further prioritisation of public goals through the state management of religious activities. The definition of "heresy" in the draft of amendments to the Ordinance includes individual and organizational religious and belief activities which are illegal, threaten social security and order, oppose traditional customs, distort history, and undermine the national solidarity and good traditions of the nation. The draft of amendments to the Ordinance stipulates that activities of heresy are prohibited. According to an official report, "the supplementation of the provisions banning activities of heresy is to provide a basis for dealing with individuals and groups who misuse the party and state's policies on freedom of religion and belief."⁷⁸

On the other hand, some proposed changes provide more space for the exercise of freedom of religion and belief. For instance, one of the proposals recognizes that local communities can organize belief activities and festivities. This proposed change reflects the reality of the diverse belief activities and festivities in local communities throughout the nation. Another proposed amendment relates to international relationships in religious activities. The draft adds that foreigners are allowed to invite foreign religious dignitaries to perform religious ceremonies for them. In the current ordinance, only Vietnamese religious dignitaries are allowed to extend such invitations to foreign dignitaries. Other proposed changes are minor or involve technicalities.

B. Significant Changes in State Enforcement

The party, the state, and the official spokesmen of Vietnam have claimed as an achievement the nation's success in enforcing laws and policies that protect and promote the people's right to freedom of religion and belief. The Government's White Paper

78 Thanh Hoài, "Đề xuất Sửa đổi Pháp lệnh Tín ngưỡng, Tôn giáo," [Proposals for Amending the Ordinance on Religion and Belief,"] <http://baodientu.chinhphu.vn/Chinh-sach-moi/De-xuat-sua-doi-Phap-lenh-tin-nguong-ton-giao/191818.vgp>, accessed 19 June 2014.

on the Protection and Promotion of Human Rights in Vietnam (2005) declares: “The state of Vietnam always respects and protects the rights of believers to freedom of worship and to conduct belief and religious activities.”⁷⁹

The paper supports this claim with quantitative evidence, namely the increase in numbers of believers, followers, and dignitaries; recognized religions and recognized religious organizations; pagodas, churches and other religious places; dignitaries participating in representative bodies; and religious schools. In addition, the paper notes that the state allows the religious activities of ethnic groups to be conducted. The paper also states that religious groups in Vietnam have extensive international networks, evident from the fact that the Roman Catholic Church of Vietnam is part of the worldwide Catholic Church and the Buddhist Sangha of Vietnam maintains close relationships with Buddhist organizations globally and regionally (Cambodia, Thailand, and China). Finally, the Paper states that petitions regarding belief and religion have been handled in a timely manner by the state.⁸⁰

Adopting a similar quantitative approach, the Government Committee for Religious Affairs published several reports which demonstrate Vietnam’s achievements in the field of religious freedom.⁸¹ Official media outlets have also

published a number of similar reports and articles.⁸² Significant changes in the state’s enforcement of laws and policies regarding religious freedom are illustrated by the following quantitative examples:⁸³

The number of recognized religions and organizations has increased. Before the enactment of the Ordinance in 2004, there were 16 recognized religious organizations affiliated with six recognized religions, namely Buddhism, Catholicism, Protestantism, Hòa Hảo, Cao Đài, and Islam. The Ordinance has resulted in the increase of officially-recognized religions to a total of 13. The newly-recognized religions include Bahai Faith, Pure Land Buddhist Home Practice, the Four Debts of Gratitude, Threefold Enlightened Truth Path, Threefold Southern Tradition, Way of the Strange Fragrance From the Precious Mountain, and Brahmin. According to the 2009 census, the number of the believers of the 13 religions is as follows:

79 White Paper on Protection and Promotion of Human Rights in Vietnam (2005).

80 Ibid.

81 Trường Bách. “Vietnam Protects the Right to Freedom of Religion.” [http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/243/0/2982/Viet Nam dam bao quyen tu do tin nguong ton giao qua nguoi dau](http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/243/0/2982/Viet+Nam+dam+bao+quyen+tu+do+tin+nguong+ton+giao+qua+nguoi+dau), accessed 28 April 2014; Phạm Huy Thông. “The Ordinance on Belief and Religion: A Review of the last Ten Years.” [http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/240/0/4786/Phap lenh tin nguong ton giao 10 nam nhin lai](http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/240/0/4786/Phap+lenh+tin+nguong+ton+giao+10+nam+nhin+lai), accessed, 28 April 2014.

82 See, for example, Đỗ Quang Hưng, “Reflection on Religion and Religious Freedom in Vietnam,” (2007) 5 *Journal of Religious Studies* 6; Nguyễn Hồng Dương, “Some Issues on Religion in Vietnam,” (2010) 7 *Journal of Religious Studies* 15; Thiên Phương. “Religious Freedom in Vietnam- Indicator of Human Rights.” <http://www.nhandan.com.vn/chinhtri/binh-luan-phephan/item/21326002-.html>, accessed 28 April 2014; Nguyễn Đức Thắng. “The Vivid Picture of Freedom of Belief and Religion in Vietnam.” <http://www.qdnd.vn/qdndsite/vi-vn/61/43/chong-dien-bien-hoa-binh/buc-tranh-sinh-dong-ve-tu-do-tin-nguong-ton-giao-o-viet-nam/265117.html>, accessed 28 April 2014; Phùng Kim Lân. “In Vietnam, Every Religion is Equal Before the Law.” <http://www.qdnd.vn/qdndsite/vi-vn/61/43/chong-dien-bien-hoa-binh/o-viet-nam-moi-ton-giao-deu-binh-dang-truoc-phap-luat/288922.html>, accessed 28 April 2014; Trần Minh Thư. “Right Policies Defeat the Plot of ‘Peaceful Evolution.’” <http://www.vietnamplus.vn/chinh-sach-dung-dan-lam-that-bai-am-muu-dien-bien-hoa-binh/234276.vnp>, accessed 28 April 2014.

83 The number is synthesized from the different reports and commentaries mentioned above.

Religions	Number of Believers
1. Buddhism	6,812,318
2. Catholicism	5,677,086
3. Hòa Hảo	1,433,252
4. Cao Đài	807,915
5. Protestantism	734,168
6. Islam	75,268
7. Brahmin	56,427
8. Four Debts of Gratitude	41,280
9. Pure Land Buddhist Home Practice	11,093
10. Way of the Strange Fragrance From the Precious Mountain	10,824
11. Bahai Faith	731
12. Threefold Southern Tradition	709
13. Threefold Enlightened Truth Path	366

More religious organizations have been recognized officially, bringing the total number of recognized religious organizations to 38. These organizations are Vietnam Buddhist Sangha, Cham Islam, Catholicism, the Southern Evangelical Church of Vietnam, the Northern Evangelical Church of Vietnam, Southern Baptists, Adventists, one branch of the Mennonites, several branches of the Cao Dai faith, Hoa Hao, Pure Land Buddhist Home Practice, the Bani Muslim sect, Threefold Enlightened Truth Path, Threefold Southern Tradition, the Bahai community, the Mysterious Fragrance from Precious Mountains, the Four Gratitude, the Vietnam Christian Fellowship, and the Assembly of God.⁸⁴ The number of religious followers increased from 20 million in 2009 to 30 million in 2014—not counting the one million believers of popular faiths. Of the religious places, Buddhism accounts for 14,321; Catholicism, 6,003; Protestantism, around 500; Cao Dai, 1,284; Hoa Hao, 522; and Islam, 89.

Recognized religious organizations have reported being able to maintain activities relating to education, ordainment, bestowing of orders, appointment, election or honorary nomination of priests. In 2011, 669 people were ordained or bestowed with orders, 1,153 people were appointed, and 2,444 graduated or received training certifications from religious schools.

It was also reported that the implementation of the Ordinance on Belief and Religion made it easier to conduct religious activities, which became more festive, throughout the nation. Annually, 8,500 religious festivals are held at the national or local level. Most national religious festivals in Vietnam are held in Spring, including Hung Kings' anniversary, Yên Tử church festival, Bái Đính church festival, and Hương church festival. Several international religious events have also been held in Vietnam, such as the United Nations Day of Vesak in 2008 and the Federation of Asian Bishops' Conferences in 2012.

⁸⁴ USCIRF Annual Report 2013 - Countries of Particular Concern (Vietnam), available at: <http://www.refworld.org/docid/51826ef2b.html>

Religious books and materials were published more easily and in greater quantities through the Religious Publishing House. The publication of religious books is said to have increased over the years in terms of numbers and types. From 2006 to today, the Religious Publishing House issued licences for the publication of 4,725 religious books with 14,500,000 copies, and 1,118 MP3 CDs, VCDs, and VDVDs containing religious works in various forms and languages. It was reported that the state supported the publication of 30,000 copies of the Bible in the languages of ethnic minorities (Ba-na, Ê-đê, and Gia-rai) of the central highlands, which led to an increase in the number of Protestants in the central highlands from 50,000 in 1975 to 500,000 in 2013. Different religions have their own newspapers, magazines, and websites.

International actors have recognized Vietnam's achievements with regard to respecting religious freedom. In particular, the US government, which had often been critical, recognized Vietnam's recent progress on religious freedom. In 2004 and 2005, the US Department of State designated Vietnam a Country of Particular Concern, but removed the designation in 2006. The Vietnam 2012 International Religious Freedom Report by the US Department of State notes:

"The government generally respected the religious freedom of most registered and some unregistered religious groups; however, some of these groups reported abuses... the government also showed signs of progress: it registered new congregations, permitted the expansion of charitable activities, and allowed large-scale worship services with more than 100,000 participants."⁸⁵

C. Significant Changes in Religious Claims (by Non-State Actors)

There have not been any significant changes in religious claims made by non-state actors in Vietnam.

⁸⁵ US Department of State's Vietnam 2012 International Religious Freedom Report.

D. Significant Events of State Persecution of Religious Groups

The official position is that there is no state persecution of religious groups in Vietnam. It is claimed that some religious actors misused their freedom of religion and violated Vietnamese laws. Thus, the official point of view is that the punishment of these actors was legitimate and not representative of state persecution of religious groups. Religious dissidents and some international commentators, however, have a different perspective on this.⁸⁶ International organizations⁸⁷ and foreign governments⁸⁸ have criticized Vietnam's policies and practices, basing their claims on reports of state persecution of unrecognized religious organizations and groups.

The UK Foreign and Commonwealth Office's 2013 Human Rights and Democracy Report stated:

"There is evidence to suggest that the Vietnamese government is allowing more space for religious expression, but taking a much harder line where members of religious groups are believed to be involved in political movements or protests."⁸⁹

Human Rights Watch, in its World Report 2014: Vietnam, states:

⁸⁶ Tu, "Extreme Policy Makeover," Carlyle Thayer. "Violation of Freedom of Belief in Vietnam." <http://www.catholic.org.tw/vntaiwan/y2vienam/39vieton.htm>, accessed 29 April 2014.

⁸⁷ *World Report 2014 (Vietnam)* of Human Rights Watch, available at: <http://www.hrw.org/world-report/2014/country-chapters/vietnam?page=2>

⁸⁸ *2013 Human Rights and Democracy Report (Vietnam-Country of Concern)* of UK Foreign and Commonwealth Office, available at: <https://www.gov.uk/government/publications/vietnam-country-of-concern/vietnam-country-of-concern>; *US Department of State's Vietnam 2012 International Religious Freedom Report*.

⁸⁹ *2013 Human Rights and Democracy Report (Vietnam-Country of Concern)* of UK Foreign and Commonwealth Office.

“The government monitors, harasses, and sometimes violently cracks down on religious groups that operate outside of official, government-registered and government-controlled religious institutions. Targets in 2013 included unrecognized branches of the Cao Dai church, the Hoa Hao Buddhist church, independent Protestant and Catholic house churches in the central highlands and elsewhere, Khmer Krom Buddhist temples, and the Unified Buddhist Church of Vietnam.”⁹⁰

The Vietnam 2012 International Religious Freedom Report by the US Department of State notes:

“Unregistered and unrecognized religious groups were potentially vulnerable to harassment, as well as coercive and punitive actions by national and local authorities.”⁹¹

The report by the US Department of State provides many examples to support this claim. One example cited in the report states: “Authorities in An Giang and Dong Thap provinces continued to harass and abuse followers of the unsanctioned Traditional Hoa Hao Buddhist Church.”⁹²

The United States Commission on International Religious Freedom (USCIRF), in its Annual Report 2013 and in the section, Countries of Particular Concern, criticizes Vietnam:

“Religious freedom conditions remain very poor despite some positive changes over the past decade in response to international attention. The Vietnamese government continues to imprison individuals for religious activity or religious freedom advocacy.”⁹³

The report lists cases involving religious prisoners: Eight Hmong Protestants sentenced in March 2012 to two years imprisonment for “partaking in a separatist ethnic movement”; Pastor Nguyen Cong Chinh sentenced in February 2012 to five years in jail for “distorting the domestic situation, criticizing the government, and the army in foreign media”; Hoa Hao activist Bui Van Tham sentenced in May 2012 to 30 months in prison for “obstructing officials in the performance of their official duties”; and 22 members of the Buddhist Council for the Laws and Public Affairs of Bia Son Mountain were sentenced in January 2013 to jail terms ranging from 12 years to life for “aiming to overthrow” the state.⁹⁴ In these cases, the formal charges all involved political activities rather than, strictly speaking, the practice of religion. This raises the question of to what extent criminal prosecution in such cases uses rubrics of political activity to sanction religious practices and belief, and to what extent it is perceived political activities on the part of religious groups that motivate the governmental intervention. The potential for such intervention, of course, is provided by the overarching ideological framework of regulation noted above.

The USCIRF Annual Report 2013 mentions that the United Buddhist Church of Vietnam—a large, unrecognized Buddhist organization—“has faced decades of harassment and repression for seeking independence from the officially-approved Buddhist Sangha of Vietnam and for appealing to the government to respect religious freedom and related human rights.”⁹⁵ The report mentions the authority’s restrictions on religious activities of Khmer Buddhists in the Mekong Delta, Catholics in Nghe An province, Montagnard Protestants and Ha Mon Catholics in the central highlands, and Hmong Protestants in northwest provinces.⁹⁶

90 World Report 2014: Vietnam, Human Rights Watch.

91 US Department of State’s Vietnam 2012 International Religious Freedom Report.

92 Ibid.

93 USCIRF Annual Report 2013 - Countries of Particular Concern (Vietnam).

94 Ibid.

95 Ibid.

96 Ibid.

The report also states that “The Vietnamese government continues to ban and actively discourage participation in independent factions of the Hoa Hao and Cao Dai.”⁹⁷ The Vietnamese government requires all Hoa Hao and Cao Dai groups to affiliate with the government-approved religious organizations,⁹⁸ such as the Cao Dai Governance Council and the Hoa Hao Administrative Council. Yet, there are Hoa Hao and Cao Dai groups that refute that affiliation and choose to practice religious activities independently.

These unregistered groups are subject to “official repression,” which “includes interference with religious activities and leadership selection; loss of jobs, discrimination, and harassment of followers; and imprisonment of individuals who peacefully protest religious freedom restrictions.”⁹⁹ Especially, several leaders of the Hoa Hao community “openly criticized” the Hoa Hao Administrative Council “as being overly subservient to the government.”¹⁰⁰ Therefore, they created their own Hoa Hao body, named as Hoa Hao Central Buddhist Church (HHCBC). This unrecognized Hoa Hao body “face[s] significant official repression, including disbanding under the new Decree 92 or arrest under national security provisions of the legal code. HHCBC leaders and their followers have been arrested and sentenced to terms of up to four years for staging hunger strikes, distributing the writings of their founding prophet, holding ceremonies and holiday celebrations, or interfering as police tried to break up worship activities.”¹⁰¹

E. Significant Events of Non-State Persecution of Religious Groups

There are no significant events of non-state persecution of religious groups to report.

97 Ibid.

98 Ibid.

99 Ibid.

100 US Department of State’s Vietnam 2012 International Religious Freedom Report.

101 USCIRF Annual Report 2013 - Countries of Particular Concern (Vietnam)

F. Significant Events of Inter-Religious Conflicts

There are no significant inter-religious conflicts to report.

G. Significant Events of Terrorism and/or Terrorist Threats

There are no significant events relating to terrorism or terrorist threats to report.

H. Significant Cross-Border Incidents

Significant cross-border events have been ones involving the Khmer Krom, who are ethnic Khmer and mostly devotees of Theravada Buddhism, residing in South Vietnam. Human Rights Watch’s “On the Margins: Rights Abuses of Ethnic Khmer in Vietnam’s Mekong Delta” (2009) reported “on-going violations of the rights,” including the right to religious freedom, of the Khmer Krom in southern Vietnam, and “abuses” against the Khmer Krom who have fled to Cambodia for refuge.

The report states: “Wary about possible Khmer Krom nationalist aspirations, Vietnam has suppressed peaceful expressions of dissent and banned Khmer Krom human rights publications. It also tightly controls the Theravada Buddhism practiced by the Khmer Krom, who see this form of Buddhism as the foundation of their distinct culture and ethnic identity.”¹⁰² Against the backdrop of historical disputes about territory and boundaries between Vietnam and Cambodia, the issue of the Khmer Krom in Vietnam points to the complexity of the entanglement of religion with ethnicity, national identity and nationalist aspirations. What may be viewed from one perspective as an issue of religious freedom and persecution might appear to

102 Human Rights Watch, *On the Margins: Rights Abuses of Ethnic Khmer in Vietnam’s Mekong Delta* (2009), <http://www.hrw.org/news/2009/01/21/vietnam-halt-abuses-ethnic-khmer-mekong-delta>, accessed 23 August, 2014.

Vietnamese officials to instead involve legitimate repression of separatism and political activity.

The “flag incident” was the most recent event of note. *The Cambodia Daily* on 12 August 2014 reported that about 600 monks and nationalist protesters gathered at the Vietnamese Embassy in Phnom Penh, demanding an apology from Hanoi for a statement made by Vietnamese Embassy first counsellor Tran Van Thong on 6 June 2014, claiming that Vietnam controlled Kampuchea Krom, a region comprising much of today’s southern Vietnam, long before it was officially-ceded by colonial France in 1949. The demonstration proceeded peacefully until prominent monk and protester Seung Hai burned a Vietnamese flag, which was then stomped and spat on by monks and laymen alike.¹⁰³ As reported by the Vietnamese media on 13 August 2014, Vietnam’s Ministry of Foreign Affairs spokesman Le Hai Binh said that the act initiated by extremists actors “intentionally offended the feelings of the Vietnamese people, and ran counter to the traditional neighbourliness between Vietnam and Cambodia.” He also said: “We demand that Cambodia try these extremists in strict accordance with the law and take effective measures to prevent similar actions from repeating in the future.”¹⁰⁴ A day after Hanoi’s statement, *The Cambodia Daily* reported that the group of protestors promised to organize an even more “massive demonstration” outside the Vietnamese Embassy in Phnom Penh at the start of September if its demands are not met.¹⁰⁵

103 “Khmer Krom Protesters Burn Vietnamese Flag,” *The Cambodia Daily*, <http://www.cambodiadaily.com/news/khmer-krom-protesters-burn-vietnamese-flag-66356/>, accessed 23 August, 2014.

104 “Those Who Burned Vietnamese Flag Must Be Strictly Dealt with,” <http://vnexpress.net/tin-tuc/the-gioi/yeu-cau-xu-nghiem-nhung-ke-dot-co-viet-nam-o-campuchia-3030786.html>, accessed 23 August, 2014.

105 “After Vietnam Raises Concern, Khmer Krom Community Resolute,” *The Cambodia Daily*, <http://www.cambodiadaily.com/news/after-vietnam-raises-concern-khmer-krom-community-resolute-66658/>, accessed 23 August, 2014.

I. Governmental Response

In response to international criticisms, the government of Vietnam repeatedly affirms the nation’s respect and protection of religious freedom. The government denies the violation of religious freedom, discrimination against religions, and arbitrary detention and imprisonment of religious leaders and followers. Official commentaries regard international criticism to be a distortion of the reality of religious freedom in Vietnam.¹⁰⁶

The official position states that the imprisonment of religious actors is legal and legitimate because these actors “abuse religion, and under the cloak of religion, oppose the state, instigate people to disturb public order and undermine national unity.” The government claims that such political opportunists appropriate the confidence of the people to erode social morality, take politically-motivated action against the interests of the state and the nation, and are incited by external enemies to oppose the state. These actions contravene Vietnamese laws and are therefore justifiably dealt with in accordance with the law. The sanctions are said to be “completely legitimate and legal to protect public order and state regulations and to protect the legal interests of the people, including believers.”¹⁰⁷ The broad legal framework outlined above for the regulation of religion and belief within a structure of political and ideological constraints provides the formal basis for such claims of legitimate intervention on the part of the government.

106 “Vietnam Respects People’s Freedom of Belief and Religion.” http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/240/0/3995/Viet_Nam_ton_trong_tu_do_tin_nguong_ton_giao_cua_nguoi_dan, accessed 29 April 2014.

107 Phùng Kim Lân. “In Vietnam, Every Religion is Equal Before the Laws.”

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

Shortly after being elected a member of the United Nations Human Rights Council, Vietnam submitted its national report to the Council for the Universal Periodic Review (UPR) on 5 February 2014. The report states: “Vietnam considers religion and belief a legitimate need of the people and has made continuous efforts to create better conditions for religious and belief activities.”¹⁰⁸ Evidence shown include the increasing number of believers; the organization of major annual festivities; the renovation and new construction of places of worship; the regular organization and expansion of training activities for religious dignitaries, monks and nuns; humanitarian activities of religious organizations; and the growth in international relations of religious organizations, which saw religious leaders participating in many international fora, dialogues among religions and faiths, and exchanges of views on religious beliefs and rules at important fora, like ASEM and ASEAN.¹⁰⁹ The domestic media reported that the UPR of Vietnam’s national report was successful and hailed by many nations, which indicated international recognition for Vietnam’s achievement in human rights and religious freedom.¹¹⁰

During the interactive dialogue at the United Nations Human Rights Council, 60 delegations made statements about Vietnam’s report. Significant achievements in economic, social and cultural rights in Vietnam were highlighted. However,

108 *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 (Vietnam)*, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_1_E.pdf

109 Ibid.

110 See, for example, a report on the website of the Government Committee of Religious Affairs. “The Success of the UPR National Report Verifies the Achievement of Human right and Religious Freedom in Vietnam.” http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/240/0/4788/Bao_cao_quoc_gia_UPR_thanh_cong_khang_dinh_thanh_tuu_ve_nhan_quyen_ton_giao_o_Viet_Nam, accessed 28 April 2014.

several countries, including Norway, Sweden, Netherlands, the United Kingdom, and the United States, proposed recommendations to improve political and civil rights, especially the rights to freedom of expression and freedom of religion. One such recommendation stated:

“While commending Viet Nam for its recent progress in terms of freedom of religion, the United Kingdom remained concerned that implementation of legislation remains patchy, particularly at the provincial level. It recommended that Viet Nam [...] re-engage with the Special Rapporteur on freedom of religion.”¹¹¹

The US recommended that Vietnam release all prisoners of conscience, including religious activist Nguyen Van Ly; speed up the process of registering churches and religious organizations locally; allow for an equitable resolution of property disputes; recognize the United Buddhist Church of Vietnam and allow it to function independently of the Vietnamese Buddhist Sangha; and allow multiple branches of the Hoa Hao and Cao Dai faiths.¹¹²

K. Analysing the Trends

The Constitution and the laws of Vietnam guarantee freedom of religion. In particular, the enactment of the Ordinance on Belief and Religion in 2004 facilitates the practise of religious freedom in Vietnam. The increasing number of followers and believers, recognized religions and recognized religious organizations, religious places, publications of religious books and materials, and the frequent and diversified religious activities held throughout the country are fair indicators of the improvement in religious freedom in Vietnam.

111 United Nations Human Rights Council. Report of the Working Group on the Universal Periodic Review-Vietnam.

112 Ibid.

The improvement in religious freedom in Vietnam stemmed from both domestic pressure and international attention. The polity of Vietnam is far from totalitarian, while clearly under the sole leadership of the Communist Party. Due to internal societal pressure, three decades of economic reforms—or national “renovation” (*Doi moi*)—since 1986, and the impact of globalization, there has been a transition to greater openness in Vietnamese politics. In addition, as part of the global community, Vietnam is compelled to fulfil its international commitments and duties as well as its regional obligations under the ASEAN Charter and ASEAN Human Rights Declaration. It is in this context that human rights and religious freedom in Vietnam can be improved. As Vietnam seeks to integrate into the global community, it has become more receptive to international opinions; international criticism may have helped ameliorate the religious freedom situation in Vietnam.

As seen above, international actors do not condemn the state of religious freedom in Vietnam without also acknowledging the improvements that have been made. Still, international criticisms of Vietnam’s religious freedom situation remain sharp, the root cause of which—among other things—is Vietnam’s communitarian interpretation of religious freedom as reflected in its regulatory framework for the practice of organized religion.

PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

A. Negative Contributing Factors

1. *Socio-Economic Factors*

Vietnam is a developing country. According to the UNDP, Vietnam’s 2012 Human Development Index is 0.617, which is lower than the average of 0.64 for countries in the medium human development group and lower than the average of 0.683 for countries in East Asia and the Pacific.¹¹³

Poverty negatively affects the quality of the practise of religious freedom in Vietnam in several ways. Underdeveloped socio-economic conditions limit people’s ability to gain access to education and religious resources, particularly for the large number of people living in poor villages and the minority groups living in highland areas. The lack of education and the limited religious resources constrain people’s awareness of religions and the right to religious freedom.

2. *Ideological Factors*

Vietnam’s Constitution and laws do not have a provision that protects freedom of thought and conscience. Vietnam’s ruling party, the Communist Party, has an ideology based on Marxism-Leninism and Ho Chi Minh Thought, which is enshrined in the Constitution.¹¹⁴ As the only ruling party in Vietnamese society, its ideology dominates the country.

Marxism-Leninism is atheistic and highly critical of religion. As is understood in Vietnam, Karl Marx believed that certain social factors, such as economic depression, inequality and violence, give rise to religions and, more importantly, religions can be removed from future communist societies by ridding the social conditions necessary for their

¹¹³ UNDP, *Vietnam- HDI Values and Rank Changes in the 2013 Human Development Report*.

¹¹⁴ Article 4, Vietnam Constitution of 2013.

existence.¹¹⁵ The belief in the possible removal of religions from social life resulted in serious consequences in Vietnam during the pre-renovation program, which was initiated in 1986. It has been recognized that in Vietnam:

“Due to incomplete cognition, we committed serious mistakes in struggling against religions. We were overhasty and extreme in dealing with religions and religious places. A number of churches, pagodas, and temples were destroyed, religious activities were prohibited, religious believers were discriminated against, and the right to freedom of belief and religion was not guaranteed.”¹¹⁶

This mode of thinking has developed into a “more complete recognition” such that, during the transitional period to socialism, religions continued to exist because the social conditions necessary for religions still existed. It was realised that the targets in the struggle against religious problems ought not to have been every religion, religious activity and believer, but “groups of people who appropriate religions to establish superstitious careers or subvert establishments, disturb social order, and go against the interests of the state.”¹¹⁷ This marks a shift from outright attempts to repress organized religion to constraint of religious practice within political and ideological boundaries that can regulate it in ways that do not conflict with state interests.

115 Mai Thị Quý & Bùi Thị Hằng. “The Position of Marxism-Leninism on Religion and the Application to Handle Religious Matters in the Transitional Period to Socialism in Our Nation today. *Online Communist Review*, http://123.30.190.43:8080/tiengviet/tulieuvankien/4lanhtu/details.asp?topic=3&subtopic=88&leader_topic=620&id=BT15111139386, accessed 24 June 2014.

116 Ibid.

117 Ibid. It should be noted the particular meaning of “subvert revolution” in Vietnam. “Revolution” in Vietnam does not merely refer to violent revolution but may include any actions and policies useful to building up “socialism.” So, the phrase “subvert revolution” means the resistance to socialist policies and Vietnamese socialism generally.

The Marxist-Leninist government in Vietnam, thus, now realizes the indisputable existence of various religions and accepts the practice of religious freedom as a necessity due to internal demands and external attention. However, the state carefully manages and controls religious activities as they fear the diversification of religions and religious practices may make control more difficult and undermine communist ideology and the state’s socialist goals.¹¹⁸ Such management and control is to ensure that religions will help the state in achieving socialist goals and to exclude “heresy” that might be subversive to socialism. This explains why religions, religious organizations, and religious activities must be officially recognized by the state, and why religious dissidents and religious organizations that are not officially recognised are at risk of state sanctions.

Buddhism is the most popular religion in Vietnam. Rather than suppressing Buddhism in a totalitarian manner, however, the Marxist-Leninist government of Vietnam co-opts Buddhists and treats them as allies for socialist goals by recognizing, supporting, and managing Buddhists and Buddhist organizations that support the regime. The Vietnam Buddhist Sangha is the largest Buddhist organization that is officially-recognized and supported by the state, and a member of Vietnam Fatherland Front. Its motto, “The Way, the Nation, and Socialism,” illustrates its allegiance to the state’s goals. In contrast, the Unified Buddhist Sangha of Vietnam (UBSV), which was founded in 1964 during the Vietnam War, had a history of anti-communism. After the communists’ victory, most of the UBSV leaders were punished by the state.¹¹⁹ Most notably, Thích Quảng Độ, the patriarch of the UBSV, was arrested and imprisoned in 1977, 1982, and 1985 for anti-revolutionary activities and undermining national

118 See Nguyễn Hữu Khiển, *The State’s Management of Religious Activities during the Period of Building a Democratic and Lawful State in Contemporary Vietnam* (Hanoi: People’s Police Publishing House, 2001); Nguyễn Đức Lữ & Nguyễn Thị Kim Thanh, *Some Positions of the Party and State of Vietnam on Religion* (Hanoi: National Politics Publishing House, 2009).

119 Zachary Abuza, *Renovating Politics in Contemporary Vietnam* (Colorado: Lynne Rienner Publishers, 2001), 192.

solidarity. Thích Huyền Quang, another patriarch of the UBSV, was similarly persecuted. UBSV is currently banned in Vietnam and operates in exile.

3. *Political Factors*

As elaborated above, Vietnam has a single-party political system. The Communist Party of Vietnam exercises exclusive control over the state and society of Vietnam as mandated by the Constitution. The single-party system means that the party and state have a monopoly over the management of religion. The party and state policies on religious freedom are made, executed, and interpreted from a communist perspective. Alternative perspectives of religious freedom are considered “wrong convictions” or to have a “reactionary tone.”

The state prioritises social-economic and cultural rights over political and civil rights. Vietnamese socialism tends to focus on the promotion of social welfare rights. The liberalization of the market economy (albeit socialist-oriented) and the reduction of poverty are seen as instrumental in securing the legitimacy of the socialist regime in Vietnam. The government takes a more cautious approach to political and civil rights, including the right to religious freedom, because the practise of these rights in a liberal manner would challenge the nature of the socialist regime. The rights to freedom of speech, press, and publication are guaranteed by the Constitution, but their practice is managed by the state through relevant laws. Private presses and publishers are not allowed. Mass media is controlled by the state. Under these circumstances, the mass media is hardly a means of supervising the state’s policies on religious freedom and its practice.

Several political forces use religious activities as platforms for anti-communist campaigns. The party and the state in Vietnam maintain that the “enemy forces” both inside and outside Vietnam employ religions in a strategy of “peaceful evolution” to replace the communist regime in Vietnam with a

Western-style democracy.¹²⁰ This has resulted in the state’s punishment of political-religious dissidents who have subversive goals, such as Nguyễn Văn Lý.

Nguyễn Văn Lý is a Vietnamese Roman-Catholic priest and dissident. He was involved in numerous political dissident activities, for which he was imprisoned in 1977, 1983, 2001, and 2007. On 8 April 2006, he collaborated with other writers on the “Manifesto on Freedom and Democracy for Vietnam,” which calls for a multi-party state. Those who signed the Manifesto, including Lý, called themselves the “Bloc 8406,” referencing the date of the document. Lý and the group also called for a boycott of the national election in 2007. On 15 April 2006, Lý and three other Catholic priests published online the first issue of “Free Speech.” On 8 September 2006, Lý participated in the establishment of the Vietnam Progression Party.

In 2007, Lý was arrested and sentenced to jail for eight years for the crime of “Conducting propaganda against the Socialist Republic of Vietnam,” according to Article 88 of the Criminal Code of Vietnam.¹²¹ During his trial, Lý stated, “Đả đảo cộng sản Việt Nam” (Down with communist Vietnam). To the state, Lý’s trial was legitimate because he had departed from the religious path and misused his priesthood to participate in numerous subversive activities against the state and undermine national solidarity.¹²² The United States expressed serious concerns about Lý’s trial. After Lý’s arrest, US Congressman Christopher Smith

120 Triệu Minh Tư, “Tiếp cận Vấn đề các Thế lực Thù địch Lợi dụng Tôn giáo Chống, Phá Đảng và Nhà nước ta,” [Approaching the matter of Enemy Forces that Appropriate Religions to Subvert the Party and State,] <http://baohagiang.vn/?lang=V&func=newsdetail&newsid=27276&CatID=22&MN=2>, accessed 24 June 2014.

121 “Tuyên phạt Nguyễn Văn Lý 8 năm tù về tội “Tuyên truyền chống Nhà nước Cộng hòa xã hội chủ nghĩa Việt Nam” [Nguyễn Văn Lý is sentenced to eight years’ jail for the crime of “Conducting propaganda against the Socialist Republic of Vietnam,” <http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/194286/Tuyen-phat-Nguyen-Van-Lynbsp8-nam-tunbspve-toi-Tuyen-truyen-chong-Nha-nuoc-Cong-hoa-xa-hoi-chu-nghia-Viet-Nam.html>], accessed 25 June 2014.

122 Ibid.

introduced a House Resolution to call on Vietnam to immediately and unconditionally release Lý and his co-accused.¹²³ The nature of Lý's activities and the reaction of the state again point to the difficulty in some cases of disentangling religious activities from political activism that falls outside the purview of freedom of religion and belief.

Another serious, negative political issue is religion-based separatism, which involves religion-based advocacy for the creation of an independent state of ethnic groups, separate from that of the communist state and Vietnam's majority population, the Kinh people. A typical example of such religion-based separatism is the Protestant mobilization for the creation of a "Degar Republic" for the Degar people, the indigenous people of the central highlands of Vietnam. Ksor Kok and a group of Vietnamese exiles in the US created the religion, "Degar Protestantism," and the Degar Republic in 2009. The view of the party and the state is that Degar Protestantism seeks "to take advantage of the low intellectual standards and naivety of the ethnic minority to induce and incite them to agitate for separatism and autonomy. It also targeted "hot spots" and took advantage of land problems, which had not been resolved satisfactorily, to cause public disorder and social disturbances and to attack political security."¹²⁴

Prior to this, in February 2001, numerous followers of Degar Protestantism and authority figures of the "Degar Republic" were involved in a rebellion in the central highlands. The rebellion was quelled by the government.¹²⁵ International observers, such as Human Rights Watch, were quite concerned with the government's manner of dealing with the Degar

Republic, calling it "repression."¹²⁶

Religious activities, when combined with separatist and dissident political campaigns, challenge the nature of the socialist polity and national unity. This increases the state's suspicion of religious freedom, which results in its stringent control and management of religious activities.

4. Legal Factors

The legal factors influencing the right to religious freedom in Vietnam are related to the government's understanding and exercise of human rights and the role of the law. Vietnam's Constitution has an idealized chapter on human rights, which includes rights similar to those of international human rights laws and that are found in many national constitutions. However, the state does not accept the liberal idea of human rights as natural rights which limit the powers of the state. Instead, human rights are conceptualized as positivist-statist rights, or positively created by the state and bestowed on its subjects.¹²⁷ Human rights are thus managed and controlled by the state for public goals that it aspires to, mainly ones associated with socialism. In policy and in reality, the state establishes restrictions on the practise of human rights, and religious freedom is not exempt.

The official conception of the role of the law in Vietnam is distinctive. The Vietnamese legal system and practice is guided by the Soviet-derived "socialist legality" principle described by V.I. Lenin. At the core of this principle is the formal, strict, and unanimous application of the law. Socialist legality emphasizes that the law is an instrument the state uses to rule the people and to enforce the strict observation of the law—it is rule by law, not

123 GovTrack: H. Res. 243: Text of Legislation.

124 "Degar Protestantism" Former Leader Tells the Truth, accessed 24 June 2014, http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30107&cn_id=82655

125 For more examples, see Nguyễn Văn Minh, "The Creation, Aim, and Activities of the So-called 'The State of Degar Republic'" (2006) 4 *Journal of Anthropology* 60.

126 Sidney Jones, Malcolm Smart, Joe Saunders, *Repression of Montagnards: Conflicts Over Land and Religion in Vietnam's Central Highlands* (Human Rights Watch, 2002).

127 For more discussion on the concepts of human rights in Vietnam, see Gillespie, J., 'Concepts of Human Rights in Vietnam' in Randall Peerenboom (ed) *Asian Discourses of Human Rights* (London: Routledge, 2006).

rule of law. The substantial content of the law, such as rights, are not as important to socialist legality. From a socialist legality perspective, laws are not instruments that people use to restrain the state, but instruments of the state to restrain people. This conception of the role of law legitimizes the legal restrictions of human rights.

After the period of economic reforms, known as the Renovation period that began in 1986, Vietnam introduced the concept of a “socialist rule-of-law state,” an adaption of the Soviet Union’s *pravovoe gosudarstvo*, which was in turn based on the German *Rechtsstaat*.¹²⁸ The “socialist rule-of-law state” is a mélange of the Soviet concept of socialist legality and the Western idea of the rule of law. Under this mixed framework, the rights contained in the law are recognized, but the idea of law as an instrument of the state to govern the people and the emphasis on people’s strict obedience to the law remain intact. This results in a reality where laws on rights do not merely recognize and protect rights, but also allow for the management and control of the practise of rights in line with the state’s goals. This means that laws, while containing new rights, fail to limit state power.

The Vietnamese conception of the role of the law affects the practise of human rights in general and the right to freedom of religion in particular. People have the right to religious freedom not because of the simple fact that they are members of the human community and have inalienable natural rights, but because they are members of the nation and have certain rights positively bestowed upon them by the sovereign power. Therefore, the practise of religious freedom is recognized, regulated, managed, and controlled by the state. In cases where the practise of religious freedom exceeds the public goals endorsed by the state, the state can withdraw this freedom as seen by its sanctions of religious dissidents and unrecognized religious organizations and activities. The law legitimizes the state’s sanctions rather than

limiting its function. The following statement by an official spokesman illustrates how the Vietnamese socialist concept of law affects religious freedom:

Apart from respecting and protecting the citizen’s right to freedom of religion and belief, the policies of the Party and the laws of the Vietnamese state also strictly prohibit and exclude every activity which misuses religion to undermine independence, national solidarity, and socialism, and to prevent followers from fulfilling their duties as citizens... In recent years, a number of heretical religions have been exposed, such as the Hoa vàng Way, Long Hoa Di Lạc (in the north); the Vàng chữ Way (in the northwest); The Y-Gyin Way, Hà Môn, Thanh Hải vô thượng sư, Canh tân đặc sủng, Degar Protestantism (in the highlands); Hội đồng công án Bia Sơn (in Phú Yên)... The ruling is completely legitimate and legal to protect security and order.”¹²⁹

5. Institutional Factors

Most nations accept certain legal limits on the freedom of individuals. However, there are usually institutional checks to ensure that such legal limits are legitimate and that the state does not limit freedom in an arbitrary manner. They include the mechanism of judicial review, special national institutions of human rights protection, and judicial independence. These institutional factors do not exist in Vietnam.

In Vietnam, there is no special judicial institution, such as a constitutional court, to check the constitutionality of the state’s actions. Ordinary courts are not allowed to perform the function of constitutional review. That means there is no

128 John Gillespie, “Concept of Law in Vietnam: Transforming Statist Socialism” in Randall Peerenboom (ed) *Asian Discourses of Rule of Law* (London and New York: Routledge, 2004), 151.

129 Hoàng Đình Thành. “Vietnam Respects and Protects the Right to Freedom of Belief and Religion.” http://btgcp.gov.vn/Plus.aspx/vi/News/38/0/169/0/2963/Viet_Nam_coi_trong_va_bao_dam_quyen_tu_do_tin_nguoi_ton_giao, accessed 26 June 2014.

independent institution to determine whether the laws and the authorities respect constitutionally-protected human rights. Under such circumstances, it is the administrators themselves (officials and the police), rather than independent institutional arbiters who decide whether the Ordinance on Belief and Religion and the administration of religious affairs respect the constitutionally-protected freedom of religion. There is also no national human rights institution in Vietnam. During the public debate on constitutional revision in the 2010s, there was a vehement call by intellectuals for the establishment of a constitutional court or council and a national committee on human rights, but the new Constitution adopted in late 2013 did not provide for the creation of such institutions. While in the ASEAN framework Vietnam participates in the ASEAN Intergovernmental Human Rights Commission (AICHR), the work of the AICHR has thus far not extended to considerations of how commitments to the rule of law and religious freedom under ASEAN instruments are concretely implemented.

There is little protection for judicial independence in Vietnam. Socialist Vietnam rejects the Western theory of the separation of powers and of judicial independence, and favours the Soviet principle of unity of power.¹³⁰ While the Constitution encourages the courts to decide cases according to the law and prohibits external interference in the decisions of judges,¹³¹ the reality is far from ideal. Most judges are party members and must be accountable to the party.¹³² A commentator observed: "Courts in this region [socialist-transforming East Asia] have been subjected to an extreme form of political control."¹³³ Judicial judgments are issued under the aegis of

the "party leadership" and in accordance with "government directives."¹³⁴ The trials of religious dissidents are no exception.

B. Positive Contributing Factors

1. *The Tradition of Religious Harmony*

Vietnam has a long tradition of harmonious co-existence among its various religions. In pre-modern Vietnam, three major religions, namely Confucianism, Buddhism, and Taoism, established a tradition called "*Tam giáo Đồng nguyên*" (Unity of Three Religions).¹³⁵ This tradition continues today and helps prevent religion-related conflict, societal abuses and discrimination, and terrorism—positively contributing to the practice of religious freedom. It was reported that in 2013, "[t]here were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice."¹³⁶

There were also some dialogues among leaders and followers of disparate religious communities. According to the US Department of State's Vietnam 2012 International Religious Freedom Report, in October 2012, "more than 1,000 followers and dignitaries of five religions joined in an inter-religious meeting held by the HCMC Archdiocese's Pastoral Services. The gathering of representatives from Catholicism, Protestantism, Buddhism, Cao Dai, Hoa Hao, Islam, Minh Ly Religion, and the Bahai Faith shared ideas about how to guide others to overcome hardship and misery, and called for more cooperation in charitable activities among different religious groups."¹³⁷

134 Ibid., 849-52.

135 Lê Anh Dũng. "The Tradition of Unity of Three Religions in the Vietnamese Nation During Different Periods." <http://www.nhipcaugiaoaly.com/post?id=142>, accessed 27 June 2014.

136 US Department of State, *Vietnam 2013 International Religious Freedom Report*, available at <<http://www.state.gov/documents/organization/222393.pdf>> accessed 21 December 2014.

137 US Department of State's Vietnam 2012 International Religious Freedom Report.

130 John Gillespie, "Rethinking the Role of Judicial Independence in Socialist-Transforming East Asia," (2007) 56 *International and Comparative Law Quarterly* 838.

131 Article 130, 1992 Constitution of Vietnam; Article 103, 2013 Constitution of Vietnam.

132 Penelope Nicholson, "Judicial Independence and the Rule of Law: The Vietnamese Court Experience," (2001) 3 *Asian Law Journal* 38.

133 Gillespie, "Judicial Independence," 838.

2. Stronger Constitutional and Legal Protections

Compared to earlier periods, the government has significantly eased restrictions on Buddhists, Catholics, Protestants, Hòa Hảo, Bahá'í, and Caodaists. More religions and religious organizations have been officially recognized after enactment of the Ordinance on Belief and Religion in 2004. The US Department of State's Vietnam 2012 International Religious Freedom Report acknowledges that "much of the change came from stronger implementation of significant revisions to the legal framework governing religion instituted in 2004 and 2005."¹³⁸

It is important to note that the new 2013 Constitution of Vietnam provides stronger protection of human rights in general and religious freedom in particular. In the 1992 Constitution, human rights must be exercised "according to the law." The "law" in Vietnam consists not only of statutes by the legislative body, but also numerous legal documents by administrative bodies,¹³⁹ which allows authorities at all governmental levels to issue legal documents that can restrict human rights. Such a human rights regime was criticized by Vietnamese legal scholars, especially during the constitutional revision process. Consequently, the 2013 Constitution adopted a new human rights regime, which states that only legislative statutes can establish legal restrictions on human rights in critical circumstances for reasons of national defence, national security, social order and security, social morality, and the health of the community.¹⁴⁰ In theory, the new human rights regime prohibits the administrative organs from issuing legal documents that limit human rights. This is a positive development which can also affect the laws and the reality of religious freedom in Vietnam in the future. The hope is that religious freedom will not be restricted arbitrarily by legal documents issued by administrative bodies and local governments.

¹³⁸ US Department of State's Vietnam 2012 International Religious Freedom Report.

¹³⁹ Law on the Promulgation of Legal Documents, No: 17/2008/QH12, 2008 (Vietnam).

¹⁴⁰ Article 14, the 2013 Constitution of Vietnam.

3. Government-led or non-state actor-led initiatives to promote freedom of religion

The government has initiated several activities to promote freedom of religion. It facilitated the construction of new places of worship, transferred land to religious groups, approved building permits, and approved small construction grants.¹⁴¹ The government also assisted in the publication of religious materials, the translation of the Bible into the languages of ethnic minorities, the on-going publication of a Vietnamese-Arabic bilingual Koran, and the translation of Buddhist classics into the Khmer language. In addition, the government facilitates the organization of religious festivals, congregations, and international religious activities.¹⁴²

The Vietnam Fatherland Front also initiated activities beneficial to religious freedom. It proposed that the government revise laws and policies regarding religious affairs. For example, the Standing Committee of the Vietnam Fatherland Front has submitted a petition to the state, calling for the revision of the Law on Education, the Ordinance on Belief and Religion, and the Law on Medical Career in a direction that provides more freedom for recognized religions to participate in medical, educational, and humanitarian activities.¹⁴³

4. The Response of Peace Promoting Religious Leaders

There are religious leaders who are engaged in promoting peace. One such religious leader is Thích Nhất Hạnh, a world-renowned, Vietnamese Zen Buddhist monk based in France, who is a teacher, author, poet, and peace activist. He is active in

¹⁴¹ US Department of State's Vietnam 2012 International Religious Freedom Report.

¹⁴² Nguyễn Đức Thắng. "The Vivid Picture of Freedom of Belief and Religion in Vietnam."

¹⁴³ Nguyễn Văn Thanh. "Research on the Fatherland Front in relation to Religions and Religious Affairs over time." 100 (2012) *Journal of Front*, online version: <http://www.mattran.org.vn/home/TapChi/so%20100/khmt.htm>

the peace movement and promotes non-violent solutions to conflict. In 1956, he was associated with the Unified Buddhist Church of Vietnam as editor-in-chief of its *Vietnamese Buddhism* periodical. In 1969, he founded the United Buddhist Church (Église Bouddhique Unifiée) in France, separating from the United Buddhist Church of Vietnam. Previously, the Vietnamese government did not welcome Thích Nhất Hạnh, but in 2005, after lengthy negotiations, the Vietnamese government gave him permission to return to Vietnam for a visit. In 2007, Thích Nhất Hạnh was again permitted to return to Vietnam. He travelled widely throughout the country, communicated with large Buddhist groups, and had discussions with intellectuals and political leaders, including President Nguyễn Minh Triết. He was also allowed to teach in Vietnam and his books have been published widely in Vietnamese.¹⁴⁴

5. *The Response of Authorities, Security Forces or the Police*

There are reports that indicate some easing of restrictions on religious freedom on the part of government authorities. For instance, the 2013 US Department of State report noted that “[i]n some parts of the country, local authorities tacitly approved the activities of unregistered groups and did not interfere with them.” The same report indicated that the government “registered an increased number of religious groups and generally respected the religious freedom of those registered groups, to the extent the groups complied with regulations. The government also permitted the expansion of charitable activities, and allowed large-scale worship services with more than 100,000 participants.” In addition, the government had restored some properties that were previously owned by religious groups. For example, in June 2012, the government restored five acres of land to

144 For more information about Thích Nhất Hạnh, see: “Religion & Ethics - Thich Nhat Hanh”. BBC, <http://www.bbc.co.uk/religion/religions/buddhism/people/thichnhatanh.shtml>, accessed 27 June 2014; Quán Như, “Nhat Hanh’s Peace Activities,” http://www.giaodiemonline.com/thuvien/FotoNews/nh_quannhu.htm, accessed 27 June 2014.

St. Peter’s Catholic chapel in Hanoi.¹⁴⁵

6. *Educational Programs Raising Awareness about Religions*

There are educational programs that support religious activities. Four Vietnam Buddhist Academies in Ho Chi Minh City, Hanoi, Hue, and Can Tho offer undergraduate degree programs on Buddhism and will also offer master degree programs.¹⁴⁶ The government supports religious education by helping build new facilities and sending students from religious academies to educational institutions overseas.¹⁴⁷

145 US Department of State’s Vietnam 2012 International Religious Freedom Report.

146 See the website of the Vietnam Buddhist Academy at Hanoi: http://hvpgvn.edu.vn/index.php?option=com_content&view=article&id=50&Itemid=11

147 Nguyễn Đức Thắng. “The Vivid Picture of Freedom of Belief and Religion in Vietnam.”

PART FOUR: CONCLUSION

This report considers the law, policies, and reality of religious freedom in Vietnam using the principle of charity. It has disinterred domestic ideas informing the discourse, the law, and the reality of religious freedom in Vietnam. It has interpreted the language and the actions of the party and the government in Vietnam regarding religious freedom in their own light. Vietnam maintains its distinctive concepts of the roles of the law, human rights, and religions in society, which affects the discourse, laws, policies, and reality of religious freedom. In particular, Vietnam has its own philosophy of human rights and has developed its own regime of human rights, which is underpinned by the concern for communitarian and statist goals. This communitarian and statist human rights regime significantly affects the domain of religious freedom in Vietnam.

Vietnam is a transforming socialist nation, not a traditional socialist nation. It has become deeply integrated into the global community and has adopted several common values and institutions instrumental to its transformation, such as a market economy and the rule of law, albeit in a socialist-oriented form. It also participates actively in the ongoing process of regional developments, including in human rights, that have followed the adoption of the ASEAN Charter in 2008. Different aspects of Vietnamese society, therefore, have undergone significant changes, including religious freedom. The legal framework established in 2004 considerably contributes to the betterment of religious freedom in Vietnam, and is now under review. The new 2013 Constitution provides a basis for the control of arbitrary administrative restrictions on human rights in general and religious freedom in particular.

There are a number of positive factors contributing to the progression of religious freedom in Vietnam: the tradition of religious harmony, stronger constitutional and legal protections of religious freedom, government-led or non-state actor-led initiatives to promote freedom of religion, the response of religious leaders who promote peace,

the authorities, security forces or the police in promoting or easing restrictions on religious freedom, and educational programs raising awareness about religions. On the other hand, a number of negative factors affect the practice of religious freedom in Vietnam: socio-economic factors, ideological factors, political factors, legal factors, and institutional factors. This report has made clear that from the perspective of the government of Vietnam, regulation of religious organization and practice must be constrained within a legally grounded framework of political control in order to serve the interests of the state.

This report concludes with some reflections on the prospects of religious freedom in Vietnam. Under the influences of internal social-economic development and demands as well as that of regional and global integration, the Vietnamese government may abate in its communitarian and statist vision of religious freedom, and allow new beliefs and religious practices. An international commentator stated: "As Vietnam modernizes and becomes more globally-integrated, party leaders increasingly grapple with cross-cultural problems. This compels them to expand their loyalties beyond the ethnic Kinh majority and accept diverse forms of religious worship. In the process, party leaders are incrementally assuming a cosmopolitan outlook."¹⁴⁸ The official recognition of the Bahai faith in 2007 and the granting of permission to Thích Nhất Hạnh to lecture on Zen Buddhism and the publication of his works in Vietnam are representative of this trend.

However, the shift to a more cosmopolitan perspective, which implies that the Vietnamese government will be ready to allow a legally-enforceable right to religious freedom, is unlikely.¹⁴⁹ This was illustrated by the rejection of the call for a constitutional court or council in the last constitution-making process. Constitutional rights and the right to religious freedom are not always

¹⁴⁸ Gillespie, "Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam," 112.

¹⁴⁹ Ibid., 149.

enforced through legal mechanisms. The new Constitution of Vietnam, nonetheless, holds some promise of political alternatives.

The new Constitution gives the people, together with state actors, the role of protecting the Constitution.¹⁵⁰ In principle, this lets the people check the exercise of state power against constitutional rights, including the right to religious freedom. While institutional checks (constitutional review, human rights committee, and independent courts) on state power are absent or limited in Vietnam, popular checks through popular discourse and mobilization have the potential to fulfil the new constitutional commitment to permit people to protect the Constitution. Such popular checks, however, require that the relevant practice of freedom of speech, press, and association be eased.

Finally, the change to a more cosmopolitan perspective does not necessarily mean that Vietnam's outlook will finally converge with the universal liberal outlook on religious freedom and human rights in general. Whether the liberal outlook should be universally accepted has been debated in global fora. The rise of Western communitarianism notwithstanding, Vietnam's vision of human rights and religious freedom is not unusual when compared with that of ASEAN's. The 2012 ASEAN Declaration of Human rights states: "The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives."¹⁵¹ It also allows legal limitations on human rights for a wide range of public goals: "The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of

securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society."¹⁵² Communitarian considerations are present in ASEAN's path to human rights and religious freedom, which moves beyond "The end of the history"—or the triumph of Western liberal democracy—as Fukuyama imagined.¹⁵³

150 Art. 119 (2) of the Constitution states: "The National Assembly and its agencies, the President, the Government, People's Courts, People's Procuracies, other agencies of the State and all the People shall defend the Constitution. The mechanism to defend the Constitution shall be prescribed by a law."

151 General Principles, Section 6, ASEAN Declaration of Human rights, 2012.

152 General Principles, Section 8, ASEAN Declaration of Human rights, 2012. One may argue that the ASEAN Human Rights Declaration contains contradictory provisions recognizing the universality of human rights principles on the one hand and in other provisions allowing human rights restrictions. However, the restrictions on human rights for some specified public interests are also recognized in the ICCPR (Article 22), and the ICESCR (Article 8).

153 Francis Fukuyama, *The End of History and the Last Man* (London: Penguin Books, 1992)

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