

**FREEDOM OF RELIGION AND BELIEF
IN THE SOUTHEAST ASIA:**

**LEGAL FRAMEWORK, PRACTICES
AND INTERNATIONAL CONCERN**

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FOREWORD

ASEAN has just ratified the ASEAN Human Rights Declaration on the ASEAN Ministerial Meeting, November 2012, in Cambodia. With a number of critical remarks, it became one of important progresses of ASEAN States in the promotion and protection of human rights in the region. ASEAN Declaration can become investment and referral to Member States and institutions in ASEAN in implementing Human Rights in future.

A positive side that ought to be welcomed from the document is listed in the General Principles of the Declaration, namely the guarantee of fundamental rights for everyone, regardless of race, gender, language, age, religion, politic and so forth. More specifically, the Declaration also guarantees the right of every people to thought, conscience and religion, as embodied in Article 22 of the Declaration

In addition, this article also stresses the importance of eliminating all forms of intolerance, discrimination and hate speech based on someone's religion or belief.

With the present article in the Declaration, we all hope that ASEAN States can further enhance the promotion and protection of the rights to religious freedom in domestic realm, because results of the research in this book show that all ASEAN member states face the same problems within the issue.

Departing from the importance of presenting a document that reviews the situation of religious freedom in ASEAN, in the realm of normative or implementation, the researches made by the HRWG and supported by Freedom House seek to fill the void of reference for policy makers, stakeholders, academics or human rights activists who wish to learn more about the issues. The expectation is surely a change toward a more positive direction, both at the level of legislation and practice.

In addition, the lack of the entire ASEAN civil societies' attention to religious freedom has made the issue receives not as much of attention at the regional level, both by civil society or by ASEAN agencies. In fact, the issue of freedom of religion or belief has also become an important aspect in the protection of human rights in general. In fact, the Convention on Civil and Political Rights (ICCPR) categorizes this right as a right that cannot be derogated, including in state of emergency. With such situation, the present book is expected to encourage civil society's attention in ASEAN in response to the issue of freedom of religion/belief, both at the national and regional levels.

Thus, we expect this document can become a reference for policy stakeholders across all ASEAN States and they can learn from best practices conducted by other countries. With States' structure that is made up of various ethnic, culture and religion, ASEAN'S target to develop into a regional community cannot be separated from the guarantee of freedom of religion/belief for every person who lives in the area. Including within it, to make the studies revealed in this book as starting point for the implementation of the ASEAN Declaration of Human Rights and to encourage the ASEAN Intergovernmental Commission on Human Rights (AICHR) to work and respond to various policies and case.

Lastly, the HRWG would like to thank Alamsyah Djafar, Herlambang Perdana and Muhammad Hafiz who have worked hard to complete these researches, as well as to the expert readers who were willing to criticize and provide input for the preliminary script. Additionally, to the Freedom House that has supported the researches since the beginning until the publication of this book.

Jakarta, December 2012
Muhammad Choirul Anam
Deputy Executive Director of HRWG

EDITOR'S INTRODUCTION

Reporting the situation of freedom of religion or belief is not an easy thing to do. Besides very closely associated with field data, reporting also requires the existence of appropriate criteria to measure the occurrence of violations of rights and the role of the State in it, either actively or passively. A more elaborate reporting as it was carried out not only in single country alone, but in more countries. As in the present book you read, the report of freedom of religion or belief situations was made in the field of ten ASEAN States.

In re-reading the research results and assembling both studies that have been done in the last semester of 2012, I was greatly helped by an introductory article written by Ihsan Ali Fauzi, Samsu Rizal Panggabean and Trisno S. Sutanto of the 'mother' book on Freedom of Religion edited by Budhy Munawar Rahman (2011). All three have been mapping the typology of existing freedom of religion reports, inter alia the Center for Religious Freedom in 2008 and Annual International Religious Freedom Report of the US Department of State.

In addition, they also conveyed feedbacks, suggestions and criticisms for religious freedom reports that started to grow in Indonesia, among other things conducted by The Wahid Institute, Setara Institute and the CRCS of Gadjah Mada University in Yogyakarta. Each has strengths and weaknesses, so in their path reports can always be perfected and complement each other to gain more maximum results.

In reporting the condition of freedom of religion and belief, there are at least three important things that have to be considered and to benchmark the extent to which religious freedom is protected and catered for by the State. In his foreword, Ihsan Ali Fauzi, et al. posited the 3 dimensional measurements that used in the book of "Religious Freedom in the World" edited by Paul A. Marshal. Those three dimensional measurements that also noted in the page of Center for Religious Freedom website, are:

Firs, State regulation in the field of religion, namely, restriction that has been positioned in practice; professing or selecting a particular religion as formal law, policy or administrative actions of the State. This criterion goes beyond a norm in the Constitution, because in many countries, even though freedom of religion is guaranteed in its Constitution, they often support the administrative approval policy or openly hostile to certain religious groups. *Second*; State favoritism towards a particular religious group; this can be manifested in subsidies, privilege,

endorsement or approval of support, which are conducted by the State towards a religion or small group in a particular religion; *third*, social regulations, i.e. socially or culturally forceful preceding policies. These aspects often – or perhaps entirely – go beyond the limitations that have been carried out by the State.

In hopes of generating a comprehensive study about religious freedom in Southeast Asia, the present research used analysis framework to uncover violations against freedom of religion or belief in ASEAN; although, the presentation of data and results of research in each country did not rigidly use the systematic of the 3 dimensional measurements.

In addition to those three measurements, it should be stated here that the research was based on the principles of Human Rights. Knowingly that the concept of Human Rights puts the State as liable party to promote, fulfill and protect them; activeness of the State, whether through regulations, policies or practices, by performing measures that impair the enjoyment of Human Rights is an act that can be comprised in the category of violation of rights. Conversely, in situation that the State was negligent and ignoring the practice of certain civic groups to other civilian that causing the inability to enjoy the guarantee of Human Rights, the State has passively committed a breach of Human Rights.

In this case, all components and principles of Human Rights require every State as the principal executor of the implementation of its citizens' Human Rights, even generally speaking of any individual within its territory, regardless background, race, religion, belief or other distinction.

Freedom of Religion in ASEAN

Reading a research report is not as enjoyable as reading a novel that presents flowing story and touches the deepest alcove of readers' heart. In contrast, reading this book requires the readers to cringe their forehead, tracing line by line of the texts provided by researchers. Needless to say, this book contains the concepts of religious freedom, State policies, UN Human Rights Bodies' recommendations and practices of freedom of religion implementation by Government.

This book is interesting to read when positioned within the context of Southeast Asian countries that possess multi-diversities in social, cultural or political aspects. The results of this research are more meaningful when the ASEAN States faced with each other's differences, which inevitably cannot be eliminated, either in domestic or regional context. The emergence of various cases of violence and discrimination also becomes propelling power in reviewing issues of freedom of religion and belief in respective State.

In addition to territorially varied, demographically, the population of South-East Asia can be differentiated into countries with Muslims majority population, namely Indonesia, Malaysia and Brunei Darussalam; state with Catholics majority, such as the Philippines; and countries with majority of Buddhists population, namely Thailand, Myanmar, Laos, Singapore, Viet Nam and Cambodia.

Politically, they are very diverse as well; States that have started to enter the democratic era, such as Indonesia, Philippines, Cambodia and Thailand; and countries that are categorized in soft authoritarian or limited democracy, such as Myanmar, Malaysia, Singapore, Viet Nam and Brunei Darussalam. In term of government forms, it is quite interesting, because most ASEAN countries are still using monarchy system, in addition to constitutional states. Position of religion is laid out very differently between one another, from the most secular country such as Singapore, a secular State but accommodating religious values, to country that recognizes particular religion as its official religion.

This diversity conveys separate message in context of fulfillment and protection of Human Rights, since in practice the system of a State strongly influences the policies issued by the State. These differences also give pattern and character of violation against and protection of religious freedom that varies in each country.

As in Brunei Darussalam, Malaysia or Singapore, when reading further about religious freedom situation in those three countries, it is certainly going to be difficult to find violation by omission (indirectly) conducted by civic groups to minority religion groups. Although, in the realm of policy and legislation there shall be found a lot of rules, which their substantive principles are contrary to the right to freedom of religion or belief. The existence of limitation to only Shafiite school of thought of Islam in Brunei or the Internal Security Act in Malaysia and Singapore, are small examples of how the State is in the dominant position in controlling religious rights of every citizen.

It will be very different when reading reports of religious freedom in Indonesia, which in addition to that some of them were committed by the State actively, but also dominated by intolerance and practices of violence by civic groups (vigilantes) against other minority religious groups. Similarly, for example, as what has been occurred in Myanmar lately when the country began to enter the phase of democracy, majority religion often used its dominance to suppress or discriminate the minorities.

As Thailand, Philippines and Myanmar are still preoccupied with internal religious conflicts between the Government and religious minorities/particular ethnics that demanding privilege and freedom in exercising their religious values. A

number of discrimination and violence are very difficult to avoid in this position; or ethnic-based violations, such as found in Myanmar, Malaysia and Thailand, which have been blocking minority ethnic groups to enjoy the rights to freedom of religion and belief as a whole.

Specifically for Indonesia, which is presently inhaling democracy breeze subsequent to its authoritarian character, it can be said that it is different from other countries in Southeast Asia. Phase of democratization un-doubts the existence of broad forthright spaces, which often "as if" every body has the right to express his/her (religious) will; even when it injures the principles of democracy itself. While on the other hand, the State is searching for a strong keystone for the rule of law. Choices of policy that are not in line with the principle of Human Rights are repeatedly taken, because politically the Government faces the desire and interest of its constituents. It makes the State wavering in facing the practices of intolerance and violence by vigilante groups.

In such climate, the Government is not strong enough to issue a policy that blatantly violates the principle of freedom of religion/belief. Beside the relatively strong international urge, civil society in Indonesia shall also be in position of opposing directly against the State. Unlike in other ASEAN countries that explicitly apply discriminatory politics or as applied in Indonesia in the era of New Order; the Government thus chooses to find the middle ground, with no solution, even tends to follow the will of a handful of group of interests claiming to be on behalf of the majority, although in more convivial and smooth packaging.

This describes the rejection made by Indonesian Constitutional Court in judicial review submitted by civil society of Indonesia on Act No. 1/PNPS/1965, the emergence of Joint Ministerial Decree on the Ahmadiyya, the continuing problems of establishing houses of worship or ongoing intolerance and violence against minority groups, like the Shia and Ahmadiyya.

In this context, the application of legislation that upholding the rule of law becomes arena of debate, which cannot be removed from a democratic State, because only with the assurance of law a country can realize its goal of creating welfare and prosperity for all citizens, without exception. It is interesting when comparing cases of violations of freedom of religion in Indonesia and a number of other countries that are very strict in carrying out their rule of law, such as Malaysia and Singapore.

Beyond the limitation and violation of right to religion that still happens and even committed by the State; Singapore and Malaysia guarantee the freedom of religion that has been strongly set up in their Constitution. A particular group, either majority or minority, can not do violence to other groups, because the law will

proceed immediately. The stability of the State and society become one of important objectives of both States' policies, given that horizontal conflicts thus will be detrimental to the State itself.

Civil Society and Promotion of Religious Freedom

In her 2008 Annual Report the UN Special Rapporteur on Freedom of Religion or Belief acknowledged that civil society is one of important elements in the promotion and protection of freedom of religion. The urgency is manifested from the monitoring and reporting that have been routinely carried out by civil society in a country. It cannot be denied, Human Rights agencies or UN and regional international procedures also received input from civil society, due to the implementation of Human Rights that undoubting the existence of independent monitoring carried out by non-State actors.

In reading the condition of religious freedom in 10 ASEAN member states that reviewed in this book impliedly presents the role of civil society in each country. The number of reports on religious freedom and the magnitude of international community's attention to the condition of religious freedom also depict the involvement of civil society in this issue.

At a glance, though it must be substantiated through further research, this indicates that the greater civil society's attention towards the issue of freedom of religion or belief, the greater documentation and reporting that can be inventoried; the smaller attention of civil society towards the issue of religious freedom, the smaller inventory of documentation or reporting. This thesis is very likely to occur, since the reporting of freedom of religion has its own criteria and framework that undoubting the sensitivity of defender or researcher. Without this sensitivity, cases of violations of religious freedom thus will sink along with other problems.

On the other hand, different situation in each country also caused civil society to provide different portion of Human Rights issues. As abovementioned, Indonesia is indeed the middle of dialogue process between religious freedom and democratization, so that civil society's attention is fixed on the issue. However, it is not the case in some other countries that might be still concentrating on other issues that have been considered as more significant.

In Philippines and Thailand, for example, the issue of majority-minority still concentrated on the peace process between the Government and minority groups. In Myanmar, civil society is still concentrated on the transition to democracy; accountable systems of civil governance and; settlement of past transgressions. In Malaysia, the issue of religion is strongly crosscutting with ethnicity issue, so it is still very impractical for civil society to raise issue of religious freedom. In

Singapore, even though freedom of religion is guaranteed by the State, but the Government does not provide sufficient space for civil society. In Cambodia and Viet Nam, even though freedom of religion is a part of the Constitution, but in practice the State's monitoring to religious bodies, including to the expression or publishing of religious books is still very strong.

This portrait gives an explanation on how differed emerging data in each State. It might happen that a state's condition of religious freedom looks good on the surface, but in practice it is far from ideal viewpoint, simply because of the lack of reports and documentations accomplished. Or vice versa, on the surface and in mass media the situation of religious freedom in a country appears to be awful, but essentially it has more guaranteed religious freedom than other states, simply because of the magnitude of civil society's attention.

Also included within it is the attention of international agencies of United Nations or NGOs. Agencies and NGOs' attention on freedom of religion is not eluded from the role of civil society in their respective countries. Except for reports on religious freedom that have been reported by the Government of the United States on a regular basis and covered almost all countries in the world; the reports that utilized data compiled by representatives (embassies) of the US Government in each country quite satiate the existing void. Although, it should be noticed that the reports were made by State representatives that would be bound by the ethics of diplomacy, which set them apart from civil society's reports that seek to uncover problems impartially and overtly.

About This Book

This research aims to analyze the implementation and protection of the right to freedom of religion in Southeast Asia with reference to prevailing regulations and attentions of international community. Various cases of violation, either directly or otherwise, in Southeast Asia cause this issue to be important to reveal and put forward to the public, especially for policy makers and stakeholders throughout the region. Within short amount of time, this research seeks to answer the vacant reference about religious freedom conditions in ASEAN States.

Since the beginning, this book is a combination of two researches sponsored by the HRWG and Freedom House. First research, i.e. the legislation and practice of freedom of religion, was conducted by Alamsyah Djafar, researcher at The Wahid Institute and lecturer at the Islamic College of Cirebon. Departing from the Constitution in each country and a number of regulatory legislations, the researcher tried to unravel the guarantee of religious freedom in each country, with reference to the standard of Human Rights. The Author's experience in The Wahid Institute

made us confident that he will be very adept in analyzing one by one information and data in order to be in line with the desired breath of research.

As abovementioned, aspects of regulation, favoritism and social regulation became the main guideline in inventorying cases of religious freedom in Southeast Asia. It's not easy indeed to photograph those conditions, let alone the first research relied on references that have been obtained from State documents, result of previous studies, reports of institutions or secondary data from the media and the internet. However, with repeated checking and reviewing, including the proof reading by expert, we are quite certain in bringing this book into your hands.

The second study was conducted by Herlambang Perdana Wiratman; a Human Rights teacher at Airlangga University, Surabaya, on the recommendations and conclusions of the United Nations Committee's monitoring results upon ASEAN States. The research is classified into two major sections, namely Charter Based and Treaty Based mechanisms.

Charter based is an international Human Rights mechanism under the auspice of UN Human Rights Council's mandate. The groundwork of the mechanism is the Universal Declaration of Human Rights; therefore every State comprised in the United Nations (UN) was automatically entering this realm. There are two things as references for research, i.e. the Universal Periodic Review (UPR) mechanism that carried out by the Human Rights Council to all UN Member States quadrennially (once in every 4 years) and Special Rapporteur mechanism that in charge of monitoring the condition of a particular Human Rights theme or specific State.

UPR reviewed Human Rights conditions in every country on a regular basis, with reference to the national report of State under review, report of the National Commission of Human Rights (NHRI), reports of the civil society and a number of information that have been made by other UN Human Rights bodies. In the UPR, every UN Member States were also given the right to deliver comments, questions or recommendations related to the condition of certain rights.

The information was then examined by a Working Group and Troika (3 states designated as discussants), confirmed to the State under review and – with the consent of the State in question – then recommendations were issued. The recommendations became reference for the State to promote and protect human rights further at the domestic level. Hence, these recommendations became one of this study's data base.

Whereas, the UN Special Rapporteurs are experts that have been conferred specific mandate on specific State or theme, such as the Special Rapporteur on Freedom of Religion or Belief. He/she submits report annually to the Human Rights Council of the United Nations related to the condition of religious freedom around

the world, particularly concerning cases that are important to notice. In addition to conducting official visit to certain states, the Special Rapporteur may also receive complaints, information and updates from civil society or the victims around the world related to the violation of freedom of religion.

Based on the information, if the Special Rapporteur considered it as important, he/she will send the letter of communication or urgent appeal (when it's urgent) to the Government under discussion and ask for information related to the alleged violation of rights. Over this allegation, the Government may provide information clarification. The results of communication, monitoring and recommendation made by the Special Rapporteur are reported annually to the forum of Human Rights Council. Recommendations and results of Special Rapporteur's report also became database of the second research.

Other databases used in the second research are the recommendations issued by the UN Human Rights Committees referred as the Concluding Observations. Each country that has ratified a particular Convention, for example the Convention on Civil and Political Rights (ICCPR), has obligation to report on the conditions of implementation and fulfillment of the rights to the Human Rights Committee. The Human Rights Committee is a body that is specifically set up to monitor the implementation of ICCPR. Every Convention has its own Committee to run the task. The report was carried out based on the rights set forth in the articles of the Convention.

The Committee not only received information from the Government, but also from the NHRI, civil society and other UN Human Rights bodies. From the information, the country under discussion then reviewed the information in cooperation with the Committee and clarified the existing data. Concerning the violations of rights that appeared, the Committee delivered concluding observation and then it became a reference for the Government in improving the condition of Human Rights. This procedure is often referred to as Treaty-Based mechanism, because it is based on international treaties that have been ratified by the Government.

Indeed the treaty based is not as perfect as charter based, because the treaty only binds countries that have ratified it. Such as the ICCPR Convention, it has not been ratified by some ASEAN States; therefore Human Rights Committee's recommendation does not present the entire states that we would like to discuss; only the Conventions of CRC and CEDAW that have been ratified by all ASEAN countries. However, the treaty bodies' mechanism provides a broader and deeper plot of specific human rights issues. This is in contrast with charter-based

mechanism that sometimes is not deep enough or not sufficiently focused on issues of particular rights.

With the range of considerations, the second study seek to completely and comprehensively gather various information from the UN Human Rights bodies, both charter and treaty-based mechanisms, particularly recommendations related to the protection and fulfillment of the rights to freedom of religion or belief.

CHAPTER I

DIVERSITIES IN SOUTHEAST ASIA AND RELIGIOUS FREEDOM

A. Preface

Southeast Asia is known as a region with diversity of religions, beliefs and traditions. The states in this area even have profundity of State-religion relations. In Philippines the majority of inhabitants are Catholics; in Thailand, Myanmar, Laos, Vietnam, and Cambodia are mainly Buddhists; Indonesia, Malaysia, and Brunei Darussalam are predominantly Muslims. The presence of majority religions in Southeast Asia does not deny the high diversity in each country, both from aspect of religion, belief, and local tradition.

The reality of diversity becomes important assets to build a stable nation-state. If managed and developed properly, this diversity will fill weaknesses among groups of citizen. Values that grow in diversity of religions, beliefs, and traditions are potential in contributing to the strength of a nation. On the contrary, if they cannot be managed thus potentially shall give rise to vertical or horizontal inter-groups conflicts.

Studies conducted by Aurel Croissant and Christoph Trinn (2011) regarding the conflict in Asia and South East Asia confirm the signal of vulnerable religion and belief factors to ignite a conflict. Cultural conflicts involving religious sentiment in the study were the most numerous than the inter-State conflicts, such as happened in Myanmar, in Pattani - South Thailand, and in Aceh - Indonesia.¹

Nevertheless, the choice to convert religion, – which frequently blamed as the culprit – that only exists in private domain in the West, apparently is rather difficult to be practiced.² The issue is not likely a matter of whether the State can ‘take care’ or ‘facilitate’ religion or not, but whether discrimination and violation of citizen’s right exist or not exist in relation to State-religion. In such management, Constitution and the principle of rule of law are significant to be discussed. This is the way so as to diversity and the rights of citizens are ensured and protected.

¹ Aurel Croissant and Christoph Trinn, “Culture, Identity and Conflict in Asia and Southeast Asia,” *ASIEN 110 (January 2009)*, 13-43, 26

² Komaruddin Hidayat, “Agama di Ruang Publik” Friday 16 March 2012 09:03 on <http://www.uinjkt.ac.id/index.php/category-table/2179-agama-di-ruang-publik.html>

In countries of Southeast Asia, the rule of law principle appears as if it has not become the “unifying concept” among states, particularly for those incorporated in ASEAN. Its definition and interpretation are also different.

If simplified, other than the Communist system embraced by Viet Nam and Laos, ASEAN states are classified into two categories of power system. First; authoritarian, semi-authoritarian or limited democracy; Myanmar, Malaysia, Singapore and Brunei Darussalam are within it; second, the countries that feature a transitional justice and constitutionalism such as Cambodia, Philippines, Thailand and Indonesia.³

On the other hand, the development of human rights in Southeast Asia experienced rather quick reform during the past ten years; especially developments that characterized by the presence of such initiatives and the establishment of institution dealing specifically in the subject of human rights. Obviously, this development is inspired from within the state, especially in context of domestic political transition that lived through democratization, coupled with the intensity of international cooperation that leads to efforts to promote Human Rights in the region.

These developments did not always run fast and step forward. Not the least of the Human Rights problems that still dominantly occurred in the central point of Southeast Asia, whether concerning political situation, economy and weakening of the commitment of cooperation to run the mandate and responsibility to guarantee the protection and fulfillment of religious freedom. Endeavors to adopt the stipulations of the guarantee of religious freedom in context of draft Declaration of ASEAN Human Rights, in reality put on view the open resistance and refusal by a number of states.⁴

In reality, the situation of discrimination, violence and all forms of conflict based on particular religious groups became frequently occurring and even the State contributed in omitting it or intentionally was involved with dominant party in particular. Violence against Ahmadiyya and Shia Muslim communities happened in

³ Mahdev Mohani, “Rule of Law for Human Rights in the ASEAN Region: A Base-line Study,” in David Cohen, et al, *Rule of Law for Human Rights in the ASEAN Region: A Base-line Study* (Depok: Human Right Resource Centre, 2011), 8

⁴ “ASEAN, Laos and Vietnam: no to human rights and religious freedom because they create chaos”, *AsiaNews.it* <http://www.asianews.it/news-en/ASEAN,-Laos-and-Vietnam:-no-to-human-rights-and-religious-freedom-because-they-create-chaos-24009.html> (accessed 1 September 2012).

Indonesia, or in Myanmar whose Government banned or tightened the freedom to expression and assembly of the Buddhists, or what have taken place in Viet Nam and several other Member States as well.

In general, the study of Human Right Resource Centre (2011) concluded that most of ASEAN countries are committed to embody the rule of law. A legal system that holds on to the rule of law principle in those countries has also been inducted into legal structure of their country. We have to acknowledge this ideal principle is indeed easier to put in writing rather than in reality. So far, many countries in South East Asia are loose-fitting in implementing it and are still facing various challenges on the reinforcement of law and respect for Human Rights, including the guarantee of freedom to religion.

Such glimpses of situation indicate that the issue of religious freedom is still a serious problem in Southeast Asia, especially among ASEAN members that have such a variety aspects of socio-cultural, diversity, and ethnic. Obviously, the big question is how far religious freedom issues are raised and guaranteed, at least at the level of ASEAN Member States; to which extent the institutional role of ASEAN and United Nations mechanisms provide promotion efforts for the implementation of the guarantee of freedom of religion in the area.

Based on the background above, this research has several the objectives, are: *first*, this study seeks to highlight on the Constitution and legislation of ASEAN countries regarding issue of religious freedom as well as photographing at a glance its implementation. The mapping is important to look for its crucial points and highlight further its fundamental challenges. Second one, this study is intended as a comparative review. The benefit is to make it as sharing of experience and lesson learning to be emulated, accommodated, or avoided, by taking into account the local context of each country.

Third, mapping the problems of UN Human Rights mechanisms of ASEAN countries, either in the Charter-Based mechanism (UPR and Special Procedures) or Treaty Based (Concluding Observation/Conclusion of Committee's Observation), particularly concerning freedom of religion; *Fourth*, measuring the level of protection and fulfillment of the rights to freedom of religion and belief in ASEAN States;

The method used in this study is a socio-legal research method, with an analysis approach that is not merely on legal aspect (normative approach), but also

on social and political analysis concerning the work of law, especially for cases of religious freedom. Data accumulation was carried out through a series of case facts compilation, by utilizing a number of official report documents from the States, international agencies as well as media coverage.

B. Human Rights and Freedom of Religion

Tolerance and freedom of religion in point of fact have developed throughout history. In European tradition, the freedom here has emerged in the form of ruler's sovereignty in dictating religion under his territory. This principle is known as *cuius regio eius religio*, whose realm, his religion.

Peace of Augsburg (1555), for instance, gave equal status for Lutheran leaders as well as Catholic leaders and allowed them to decide which religion they chose to be established within their territories. The Lutheran Church was granted authority of "*self-governance*". However, the people that have already adhered Lutheranism also received limited self-determination to continue practicing the teaching of their faith.⁵

In the history of Islam, Ottoman Turkish period is important to mention. The *Humayun* Charter (1856) that was produced in this era, one of the contents held promise of equality of rights for non-Muslim citizens and those who were not Turkey origin. The Christians and other non-Islam were allowed to carry out revitalization, to build house of worship, hospital and burial ground.⁶

In modern day, guarantee of religious freedom protection began after the World War I through the establishment of League of Nations and the formulation of Minority Treaties. In the League of Nations Covenant, prohibition of State interference in the implementation of religion has not been introduced in the proposed articles (draft of Article 20); however the agreement on minority rights already inserted. In that phase, the approach regarding guarantee for Freedom of

⁵ Anat Scolnicov, *The Right to Religious Freedom in International Law Between group rights and individual rights*, (New York: Rutledge, 2011), 10

⁶ Zainal Abidin, "Tanzimat dan Ide Pembaharuannya," *Jurnal Hunafa* Vol. 1 No. 1 2004, 13 <http://hunafa.stain-palu.ac.id/wp-content/uploads/2012/02/TANZIMAT-AND-IDE-PEMBAHARUANNYA.pdf> (accessed on 14 September 2012)

Religion aimed more at group's right. The approach was cast off afterward by the League Nations after the World War II.⁷

The change was triggered by the defeat of Hitler's invasion to Poland which then instigated World War II. From there, group approach changed into the protection for individual, as manifested in the opening of UN document.

Article 1 of 1945 United Nations Charter confirms the purposes of establishing the organization: in order to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.⁸

Individual protection is set forth much firmer in the Universal Declaration of Human Rights, which was adopted on 10 December 1948. Article 18 says,

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

In addition to Article 18 of the Universal Declaration of Human Rights, another reference of international instrument is Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Some instruments that still linked to this issue are International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination; 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).

Article about freedom of religion has been discussed in a number of occasions by the Human Rights Committee (HRC) as specialized institutions which monitor the implementation of the ICCPR. The HRC also provides the foundation for

⁷ Anat Scolnicov, *The Right to Religious Freedom in International Law Between group rights and individual rights*, 10

⁸ Charter of the United Nations, Article 1 (3)

the freedom of religion and belief, as expressed in the General Comments of the Human Rights Committee number 22 Para 3 and 5, i.e.

Paragraph 3: "...It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice..."

Paragraph 5: "The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."⁹

Fundamentally, freedom to religion [including freedom to belief] is the freedom or human right that is in any way should not be reduced or a non-derogable right. As a form of the right or freedom that cannot be reduced, then in principle, any form or effort of restrictions or reductions in the enforcement or execution of guarantee of freedom to religion is a violation of human rights.

In particular, international human rights law also regulates the special protection for the situation of children and minorities. Article 14 of the Convention on the Rights of Child (CRC) confirms the rights of child to freedom of thought, belief and religion. While article 30 states:

"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

The Human Rights Council and the Special Procedures of the United Nations

In 1986, the UN Commission on Human Rights (now changed to: UN Human Rights Council/UNHRC) has mandated the Special Rapporteur (Special Rapporteur on Religious Intolerance, now acknowledged as the Special Rapporteur on Freedom of Religion or Belief). The Special Rapporteur is working with a mandate to enforce the provisions of international laws, including Article 19 of UDHR of 1948, article 18

⁹ 48th Session, 1993, U.N. Doc. HRI\GEN\1\Rev.1 at 35 (1994)

of the 1966 ICCPR Convention as well as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 (hereinafter expressed as Declaration on Religion/DR. 1981, 25 November 1981)

In June 2010, the UNHRC extended the mandate in triennial period as a form of important contribution in the working process, which is carried out by the Special Rapporteur for the overall protection, promotion and implementation of right to freedom of religion and belief.

Council of Human Rights has general mandate for all human rights issues and covers the entire States under the auspice of the United Nations. Universal Periodic Review (UPR) that evaluates the condition and implementation of human rights is based on the Universal Declaration of Human Rights, which is one of the mandates and tasks of the Human Rights Council. Each year, the Council of Human Rights convenes three times, including receiving periodic reports of special procedures, whether based on Theme or State.

The Special Rapporteurs are independent experts that provided with mandate for specific Human Rights issues or particular States. The Special Rapporteur on Freedom of Religion or Belief is one of the special procedures that was established and to report to the UN Human Rights Council in accordance with resolution of the Human Rights Council No. 4/10 dated on 30 March 2007. The Rapporteur works in accordance with human rights standards, in particular with regard to freedom of religion and belief. These standards can be found in conventions, treaties, general comments, declarations or resolutions adopted by countries or other UN Agencies.¹⁰

There are a number of activities undertaken by the Special Rapporteur in context of the promotion and protection of rights to freedom of religion/belief, which including sending communications to the States associated with cases of violation taking place, visiting the State officially (official visit), engaging in meetings with State representatives, religious groups, or civil society organizations, as well as sending out statements, speeches and public statements.¹¹

¹⁰ Report of The Special Rapporteur on Freedom of Religion and Belief, Asma Jahangir: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including The Right To Development, (A/HRC/6/5, 20 July 2007), p. 5.

¹¹ These forms of activity are always reported by the Special Rapporteur on a regular basis to the UN HUMAN RIGHTS Council each year.

The Special Rapporteur presents a number of reports and/or clarifications regarding specific aspects of the right to freedom of religion. As an example, the HRC has made it clear that:

“... [F]reedom of thought, belief and religion (otherwise known as the forum internum), for example, the right to choose a religion, is an absolute right and absolutely can not intervened or interfered with in any way”.

The Special Rapporteur on Freedom of Religion and Belief has noted:

“Special attention must be given to the forum internum component of freedom of religion or belief, which enjoys the status of an absolute guarantee under international human rights law. With regard to the freedom to manifest one’s religion or belief, both the positive and negative aspects of that freedom must be equally ensured, i.e. the freedom to express one’s conviction as well as the freedom not to be exposed to any pressure, especially from the State authorities or in State institutions, to practice religious or belief activities against one’s will.”

Based on the Special Rapporteur's note, coercion to a certain religion is a prohibited form in human rights law, as explained here:

“[A]ny form of coercion by State and non-State actors aimed at religious conversion is prohibited under international human rights law, and any such acts have to be dealt with within the remit of criminal and civil law”.

Mapping of Freedom of Religion and Belief Rights

Rapporteur’s Digest on Freedom of Religion or Belief composed by *Special Rapporteur on Freedom of Religion or Belief* briefly put together two domains of religious freedom along with associated international instruments.¹²

¹² The Special Rapporteur on freedom of religion or belief is an independent expert appointed by the United Nations Human Rights Council. The mandate holder has been invited to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles. See “Rapporteur’s Digest on Freedom of Religion or Belief,” OHCHR. 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, <http://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf> (accessed on 13 September 2012)

Those domains are *forum internum* and *forum externum*. *Forum internum* contains freedom of conscience to believe, profess, convert religion, and the right not to be forced to adhere or not to adhere to a religion. This Forum cannot be restricted even though in a state of war; while *forum externum* is external dimension of freedom to manifest a religion.

There are eight privileges that comprise the forum externum. First, freedom to practice religion alone or in the company of others and in private or in public; Second, the freedom to establish place of worship; third, the right to freedom of using religious symbols; Fourth, the right to freedom of celebrating religious holidays; the fifth, right to freedom of establishing religious leaders: sixth, the right to teach and disseminate religious teachings: seventh, the right of parents to educate religion to their children; Sixth, the right to establish and manage religious organizations.

In addition to the two abovementioned points, Tore Lindholm, et al added other basic principles of the right to freedom of religion and belief, including:

- (1) Non-Coercion; 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.
- (2) Non-discrimination; the State is obliged to respect and guarantee freedom of religion or belief for all of those who are in its territory and subject to its authority or jurisdiction, the right to freedom of religion or belief without distinction as to ethnicity, color, sex, language, religion or belief, political or other differences of opinion, nationality or origin, wealth, birth or other status.
- (3) The right of parents and guardians; the State is obligated to have respect for the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, in conjunction with obligation to protect the right to freedom of religion or belief, bearing in mind in which they believe the child should be brought up in accordance with the capacity of the developing child.
- (4) The freedom of legal institutions and status, which is a vital aspect of freedom of religion or belief, for religious communities is the freedom of association or assembly. Hence, religious communities have freedom of religion or belief, including within it the right to independence in managing their organization.

(5) The permitted restriction; freedom to manifest one's religion or beliefs may be subject only to such limitations as prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(6) Non-Derogable; that State should not reduce the freedom of religion or belief in any circumstance.

Notwithstanding, there are a number of other issues related to discrimination, i.e., vulnerable groups, intersection with other Human Rights, and cross-cutting issues. On the issue of discrimination, there are two important issues that arise: discrimination based on religion or inter-faiths discrimination and intolerance.

Intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.¹³ Among other forms of intolerance, including: spreading misinformation about particular group's beliefs or practices; spreading hatred against certain group; ridiculing and belittling particular faith group for belief and practice they embrace; or coercing religious beliefs and practices on others against their will.¹⁴

As for the groups that are categorized as vulnerable are women, the persons deprived of their liberty, refugees, children, minorities, and migrant workers.¹⁵

The Special Rapporteur also referred to three issues that are categorized as at the intersection with other human rights. Those three issues are: first, the freedom of expression, including the questions of religious-related conflict, religious intolerance and extremism; second, the right to life and the right to be free; third, the prohibition of torture, cruel treatment, and inhuman or degrading punishment.

¹³ See Article 2 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. The resolution was proclaimed by the United Nations General Assembly in the Report of Committee III (A/36/684) 36/55 <http://www2.ohchr.org/english/law/religion.htm> (13 September 2012)

¹⁴ Bruce A. Robinson, "Religious Intolerances: An Introduction," Ontario Consultants on Religious Tolerance, <http://www.religioustolerance.org/relintol1.htm> (accessed on 13 September 2012)

¹⁵ "Rapporteur's Digest on Freedom of Religion or Belief"

As for the cross-section issues are in the forms of derogation, limitation, legislative issues, and defenders of freedom of religion or belief and non-governmental organizations.

Restrictions; the principle of "permitted restriction" (permissible limitations) is the issue that should be more carefully examined, to what extent the limitation so as not to collide with its fundamental concept as ' non-derogable right '. In other words, restrictions on religious freedom must be measured in such detail in order not to violate other principles.

Then, how far is the extent of such limitations, as expressed in article 18 paragraph (3) of the ICCPR? As written, the restriction is based on law and necessary to protect 'public safety, order, health or morality or the fundamental rights and freedoms. In addition to article 18 paragraph (3) of the ICCPR, the provisions of this limitation are noticed in a number of articles or documents, inter alia:

- a. Convention on the Rights of Child (CRC), article 14 paragraph (3)
- b. The Convention on Migrant Workers article 12, paragraph (3)
- c. Commission on Human Rights Resolution 2005/40 (paragraph 12) and Human Rights Council Resolution 6/37 (paragraph 14)
- d. Human Rights Committee, General Comment 22 Para. 8

Nevertheless, HRC considered that:

"[L]imitations... must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."

The aforementioned description is a framework of international human rights law that gives the guarantee of protection for the rights and freedom of religion and belief.

Legislative issues. Human Rights Commission/Council always reiterated that the State should ensure that its Constitution and legal system provide adequate and effective guarantee of freedom of religion and belief through clauses that grant freedom for every person to worship and belief. The Special Rapporteur also encouraged the existence of Human Rights institutions at national level (NHRI and/or Ombudsman) that specifically receiving complaints and resolving problems of religious freedom, including conducting mediation in cooperation with other State institutions in case any discrimination against religion or belief takes place.

The Special Rapporteur also encouraged States to ascertain the implementation and enjoyment of those rights and bring the perpetrators to the legal proceeding/court.

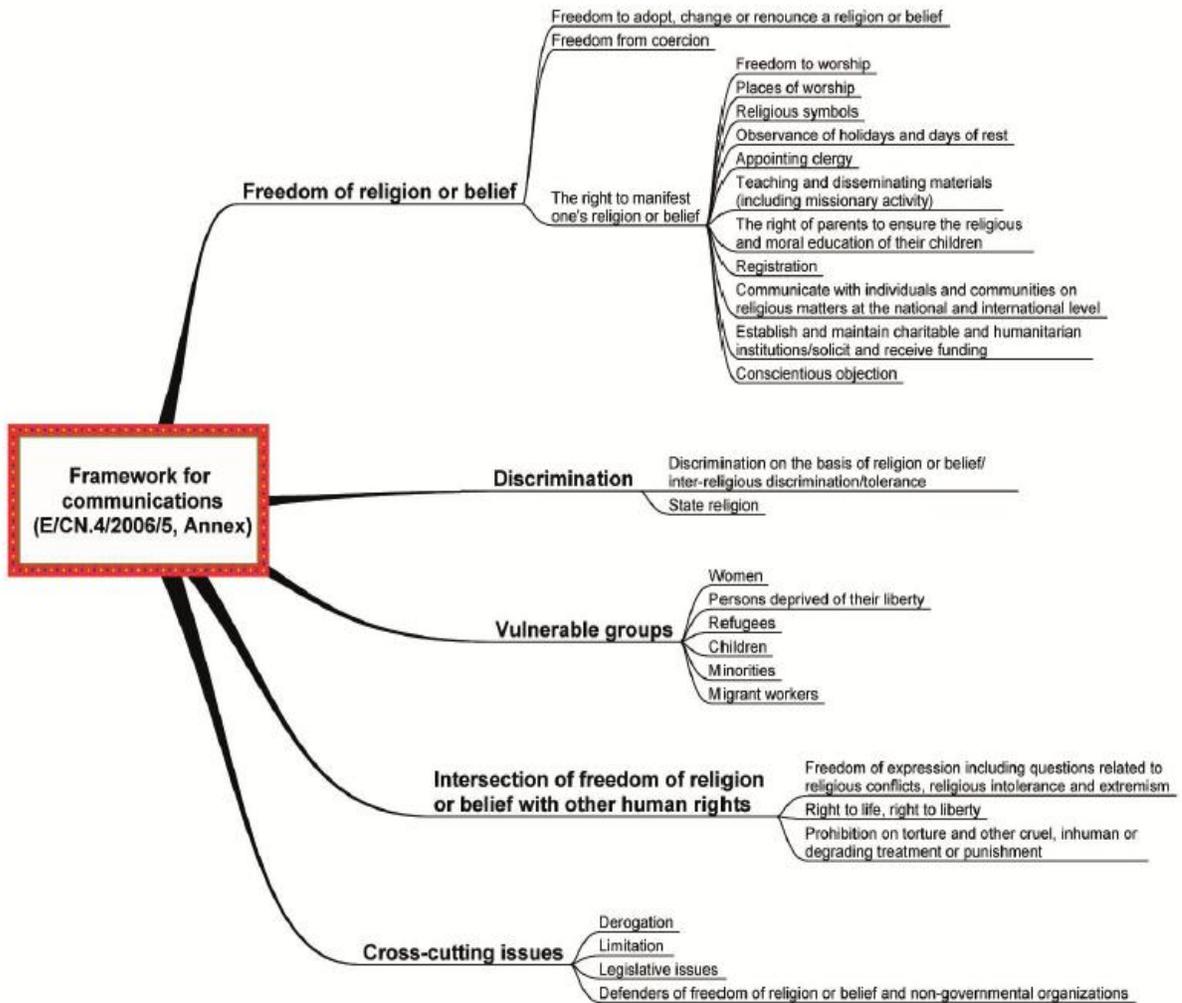
Human Rights Defenders and Civil Society Organizations. Non governmental organizations (NGOs) engaged in the field of freedom of religion/belief have played an essential role in the promotion of those rights. The Special Rapporteur conveyed his/her gratitude to the NGOs who provided input and information, including during a visit to a particular country with cases of intolerance, discrimination and persecution. The Special Rapporteur provides an online questionnaire for civil society and receives the complaint of alleged violations.

The Special Rapporteur expects that NGOS can also convey the latest developments related to the follow-up of the communications transmitted by the Special Rapporteur, as described in the reports and recommendations.¹⁶

With reference to the above explanation, a guidance to map the situation and condition of religious freedom by founding on the Framework for Communications compiled by the Special Rapporteur on Freedom of Religion and Belief (see diagram), in general can be divided into five fundamental points, i.e.:

- 1) Freedom of religion and belief (in general), that covers: *forum internum* and *forum externum*.
- 2) Discrimination based on particular religion.
- 3) Vulnerable groups, such as women, children, minorities, refugees, etc.
- 4) Intersection or interface of freedom of religion or belief and other human rights.
- 5) Other cross-cutting issues, such as derogation, limitation, legislative and defenders of freedom of religion and belief.

¹⁶ The Report of UN Special Rapporteur, Asma Jahangir, A/HRC/6/5, 20 July 2007, p. 19



CHAPTER II

ASEAN AND GUARANTEE FOR FREEDOM OF RELIGION

A. ASEAN

*The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 in Bangkok, Thailand by 5 founding member countries: Indonesia, Malaysia, Philippines, Singapore and Thailand. 5 state representatives who signed the declaration: Adam Malik (Foreign Minister of Indonesia), S. Rajaratnam (Foreign Minister of Singapore), Tun Abdul Rozak (Deputy Prime Minister of Malaysia), Thanat Khoman (Foreign Minister of Thailand), and Narciso R. Ramos (Secretary to Foreign Minister of Philippines).*¹⁷

ASEAN'S founding was marked by the signing of the Declaration of Asia, also known as the Bangkok Declaration. Asian Declaration contains five points. First, the Declaration of ASEAN establishment; second, seven purposes and principles of ASEAN, including accelerating economic growth, social progress and cultural development, as well as improving regional peace and stability by means of abiding respect for justice and the rule of law in inter-states relations in the area, including adherence to the principles of United Nations Charter; third, formulate ASEAN mechanisms such as organizing the annual meeting of Foreign Ministers or ad hoc Committee and periodical meeting for certain issues; fourth, the affirmation as an open organization to the participation of all countries in Southeast Asia in accordance with the purposes and principles of ASEAN establishment. Fifth, the affirmation of ASEAN as an institution that represents the collective wills of Nations in Southeast Asia to bind themselves together in friendship and cooperation through mutual effort and sacrifice, security for their people to achieve peace, freedom, and prosperity.

In building relationship among Nations, through the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976, ASEAN members agreed on six fundamental principles of relations with one another. First, respect for the independence, sovereignty, equality, territorial integrity and national identity of all Nations; Second, the right to lead its national existence free from external

¹⁷ "Overview" http://www.aseansec.org/about_ASEAN.html (accessed on 10 September 2012); See also The ASEAN Declaration, (Bangkok Declaration) Bangkok, 8 August 1967 <http://www.aseansec.org/1212.html> (accessed on 10 September 2012)

interference, subversion or coercion; Thirdly, non-interference in the internal affairs of one another; Fourth, settlement of differences or disputes by peaceful means; Fifth, renunciation of the threat or use of force; Sixth, an effective cooperation among themselves.

In a further development, the signing of the ASEAN Charter by ten Heads of State or Government of the Member States in the ASEAN Summit, Singapore, November 27, 2007 – corresponded with the 40th anniversary of the founding of ASEAN. The Charter was signed by Hajji Hassanal Bolkiah (Sultan of Brunei Darussalam), Samdech Hun Sen (Prime Minister of the Kingdom of Cambodia), Susilo Bambang Yudhoyono (President of the Republic of Indonesia), Bouasone Bouphavanh (Prime Minister of the Lao People's Democratic Republic), Dato' Seri Abdullah Ahmad Badawi (Prime Minister of Malaysia), General Thein Sein (Prime Minister of the Union of Myanmar), Gloria Macapagal-Arroyo (President of the Republic of the Philippines), Lee Hsien Loong (Prime Minister of the Republic of Singapore) General (Ret.) Surayud Chulanont (Prime Minister Of The Kingdom Of Thailand), Nguyen Tan Dung (Prime Minister Of The Socialist Republic Of Viet Nam).¹⁸

ASEAN Charter is an important document that provides legal status and institutional framework for ASEAN. It also contains definite norms, functions, values, and target formula for ASEAN organization. In addition, ASEAN Charter is a form of accountability mechanism of legal compliance of member states.

The ASEAN Charter came into force on 15 December 2008. A meeting of the Foreign Ministers of ASEAN member states was held at the ASEAN Secretariat in Jakarta to mark the enactment of such important document. That way the ASEAN Charter became a legally binding agreement of 10 member states. Moreover, ASEAN Charter has also become a legal personality document that binds in the midst of Member States.¹⁹

The Charter consists of 13 chapters with 55 articles, which govern the principles of cooperation, settlement of dispute, organizational structure, administration and procedures, as well as matters concerning Human Rights.

¹⁸ See "ASEAN Charter" in <http://www.aseansec.org/21861.htm> (accessed on 10 September 2012)

¹⁹ See Chapter II Article 3 of the ASEAN Charter: *ASEAN, as an inter-governmental organization, is hereby conferred legal personality*".

Affirmation of the enforcement of Human Rights values appears in the preamble to the Charter, namely to “adhere to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”.²⁰

As well as the purposes of the establishment of ASEAN; the respect for Human Rights values is one of 15 important ASEAN purposes: to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN.”²¹

If grouped, at least there are four goals, which are oriented for protection, respect, fulfillment and promotion of human rights. First, to ensure that the people and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment; second, to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN; third, to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice; and fourth, to promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.²²

In pursuit of the purposes of ASEAN, member states are also duty-bound to the principle of respect for fundamental freedoms, the promotion and protection of Human Rights and the promotion of social justice. Other principles: (a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States; (b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity; (c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law; (d) reliance on peaceful settlement of disputes; (e) non-

²⁰ See the Preamble of the Charter of Association of Southeast Asian Nations in “Terjemahan Piagam Perhimpunan Bangsa-Bangsa Asia Tenggara,” ASEAN, 1 (accessed on 10 September 2012)

²¹ See Article 1 paragraph 7 “the Charter of Association of Southeast Asian Nations,” p.3 (accessed on 10 September 2012)

²² See Chapter 1 Article 1 paragraphs 4, 7, 11, and 13 the Charter of Association of Southeast Asian Nations, in “Terjemahan Piagam Perhimpunan Bangsa-Bangsa Asia Tenggara,” 2-3 <http://www.aseansec.org/AC-Indonesia.pdf> (accessed on 10 September 2012)

interference in the internal affairs of ASEAN Member States; and (f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion.

B. ASEAN Inter-governmental Commission on Human Rights (AICHR)

One of important advancements in the field of promotion and reinforcement of Human Rights in ASEAN is the creation of a special body for Human Rights named ASEAN Inter-governmental Commission on Human Rights (AICHR). The founding was the mandate of ASEAN Charter, in article 14. Established on 23 October 2009 by the Declaration of Cha-am Hua Hin, AICHR contains ten representatives from ten ASEAN member states.

The commission was born as an effort to accomplish the purposes and principles of ASEAN Charter in the field of promotion and protection of human rights and fundamental freedoms. The commission works in accordance with the Terms of Reference to be determined by a meeting of ASEAN Foreign Ministers.²³

The framework of AICHR is set in “Terms of Reference of ASEAN Intergovernmental Commission on Human Rights” (hereinafter referred to as the Terms of Reference) which approved by the ASEAN Foreign Ministers Meeting, on 20 July 2009, in Thailand. The Terms of Reference consist of the purpose of AICHR establishment, principles, composition of members, as well as general and final rules.

Based on Terms of Reference, AICHR has a number of purposes. First, to promote and protect human rights and fundamental freedoms of the peoples of ASEAN; second, to uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity; third, to contribute to the realization of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN community building process; fourth, to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for

²³ See Article 14 Paragraph 1 and 2 the Charter of Association of Southeast Asian Nations, 12

different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities.²⁴

In addition, AICHR also aims to enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; this is the fifth purpose. The sixth purpose is to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.²⁵

Although the Terms of Reference have been appreciated as accomplishing important achievement in Human Rights issues, but there are still some shortcomings. Asia-Pacific Centre for the Responsibility to Protect in their working paper entitled “The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect (R2P): Opportunities and Constraints“(2011) states a number of weaknesses in the Terms of Reference, i.e. the lack of power of monitoring, investigative, evaluative or law reinforcement; the inability to receive complaints, petitions, and communications from individuals, groups of individuals or NGOs/CSOs; as well as one directional system of communication from the Commission to the public.²⁶

In the Terms of Reference, AICHR was also mandated to compose the Declaration of Human Rights that contains the cooperation framework of Human Rights through various Conventions of ASEAN and other instruments.²⁷ This mandate was finalized with the delivery of the ASEAN Human Rights Declaration (AHRD) by the Commissioners of AICHR in 45th ASEAN Ministerial Meeting (AMM) in Phnom Penh, Cambodia. After obtaining feedback and improvements, a draft is scheduled to be adopted by Heads of State or Government of the ASEAN in a

²⁴ “Terms of Reference of ASEAN Intergovernmental Commission on Human Rights,” ASEAN Secretariat Jakarta, October 2009, 3 <http://www.aseansec.org/publications/TOR-of-AICHR.pdf> (accessed on 10 September 2012)

²⁵ “Terms of Reference of ASEAN Intergovernmental Commission on Human Rights,” 3-4.

²⁶ “The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect (R2P): Opportunities and Constraints,” Working Paper on ASEAN and R2P No. 2, Responsibility to Protect in Southeast Asia Program, Responsibility to Protect in Southeast Asia Program, 30 March 2011, 4

²⁷ Lihat Mandat dan Fungsi kedua AICHR dalam Terms of Reference of ASEAN Intergovernmental Commission on Human Rights,” Jakarta, ASEAN Secretariat, October 2009, 6

meeting in Cambodia, December 2012. In addition to the Declaration, AICHR submitted Explanatory Note and Substantive Challenges along with 2012 Annual Report.²⁸

AHRD draft already contains some important accomplishments; including formulas of Human Rights, which provides added value of the 1948 Universal Declaration of Human Rights (DUHAM) and the 1993 Vienna Declaration of Programme of Action from the World Conference on Human Rights in Vienna.²⁹ But there are still a number of questions which is feared to be interpreted differently from the norms of the 1948 UN Universal declaration of Human Rights. One of these concerns is related to restrictions (limitations) of rights.

The Declaration mentioned the implementation of human rights and fundamental freedoms can be restricted for the purpose of: first, ensuring the recognition of Human Rights and fundamental freedoms of others, and second, fulfilling the requirement for the sake of national security, public order, public health, public safety, public morality and the general welfare in a democratic society.

However, beyond these deficiencies, in context of religious freedom, the ASEAN Human Rights Declaration that was adopted by ASEAN Ministerial Meeting in Cambodia in November 2012 has a relatively strong guarantee in context of freedom of religion and belief. It can be seen in the General Principles of the Declaration, which states:

“Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status”

In addition, section 22 of the Declaration stated explicitly that:

“Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.”

²⁸ “RI Foreign Minister Welcomes the ASEAN Human Rights Declaration,” Wednesday, 10 July 2012 15:00, <http://www.deplu.go.id/layouts/mobile/PortalDetail-NewsLike.aspx?l=id&ItemId=af9da600-8ad8-4592-b660-26537a52f48c> (accessed on 10 September 2012)

²⁹ “RI Foreign Minister Welcomes the ASEAN Human Rights Declaration”

As an official document and has been approved by all Governments of ASEAN, Declaration of Human Rights can become a primary capital of development and promotion of Human Rights in Southeast Asia, as well as being a reference for the AICHR in carrying out its mandate and functions. Moreover, in supra national domain, the Declaration can turn into a cornerstone of the new norm in foreign relationship among ASEAN countries, because directly or otherwise, the Declaration has become a shared commitment of all countries to be implemented in the future.

Constitutionalism, Constitution and Freedom of Religion and Belief

Brian Thompson simply defines the Constitution as a document containing the rules for running an organization, including a State.³⁰ Phillip Hood and Jackson identify Constitution as “*a body of law, custom, and conventions that define the composition and powers of the organs of the state and that regulate the relations of the various state organs to one another and to private of citizens.*”³¹

If constitution refers to the literature shape of rules, hence constitutionalism has broader meaning concerning the implementation and principles of State management. Richard S. Kay outlines constitutionalism as *implements the rule of law; it brings about predictability and security in the relations of individuals and the government by defining in advance the powers and limits of that government.*

In constitutionalism, there are two basic characters according to Jhon Alder that must be present: the rule of law and separation of powers.³² The rule of law presupposes a number of values that hold on to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international Human Rights norms and standards.³³

³⁰ Jimly As-Shiddiqie, “Konstitusi dan Konstitusionalisme,” 15 www.jimly.com/pemikiran/getbuku/9 (Accessed on 13 September 2012)

³¹ Jimly As-Shiddiqie “Konstitusi dan Konstitusionalisme,” 17

³² Wahyudi Djafar “Konstitusionalisme Indonesia #1: Konstitusi dan Konstitusionalisme,” 16 January 2012, <http://wahyudidjafar.net/2012/01/16/konstitusionalisme-indonesia-1-konstitusi-dan-konstitusionalisme/> (accessed on 12 September 2012)

³³ This view was confirmed by UN Secretary General Kofi Annan when he was conveying standard *rule of the law*. Secretary-General to the Security Council, *the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (United Nations Security Council, 2004, S/2004/616), 4 Those values were also affirmed in “*Guidance Note of the UN Secretary-General on the UN Approach to Rule of Law Assistance*”. See UN Secretary-General (UNSG), *Guidance Note of the Secretary-General:*

To make it happen there are a number of prerequisites to achieve: supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.³⁴

The Constitutions of ASEAN member states, without exception, have set the guarantee of freedom of religion and belief; either guarantees of forum internum or forum externum (vide: HRWG Research Report, 2011). Some constitutions regulate specifically on the restriction of right and freedom of religion or belief. In particular, we can see the provisions in those Constitutions from the following table:

A number of provisions of the Constitution can be observed in the following articles:

Freedom of Religion/Belief and Constitution

Konstitusi Negara	Forum Internum	Forum Externum	Jaminan tidak ada paksaan dan diskriminasi	Pembatasan
Philipina	Article III.5	Article III.5	Article III.5	-
Indonesia	Article 29	Article 28E;	Article 28I	Article 28J
Thailand	Section 5; 37	Section 37, 79	Section 37	Section 37
Myanmar	Article 34	Article 354	Article 348, 352, 362-364, 368; and 407d.	Article 34
Malaysia	Article 11.1	Article 8.5b.; 11.3; 12.2; 12.3.	Article 8.2.; 12.1;	-
Brunei	Article 3	-	-	-
Laos	Article 43	Article 9	-	-
Cambodia	Article 43	Article 31	Article 31	Article 43
Singapura	Article 15.1;	Article 15.3	Article 12; 16.	Article 12.3b.; 15.4

United Nations Approach to Rule of Law Assistance, 14 April 2008
<http://www.unhcr.org/refworld/docid/4a54bbf64.html> (accessed on 12 September 2012)

³⁴ "Guidance Note of the Secretary-General: *United Nations Approach to Rule of Law Assistance*."

Viet Nam	Article 70	Article 70	Article 54	Article 70
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The constitutional norms could be captured in the following articles;

- Brunei Darussalam Constitution, Article 3;
“[P]rovided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam.”
- Malaysian Constitution, Article 11.1;
“Every person has the right to profess and practice his religion and to propagate it.”
- Lao PDR Constitution Article 43;
“Lao citizens have the right and freedom to believe or not to believe in religions.”
- Thailand Constitution Section 37;
“A person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious principles or religious precepts 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.”
- Indonesia Constitution, Article 29 (2);
“The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief.”
- Philippines Constitution 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.”
- Myanmar Constitution, Article 34;
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.
- Singapore Constitution, Article 15;

(1) Every person has the right to profess and practise his religion and to propagate it.

(3) 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 law.

- Cambodia Constitution, Article 43;

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.

- Viet Nam Constitution, Article 70;

Citizens have the right to freedom of belief and religion, and may practise or not practise any religion. All religions are equal before the law.

Public places of religious worship are protected by law.

No one has the right to infringe on the freedom of faith and religion or to take advantage of the latter to violate State laws and policies.³⁵

C. International Human Rights Instruments in ASEAN States

In the mapping made by a number of experts who were facilitated by the American Bar Association (2012), Viet Nam is the first ASEAN country to ratify the ICCPR, on 24 September 1982; then followed by the Philippines on 23 October 1986, Cambodia on 26 May 1992, Thailand 29 October 1996, Indonesia on 23 February 2006 and Laos on 25 September 2009.³⁶ Thus, four countries have not yet ratified the Covenant.

³⁵ Penjelasan lebih lanjut tentang Konstitusi yang menjamin kebebasan beragama di ASEAN akan dijelaskan pada bagian lain dalam penelitian ini.

³⁶ American Bar Association Rule of Law Initiative, "Experts' Note on the ASEAN Human Rights Declaration," Washington, May 2012.
http://www.americanbar.org/content/dam/aba/directories/roli/indonesia/asia_aba_rol_i_expert_note_asean_human_rights_declaration_05121.authcheckdam.pdf. Data on ratifying states are available on "International Covenant on Civil and Political Rights,"
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (accessed on 14 September 2012)

The mapping also recorded Philippine to be the first country that ratified International Covenant on Economic Social and Cultural Rights – ICESCR, on 7 June 1974; followed by Viet Nam on 24 September 1982, Cambodia on 26 May 1992, Thailand on 5 September 1999, Indonesia on 23 February 2006, and Laos on 13 February 2007. Again, four other countries have not yet ratified it.³⁷ While six countries that already had ratified the International Convention on the Elimination of All Forms of Racial Discrimination are the Philippines on 15 September 1967, Vietnam 9 June 1982, Cambodia on 28 November 1983, Laos on 22 February 1974, Indonesia on 25 June 1999, and Thailand, 28 January 2003.³⁸

Unlike a declaration, as a form of international treaty a Convention legally binds States parties that ratify the obligation to execute the rules. If States parties have not had the rules or they have rules that contradicted with the Covenant, it required effort of alignment or formulation of their domestic rules. Whereas to ensure the protection and promotion of those rights, a number of procedures, monitoring mechanism, and the establishment of related agencies are needed to be constituted.³⁹

Therefore, ASEAN states that already ratified ICCPR and other covenants abide themselves to the rule that legally binding. To be more precise, see the Diagram of International Human Rights Instruments in ASEAN.⁴⁰

States	ICCPR	ICESCR	CERD	CAT	CEDAW	CRC	ICRMW	CRPD
Brunei Darussalam					V	V		
Cambodia	V	V	V	V	V	V	V	
Indonesia	V	V	V	V	V	V		V
Laos	V	V	V	V	V	V		V

³⁷ “International Covenant on Economic, Social and Cultural Rights” http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (accessed on 13 September 2012)

³⁸ “International Convention on the Elimination of All Forms of Racial Discrimination” http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en (accessed on 13 September 2012)

³⁹ Dadang Juliantara (Ed), *Jalan Kemanusiaan Panduan untuk Memperkuat Hak Asasi Manusia*, Yogyakarta: Laper Pustaka Utama: 1999, 113-114

⁴⁰ David Cohen, *Rule of Law for Human Rights in the ASEAN Region: A Base-line Study*, (Depok: Human Right Resource Centre, 2011), 26-27

Malaysia					V	V		V
Myanmar					V	V		
Phillipines	V							
Singapore					V	V		
Thailand	V	V	V	V	V	V		V
VietNam	V	V	V		V	V		

CHAPTER III

THE PORTRAIT OF FREEDOM OF RELIGION IN SOUTHEAST ASIA

A. Brunei Darussalam

1. Overview of Brunei

Brunei's population is estimated to be 428 thousand. Approximately 82 percent Muslim, 7 percent Buddhist, 3 percent Christian; less than 1 percent professes religion and belief of other minorities such as Hindu, Baha'i, Sikh, Taoist, and others. There was also indigenous population that adhered to traditional beliefs, which later converted either to Islam or Christianity. There are 110 mosques and *musalla* (Islam prayer hall), 3 Christian churches, 3 Buddhist temples and one Hindu temple, all officially registered in the country.⁴¹ Two Christian churches are located in Bandar Seri Begawan city and another in Seria, the center of the largest mining and Oil drilling in Brunei.⁴² About 67 percent are ethnic Malays, 11 percent Chinese, 22 percent comes from local communities such as the Belait, Bisaya, Brunei, Dusun, Kedayan, Murut, and Ukits.⁴³

In the field of Human Rights Brunei has ratified a number of Covenants i.e. Convention on the Prevention and Punishment of the Crime of Genocide, CEDAW, and CRC. Brunei has not ratified ICCPR.

2. Constitution and Guarantee of Freedom of Religion

Constitution of Brunei has historical bond with Islam. In its Preamble, the Constitution affirmed its obedience to the Magnificence of Allah and respect for Prophet Muhammad.⁴⁴ Article 3 (1) states, the official religion of Brunei Darussalam shall be the Islamic Religion, provided that all other religions may be practiced in

⁴¹ U.S. Department of State, "International Religious Freedom Report 2010 Brunei," November 2010, Bureau of Democracy, Human Rights, and Labor, <http://www.state.gov/j/drl/rls/irf/2010/148858.htm> (accessed on 20 September 2010)

⁴² Hendra Tedi, "Christmas di Brunei," 23 December 2010 20:24, <http://luar-negeri.kompasiana.com/2010/12/23/christmas-di-brunei/> (accessed on 20 September 2012)

⁴³ "International Religious Freedom Report 2010 Brunei"

⁴⁴ See "Invocation" in "Laws of Brunei Constitutional Matters I Constitution of Brunei Darussalam," Revised Edition 2011, 9 http://www.agc.gov.bn/agc1/images/LOB/cons_doc/constitution_i.pdf (accessed on 20 September 2012)

peace and harmony by the persons professing them. Islam in the Constitution means the Islamic Religion according to the Shafiite sect of Ahlis Sunnah Waljamaah.⁴⁵

In religious matters, The Head of the official religion of Brunei Darussalam is His Majesty the Sultan and Yang Di-Pertuan.⁴⁶ For religious matters a Religious Council is constituted and responsible for advising His Majesty the Sultan and Yang Di-Pertuan on all matters relating to the Islamic Religion.⁴⁷ However the advice or consultation with Religious Council may not necessarily compulsory. His Majesty the Sultan and Yang Di-Pertuan may take or not take the advice and consultation result in making laws in respect of matters relating to Islamic religion.⁴⁸

While in the field of custom and tradition in Brunei, a *Majlis Mesyuarat Adat Istiadat* (Adat Istiadat Council) is established. The function and responsibility of this authority is to provide advice for His Majesty the Sultan and Yang Di-Pertuan on matters relating to *adat istiadat* and State custom. Term of office of the authority shall be during His Majesty the Sultan and Yang Di-Pertuan's pleasure.⁴⁹ The Constitution also affirms that the Ministers and Deputy Ministers appointed by His Majesty the Sultan and Yang Di-Pertuan must profess Islamic religion.⁵⁰

State system of Brunei Darussalam does not recognize the division of power between religious leader, the King, the Head of State and Head of Government. The Constitution states that the supreme executive authority of Brunei Darussalam shall be vested in His Majesty the Sultan and Yang Di-Pertuan, and He automatically

⁴⁵ Attorney General's Chamber Brunei Darussalam, "Laws of Brunei Constitutional Matters I Constitution of Brunei Darussalam," 12, http://www.agc.gov.bn/agc1/images/LOB/cons_doc/constitution_i.pdf (accessed on 12 September 2012). *Mazhab* (School of Thought) Syafi'i was founded by Muhammad bin Idris asy-Syafi'i or more popular as Imam Syafi'i. In addition to Brunei, this sect is professed by Muslim in Egypt, Syria, Indonesia, Malaysia, Hadramaut, or Bahrain. In taking Islamic law the *mazhab* based it on Al-Quran, *Sunnah* of Prophet Muhammad, Ijma' (Ulema consensus) and Qiyas (analogy)

⁴⁶ Article 3 (2)

⁴⁷ Article 3 (3)

⁴⁸ Article 3(4)

⁴⁹ Article 3A (1), (2), and (3); Further on this organization see <http://www.majlis-mesyuarat.gov.bn> (accessed on 20 September 2012)

⁵⁰"Laws of Brunei Constitutional Matters I Constitution of Brunei Darussalam," 18

becomes the Prime Minister.⁵¹ His Majesty the Sultan and Yang Di-Pertuan shall also be the Supreme Commander of the Royal Brunei Armed Forces.⁵²

The rules of Brunei constitution that open ways for human rights violations, including Freedom of Religion are the limitation articles of “state of emergency”. Whenever the State is proclaimed in a state of emergency by Yang Di-Pertuan, any policy that infringes human rights is acceptable; including: censorship, control and suppression of various forms of publication such as writings, photographs, communications and means of communication.⁵³ The State also can execute arrest, detention and deportation,⁵⁴ or modify and amend any written law.⁵⁵

In 2004, the 1959 Constitution was amended. The amendment consists of the establishment of parliament with 15 to 30 appointed members. The last time the Kingdom organized a parliament was in 1962, which was won by left wing party of Brunei People's Action Party. But those who have been elected never hold the offices in parliament since Omar Ali Saifuddin dissolved it.

3. Contemporary Challenges

State policies with State-religion paradigm and the absence of power division principle are fundamental problems in favor of many acts of discrimination and infringement in Brunei. The Government that claims to be *Melayu Islamic Beraja* (MIB) aka Malay Islamic Monarchy continues to perform various ideological intensification efforts into public life. Those efforts carry on since 1990s.

Through the University of Brunei Darussalam, MIB ideology was socialized with various activities of public presentations, especially amongst younger generation. Government activities are always opened with a prayer of Islam. For non-Muslims who participate in public activities, are required to wear national clothing, including using the head cap and veils.⁵⁶

⁵¹ Article 4 (1)

⁵² Article 4 (1B)

⁵³ Article 83 (4a), 58

⁵⁴ Article 83 (4b), 58

⁵⁵ Article 83 (4l), 59

⁵⁶ “International Religious Freedom Report 2010 Brunei

The MIB ideology also serves as groundwork for the Yang Di-Pertuan Agung to resist the passage of Bill, motion, petition introduced by people's representatives of Brunei. The supreme ruler can refuse the proposal if it is judged as lowering or adversely affect the ideology known as the National Philosophy.⁵⁷

The responsible agency in developing and socializing this ideology is the Ministry of Religion. The Islamic authority is reported to be actively made efforts to invite those who were Non Muslims to convert to Islam, specifically of the local community. The *muallaf* (Muslim convert) gets financial aid every month, new home, electric generator, water pump, or budget for Hajj.⁵⁸

As the official Islamic sect, the spread of Islamic sects other than Shafiite doctrine get a lot of restrictions. The Government implements a strict control of importation non-Islamic religious texts such as the Bible, including Islamic religious teaching materials to be distributed in Brunei.

Anyone who teach or promote a deviated belief and practice in public will be sanctioned under the Islamic Religious Council Act with three-month of imprisonment or a fine of 2,000 Dollars (Brunei).

In 2001, *fatwa* (religious ruling) as deviant sects was issued by the Brunei Ulema Council against Persaudaraan Ilmu Dalam Al Ma'unah Malaysia (Brotherhood of Al Ma'unah Inner Power) lead by Mohd Amin bin Razali and Teachings of Tasipan Saihoni lead by Saihoni bin Tasipan. A similar *fatwa* was experienced by Tarekat Ilmu Makrifat Abd Razak Bin Muhammad (1979) Islamic al-Arqam (1991), Silat Lintau (1980) Hazrat Mufarridiyah (1979) Qadiani Ahmadiyya (1970) and Baha'i (1970). The *fatwas* have not changed to date.⁵⁹

⁵⁷ Article 42 (1e)

⁵⁸ The Institute on Religion and Public Policy, "Religious Freedom Report, Brunei Darussalam," Friday 10 July 2009 <http://www.religionandpolicy.org/reports/the-institute-country-reports-and-legislative-analysis/east-asia-and-the-pacific/brunei/religious-freedom-report-brunei-darussalam-2009/> (accessed on 20 September 2012)

⁵⁹ The list of groups that have been *fatwa* as deviant sects can be seen on the official website of the Ministry of Religion of Brunei. See "Kumpulan Keagamaan yang Telah Difatwakan dan Diwartakan Sebagai Ajaran Sesat" http://www.religious-affairs.gov.bn/index.php?ch=bn_about_div&pg=bn_div_syariah&ac=1661 (accessed on 20 September 2012). See also Institute on Religion and Public Policy, "Religious Freedom in Brunei Darussalam, Executive Summary, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/IRPP BRN UPR S06_2009.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/IRPP_BRN_UPR_S06_2009.pdf) (accessed on 20 September 2012)

The *Fatwa* released by State Mufti in 1964 strongly discourages Muslims from assisting Non-Muslim organizations in perpetuating their faiths and the Ministry of Religious Affairs reportedly uses the fatwa to influence other government authorities either to deny non-Shafiite religious organizations permission or to fail to respond to applications from these groups.

Another regulation which was used to limit the rights of non-Shafiite Muslims is The Societies Order in 2005. This rule contains provisions for all organizations, including the non-Shafiite religious groups, to sign up and give the names of any of its members. The registration process is constantly monitored by registrars who have authority to certify or reject the registration. Organizations that have not registered could face charges of violating the law and threatened. As well as the people who join it. They can be fined, imprisoned, or detained.⁶⁰

Brunei also has rules that prohibit private homes as places of worship. However the associated authority reportedly did not take acts of intervention against religious compliance activities in private homes.

The Government implemented a policy of censorship towards the writings in magazines related to other religions or beliefs. The Government will cover with a black color or remove the image of cross or other religious symbol of Christianity. Distribution and sale of photographic items containing religious symbols will also be constrained.

Ethnic identity in an ID card is compulsorily declared. This policy gives the Government leeway to determine whether they are Muslims or non-Muslims. Those who are ethnic Malays are considered Muslim and therefore bound to Sharia rules. The statement of religion in visa is also prerequisite for the visitors when applying visa. Foreign Muslims are also subject to the rules of Sharia in the country. However, there are some cases where they did not mention their religious identity but did not face serious problems.

Authorities apply Shari'a law, such as sanctioned for *khalwat* (close proximity between the sexes) and consumption of alcohol. 51 *khalwat* cases were reported. Some of them were annulled due to the lack of evidence. Most of those

⁶⁰ "International Religious Freedom Report 2010 Brunei"

arrested were released after paying the fine. Men are liable to a B\$1000 and women to a B\$5000 fine.⁶¹

Religious authorities regularly participated in raids to confiscate alcoholic beverages and non-halal meats that had entered Brunei illegally. Restaurants that served in daylight hours during the fasting month (Ramadan) were subjected to fines. However, non-halal restaurants were allowed to operate without interference from authorities.

In the field of education, the Government requires courses on Islam and the MIB in all public schools in accordance with State curriculum. The Ministry of Education prohibits the teaching of other religions and comparative religious studies. On January, Head of State ruled that religious education will be mandatory for Muslim students. Private schools are required to teach Islam by making *Ugama* instruction available on extracurricular activities, after-hours basis. *Ugama* is a six year education system that teaches Islam under the *Sunni Shafi'i* school of thought.

The government warned Christian schools that they could be fined or imprisoned for teaching non-Muslim religious subjects. The government has not revised its position regarding the teaching of non-Islamic religious courses to non-Islamic students. However, the government did not prohibit or restrict parents from providing religious instruction for children in their homes.

There was no legal requirement for women to wear head coverings in public; however, religious authorities encourage Muslim women to wear *tudong*, a traditional head covering, and many women do so. In government schools and at institutes of higher learning, Muslim and non-Muslim female students must wear Islamic attire, including head covering as a part of their uniform. Male students were expected to wear *songkok* (hat) although this is not required in all schools.⁶²

Marriage between Muslims and non-Muslims was not permitted, and non-Muslims must convert to Islam if they wish to marry a Muslim. Government statistics indicated 575 conversions to Islam. Although it is legal, perpetrator often faced significant official and societal pressure.⁶³

⁶¹ "International Religious Freedom Report 2010 Brunei"

⁶² United States State Department, "Report on International Religious Freedom 2007 Brunei," <http://www.state.gov/> (accessed on 20 September 2012)

⁶³ "International Religious Freedom Report 2010 Brunei"

B. Indonesia

1. Overview of Indonesia

The country covering an area of 1.919.404 square kilometers with approximately 19.108 of the islands is inhabited by 237,641,326 people (2010). Islam is majority religion of 207,176,162 inhabitants (87.18 percent). The next largest religion is Protestants with 16,528,513 adherents (6.96 percent), followed by Roman Catholics with 6,907,873 (2.91 percent), Hindus with 4,012,116 (1.69 percent), Buddhist with 1,703,254 (0.72 percent), Confucianism 117,091 (0.05 percent). Others were 299,617 (0.13 per cent). Referring to the data of BPS (Central Bureau of Statistics) Census in 2010, two other categories were “not answered” as much as 139,582 inhabitants (0.06 percent), and “not asked” amounted to 757,118 (0.32 percent).⁶⁴

“Others” category was most likely those who embrace local beliefs. This can be indicated with their distribution in the provinces that had been their place of residence. The most numerous is in Central Kalimantan with 138,419 inhabitants, followed by East Nusa Tenggara with 81,129 individuals, South Kalimantan with 16,465, and Banten with 11,722 (see annex). Column “Others” can also refer to a religion other than those six, like Jews, Baha’i, or Sikh.⁶⁵

In Islamic society, Islamic organization with the greatest number of followers is Nahdlatul Ulama, and then Muhammadiyah. A number of minority sects, like Shia, were estimated to comprise approximately one to three million followers. There is also the Ahmadiyya, which is estimated to have about 500 thousand followers spread over 242 branches in various parts of Indonesia. Beyond that there were a number of Islamic organizations that emerged in the early 2000s such as Hizbut Tahrir Indonesia (HTI) who brought forth the ideology of the Islamic Caliphate; Jemaah Anshorut Tauhid (JAT) commanded by Abu Bakar Baasyir, and Islamic Defenders Front (FPI) lead by Rizieq Shihab.⁶⁶

⁶⁴ Badan Pusat Statistik Republik Indonesia, “Data Sensus Penduduk 2010,” <http://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=0> (Accessed on 3 September 2012)

⁶⁵ The Wahid Institute, “Laporan Kebebasan Beragama dan Toleransi di Indonesia the Wahid Institute 2011 : Lampu Merah Kebebasan Beragama,” December 2011, 25

⁶⁶ U.S. Department of State, “International Religious Freedom Report 2010 Indonesia,” Bureau of Democracy, Human Rights, and Labor November 17, 2010 <http://www.state.gov/j/drl/rls/irf/2010/148869.htm> (accessed on 3 October 2012)

Fellowship Church of Indonesia (PGI) is the largest umbrella organization of Protestants; Catholics with the KWI; Hindu with PHDI, Buddhist with Walubi and Matakini for Confucianism; while the population of the Sikh community is estimated at between 10,000 and 15,000, mostly living in Medan and Jakarta.

A number of international human rights instruments that have been ratified by Indonesia, namely: ICCPR and Second Optional Protocol to ICCPR concerning the Elimination of Death Penalty, ICESCR and Optional Protocol to ICESCR, CEDAW and Optional Protocol to CEDAW, CAT, CRC and Optional Protocol to CRC concerning involvement of Children in Armed Conflict, Optional Protocol to CRC concerning the Sale of Children, Prostitution and Pornography, and ICPAED.

Constitution and Guarantee of Freedom of Religion

Like most countries in Southeast Asia, State-religion relation is strongly affirmed in the 1945 Constitution. Article 29, paragraph (1), *The State shall be based upon the belief in the One and Only God*. Article 29 paragraph (2) declares *the State guarantees all persons the freedom of worship, each according to his/her own religion or belief*.

Solid connection between religion and State was also noticed in Article 9 paragraph (1) that says, “...the President and Vice President shall swear an oath in accordance with their respective religions or shall make a solemn promise ...,” Article 31 paragraph (3) says, “...increase the level of spiritual belief, devoutness and moral character ...”

One manifestation of this State-religion relation is the establishment of Department of Religious Affairs (now the Ministry of Religion). So far, only six major religions are coordinated by Ministry of Religion: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Local faiths are under the Ministry of Tourism.

In context of the uniqueness of this country in accommodating religious law, particularly for Muslim community, the State accommodates the laws concerning marriage, divorce, re-marriage, inheritance, grants, wills, endowments, economic Sharia, and others to become State laws, particularly as it applies to the Islamic adherents. Most of those religious laws have existed since the colonial period.

Indonesia has non-discrimination policy guarantee that is contained in Article 1 paragraph (3) of the Constitution. This Article confirms the existence of

equality before the law, regardless of his background, religion and ethnic group; Article 28D paragraph (1) is about protection and certainty before a just law; Article 28E paragraph (1) paragraph (2) and paragraph (3) also contain the affirmation of freedom of religion and opinion; Article 28I paragraph (1) and paragraph (2) provide guarantees regarding the rights to life, the right not to be tortured, the right to freedom of thought and conscience, freedom of religion, and right to be free from discriminative treatments; or Article 29 paragraph (1) and (2) which confirms the principle of the State shall be based upon the belief in the One and Only God and the freedom of worship, each according to his/her own religion or belief.⁶⁷

In addition, Indonesia has Law No. 39 of 1999 on Human Rights. This regulation can be said to be an umbrella Act of the whole regulations that governing human rights.

In context of Human Rights reinforcement, the main responsibility lies on the shoulders of the State, especially the Government. This is constitutional mandate, as set forth in Article 28I paragraph (4) as results of the fourth amendment to the Constitution: *The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government.*

Regulations in Indonesia provide mechanism of protection and fulfillment of victims' rights suffering gross Human Rights violations by means of Law No. 26 of 2000 on Human Rights Court, although in practice it is still difficult to be realized. The persecution against particular groups or communities, which based on religion

⁶⁷ Article 1 (3): *The State of Indonesia shall be a state based on the rule of law.* Article 27 Paragraph (1): *All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions;* Article 28D (1): *Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.* Article 28E Paragraph (1): *Every person shall be free to choose and to practice the religion of 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;* Article 28E Paragraph (2): *very person shall have the right to the freedom to believe his/her faith (belief), and to express his/her views and thoughts, in accordance with his/her conscience, and Paragraph (3) Every person shall have the right to the freedom to associate, to assemble and to express opinions,* Article 28I Paragraph (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;* Article 28I Paragraph (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.* Article 29 (1): *The State shall be based upon the belief in the One and Only God.* Article 29 (2): *The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.*

as one of the causes, is included within the category of gross violation and can be brought to the Human Rights Court. Article 35 of the Act also affirms three rights of the victims of gross Human Rights violations, i.e. compensation, restitution, and rehabilitation.⁶⁸

The compensation referred here is compensation provided by the State, since the perpetrator was not able to fully compensate the losses that are the responsibility of the offender. As for the restitution, it is reimbursed to the victim or his family by the offender or a third party, it could be: the return of property, payment of damages for loss or suffering, or the reimbursement of expenses for certain actions; whereas rehabilitation is restoration of the original position, such as honor, good name, title, or other rights.⁶⁹

Contemporary Challenges

In the field of regulation, there are still a lot of rules that contradicted with the principle of freedom of religion. Rules in the form of laws, national regulations, local government regulations, decree of regional heads, local government circulars, or lower regulations.

At national level, a number of regulations need to be questioned, including Law No.1 PNPS of 1965 concerning the Prevention of Blasphemy and/or Abuse of Religion. In the Constitutional Court's Decision concerning Judicial Review of the Law, the Court acknowledged the reality of indistinctness of definition that might bring about conflict in its application. Therefore the Constitutional Court gave way so that the House of Representative to revise it in order to clarify the categories and forms of blasphemy.⁷⁰

⁶⁸ See Article 35 Law No 26 of 2000 on Human Rights Court, available at http://www.setneg.go.id/index.php?option=com_perundangan&id=235&task=detail&catid=1&Itemid=42&tahun=2000 (accessed on 1 June 2012) or in English available at <http://www.indonesia.ahrchk.net/news/mainfile.php/hrlaw/18/?alt=english> (1) Every victim of a violation of human rights violations, and/or his/her beneficiaries, shall receive compensation, restitution, and rehabilitation.; (2) Compensation, restitution, and rehabilitation as referred to in clause (1) shall be recorded in the ruling of the Human Rights Court ; (3) Provisions concerning compensation, restitution, and rehabilitation shall be further governed in a Government Regulation.

⁶⁹ See the explanation to Article 35 Law No 26 of 2000 on Human Rights Court, available at http://www.setneg.go.id/index.php?option=com_perundangan&id=235&task=detail&catid=1&Itemid=42&tahun=2000. (accessed on 3 September 2012)

⁷⁰ Mahkamah Konstitusi (2009), Nomor 140/PUU-VII/2009, 304-305

Since 2003, more than 150 people have been arrested and dozens of people sentenced under *beleid* (policy guidelines) added in Article 156a of the Criminal Code.⁷¹ This does not include case of Tajul Muluk, Shia leader in Nangkernang hamlet, Karanggayam village, Omben district, Sampang Regency. He was made a suspect on 12 April 2012. On 12 July 2012 Tajul was sentenced two years in prison by the State Court of Sampang as proven of committing blasphemy.

In the meantime, a number of laws and bills that seem to be potentially discriminatory are Hajj Law, Alms (Zakat) Law, Bill of Halal Products Guarantee (JPH), Bill of Religious Harmony (KUB), and Bill of Mass Organization. One of the reasons, it is considered as contrary to the principles of legislation making. Legislation does not bind particular group. It applies to all citizens.⁷²

As for some lower regulations that ought to be criticized are Joint Regulation of Minister of Religious Affairs and Minister of Home Affairs No. 9/2006, No. 8/2006 concerning Guidelines for the Implementation of Tasks of Regional Head/Deputy in the Maintenance of Religious Harmony, Empowerment Forum of Religious Harmony, and the Construction of Places of Worship. The *Beleid* became source of conflicts and violations in many cases of worship house establishments.⁷³ And for the Ahmadiyya's case, the footing was the Three Ministries Joint Decree in 2008 concerning the Ahmadiyya.⁷⁴

⁷¹ USCIRF, "U.S. Commission on International Religious Freedom 2012 Annual Report," March 2012, 311

⁷² "Laporan Kebebasan Beragama dan Toleransi di Indonesia the Wahid Institute 2011"

⁷³ Here, some issues worth to be observed, including, specific requirements of constructing houses of worship, as in Article 14 Paragraph 2: 90 signatures from the house of worship's users and the support of 60 surrounding residents which is passed by *lurah* or head of the village. Other issues, related to the obligation of local authorities to facilitate the availability of location for the worship house construction, if the requirement of 90 users' signature is pulled off, on the other hand the support of 60 local residents is not.

⁷⁴ This Decree became a legal 'hook' for the outbreak of banning on Ahmadiyya activity after the Cikeusik tragedy in some areas in 2011. Regarding splinter movement or cases of religious blasphemy, the existence of Bakorpakem (Monitory Coordinating Task Force of Spiritual Beliefs in Society) also needs to be paid attention to. The Agency is authorized to decide whether a particular group is deviant or committing blasphemy. Its existence is explicitly stated in the Attorney's Law No. 16 of 2004. See the Joint Decree made by The Minister of Religious Affairs, the Attorney General and the Minister of the Interior of the Republic of Indonesia No.3 Year 2008 number: KEP-033/A/JA/6/2008 number: 199 Year 2008 concerning A Warning and Order to the followers, members, and/or leading members of the Indonesian Ahmadiyya Jama'ah (JAI) and to the General Public.

So far, the phenomenon of Sharia nuanced local regulation is not quite popular. This might due to the influence of domestic and overseas wide-ranging criticism. However, the obsession of *agamasasi* (act of making religious) rules nonetheless appears. WI Report of 2011 noticed that many regulations and regulatory plans emerging at local government levels can be divided into six categories. First, 3 regulations concerning alleged deviant sect; second, 15 regulations relating to Ahmadiyya; third, 1 Bill regarding Islamic fashion in the region of Aceh; fourth, 7 regulations in relation to respect for religious holy days; Fifth, 6 religious skills such as reading the Holy Quran, sixth, 1 regulation concerning social fundraising in Malang city; and seventh, 2 prohibitions of establishing houses of worship.⁷⁵

In 2012, a number of regulations are issued, including, the draft of local regulation (Raperda) concerning *Diniyah* in relation to improving the quality of Islamic education in Tasikmalaya. This Raperda will later has an effect on the legalization of religious studies as one of elements that will affect students' promotion to the next grade and graduation. Previously, Tasikmalaya Regency has had rules in the same field, which was Regency Regulation No. 4 of 2006.

Quite encouraging position toward the guarantee of Freedom of Religion was made by Ministry of Home Affairs. Some Local Regulations concerning liquors in some areas such as in Bandung, Banjarmasin, Balikpapan, Tangerang, Pamekasan, Maros, North Penajam Paser, Manokwari, and Bali, were evaluated because it is considered not in accordance with higher regulations. These local regulations ban the distribution of liquors, despite the fact that a Presidential Decree (Kepres) No. 3 of 1997 concerning the Supervision and Control of Alcoholic Beverages stated the existence of limits on the consumption of alcoholic beverages.

The most recent case that tainted the guarantee of Freedom of Religion is the attack of roughly 200 people against Shia adherents in Nangkernang hamlet, Karanggayam village, Omben district, Sampang Regency, East Java, in 26 August 2012.⁷⁶

⁷⁵ "Laporan Kebebasan Beragama dan Toleransi di Indonesia the Wahid Institute 2011," 7-9

⁷⁶ "Tragedi Sampang, Pemerintah Gagal Lindungi Minoritas," Monday, 27 August 2012, 10:34, <http://www.tempo.co/read/fokus/2012/08/27/2547/Tragedi-Sampang-Pemerintah-Gagal-Lindungi-Minoritas> (accessed on 3 September 2012)

Throughout the year of 2012, acts of violation and intolerance against Freedom of Religion seem to still be on the rise. In Midyear Report of January – June 2011, WI noted 54 cases of violations occurred or approximately 9 incidents per month. This number is higher than the cases of 2011, about 7 incidents per month. For the category of intolerance throughout the period, it reached 52 incidents or roughly 9 cases per month.⁷⁷ While last year, the average number was 15 incidents. From this point forward, data on violation and intolerance in this paper shall refer to the WI Report of 2012.

If observed from violation category, “sealing or banning of houses of worship” occupied the highest rank of breaches: 19 percent. A conspicuous case was the sealing of 16 churches in Aceh Singkil Regency and a house of worship of The PAMBI (Persatuan Agama Malim Baringin Batak Indonesia) by the Team of Control of the Government of Singkil Regency in early May. “Act of Omission” occupied the second highest number of infringements. It was commonly carried out by the apparatuses when acts of violence happened against minority groups who have been considered as deviant and different from the mainstream. For example, the case of the dissolution of Irsyad Manji discussions at Salihara Theater (4/5) and at LKiS, Yogyakarta (9/5), in addition to the banning of HKBP Philadelphia Bekasi and GKI Yasmin congregations from worshipping.

One of notorious cases in category of criminalization/victimization concerning faith was the case of Alexander (Aan), a state-employee (PNS) in Regional Development Planning Board (Bappeda), Dharmasraya Regency of West Sumatra. Considered as spreading atheism through Facebook, Aan suffered violence from dozens of people in mid-January. Then he was made a suspect with charges of violating Article 28 paragraph 2 of Law number 11 year 2008 about ITE, Article 156a the Criminal Code concerning Blasphemy, and Article 260 of the Criminal Code for allegedly falsifying an authentic certificate by claiming as Muslim, whereas he was suspected as atheist. The Court sentenced him for only violating Article 28 paragraph 2 of Law number 11 year 2008. He was imprisoned for 2.5 years and required to pay a fine of 100 million in substitute of 3 months in jail.

⁷⁷ The Wahid Institute 2012, “Catatan Laporan Tengah Tahun 2012 Negara Sudah Tidak Dipercaya?”; Jakarta.tt;

For intolerance issues, largest number of intolerance acts is “intimidations and threats of violence”: 19 incidents (29 percent). This trend has not changed from 2011. What’s different is “the banning of worship”, which positioned at the sixth in 2011, this year it escalates into second place. The change was driven by the abundance of worship banning acts, which perpetrated repeatedly against GKI Yasmin and HKBP Philadelphia, and against the worship of Ahmadiyya community and several others. Physical assault also increases in 2012.

As in the last few years, West Java still occupies the area with highest number of violation and intolerance: 19 violations and 24 intolerance cases. Last year, violations in the area reached as many as 55 cases and 105 cases of intolerance. See diagram 3, Violations and Intolerance per Region of 2012.

In both violence and intolerance, the most vulnerable groups and those who suffered the most are the minority. Minority groups are not only a matter of quantity but also power relations issue. These groups can be categorized as: first, the individual or group who has been accused as deviant, for example: Ahmadiyya (5), AKI (1), or other individuals/groups (5); second, Church communities like GKI Yasmin (2 incidents), HKBP Philadelphia (7 incidents), GKPPD (8 incidents). This portrait does not vary much from the victims in 2011. The largest number was suffered by Jemaah Ahmadiyya Indonesia (JAI) with 47 cases (50%), followed by Church of GKI Yasmin with 13 cases (14%), congregation of other Churches with 12 cases (13%), allegedly deviant groups with 8 cases (9%), Shia Community with 2 cases (2%), Abraham Millah with 4 cases (4%), and AKI with 2 cases (2%).⁷⁸ (The Wahid Institute 2011 and 2012).

C. CAMBODIA

Overview of Cambodia

Cambodia is inhabited by 14.4 million people. Buddhism is the majority religion in a country that gained its independence on 9 November 1953. It comprises 96 percent of the population. 4,330 shrines are estimated to be in this State.⁷⁹

⁷⁸ The Wahid Institute, “Catatan Laporan Tengah Tahun 2012 Negara Sudah Tidak Dipercaya?,” Jakarta; tt;

⁷⁹ National Human Rights Commission of Cambodia, “Freedom of Religion in Cambodia”, CCHR Fundamental Freedom Series, Volume II, February 2012

Muslims are 2 percent. Mostly from Chams ethnic, Malay, and generally adhere to the Sunni sect. Many Cham Muslims live in urban centers and fishing villages on the shores of Lake Tonle, Mekong River, and the province of Kampot.

The number of Christians is 1.3 percent, including Protestant and Catholic, or Baptist. There are approximately a hundred Christian organizations or denominations throughout Cambodia with 1,600 Churches (1544 Protestant and 65 Catholic). The officially registered are approximately 900's Churches.

In addition to Buddhism, Islam, and Christianity, a small portion of the population adhering to Hinduism, original religion embraced by the Khmer Empire. The rest are traditional Chinese religion, Mahayana Buddhist, Taoist and Confucian.⁸⁰

Cambodia is a State that ratified many International Covenants. A number of conventions that have been ratified, including, the Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Elimination of All Forms of Racial Discrimination; ICCPR and Optional Protocol to ICCPR concerning the Elimination of Death Penalty; ICESCR; CEDAW and its Optional Protocol; PAINT and its Optional Protocol; CRC and the Optional Protocol on the Involvement of Children in Armed Conflict, the Optional Protocol on the Sale of Children, Prostitution, and Pornography; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the CRPD.⁸¹

Constitution and Guarantee of Freedom of Religion

In a document released by the National Commission of Human Rights of Cambodia, the Constitution guarantees freedom of religion. State-religion relation in this country has a special position. Article 4 the Constitution of Cambodia, adopted on 21 September 1993, stated if religion is one of three pillars of the State. Fortified with, "*The motto of the Kingdom of Cambodia is: "Nation, Religion, and King"*.

http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_02_10_CCHR_Fundamental_Freedoms_Fact_Sheet%20.%20Freedom%20of_Religion%28ENG%29.pdf (20 September 2012).

⁸⁰"Freedom of Religion in Cambodia"

⁸¹ PHUN Vidjia and Jennifer Holligan, "Cambodia", 52-86, in David Cohen, et al, *Rule of Law for Human Rights in the Asian Region: A Base-line Study*.

This is confirmed in Article 16 paragraph (2) regarding functions of the Queen. The Queen has a role and function of exercising various activities related to religious, humanitarian, and social. In that context the Queen assists the King by arranging their diplomatic functions and protocols.⁸²

Article 31 asserts the guarantees of the rights of citizens, i.e. equality before the law, enjoyment of the same freedom and rights, and the fulfillment of the State over the rights of its citizens regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status and wealth or other status.⁸³

Specifically about religion, the Constitution of Cambodia regulates thereto in Article 43. Three things are asserted in this Article: *first*, Khmer citizens, by sex of any kind, enjoy the freedom of conviction; *second*, freedom of religion, conviction and worship is guaranteed by the State under the condition that it does not cause a consequence/impact on the religious beliefs of others, or violate public order and public safety; and third, Buddhism is State religion.

According to the Institute on Religion and Public Policy, since the commencement the Constitution of Cambodia confirms that the restoration of Cambodia has already put in the protection of Human Rights in it. The explanation is set on Chapter III of the Constitution. Article 31 expressly states, Cambodia will recognize and respect the United Nations Charter and the Universal Declaration of Human Rights. Then, Article 43, as aforementioned, affirms the freedom of conviction and freedom to carry out those beliefs.⁸⁴

Guarantee to the rights of freedom of religion in the Constitution and a number of related regulations contribute to the dynamics of religious freedom practice in general. The State gives special attention to the Buddhists as the majority in Cambodia. Moreover, Buddhism was declared as the State religion. The Government generates policy of special holidays for Buddhist holy days. The State

⁸² Article 16 (2): *"The Queen of the Kingdom of Cambodia shall exercise activities that serves the social, humanitarian, religious interests, and shall assist the King with protocol and diplomatic functions"*.

⁸³ "Cambodia", <http://www.freedomfromchains.org/weserve/cambodia/> (accessed on 3 October 2012)

⁸⁴ The Institute on Religion and Public Policy, "Religious Freedom in the Cambodia", Thursday, 2 July 2009. Accessed from <http://www.religionandpolicy.org/reports/the-institute-country-reports-and-legislative-analysis/east-asia-and-the-pacific/cambodia/religious-freedom-in-the-cambodia-2009/> (accessed on 3 October 2012)

also gives special training and education for monks and religious figures in temples, as well as provides support to an agency that specializes in conducting research and publishing materials relating to Khmer culture and Buddhist traditions.

The Government regulates the construction of places of worship. Religious groups, including Buddhists, have to apply for permission to the Department of Religions and Beliefs of Cambodia; as well for religious activity. They should explain the purpose of the religion and its activities, and then to be declared as not insulting the beliefs of other religious groups, not giving rise to a dispute, or threatening national security of Cambodia. There is no punishment of this regulation for those who violate it and in practice there are several religious groups that have not registered.

The Directive on Controlling External Religions of 2003 also requires registration or State approval to build a religious school. In this rule, establishing worship place must be at least two miles from another house of worship that already existed. House of worship is prohibited to be utilized for politics interest, crime, or every other thing against the law. According to records, there has been no documented case that uses this rule to prohibit the construction of a church or mosque. However, there has been no report of any significant difficulty to obtain approval for constructing places of worship.⁸⁵

After revision in 2007, this regulation also incorporated a ban on proselytizing.⁸⁶ Not only traditional door-to-door proselytizing, other forms, such as wider use of loudspeakers in public places and aid-giving that lead to conversion of religion are also prohibited. There are some concerns that children of Buddhist community would be interested in converting their religion into Christianity. This rule also contains a ban on distributing religious books except in churches or houses of worship.⁸⁷

⁸⁵ "Religious Freedom in the Cambodia"

⁸⁶ Proselytism in the past is often associated to evangelization (freedom of religion). The Second Vatican Council affirmed the right of the Church to evangelize and bring people to the Catholic faith. Now, proselytizing is almost always has a negative meaning, namely forcing or manipulating people until he/she accepting certain faith. Gerald O'C, SJ. & Edward G Farrugia, SJ., *A Concise Dictionary of Theology*, translation edition, (Yogyakarta: Kanisius, 1996), p. 266

⁸⁷ The Institute on Religion and Public Policy, "Religious Freedom in the Cambodia" Thursday, 2 July 2009. See also, Working Group on UPR UN Human Rights Council, "Summary of stakeholders information," A/HRC/WG.6/6/KHM/3, (Sixth session) 9 September 2009, Para 32

In practice, the State that also known for its high number of poverty does not forbid the practice of humanitarian and religious aid conducted by particular religious organizations and "missionary" activists.

Contemporary Challenges

So far the State's respect for Human Rights values is much more increased than in Communist and Khmer times. Since 1979, Cambodia underwent many improvements in the field of tolerance, although there are still a small number of restrictions committed by the State. For example, the instruction of the Ministry of Religion and Belief of Cambodia in 2003 concerning the Control of External Religion, which requires every religious group to submit permits of establishing worship houses and organizing worship activities.

Majority population of Cambodia is Buddhist, with small population of other religions, such as Islam, Christian, or others. Hence, the Government has relatively made efforts to promote inter-religion tolerance and mutual understanding. However, sometimes the Government often issued policy that in contrast to the intention. On the whole, regulations did not prohibit religious dissemination activities (Da'wah). Nonetheless, this provision was definitely still very problematic when the State prohibited individual or religious group from propagating their faith or belief in public.

In August 2007, the Government warned the organizers of evangelical and humanitarian activity, entitled "Hope Cambodia". The activity that would be held by Joyce Meyer Ministries in collaboration with Christian groups was supposed to be held for 30 days with climax programs that consisted of three public meetings in Phnom Penh stadium. A week earlier, the Government issued a ban. The organizing committee then looked for smaller site that could be attended by approximately 4000 people. When the event took place, suddenly the police of Cambodia came to the site and announced that the event was cancelled. The police even cut the electricity. The event then was suspended by the organizing committee.⁸⁸

Another note came from the Khmer Kampuchea Krom Human Rights Association (KKKHRA), a non-governmental organization that seeks to promote and protect the rights of minorities in Cambodia. The Government was reportedly still

⁸⁸ "Religious Freedom in the Cambodia"

continuing acts of violence against religious figures of the Khmer Krom Buddhist when they rallied. On one occasion, this religious figure committed demonstration, afterward he was excommunicated from his religious community. In fact, even peaceful demonstration was resolved by means of violence.⁸⁹

In 2006, international non-governmental organization reported a number of persecution incidents on the basis of religion. On 28 April 2006, part of Boeng Krum Leu church was wrecked by some Buddhist people. The church location is just 700 meters from a shrine. Some people attacked and set fire to the Church while shouting "Destroy the Church!" and "Long live Buddhism!".⁹⁰

Positive Trends

In addition to those notes of concern, there are a number of positive trends. In May 2008, an Instruction of the Minister Religion and Belief of Cambodia issued a regulation concerning the freedom of Muslim students and Government officers to wear Muslim outfits in class or at work.⁹¹ In the same month, the Government opened two halls of prayer for Muslims at the Phnom Penh International Airport

In the opening ceremony of a new mosque in Cambodia, Prime Minister of Cambodia, Hun Sen, has called for the importance of inter religion tolerance and accepted the existence of Muslims in Cambodia. He also appealed to international media to not immediately blaming Muslims as terrorists.

On 27 July 2008, the monks of Cambodia were given the opportunity to get involved and to vote in elections. This was the first election for them after 10 years ago the Tep Vong Buddhist community had forbade the monks to get involved, due to act of demonstration against Hun Sen Administration.⁹²

⁸⁹ "Summary of stakeholders' information"

⁹⁰ European Centre for Law and Justice, "Religious Freedom in Cambodia", NGO Alternative Report for UN Human Rights Council in the UPR process of Cambodia, 9 April 2009.

⁹¹ National Human Rights Commission of Cambodia, "Freedom of Religion in Cambodia", CCHR Fundamental Freedom Series, Volume II, February 2012.

⁹² "Religious Freedom in the Cambodia"

D. LAOS

Overview of Laos

The state of Laos is located in the middle of Indochina peninsula in Southeast Asia. For centuries known as the outsider and the land of millions of elephant, Laos is surrounded by mountains and crisscrossed by many rivers. The Mekong River flows through 1865 km of the country from North to South.

With an area of 236,800 square km and its three quarters are mountains and plateaus. According to official Lao government records, Lao population is 5,218,000. 85 percent lives in the countryside, which is divided into 5 provinces (Vientiane Municipality, Champasack Savannakhet, Luang Prabang and Sayaboury). In general, the population of Laos is consisted of 48 ethnic groups with 4 core languages: Lao-Tai, Mone Khmer, Hmong-loumien and Tibeto-Burman ethnic groups.

Majority of citizens are Theravada Buddhists. The number reaches 90 percent of the total inhabitants. Total population of Buddhists reaches 3,600,000; while Catholics are 41,746, Evangelists are 60,000, Advents are 700, Muslims are 400, Baha'i are 8,537 and animism are 1,180,000.⁹³

Laos has ratified International Human Rights instruments, i.e. ICESCR, ICCPR, CERD, CEDAW, CRC, Optional Protocol of CRC-SC, and CRPD. By ratifying the ICCPR, actually Laos is under the ruling to uphold the guarantees of Freedom of Religion through their domestic legislation.

Constitution and Guarantee of Freedom of Religion

The guarantee of freedom is inscribed in Article 30 of the 1991 Constitution, which states "Lao citizens have the right and freedom to believe or not to believe in religions." ⁹⁴ Form of State favoritism toward Buddhism is written in Article 9. "The state respects and protects all lawful activities of the Buddhists and of other religious followers mobilizes and encourages the Buddhist monks and novices as well as the priests of other religions to participate in the activities which are beneficial to the country and people..." This Article also asserts that the State prohibits "...All acts of creating division of religions and classes of people ..."

⁹³ "E-Portal Laos Profile: Religion"
<http://app02.laopdr.gov.la/ePortal/lao/detail.action;jsessionid=zrhpQyFMpcv819XpdjT8Vqjpk40qxcyGLtMkzpiCbgbFWdFbMCjw!-257450768?id=11538> (accessed on 3 October 2012)

⁹⁴ Article 30 1990 Lao Constitution

The principle of every citizen is equal before the law, regardless of their beliefs, is regulated in Article 22. While Article 6 declares that the State protects people's freedom and democratic rights and those rights cannot be infringed by anyone.

The Constitution of the Lao PDR provides a platform to guarantee Freedom of Religion. But most contents of Laos Prime Ministerial Decree No. 92 (2002) Decree Regarding Governance and Protection of Religious Activity in the Lao PDR (known as Decree 92) are still problematical for the realization of those rights. Some rules therein give Government the opportunity to control and intervene in religious activities of its citizens. However, some contents of the regulation reaffirm the guarantees defined in the Constitution. One of them is that every citizen has equal rights before the law to believe or not to believe in religions.⁹⁵

The Decree 92 defines principles and rules concerning the management and protection of religious activities in the country. This is regulated with consideration so as to making religious activities conform to laws and regulations.⁹⁶

Religious activity is declared to be conducted based on the approval of the adherents, without any coercion or enticement (bribe) from political institutions as well as individuals, neither domestic nor overseas. Any religious activity, in small and large scales, should be aimed at development of the country and education of their people, respectively. In practice, the religious activity must be: 1) Avoiding badness, doing good and having a pure heart; 2) Teaching humans in the spirit of solidarity, mutual assistance and love; 3) Assisting humans in the spirit of equality, justice and peace.⁹⁷

Article 5 of the Decree refers to the importance of every believer of all religions to preserve and expand historic traditions, cultural heritage and Lao National Unity. The "national unity" clause seems to be common. It could reduce the respect for religious minorities.

This decision obligates every religious organization to apply for registration and permit regarding religious activity to the State. In this context, the State is given the authority to approve the registration and activities of religious affairs, including

⁹⁵ Article 39 Decree 92

⁹⁶ Article 1 Decree 92.

⁹⁷ Article 2 Decree 92

the appointment of religious personnel or employees, sermons and propaganda, the printing of religious literature, construction of religion-related building and inter-religion relations.⁹⁸

Article 16 affirms, *building of new monasteries, churches, Dharma council hails, offices or dormitories of each region shall be approved by the governor of the province, the mayor of the prefecture or the head of the special zone with the approval of the Lao Front for National Construction of the province, prefecture or special zone and of the concerned local administrative authority. The building of Buddhist temples shall be approved by the Prime Minister with the approval of the president of the Central Committee of the Lao Front for National Construction.*

Limitation in the enjoyment of this right is regulated in Article 13. By reason of potentially dividing religions and causing social disorder, this Article provides authority to execute prohibition.

Regarding publication of religious literature and its dissemination is regulated in Article 14. The Ministry of Propaganda and Culture has authority in providing consideration for publication and propagation activity. This activity is also required to be approved by the Central Committee of the Lao Front for National Construction (LFNC). Factually, the decision to allow or not to allow a document or religious material vastly depends on LFNC.⁹⁹

Furthermore, Article 15 affirms that every believer has the duty to preserve sacred sites, articles of historical heritage, fine Lao national culture, customs and traditions. All changes or renovations should be conducted through the LFNC.

Contemporary Challenges

The condition of religious freedom in Laos began to improve when the state hosted international meetings, such as the ASEAN Summit of 2004, Southeast Asian Games in 2009, and ASEAN regional meetings and dialogues. Nevertheless, practice of government arbitrary arrest against prominent figures is still revealed. The regime still uses violence approach.

⁹⁸ Article 7, 8, 9 12, 14, 16 and 17 – 20 Decree 92

⁹⁹ Article 14 states: *The printing of books, documents for dissemination, signs and various plates related to religion shall be authorized by the Ministry of Propaganda and Culture with the with the approval of the Central Committee of the Lao Front for National Construction. It is forbidden for believers in the Lao PDR to publish or possess books, documents, photographs, photography, distortions of truth, slandering or obstructing the progress of the nation, or the production and duties of citizens towards the country.*

At the macro level, the issue of religious freedom is still centered on the problems of weak reinforcement and legal protection for religious activities, as well as regime's arbitrary approach.¹⁰⁰ Frequently the Government put the country's security as more important than the rights of certain religious groups' members.

As experienced by Christian community, the Government only recognizes Christian groups originating from the Lao Evangelical Church (LEC)¹⁰¹ and the Seventh-day Adventist Church. This policy gave way for the Government coercing Christians to simply choose one of both mainstreams. Those who did not enter in those organizations were declared as illegal and often suffered discrimination up to gross violation. In some places, for example, the Methodist Church congregation could not gather to worship, establish house of worship, or do a funeral with the Methodist tradition. Until recently, the Methodist and other Christian groups that have not been recognized are still seeking legal recognition from the State.¹⁰²

Another challenge in the future is the authority implemented by officials in a number of regions. In addition to lack of legal protection and ambiguity of regulations, lack of training and education, social prejudice and antipathy mind-set of local officials has also become fastidious obstacle. At local government level, in fact, approach of violence and control still dominates the pattern of local bureaucrats' policy.¹⁰³

A number of infringement cases in the state have drew special attention of UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir in 2009. One of them was the case of 3 pastors who suffered persecution and violence, as well as their conditions in prison. The Lao Government denied the information. Local officials said they had not making arrest, torture or any other cruel treatment to those men. Local officials admitted that they held three of them for two days. After an investigation, they were released.¹⁰⁴

¹⁰⁰ Christian Solidarity Worldwide, "Briefing: Laos Religious Freedom Report," May 2012, 7

¹⁰¹ LEC was founded in 1965 and received legal recognition from Lao Government in 1990. Nowadays, the number of LEC adherents in Laos is estimated for 100,000 individuals, most of them are in Vientiane.

¹⁰² Annual Report of USCIRF, Cambodia, 2012, p. 313

¹⁰³ Christian Solidarity Worldwide, "Briefing: Laos Religious Freedom Report," May 2012, 13

¹⁰⁴ Asma Jahangir, "Report of the Special Rapporteur on Freedom of Religion or Belief," UN Human Rights Council, Tenth session, A/HRC/10/8/Add.1, 16 February 2009, 35

In practice, the Government still applies restriction policy, which its size depends on the interests of local government or regime. Religious figures reportedly had to get permission to organize religious activities. Activities of inviting someone to convert into particular religion and of producing religious documents are prohibited. Notwithstanding, the activities are clearly guaranteed in Constitution.

Some groups are reportedly still having difficulty of bringing the religious materials to Laos and establishing places of worship. The implemented requirements are difficult to obtain due to confusing¹⁰⁵ reasons such as social division or chaos.¹⁰⁶

Factually, Government's policies of tolerance regarding religious freedom are indeed different, whether by regions, ethnics and religious groups. Buddhism as the mainstream has the most loose-fitting restriction and supervision.

However, there is some advancement in this country that noteworthy. Catholics were given the chance to build Church and to consecrate clergy. Protestants in urban areas also reported an increase of the ability to worship and re-open, establish or expand a place of worship.

Other smaller communities such as the Baha'i adherents reported better conditions in cooperation with government agencies and in expanding their facilities. Even the LFNC has visited the headquarters of the Baha'i in Israel.

¹⁰⁵ Article 13 of 1992 Decree states: *"Believers of any religion in Lao PDR disclosing or participating in disclosure of State secretary to other persons residing inside or outside the country; conducting activities against Lao People's Democratic Republic regime, and dividing ethnic groups or religions in order to cause social disorder, will be punished in conformity with laws and regulations of the Lao PDR"*.

¹⁰⁶ Annual Report of USCIRF, Cambodia, 2012, p. 313

E. Malaysia

Overview of Malaysia

The State that gained independence on 31st August 1957 covers an area of 127 thousand square miles. Population is 26.9 million. Referring to the 2000 census, approximately 60 percent are Muslims, 19 percent Buddhist, 9 percent Christian, 6 percent Hindu and 3 percent Confucianism, Taoism, and other traditional religions of Chinese communities. Groups of other minority religions include animists, Baha'i, and Sikh. Muslim Malays constitute about 55 percent of the population. Most of the Christians live in East Malaysia, namely Sabah and Sarawak.¹⁰⁷

In the Constitution of Malaysia, the Malays are individuals who professed Islam, Malay-speaking and conformed Malay custom. Therefore civil courts typically cede authority to the Sharia Court for cases related to conversion of religion and other affairs such as inheritance, marriage, etc.¹⁰⁸

In Malaysia, Sunday is national holidays in the Federation and in ten of thirteen States territories. Three States that did not make Sunday as holyday are Kedah, Kelantan and Terengganu. Weekends in these regions fall on Friday and Saturday. National holidays are also regulated for a number of religious holidays such as the Eid al-Fitr, and Eid al-Adha (Islam), Mauled Nabi (Islam) Vesak day (Buddha), Deepavali (Hindu), and Thaipusam (Hindu), Christmas (Christian), and in Sabah and Sarawak, Good Friday (Christian).

Malaysia as a member of the United Nations since 1957 is one of countries that did not ratify many International Human Rights Instruments. So far there are only three conventions that ratified: in 1979, CEDAW, CRC in 1989, and the CRPD in 2007.¹⁰⁹

Constitution and Guarantee of Freedom of Religion

¹⁰⁷ Democratic Bureau, Human Rights and Labor, "International Religious Freedom Report 2008 Malaysia," http://usembassymalaysia.org.my/bnet/IRF08_Malay.pdf (accessed on 10 September 2012)

¹⁰⁸ See Article 160 (2): "*Malay*" means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or (b) is the issue of such a person.

¹⁰⁹ Azmi Sharomi, "Malaysia" International religious freedom report 2008 Malaysia, *Rule of Law for Human Rights in the ASEAN Region: A Base-line Study*, 136.

The Constitution of Malaysia acknowledges policy of official religion of the State. Its assertion is listed in the Constitution of Malaysia Article 3 (1). Islam is the religion of the Federation. However, this Article also emphasized the freedom of other religions to practice in peace and harmony.¹¹⁰

The Constitution also gives the highest authority to Yang di-Pertuan Agong, as head of the religion. Article 3 (3) of the Constitution stated, States of Malacca, Penang, Sabah and Sarawak shall each make provision for conferring on the Yang di-Pertuan Agong shall be Head of the religion of Islam in that State.

Similar authority was also regulated at the Federal territory of Kuala Lumpur and Labuan. The rule is comprised in Article 3 (5). To regulate Islamic religious affairs, a Council is created to advise the Yang di-Pertuan Agong in matters relating to the religion of Islam.

In practice, Islamic law should not downgrade other provisions of the Constitution. That means the religious rules that were set up based on the authority of this Article cannot be in opposition to the contents of Constitution in other Articles, while some of them are the guarantees of religious freedom.

In view of Prime Minister Mahathir bin Mohamad, with reference to Article 3 (1), Malaysia is an Islamic State. His opinion that was made on 29 September 2001 was strongly responded by opposition leader Lim Kit Siang. Lim considered the statement as unconstitutional action. For Lim, Malaysia is a secular State with Islam as the official religion.

Similar to Mahatir, Najib Razak also expressed a similar statement on 17 July 2007. Malaysia is an Islamic State, not secular. The statement also ignited pros and cons, especially among the oppositions. In respond to the dispute, the Government finally banned liberal media from covering debates regarding those issues, except for Prime Minister and Deputy Prime Minister's statements. In early August 2007, the Prime Minister issued a moderate statement. Malaysia was not a secular or a theocratic State, but "Parliamentary Democracy".¹¹¹

¹¹⁰ See Chapter I "The States, Religion and Federation Law of Malaysia" Article 3 (1) Constitution of Malaysia.

¹¹¹ US Embassy Malaysia, "International Religious Freedom Report 2008 Malaysia," Democratic Bureau, Human Rights and Labor, http://usembassymalaysia.org.my/bnet/IRF08_Malay.pdf (accessed on 10 September 2012)

Article 11 of Constitution regulates matters and guarantees of Freedom of Religion. There are five things regulated. First, the guarantee to profess, practices, and propagates religion.¹¹² Second, a guarantee that there is no compulsion to pay any tax that specially allocated, either in part or in whole, for religion other than their own.¹¹³ Third, every religious group has the rights to manage its own affairs, to establish and maintain institutions for religious or charitable purposes, to acquire and own property and to administer it in accordance to law.¹¹⁴ Fourth, the power of federation law to control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.¹¹⁵ Fifth, prohibiting any act contrary to any general law relating to public order, public health or morality.¹¹⁶

Contemporary Challenges

Although guarantee for Freedom of Religion is available, in practice many violations of religious freedom still happened in the country. One of the factors is due to legal dualism: public and Sharia laws. The policy of official religion also contributed in a number of discrimination cases.

Before the amendment, the criminal courts have jurisdiction over criminal matters of Islam that expressed under various legal administrative systems of Islamic law. But after the constitutional amendment in 1988 and subsequent amendments, a clause was added declaring Lower and High Courts no longer have jurisdiction relating to Sharia Courts. Thus, Article 121 separates jurisdiction of these Courts, commonly known as the Civil Courts and Sharia Courts.¹¹⁷

¹¹² See Article 11 (1): *Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.*

¹¹³ See Article 11 (2): *No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.*

¹¹⁴ See Article (3): *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 law.*

¹¹⁵ See Article 11 (4): *State law and in respect of the Federal Territories of Kuala Lumpur and Lubuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.*

¹¹⁶ See Article 11 (5): *This Article does not authorize any act contrary to any general law relating to public order, public health or morality.*

¹¹⁷ Jan Michiel Otto (Ed), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, (Leiden: Leiden University Press, 2010) 513

The case of Subashini Rajasingam, a Hindu woman; the Supreme Court of Malaysia rejected her submission of case appeal to have her case to be arbitrated in the civil courts. The reason was because she is not a Muslim. Because of the decision, she lost custody of her children. Islamic Sharia Courts of Malaysia will not give custody of child to a non Muslim parent. Subashini's case began when Subashini's husband converted to Islam and tried to divorce her through Sharia Court. The husband also took his older son to follow his footsteps.¹¹⁸

This dualism has also become a stumbling block for cases of religion conversion in Malaysia, especially within Muslim community. Sharia Court is extremely difficult to grant attempt of conversion off Islam. Among the cases emerged is Lina Joy's in 2007. The Supreme Court of Malaysia rejected the Cassation of Lina Joy. The woman who struggled for six years to obtain official recognition of religion conversion can only be accepted through the Sharia Court. In 2000, she went to the High Court after the Department of National Registration refused to change the status of Muslim from her identity card. Her efforts failed.¹¹⁹

Earlier, a similar case also fell upon Revathi Massosai who was trying to convert from Islam to Hinduism. In January 2006, she proposed the convert to Religion Department of Malacca. But she was required to go to the Sharia Court. The Court alone refused her conversion of religion. Her marriage to a Hindu man was also not recognized.

Cases regarding propagation of religion via media conducted by non-Muslims are emerging. In addition to using Article 11 (4) of Constitution, the prohibition of religious propagation is associated with section 7 (1) Press and Publication of 1984 which prohibits publications that contain article, caricature, report notes, sound, music and other things in a way that is harmful or disturbing public order, morality, and security. In 2005, the Prime Minister applied a policy that Malay-language Bible to be written "not for Muslims" on the cover and can only be distributed in churches and Christian bookstores, and not to be used at the homes of Malays.

¹¹⁸ "Banding wanita Hindu ditolak" 27 December, 2007, 16:32 GMT
http://www.bbc.co.uk/indonesian/news/story/2007/12/071227_malaysiahindu.shtml

¹¹⁹ "Kasasi pindah agama ditolak"
http://www.bbc.co.uk/indonesian/news/story/2007/05/070530_malaysiareligion.shtml (accessed on 10 September 2012)

Protest on the use of word "Allah" happened in December 2007. The Ulema Council in seven States and the Association of Chinese Muslims protested against the Catholic Herald Magazine that published the word "Allah" (God). It belongs to Islam. The Ministry of Home Affairs eventually prohibited the use of the word. The reason, it might escalate tension and create confusion in Muslim community. The Christians reasoned that the Word also comes from the Hebrew "Elohim"

End of December 2009, the High Court decided the Christians are constitutionally entitled to use the word of Allah. The Court considered policy banning on the use of word "Allah" by the Ministry of Domestic Affairs is illegal and invalid. That decision stirred up group of people who vandalized eight church buildings. A Catholic monastery in Taiping was thrown with bomb. The perpetrators were identified as Abim Muslim Youth Movement. They insisted the word "God" should only be used by Muslims. If other religions, including Christians use the word, it definitely means inciting Islamic adherents to renounce their religion.¹²⁰

In field of publication banning, from 2000 to July 2009, a total of 397 books were banned.¹²¹ Among the books which *haram* (sinful) because they are opposing to the values of Islam, namely: 'Islamic Politics Brings About Love' by Chairman of Al Arqam, Ash'ari Muhamad; 'The Life and Times of Muhammad', the work of John Glubb; 'Now You Can Know What Muslims Believe' by Ministries to Muslims; 'What is the Ahmadiyah Movement' by Mirza Bahiruddin Mahmud; and 'Tasawuf in the Quran' by Mir Aliudin; 'Secrets of the Koran: revealing Insights Into Islam's Holy Book' by Don Richardson; and 'Women in Islam' by Margaret Speaker Yuan.¹²²

Early March, the Government also issued a policy to confiscate Christian books and other materials containing the word of Allah. By the end of 2009, ports and customs officers have been noted of seizing 15 thousand bibles.

¹²⁰ "Gereja Terus Diserang," Monday, 11 January 2010 06:47, <http://otomotif.kompas.com/read/2010/01/11/06472857/direktori.html>

¹²¹ Liz gooch, "Malaysian Court End Ban on Book," New York Times, January 26, 2010, <http://www.nytimes.com/2010/01/26/world/asia/26malaysia.html?ref=word> See also Perry Smith, "speak No Evil: Apostasy, Blasphemy and Heresy in Malaysian Syariah Law," UC Davis Journal of International Law and Policy 10, no. 2 (spring 2004): 358-403, <http://www.iclrs.org/common/document/pdf/2393.pdf>.

¹²² "Laporan Kebebasan Beragama Antarabangsa 2008 Malaysia," http://usembassymalaysia.org.my/bnet/IRF08_Malay.pdf (accessed on 10 September 2012)

In Selangor, Sharia Court decided prohibition for non-Muslims to use 35 Islamic terms; including the words: *Allah, firman Allah, solat, Rasul, mubaligh, mufti, qiblat*, etc.¹²³

Malaysia has its own Human Rights Commission named SUHAKAM. This institution was established by the Parliament of Malaysia under the Human Rights Commission Act of 1999 (Act 597). The Commission was established after Malaysia actively engaged in UNCHR from 1993 to 1995, when it was selected as member of the Commission by the United Nations Economic and Social Council and re-elected for the second period in 1996-1998 and the third in 2001–2003.¹²⁴

The establishment of SUHAKAM was also motivated by Malaysia's participation in the World Conference on Human Rights, Vienna, 1993. As stated in Section 4 of the Human Rights Commission of Malaysia Act 1999, the functions of SUHAKAM, as follows: first, to promote awareness of and providing education relating to human rights; second, to advise and assist the government in formulating legislation and procedures and recommend the necessary measures to be taken; three, to recommend to the government with regard to subscription or accession of treaties and other international instruments in the field of human rights; Fourth, to inquire into complaints regarding infringement of human rights.¹²⁵

¹²³ "Non-Muslims not to use 35 Islamic terms: Diktat", *Press Trust of India*, Friday, January 15, 2010, 17:59 http://zeenews.india.com/news/world/non-muslims-not-to-use-35-islamic-terms-diktat_596153.html (accessed on 12 September 2012)

¹²⁴ Tan Sri Arifin Zakaria, "the Malaysian Perceptive on Human Rights and Freedom in 21st Century and the Role of Court," 50th Turkish Constitutional Court And International Symposium, Turkey 25 – 28 April 2012, 11, <http://www.kehakiman.gov.my/sites/default/files/document3/Teks%20Ucapan/PAPER%20PRESENTATION%20-%20CJ%20OF%20MALAYSIA.pdf> (accessed on 12 September 2012)

¹²⁵ Tan Sri Arifin Zakaria, "the Malaysian Perceptive on Human Rights and Freedom in 21st Century and the Role of Court," 11-12.

F. Myanmar

Overview of Myanmar

Myanmar's total population is around 52.4 million (July 2003). Of the 135 ethnic groups, the largest ethnic is Burman (68 percent), Shan (9 percent), Karen (7 per cent), Rakhine (4 percent), Chinese (3 per cent); Indian (2 per cent), Mon (2 percent), other ethnics is 5 percent. Approximately 89 percent of the population embraces Buddhism, mostly Theravada doctrine. Minority religious groups that flourished in the country that covering an area of 677,000 square kilometers are Christian (4 per cent), primarily the Baptist, Roman Catholic, and Anglican, along with other smaller Protestant denominations; Islam (4 percent), mostly Sunni; the animistic (1 percent) and others 2 percent. There are also a number of residents who profess Judaism and have synagogue.¹²⁶

Protestant Christian began to develop among animism society in Chin. Although the majority embraced Buddhism, part of Karen and Karenni ethnics profess Catholicism and Islam. Population from India is mostly Hindu or Muslim. The region with the largest Islamic adherents is in Rakhine State, in Rangoon, Irrawaddy, Magwe, and Mandalay. Minority Chinese ethnic practices Chinese traditional religious beliefs. Adherents of local belief are usually located in the Highlands.¹²⁷

Under the military administration, Myanmar adopted pretty much International Human Rights Instruments. So far the International Human Rights Instruments had been ratified are the CAT (30 March 2004); Freedom of Association and Protection of the Right to Organize Convention (4 March 1955); Convention concerning Forced or Compulsory Labor (4 March 1955); CPPCG (14 March 1956); International Convention for the Suppression of Unlawful Seizure of Aircraft (22 May 1996).¹²⁸ Myanmar has not ratified the ICCPR and the Convention on the Elimination of All Forms of Discrimination.

¹²⁶ "About Myanmar : Population"
<http://www.mofa.gov.mm/aboutmyanmar/population.html> (accessed on 3 October 2012)

¹²⁷ U.S. Department of State, "International Religious Freedom Report 2010 Burma," Bureau of Democracy Human Rights and Labor, November 17, 2010
<http://www.state.gov/j/drl/rls/irf/2010/148859.htm> (accessed on 3 October 2012)

¹²⁸ David Cohen, et al, *Rule of Law for Human Rights in the ASEAN Region: A Base-line Study*, 156

Constitution and Guarantees of Religious Freedom

It takes 15 years and 4 months for the Constitution of Myanmar to be eventually adopted by Government under the military junta of State Peace and Development Council (SPDC), on 29 May 2008 – known as the 2008 Constitution. Adopted through a national referendum, with 92.48 percent of voters approved the new Constitution. The Referendum itself received a lot of criticism from some parties including the opposition such as the LDP; among other things, due to continuing intensive military power.¹²⁹

Their powers are regulated in the Constitution that calls the military can participate in the role of national political leadership of Myanmar;¹³⁰ whereas, authoritarian military leadership hitherto is considered to be the culprit various violations of Human Rights in the country. The military regime has ruled the country since 1962. The current military Government, SPDC, ruled without a Constitution since 1988.¹³¹

The 2008 Constitution indeed guarantees enough Freedom of Religion. Chapter I "Basic Principles of the Union" Article 34 states, every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution. The Constitution also guarantees the prohibition of discrimination based on race, birth, religion, official position, status, culture, sex and wealth, as set forth in Article 348.¹³²

The 2008 Constitution Article 352 confirms the principle of non-discrimination in the public service. If qualifications are met, the public service should not be run discriminatively on the basis of birth, race, religion, or gender.¹³³

¹²⁹ "International Religious Freedom Report 2010 Burma

¹³⁰ See Article 6 (f) Constitution of the Republic of the Union of Myanmar (2008), Printing & Publishing Enterprise; Ministry of Information.

¹³¹ "International Religious Freedom Report 2010 Burma"

¹³² Article 348: 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.

¹³³ Article 352: *The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only*

Article 354 (d) provides guarantees to every citizen the right to develop the language, literature and culture, religion, and customs, without prejudice to the relations between one national race and another or among national races and to other faiths.¹³⁴

Nevertheless, Article 34 also paves the way to violation of Human Rights due to the rubber limitation: "the other provisions of this Constitution". In the other part of the Constitution, there are articles that contrary to the principles of law and Freedom of Religion.

Article 354 for example, the basic guarantees of freedom of expression, association, and practicing religion is permissible only to the extent not in conflict with the law, State security, prevalence of law and order, community peace, public order, and morality.¹³⁵

Article 360 restricts that freedom subject to Article 34 shall not include any economic, financial, political or other secular activities that may be associated with religious practice. That freedom also shall not debar the Union from enacting law for the purpose of "public welfare and reform".¹³⁶ With this provision, the State can produce law that in fact violates freedom of religion.

Obviously, the Constitution of Myanmar banned religious activity to perform political activities. Those who are incorporated in particular religious orders could not be elected to Pith Hluttaw member, Myanmar House of Representatives. Those who were found of receiving financial support, housing, land, buildings, and other property from government organizations, religious, or other organizations of foreign countries shall be disqualified. As well as individual or member or organization that conspired to incite, orate, talk or issue a declaration to vote or not to vote on the basis of religion for political purposes.¹³⁷

Even though it does not inscribe explicitly as "State religion", the 2008 Constitution gives special position for Buddhism, the grounds because it is professed by majority of citizens.¹³⁸ The Constitution also acknowledges the

¹³⁴ See Article 354 (d)

¹³⁵ Article 354

¹³⁶ See Article 360 (a) and (b)

¹³⁷ Article 121 (g), (h), and (i)

¹³⁸ Article 361: *The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union.*

existence of Christianity, Islam, Hinduism and animism as well as providing guarantee to help and protect the religions.¹³⁹ This Article seems to admit the existence of stratification of religion recognition and tends to be discriminatory.

Article 343 prohibits "misappropriation of religion" for political purposes. At the same time, the article also commits all forms of action to promote feelings of hatred, enmity or conflict among races or religious communities or sects in opposition to this Constitution.

Contemporary Challenges

Rohingya Minority

The issue of Rohingya is a case that gains international pervasive attention. In June 2012, at the West Arakan State a deadly sectarian violence exploded between Arakan Ethnic adherents of Buddhism and Rohingya Muslim, ternon-Rohingya Muslim. The violence took place after a story circulated concerning an Arakan woman had been raped and murdered in Ramri. The perpetrators were suspected as three Muslim men. The report sparked acts of revenge. On 3 June, a mass from Arakan village in Toungop stopped a bus and brutally killed 10 Muslims who inside it. After that riots broke out in Sittwe, Maungdaw, and surrounding areas. The Government stated approximately 78 people were killed and 100 thousand people displaced.¹⁴⁰

Violence did not occur suddenly. The case is more as a result of various State and military discriminative policies against the community. The Investigation made by Human Right Watch even mentions that there was collusion between Arakan residents and local security officials in scores of violence in June.¹⁴¹ But the Government of Myanmar denied if the case is motivated by factors of religious persecution or discrimination¹⁴²

¹³⁹ See 362: *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*; and Article 363: *The Union may assist and protect the religions it recognizes to its utmost.*

¹⁴⁰ Human Rights Watch, "The Government Could Have Stopped This" Sectarian Violence and Ensuing Abuses in Burma's Arakan State, 2012, 1-2.

¹⁴¹ Human Rights Watch, "The Government Could Have Stopped This", 26

¹⁴² "Myanmar Tolak Kasus Rohingya Terkait Agama," Monday, 30 July 2012 23:34, <http://www.metrotvnews.com/read/news/2012/07/30/100374/Myanmar-Tolak-Kasus-Rohingya-Terkait-Agama/7> (accessed on 14 September 2012)

In a long time, the Rohingya community suffered many forms of discrimination in the fields of law, economy, religion, education and social. Their citizenship status was denied. Government's excuse said that their ancestors did not live in the country since the beginning of colonial era. Nearly 800 thousand Rohingyas are recorded living in Myanmar, mostly are concentrated in cities like Maungdaw, Buthidaung, Rathedaung, Akyab, and Kyauktaw.

In 1991, for example, the Government reportedly has significant role of inciting violence against Rohingya Muslims in Arakan. More than 250,000 sought refugee to Bangladesh. After the army attacked in 1994, nearly 110,000 residents of Karen and Mon fled to Thailand. The Government reportedly also took part or incited anti-Muslim violence in Shan State and Yangoon in 1996.¹⁴³

Christian minority

In Myanmar not only Muslims who suffered violation against the right to freedom of religion and act of discrimination, other minority groups also experienced it. In reference to Report of the Special Rapporteur to Burma, September 2011, the long lasting military conflict has caused the occurrence of worst Human Rights abuses. The Kachin Women's Association-Thailand (KWAT) said that between 25-50 thousand civilians fled from their village, lived as internal refugees in makeshift camps along the Burma-China border; some were hiding in the forest.

The Burmese military has destroyed religious venues, actively promoted conversion to Buddhism, confiscated land, mandated forced labor, and used rape as an instrument of war and intimidation. The Chin, Naga, Kachin, Shan, Karen, and Karenni peoples, each with sizable Christian populations, have been the targets of these abuses.¹⁴⁴

Report of the Chin Human Rights Organization (CHRO), an organization founded by Chin activists, reveals a number of cases they have experienced since 2004. First, The destruction of 13 Christian crosses, many of them are large structures over 20 feet tall.; second, 15 Buddhist pagodas or monasteries were built with forced labor exacted from Chin Christians; third, more than 40 separate

¹⁴³ Islamic Human Rights Commission, "Myanmar's Muslims The Oppressed of the Oppressed," Rianne ten Veen, October 2005, 9

¹⁴⁴ U.S. Commission on International Religious Freedom 2012 Annual Report "Country Chapters: Countries Of Particular Concern Burma," 2012, 35

incidents of torture or ill-treatment, targeted at Chin on the dual basis of their ethnicity and religion; fourth, 24 official complaints of violations of religious freedom and other human rights abuses (including rape and extra-judicial killing) lodged by Chin Christians at various levels of government, where no action was taken against the alleged perpetrators.¹⁴⁵

In Kachin, military commanders issued new regulations requiring religious groups to get permission 15 days in advance for —reading the Bible, fasting, prayer . . . and [saying] the rosary of the Virgin Mary. In most ethnic minority areas, Christians are required to obtain a permit for any gathering of more than five people outside of a Sunday service.

Buddhist Community

Not only minority groups, the majority also experience similar thing. Most of them are groups in opposition to the ruler. In the aftermath of peaceful anti-government demonstrations in 2007, the regime began systematically repressing Buddhist monks.

Hundreds of monks were arrested, defrocked, beaten, and forced to perform hard labor in prison. At least 30 deaths were reported, although some experts say the actual number was much higher.

At least 4,000 people were arrested during the crackdown, and between 500 -1,000 were believed to remain in detention months later. Many of the detained reportedly have been mistreated or tortured. Given the lack of transparency in Burma, it is difficult to determine how many people remain in prison or are missing. According to the Thailand-based Assistance Association of Political Prisoners in Burma (AAPP), approximately 150 monks remain in prison to date.

The Government began to intervene in the form of imposing criminal penalties on those who are critical of the Government, particularly among the *sangha*. The Monks are not allowed to preach political sermons, make public

¹⁴⁵ Chin Human Rights Organization September, Summary “Threats to Our Existence: Persecution of Ethnic Chin Christians in Burma Executive,” September 2012, 7 http://www.chro.ca/images/stories/files/PDF/EC_Threats_to_Our_Existence.pdf (accessed on 15 September 2012)

statements, or produce literature with views critical to government policies or the military.

Monks are also prohibited from associating with or joining political parties or taking part in peaceful demonstrations or ceremonies viewed as political, such as commemorations of Aung Sang Suu Kyi or for the victims of the 2007 demonstrations. Military commanders retain jurisdiction to try Buddhist monks in military courts.

In September 2010, authorities sentenced monk Ashin Uk Kong Sah to 15 years in prison for violating the Electronics Transactions Act, Press Act, and Section 505 B of Penal Code for a writing. In December 2011, a monk was arrested for delivering speeches about the need for further political reform.

Some monks and Buddhist laypeople were arrested and detained for conducting peaceful religious services on behalf of Aung San Suu Kyi or to commemorate the victims of the 2007 demonstrations, including four monks, U Chit Phay, U Aung Soe U Damathara, and U Nandara Wai, and approximately 50 members of the opposition, National League for Democracy.

Despite its crackdown on Theravada monks, but the Government still tried to promote it in the pocket areas of minority groups. The Government tried to legitimate their power through Buddhist patronage.

Buddhist doctrine is an optional course taught in all government-run schools and daily prayer is required of all students; in some schools, children who are not Buddhist reportedly are allowed to leave the room during this time, but in others they are compelled to recite the prayer.

G. Philippines

Overview of Philippines

Referring to the results of Philippines National Statistics Agency survey, nearly 93 percent of the country's population of 97.98, which covers area of 115,831 million kilometers, is Catholic. The Roman Catholic Church is the largest group; while Islam is the largest minority group, which is about 5-9 percent of the total population. Most Muslims come from minority ethnics. The majority resides in Mindanao and nearby islands. Although most of them affiliate with Sunni, a small group of Shiites lives in the province of Lanao del Sur and Zamboanga Del Sur in Mindanao. Some were moving to urban centers in Manila and Cebu.¹⁴⁶

Among the other minority religious communities in the Philippines there are a number of international denominations such as the Seventh-Day Adventist, United Church of Christ, the United Methodist, Episcopal Church in the Philippines, Assemblies of God, the Church of Jesus Christ of Latter-day Saint (Mormons), and Philippines (Southern) Baptist, and domestically established denominations: the Iglesia ni Cristo (Church of Christ), Philippines Independent Church (Aglipayan), Members Church of God International, and The Kingdom of Jesus Christ, and the Name Above Every Name.

In the subject of education, the Government of the Philippines also provides Islamic teachers for public schools that have majority of Muslim students. The Government made a Special Committee in the field of education and the development of the *madrassa*: *Madrassah* Development Coordinating Committee. This agency manages funding for madrasa, both from local sources and abroad. In the Philippines, more than 2,000 Islamic schools are registered and half of them are located in Mindanao. The Central Government is trying to integrate madrasa into Philippines system of school. In 2008, most of the madrasa reportedly have met the standards of accreditation by the Government. Some Muslim college students were also registered as studying at Catholic school, but did not face the mandatory teaching of the Catholic religion.¹⁴⁷

¹⁴⁶ United States Department of State, "International Religious Freedom Report 2010 Philippines," Bureau of Democracy Human Rights and Labor, November 17, 2010, <http://www.state.gov/j/drl/rls/irf/2010/148891.htm> (accessed on 20 September 2012)

¹⁴⁷ U.S. Department of State, "Philippines International Religious Freedom Report 2008," <http://www.state.gov/> (accessed on 14 September 2012)

In a number of studies, the madrasa education in this country is considered as taking part in fermenting religious intolerance, even dissatisfaction movement against the State. Therefore, integration policy is needed so as to make religious education in line with national objectives.

The Philippines is one of ASEAN countries that ratified many international instruments. Some instruments that already ratified are the International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities

Singapore has ratified a number of international instruments, namely the CPPCG, CEDAW, and CRC. Singapore hasn't ratified the ICCPR.

Constitution and Guarantee of Freedom of Religion

The Constitution of Philippines is one of Constitutions in Southeast Asia that firmly implement policy of separating State-religion. The policy is outlined in the 1987 Constitution of The Republic of The Philippines Article 2 paragraph 6: the separation of Church and State shall be inviolable.¹⁴⁸

The Constitution that was adopted by Constitutional Commission on October 12, 1986 confirms the principle of Freedom of Religion. Article 3 paragraph 5 emphasizes the principle of respect for establishment of religion, or prohibits 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.¹⁴⁹

¹⁴⁸ See "The 1987 Constitution of The Republic of The Philippines – Article II," <http://www.gov.ph/the-philippine-constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-ii/> (accessed on 14 September 2012).

¹⁴⁹ Article 3 Paragraph 5 says: *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.* See "The 1987 Constitution of The Republic of The Philippines – Article Iii <http://www.gov.ph/the-philippine-constitutions/the-1987-constitution-of->

In addition to the guarantees of the Constitution regarding Freedom of Religion, there are other fundamental rights that interlinking within civil political category, which is contained in the Constitution, namely personal freedom,¹⁵⁰ right to privacy of communication and correspondence,¹⁵¹ liberty of abode and right to travel,¹⁵² right of associations,¹⁵³ the right to information¹⁵⁴ and freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble.¹⁵⁵

In category of economic, social, and cultural rights, the Constitution of the Philippines contains the principle of protection of, among other things, the promotion of social justice and human rights,¹⁵⁶ the right to education, science, technology, culture and sports,¹⁵⁷ conservation and the use of natural resources,¹⁵⁸ the right to health,¹⁵⁹ the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions.¹⁶⁰

In the implementation of human rights reinforcement, including within it the freedom of religion, Article 18 of the Constitution required the formation of Human Rights Commission that holds authority and functions to: *first*, conduct investigation regarding all forms of Human Rights violations involving civil and political rights; *second*, provide recommendations to Congress on effective measures in promoting human rights and providing compensation for victims of Human Rights violations or their families; or *third*, establish a sustainable program in the fields of research,

the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-iii/
(Accessed on 3 September 2012)

¹⁵⁰ Art 3, sec 1

¹⁵¹ Art 3 sec. 3 (1)

¹⁵² Art 3 sec 6

¹⁵³ Art 3 sect 4, 8

¹⁵⁴ Art 3 sec 5

¹⁵⁵ Art 3 sec 4 *No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.*

¹⁵⁶ Art 3 sec 9-11, 13-23 & 26: art 13.

¹⁵⁷ Art 14

¹⁵⁸ Art 12, sect, 1 & 2

¹⁵⁹ Art 2, sec 15

¹⁶⁰ Art 2, sec 22 & art 14 sec. 17

education, and information in order to improve respect for the primacy of human rights; and fifth, serve recommendations to Congress on measures that are effective in promoting human rights and providing compensation for victims of Human Rights violations or their families.¹⁶¹

The Philippines also has The Indigenous Peoples Rights Act of 1997. This rule confirms that the State recognizes traditional law over property rights or relations in determining the ownership over indigenous land (ancestral domain). This rule also consents with traditional law and practices.¹⁶² This rule gives assurance in which rights of local beliefs are protected by the law.

Although implementing secular policies, in practice the State does not fully separate the religious affairs. The State recognizes internal independence of each religion in managing their religious affairs. Preamble also refers to the phrase “imploing the aid of Almighty God ”.¹⁶³ The Philippines have a policy of national holidays for Catholic community. Since 2002, the Government made a policy of Eid-al Fitr as official holiday.

In the issues beyond non-criminal matter, the Muslim community is subject to the decision of Sharia Court. The management of the Hajj is executed by Islamic Affairs Office. The Institute also manages and regulates the activities of Islamic centers and economic development projects in areas of Muslim majority.

The implementation of Islamic related issues is defined by the Code of Muslim Personal Laws of the Philippines (CMPL) in 1977. The Law was signed by President Ferdinand Marcos through Presidential Decree 1083. Legislation concerning the existence of Sharia law includes personal matters such as marriage

¹⁶¹ Article XIII Section 18

¹⁶² Republic Act No.8371 (The Indigenous Peoples Rights Act of 1997), Section 2(b).

¹⁶³ *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 developed our patrimony, and secure to auk selves and our posterity, the blessings of independence and democracy under the rule of law and regime of truth, justice, freedom, love, equality, and peace, to ordain, and promulgate this constitution.* See The 1987 Constitution of The Republic of The Philippines – Preamble,” <http://www.gov.ph/the-philippine-constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-preamble/> (accessed on 14 September 2012)

and divorce, inheritance, or family relationships in Muslim community in Philippines.¹⁶⁴

To run it, Sharia district courts are set up in the region or the province with Muslim majority. For Muslims who live in places with no Sharia Court available, they can appeal for their case at the nearest Sharia Court.

Contemporary Challenges

So far Muslim communities reportedly still endure discrimination. A similar experience is come across other minority ethnics. A group of young Muslim professionals mentioned the existence of stereotype telling on that Muslim businessmen are less educated. Also, some Muslims are reportedly having difficulty of renting rooms in boarding houses or working in retail if using their real name or wearing a Muslim fashion. Facing the problems, many were forced to use pseudonyms and wearing Western clothes.¹⁶⁵

Contemporary case that surfaced was the banning of female students to wear *hijab* in Pilar College early August 2012. The policy in the oldest Catholic University in Mindanao were rated by most Muslims as violating the religious freedom clause of the 1987 Constitution of the Philippines and Article 32 Republic Act No. 9710 of Magna Carta. In reply to Mayor Celso Lobregat dated on 9 July, Sister Maria Nina Balbar, President of Pilar College, said that they shall remain carrying out the rule.

¹⁶⁶

Some reports also emerged, where a number of Muslims community leaders assessing the Government's campaigns and NGOS engaged in the issue of Human Rights concerning acts of terrorism are bias in treating the Muslims. They considered the Government did not do enough serious efforts to promote their economic development. The Muslim community feels discriminated. There is also a demand so as to allow Sharia courts applying criminal law.¹⁶⁷

¹⁶⁴ Asian Institute of Journalism and Communication, "A Primer on the Code of Muslim Personal Laws of the Philippines, 3-4
http://www.muslimmindanao.ph/shari%27a/pesonal_laws.pdf (accessed on 15 September 2012)

¹⁶⁵ "International Religious Freedom Report 2010 Philippines"

¹⁶⁶ "Kampus Filipina Larang Pemakaian Jilbab," Wednesday, 01 August 2012, 14:26
<http://www.republika.co.id/berita/dunia-islam/islam-mancanegara/12/08/01/m82fct-kampus-filipina-larang-pemakaian-jilbab> (accessed on 3 September 2012)

¹⁶⁷ "International Religious Freedom Report 2010 Philippines"

Policy that bans the use of religious symbols and ceremony in government offices also gained challenge from religious community recently. At the end of June, Philippines Catholic Bishops' Conference (CBCP) submitted a draft of law allowing the use of religious symbols and religious activities in government offices. According to the organization that containing largest congregation the reason is because such banning is not in accordance with the principle of religious freedom embraced by Filipino Constitution.¹⁶⁸

The arduous challenge is the continuing conflict in the region of Muslim majority in Mindanao. Groups that stir up resistance are including Abu Sayyaf Group and Rajah Sulaiman movement.

A more moderate group tried to negotiate with the Government. The target is getting special autonomy power. This effort was conducted by MILF leader Nur Misuari. One of the negotiations is in the form of natural resources share given to Autonomous Republic of Muslim Mindanao (ARMM). Although the agreement on autonomy status in Mindanao was signed in 1996, but the prosperity in this region still has not materialized. In early 2000, the ARMM was reported to send 60 percent of revenue to Manila. The ARMM received only 10 percent.¹⁶⁹

But that scheme is likely opposed by the ASG and RSM that continue to revive the spirit of founding an Islamic State. The struggle to create an Islamic State or special autonomy are stained with violence and armed conflict

In 2003, there was a bombing attack at the harbor of Davao city that killed 16 people and wounded 50 others. In the same month, violent attack was committed by MILF in Maigo that caused 13 people died and 100 people as hostages. Acts of violence were carried out by armed groups in Mindanao, followed by the Philippines military action against the ASG and the MNLF in 2007. In a month, nearly 60,000 people fled from their homes. In 2008, a number of incidents happened in Mindanao. Among these was a bombing at the Cathedral, in Amoanga City, Mindanao. A priest was kidnapped and killed in Tawi-Tawi.¹⁷⁰

¹⁶⁸ Priest raps bill banning religious rites, symbols in PHL government offices, Saturday, 23 June 2012, <http://businessmirror.com.ph/home/faith/28912-priest-raps-bill-banning-religious-rites-symbols-in-phl-govt-offices> (14 September 2012)

¹⁶⁹ Human Rights Watch "Lives Destroyed: Attacks Against Civilians in the Philippines," 2007, <http://hrw.org/> (accessed on 24 September 2012)

¹⁷⁰ Gary D. Bouma and Rod Ling Douglas Pratt, *Religious Diversity in Southeast Asia and the Pacific*, (New York: Springer, 2010), 94

Bombing was reportedly still occurred sporadically. In July 2009 a bomb exploded outside a cathedral in Cotabato City, killing 6 and injuring 30 others. Shortly after that, still in July, two bombs exploded at a cathedral in the town of Jolo. Two people were killed and 50 people injured. In the beginning of 2010, a grenade blasted in a cathedral at the same location. The national police arrested a number of suspects.¹⁷¹

¹⁷¹ “International Religious Freedom Report 2010 Philippines”

H. Singapore

Overview of Singapore

The country covering an area of 270 square miles is inhabited by approximately 5.3 million (2012). According to 2000 census results, nearly 85 percent of the population of Singapore professes religions. About 42.5% is Buddhist, Muslim 14.9%, and Taoist 8.5%, Hindu 4%, Catholic 4.8%, other Christian 9.8%, and others 0.7%;¹⁷² while those who profess no religion or faith are roughly 14.8%.¹⁷³

According to the 2010 Census, 74.1 percent of the population is ethnic Chinese, 13.4 percent ethnic Malay, 9.2 percent ethnic Indian and 3.3 percent other, including Eurasians. Nearly all ethnic Malays are Muslim. Among ethnic Indians 55 percent are Hindu, 25 percent are Muslim, and 12 percent are Christian. The ethnic Chinese population includes mainly Buddhists (54 percent), Taoists (11 percent), and Christians (16.5 percent). There are no current membership estimates for Jehovah's Witnesses or the Unification Church, two religious groups that the government has banned.¹⁷⁴ Since the 19th century, a small community of Jews has developed. It is estimated to be 300 to 1,500, including expatriates. In this country two synagogues are listed as national monument.

The Government has a policy of holidays of its citizens' religious belief: Eid al Fitr, Christmas and Good Friday (Christian), Deepavali (Hindu), and Vesak Day (Buddha).

Constitution and Guarantee of Freedom of Religion

The Singapore Constitution contains guarantees of citizen's right to profess and practice his religion and to propagate it.¹⁷⁵ No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.¹⁷⁶ Every religious group has the right (a) to manage its own religious affairs; (b) to establish and maintain institutions for

¹⁷² "Singapore" <https://www.cia.gov/library/publications/the-world-factbook/geos/sn.html> (accessed on 20 September 2012)

¹⁷³ United States Department of State, "International Religious Freedom Report 2010 Singapore," November 17, 2010 <http://www.state.gov/j/drl/rls/irf/2010/148893.htm> (accessed on 20 September 2012)

¹⁷⁴ "International Religious Freedom Report 2010 Singapore"

¹⁷⁵ See Article 15 Constitution of the Republic of Singapore

¹⁷⁶ Article 15 (2)

religious or charitable purposes; and (c) to acquire and own property and hold and administer it in accordance with law.¹⁷⁷ This freedom does not authorize any act contrary to any general law relating to public order, public health or morality.¹⁷⁸

In field of education, the Constitution gives the guarantee of non discrimination on the grounds only of religion, race, descent or place of birth. The guarantee covers the administrative services and financial aid.¹⁷⁹

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.¹⁸⁰ However, this does not apply to those under the age of 18 years. Decisions are in the hands of their parents or guardians.¹⁸¹

In Islamic matters, the government maintains a semi-official relationship with the Muslim community through the Islamic Religious Council of Singapore (MUIS), which consisted of Muslims appointed by the President to serve three-year terms.

The MUIS advised the government on concerns of the Muslim community, drafted the weekly Friday sermon to be approved and used in mosques throughout the country, and oversaw mosque-building fund financed by voluntary payroll deductions. ¹⁸² Broadly, the MUIS responsible for promotion of religious, social, educational, economic and cultural activities in accordance with the principles and traditions of Islam as enshrined in the Holy Quran and *Sunnah (Prophet Muhammad's practice)*.¹⁸³

The religious institution was established as legal entity in 1968 when the Administration of Muslim Law Act (AMLA) came into force. The Act also contains rules of law based on Islamic law such as marriage, including the payment of maintenance, division of property on divorce, and custody of children. The Shari'a courts run within the civil court system. The appeals in the Shari'a system are

¹⁷⁷ Article 15 (3 a, b, and c)

¹⁷⁸ Article 15 (4)

¹⁷⁹ Article 16 (1a) and (1b)

¹⁸⁰ Article 16 (3)

¹⁸¹ Article 16 (4)

¹⁸² "International Religious Freedom Report 2010 Singapore"

¹⁸³ "About us" <http://www.muis.gov.sg/cms/aboutus/default.aspx> (accessed on 20 September 2012)

proposed to the Appeal Board consisting of three members selected by President of MUIS from a panel of seven nominations biennially by the President. Decision of the Appeal Board is final and no appeals can be lodged or questionable in other courts.

AMLA allows Muslims to polygamy. But application of polygamy can be denied if there is no approval from wife or due to the consideration of their financial capabilities of those who intend to commit polygamy. By the end of 2009, 43 applications of polygamy marriage were registered, eleven were approved.¹⁸⁴

The Presidential Council for Minority Rights has the authority to test a number of related regulations to ensure not to harm ethnic or religious minorities. The Board also periodically reports materials related to ethnic and religious communities who was appointed by the Parliament or the Government.

In religious field, Singapore has Maintenance of Religious Harmony Act. This legislation establishes a Presidential Council for Religious Harmony. This Council functions to give input to a Presidential Council for Minority Rights. In addition, the Board also provides consideration or reports problems related to religious harmony to the Parliament and Government.

Meanwhile in the field of education the Government has a policy of religious subjects in public schools. Religious lessons are only allowed in private schools, including madrasa and Christian schools. By the end of 2009, 11 religious private schools were registered as providing basic and advanced education; nine madrasa and two Christian schools

The missionaries, with the exception of members of Jehovah's Witnesses and representatives of the Unification Church, are allowed to work and to publish and distribute religious texts, however, provisionally the Government does not officially ban the Da'wah, in practice that discouraged activities are considered as capable of disrupting the balance of inter relationship among groups.

Contemporary Challenges

A number of regulations still become a stumbling block for Freedom of Religion in the State. One of them is Societies Act. Religious groups are groups that fall into the radar settings of such laws. This law states: religious groups, including

¹⁸⁴ "International Religious Freedom Report 2010 Singapore"

clubs, companies, partnerships or associations consisting of 10 or more persons, whatever the nature or its objects, fall into the category of society.¹⁸⁵

The legislation gives the Government powers to refuse registration of organization if considered as, among other things, having purposes in opposition to the principles of peace, well-being, or public order. Those unlawful societies and persons who allow unlawful assemblies shall be subject to punitive fine, imprisonment, or both.¹⁸⁶

In early 1972, the Government revoked and then declared the Jehovah's Witnesses as illegal because it was considered detrimental to the safety and public order. Those who have material and literature of Jehovah's Witnesses shall also be criminalized. In 1996, Yu Nguk Ding was sentenced to jail for a week. The 72 years old Granny was considered as violating Undesirable Publications Act because she had 4 books of Jehovah's Witnesses. 1995 Amnesty International Report indicates more than 60 members of Jehovah's Witnesses were convicted of having in possession of banned literature.¹⁸⁷

They were arrested after police arranged a series of raid since February that year. Most of them were found guilty with penalty of fine or imprisonment. During detention and interrogation, they were not accompanied by a lawyer. The teens that got into detention were not allowed to contact their parents as regards the detention.

To date various materials published by the International Bible Students Association, the Watchtower Bible and Tract Society are still banned under the Undesirable Publications Act. The Government also banned imported publications of Unification Church, the Church of Scientology, the Children of God (which is also known as the Family of Love, the Family, and Family International), and the Church of Satan. Someone who may be in possession of such publications could be fined up

¹⁸⁵ See interpretation of "society" in "Societies Act (Chapter 311)" <http://statutes.agc.gov.sg/aol/search/display/view.w3p:ident=a0416544-45a5-4300-a9a5-51a4fe0f4d6a;page=0;query=Id%3A%221f0dc806-34eb-4460-b3f2-72e0c8a951b8%22%20Status%3Ainforce;rec=0#legis> (accessed on 20 September 2012)

¹⁸⁶ See Article 4 (2) "Societies Act (Chapter 311)"

¹⁸⁷ "The Myth of Religious Freedom in Singapore," 21 December, <http://ausgworldpolitics.wordpress.com/2007/12/21/the-myth-of-religious-freedom-in-singapore/> (accessed on 20 September 2012)

to \$ 2,000) and jailed up to one year. However, so far there has been no report of Government confiscation regarding the publication.

The Government also seems to run a strict policy in religious issues. In some cases, the Government intervenes to admonish public statements that brings up issues of religion and that considered as harmful to public order, health or morality.

February 2010, the Internal Security Department rebuked a Protestant pastor. Through the video downloaded from website of his Church, the pastor made statements that allegedly insult the beliefs of Buddhism and Taoism. After that the pastor apologized publicly to the leaders of Buddhist and Tao community.

A similar incident occurred in 2010. Video contains the comments of a pastor that undermining Tao belief appeared in cyberspace. The pastor later apologized after the Internal Security Department announced that they shall investigate the case.

In his rally on National Day in August 2009, Prime Minister Lee Hsien Loong expressed the trend of religious intolerance trend and proselytism. Responding to the challenge, he presented four roles of religion in public life. First, ethnic groups and religions have to exercise tolerance and restraint; second, religion should be separated from politics; third, the Government should take a position as a secular and public policy should be based on secular principles and rational consideration to the public interest; and fourth, public space, especially schools and workplaces should accommodate members of all religions.¹⁸⁸

Opposition politicians in 2002, Che Soon Juan faced \$ 2,000 penalty because of his speech was considered as impacting on sensitive religious issue. In his speech at Speaker Corner, he alluded to the case of four Muslim women who were barred from wearing a headscarf in public schools. The Government assessed the use of hijab can be disruptive to social and religious ties in children environment who are vulnerable.¹⁸⁹ But Chee reasoned thus with the freedom, children learn to appreciate differences.

¹⁸⁸ "Transcript of National Day Rally 2009 Speech (Part 3 – Religious Harmony)" http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/pmo/transcript/T-20090816-2 (accessed on 2 October 2012)

¹⁸⁹ "Row over Islamic headscarf goes beyond Singapore," 23 February 2002 <http://www.atimes.com/se-asia/DB23Ae03.html>

In the same year, a Muslim activist Zulfikar Mohamad Shariff dealt with police's investigation. He was considered as offending Singapore leaders. Via Fateha.com website, he voiced very critical of Government policy which was judged discriminatory against ethnic Malays. He also alluded to the controversy about the headscarf (*tudung*).¹⁹⁰

Falun Dafa community also experienced discrimination. In October 2009, the Singapore border official refused the entry of two Falun Gong followers from Indonesia and Malaysia. Beforehand, they often traveled into and out of the country. It happened before the Conference for the Asia-Pacific Economic Cooperation (APEC) in November.¹⁹¹

Six individuals were arrested in early October in the Esplanade Garden after meditating and showing posters depicting the Suppression of Falun Gong in China. Those who put up the posters were charged with "damaging public facilities" and will hear their verdict on 2 November.¹⁹²

¹⁹⁰ "Why I'm in Australia," 31 July 2002, <http://www.littlespeck.com/informed/2002/CInformed-020731aust.htm> (accessed on 3 October 2012)

¹⁹¹ "Singapura Kekang Kebebasan Jelang APEC" 29 October 2009 <http://erabaru.net/top-news/38-news3/6420-singapura-mengekang-kebebasan-sebelum-apec>

¹⁹² "Singapura Kekang Kebebasan Jelang APEC (Singapore Control Freedom Awaiting APEC)."

I. Thailand

Overview of Thailand

The Country covering 198,000 square miles has a population of 66 million. The 2000 Census result presented data saying that 94 percent of the population professes Buddhism and 5 percent are Muslim. The remaining groups are Christian, Confucian, Hindu, Jewish, Sikh, Taoist, and animists. Theravada Buddhism is the dominant religion. The Buddhist clergies (Sangha) consist of two main schools: Mahanikaya and Dhammayuttika. The former is older and more prevalent.¹⁹³

Islam is the dominant religion in four of the five southernmost provinces. The majority of Muslims are ethnic Malay, but the Muslim population also includes descendants of immigrants from South Asia, China, Cambodia, Indonesia, and those who consider themselves ethnic Thai. The Ministry of Interior's Islamic Affairs Section reported that there are 3,679 registered mosques in 67 of the country's 76 provinces, of which 3,000 are located in 14 southern provinces. According to the Religious Affairs Department (RAD) of the Ministry of Culture, 99 percent of these mosques are associated with the Sunni branch of Islam. Shi'a mosques make up the remaining 1 percent and are not located in the south but are in Bangkok and the provinces of Nakhon Sithammarat and Krabi. There are 39 Provincial Islamic Committees nationwide.¹⁹⁴

According to the 2000 census, there are an estimated 438,600 Christians in the country, constituting 0.7 percent of the population. While there are a number of denominations, the government recognizes five Christian umbrella organizations: the Catholic Mission of Bangkok (Roman Catholic); the Church of Christ in Thailand (Protestant); the Evangelical Fellowship of Thailand (Protestant); Saha Christchak (Baptist); and the Seventh-day Adventist Church of Thailand. The oldest of these groupings, the Church of Christ in Thailand (CCT), was formed in 1934 and claims 114,260 adherents. The Catholic Mission of Bangkok has 335,100 believers. The Evangelical Foundation of Thailand has approximately 126,000 believers. The Seventh-day Adventists have approximately 13,300 members, and the Saha Christchak Baptists report 10,000 followers

¹⁹³ U.S. Department of State, "International Religious Freedom Report 2006 Thailand," Bureau of Democracy, Human Rights, and Labor <http://www.state.gov/j/drl/rls/irf/2006/71359.htm> (accessed on 3 October 2012)

¹⁹⁴ "International Religious Freedom Report 2010 Thailand"

According to a 2002 government survey, there are nine recognized *chao khao* (tribal groups), composed of approximately 920,000 individuals. These groups generally practice syncretistic forms of Buddhism, Christianity, Taoism, or animism. There are up to 30,000 Sikhs. Although there are 16 Sikh temples, only 11 are active; whereas there are an estimated 100,000 Hindus.¹⁹⁵

The majority of ethnic Chinese and Vietnamese practice Mahayana or Theravada Buddhism. There are more than 750 people. Many ethnic Chinese, as well as members of the Mien hill tribe, practice forms of Taoism. Some ethnic Chinese also practice Christianity, mainly Protestantism.

Thailand has ratified a number of international instruments: CERD, ICCPR, ICESCR, CEDAW, CAT, CRC and CRPD.¹⁹⁶

Guarantee of Freedom of Religion

Thailand is a country with a system of constitutional monarchy. The Constitution declares as a country that is running in a democratic Government with the King as Head of State.¹⁹⁷ Constitution confirms the guarantee of protection of human dignity, rights and liberties and equality of the people.¹⁹⁸ The Constitution also positioned equal protection under this Constitution, irrespective of their origins, sexes or religions.¹⁹⁹

The King of Thailand is declared as a Buddhist who serves as Upholder of Religion.²⁰⁰ The King's power in the Constitution is very authoritative. A person is prohibited to expose various actions or accusations to the King.²⁰¹ The King also holds the position of Head of the Thai Armed Forces.²⁰²

¹⁹⁵ "International Religious Freedom Report 2010 Thailand"

¹⁹⁶ Rule of Law for Human Rights in the ASEAN Region: A Base-line Study 255

¹⁹⁷ See Chapter I General Provisions Section 2 Constitution of The Kingdom of Thailand, Bureau of Printing Services, The Secretariat of the House of Representatives, "Constitution Of The Kingdom of Thailand, BE 2550 (2007), November 2007
http://www.senate.go.th/th_senate/English/constitution2007.pdf (accessed on 3 October 2012)

¹⁹⁸ Chapter I General Provisions Section 4

¹⁹⁹ Section 5

²⁰⁰ Chapter II The King Section 9

²⁰¹ Section 8

²⁰² Section 10

Guarantee of Freedom of Religion is regulated in Chapter 3 Part 3 (Personal Rights and Liberties). The State guarantees every person to enjoy full liberty to profess a religion, a religious sect or creed, and observe religious principles or religious precepts or exercise a form of worship in accordance with his or her belief. That freedom must not contrary to his or her civic duties, public order or good morals. Constitution also requires protection from any form of State action that could hinder the citizens enjoy their right to Freedom of Religion.²⁰³

Thailand did not establish state-religion policy like Malaysia or Brunei. However, its Constitution puts Buddhism in a special position compared to other religions and beliefs. Section 79 asserted, the State must provide patronage and protection to Buddhism, which is the religion long practiced by the majority of the Thai people, and other religions and shall promote good understanding and harmony amongst followers of all religions and encourage the application of religious precepts for the purpose of fostering conscience and developing the quality of life. ²⁰⁴ Religion has also become one of the parts that must be protected by every citizen under the Constitution.²⁰⁵

Religious education was required in public schools at both the primary and secondary education levels. In 2003 the Ministry of Education formulated a course called "Social, Religion, and Culture Studies," which students in each grade study for one to two hours each week. The course contained information about all of the recognized religions in the country.

For secondary school children, the Ministry of Education allowed two separate curriculums for private Islamic schools. The first curriculum taught both Islamic religious courses and traditional state education coursework.

Currently 232 schools used this curriculum nationwide, employing 11,167 teachers and 193,296 students. There are also traditional Islamic schools that are mostly located in the southern region. As of June 2010 according to the government, there were 398 registered pondoks, 395 of which are in Songkhla, Satun, Pattani, Yala, and Narathiwat Provinces.

²⁰³ Part 3 "Personal Rights and Liberties" section 37

²⁰⁴ Chapter V "Directive Principles of Fundamental State Policies" Part 4 Section 79

²⁰⁵ Chapter IV "Duties of the Thai People," Section 70.

The government observes the following religious holidays as national holidays: Maka Bucha Day (the full moon day of the third lunar month, typically in February); Visakha Bucha Day (the full moon day of the sixth lunar month, typically in May); Asalaha Bucha Day (the full moon day of the eighth lunar month, typically in July); and Khao Phan Sa Day (beginning of the Buddhist Lent, typically during the summer).²⁰⁶ Eid al-Fitr and Eid up-Adha also became holidays.²⁰⁷

Contemporary Challenges

Although deciding not to establish Buddhism as the State religion, its special position remained as sharp gravel. A number of regulations below the Constitution can be used by the Government to protect the majority or the power of the King. For example, the 1962 Sangha Act (amended in 1992) specifically prohibited the defamation or insult of Buddhism and the Buddhist clergy. Violators of the law could face up to one year imprisonment or fines of up to \$581 (20,000 baht). The 1956 penal code sections 206 to 208 (last amended in 1976) prohibited the insult or disturbance of religious places or services of all officially recognized religions. Penalties ranged from imprisonment of one to seven years or a fine of \$58 to \$407 (2,000 to 14,000 baht).

"Patronage and protection of Buddhism" policy can also generates acts of State discrimination of non-Buddhist religious groups. Moreover for religious groups that has not been registered. For example Government allocates funds to support the activities of developing the promotion of Buddhism.

One of the forms is by providing facilities and financial support for 5,609 Dhammaduta (Buddhist missionaries) to perform religion dissemination in Thailand. The Government appointed 1,857 dhammaduta for international travel, and 1,380 are working in 30 different overseas countries. While 317 registered Thai Buddhist temples abroad, located in 27 countries receive government support. This policy does not apply to Christians and the Muslims missionaries.²⁰⁸

²⁰⁶ "International Religious Freedom Report 2010 Thailand"

²⁰⁷ "Public holidays in Thailand," http://en.wikipedia.org/wiki/Public_holidays_in_Thailand#cite_note-1 (accessed on 3 October 2012)

²⁰⁸ "International Religious Freedom Report 2010 Thailand"

The government allocated approximately \$110 million (3.6 billion baht) for fiscal year 2010 to support the National Buddhism Bureau, which was established in 2002 as an independent state agency. The bureau oversees the Buddhist clergy and approved the curriculums of Buddhist teachings for all Buddhist temples and educational institutions. The Government also sponsors educational and public relations materials on Buddhism as it relates to daily life. For fiscal year 2010 the government, through the RAD, budgeted approximately \$3.8 million (125 million baht) for Buddhist.²⁰⁹

However, the Government also provides support and facilities to the registered religious groups. In 2010, the Government provided \$ 1.1 million (35.6 million baht) for Islamic organizations, and \$ 92,300 (3 million baht) for Christian, Brahmin-Hindu, and Sikh organizations. In the southern border provinces government allocated \$ 1.2 million (38 million baht) for research activities, children's activities, and summer camps; \$ 327, 000 (10.6 million baht) for promotional religious activities.

So far there are only five officially recognized religious groups in Thailand: Buddhism, Islam, Sikh, Hindu-Brahmin, and Christian. Based on Religious Organizations Act, and the relevant rules on Religious Organizations, the RAD recognized a new religious group if a national census shows that it had at least 5,000 adherents, had a uniquely recognizable theology, and was not politically active. Religious groups also can apply for financial support for the construction or renovation of religious buildings. Private donations to registered religious organizations were tax deductible.²¹⁰

The Government is still implementing a policy of restrictions against a number of foreign missionaries in Thailand. The restrictions refer to the official quota formed by RAD in 1982. In 2010, 1600 foreign missionaries were registered, mostly from Christian. Those who were not registered as missionaries usually used tourist visa. However, there has been no report that those who are not registered get restricted.

Regarding conflict and violence in Muslims majority area in Southern region, authorities still apply scrutiny on Muslim professors and clerics. There is also a

²⁰⁹ "International Religious Freedom Report 2010 Thailand"

²¹⁰ "International Religious Freedom Report 2010 Thailand"

concern that some Islamic schools were used by Muslim extremists to indoctrinate their ideology and movement.

On 9 April 2009, three mainland Chinese members of Falun Gong were arrested at their homes in Pattaya one day prior to the ASEAN summit based on immigration-related charges. All the detainees were transferred to the Bangkok Immigration Detention Center in April 2009. Two of the detainees have since been resettled in the United States, while the third detainee remains at the Immigration Detention Center.²¹¹

In December 2008, Yapa Kaseng, an Imam was accused with the activities of militant groups. The Narathiwat Court ruled that the autopsy results found some evidence of violence: bruises and wounds on the body, broken ribs and punctured on the right part of lungs.²¹²

Based on the finding, 19 March 2009, the wife and 4 children of Imam filed a civil suit against the Ministry of Defense (MOD), the Royal Thai Army (RTA), and the Royal Thai Police (RTP). They were demanding compensation of \$ 436.000 (15 million baht) for the death of their breadwinner.

The toughest challenge faced by the country is currently the conflict in Southern Thailand. On 21 September 2012, a car bomb exploded in Sai Buri town in South Thailand. Killed six, injured 40s people. Suspected perpetrators were separatist movement, which generally Muslims.²¹³

Justice demands to the Government of Thailand often cause civilians as the target group. Such actions give rise to tension between Islam-Buddha relations. Since 2004, nearly 5,000 lives were recorded failing as a result of this conflict.²¹⁴ A conflict motivated by desire for independence has been rumbling in a number of

²¹¹ "International Religious Freedom Report 2010 Thailand"

²¹² "Rights-Thailand: Imam's Widow Takes on Legal System in South," 6 July 2010, <http://www.ipsnews.net/2010/07/rights-thailand-imamsquos-widow-takes-on-legal-system-in-south/> (accessed on 3 October 2012)

²¹³ "Bom di Thailand selatan tewaskan enam orang," 21 September 2012 http://www.bbc.co.uk/indonesia/dunia/2012/09/120921_thailand_bomb.shtml (accessed on 3 October 2012)

²¹⁴ "Bom di Thailand Selatan tewaskan enam orang,"

Muslim provinces: Patani, Narathiwat, and Yala. They are ethnic Malays Patani originally came from Malaysia.²¹⁵

A mosque, for example, was attacked on 20 June 2010. Two men riding a motorcycle threw a grenade into a mosque in Sai Buri, Pattani. A woman and two boys were injured. Earlier, in mid-April of the same year, unidentified assailant fired two M-79 grenades into the Choeng Khao Buddhist temple in Narathiwat, without any casualties. The conflict sparked fears of monks traveling to the southern region.

²¹⁵ Pluralism Project, "International Portrait: Thailand (2007)"
<http://pluralism.org/reports/view/31> (accessed on 3 October 2012)

J. Vietnam

Overview of Vietnam

Viet Nam is a country that decided on socialist system. The 1992 Constitution of the Socialist Republic of Vietnam stipulates: the State of the Socialist Republic of Vietnam is a State of the people, by the people, for the people. The people are the alliance between the working class and the peasantry and the intellectual. State power is unity with delegation of power to, and co-ordination among State bodies in exercising legislative, executive and judicial rights.²¹⁶ The State is governed according to the principles of concentrated democracy, which run by the Communist party.²¹⁷

Total population of Viet Nam is 89.6 million. More than half are Buddhists. Adherents of the Roman Catholic Church are 7 percent, Cao Dai 2.5 to 4 percent,²¹⁸ the Hoa Hao 1.5-3 percent,²¹⁹ Protestant, 1-2 percent while Muslims are less than 0.1 per cent

Many Buddhists practice an amalgam of Mahayana Buddhism, Taoism, and Confucianism that is sometimes called the "triple religion." Most Mahayana Buddhists are members of the ethnic Kinh community (the country's majority group, also referred to as Viet). In Ho Chi Minh City alone, there are more than 1,000 active Buddhist pagodas. A Khmer ethnic minority in the south practices Theravada Buddhism and has more than 570 pagodas. Numbering more than one million, they

²¹⁶ Article 2, 1992 Constitution of The Socialist Republic of Vietnam
<http://www.vietnamlaws.com/freelaws/Constitution92%28aa01%29.pdf> (accessed on 3 October)

²¹⁷ Article 4

²¹⁸ Cao Dai Viet Nam is a syncretistic religious movement founded in 1926 by Ngo Van Chieu. Cao Dai refers to the ethical teachings of Confucianism. Currently the number of its people approximately reached 2-6 million people. One of the important doctrine concepts is the realization that all religions have one origin, and do not discriminate against each other, but to love one another. See "Cao Dai" http://www.religionfacts.com/a-z-religion-index/cao_dai.htm (accessed on 3 October 2012) and "Caodai, Its Concepts" <http://www.caodai.org/web/content.aspx?pageID=15> (accessed on 3 October 2012)

²¹⁹ Hòa Hảo is religious movement based on Buddhism. It was founded in 1939 by Huynh Phú Jadi, a prominent individual of the Mekong River in Southern Viet Nam. Some concepts of the teachings are no temple and no expensive cost of ceremony. Hoa Hao is progressive, democratic and revolutionary movement based on the Phat Thay Tay-An teaching (1830), the inspirational person in revolutionary acts against France, in 1875 and 1913. This movement is growing in the southern region near Saigon. See Tam Thi Hong Mai, "Human Rights in Viet Nam: A Debatable Issue" Theses for Master of Art in the Faculty of the Center for International Studies of Ohio University, June 2008, 60

live almost exclusively in the Mekong Delta. The government does not observe any religious holidays as national holidays.²²⁰

International Human Rights Instruments that have been ratified by Vietnam are CPPCG, CERD, ICCPR, ICESCR, CEDAW, and CRC.

Constitution and Guarantee of Freedom of Religion

Guarantee of freedom in the Constitution of Viet Nam is stipulated in Article 70 of the 1992 Constitution of the Socialist Republic of Viet Nam. This Article guarantees the right of every citizen in the right to freedom of belief and religion, and may practice or not practice any religion. All religions in this article are equal before the law; places of religious worship are protected by law; and no one has the right to infringe on the freedom of faith and religion or to take advantage of the latter to violate State laws and policies.²²¹

In terms of religion, the Constitution also mandates that the Government has the duties and powers to carry out social, ethnic and religious policies.²²²

Guarantee of non-discrimination and equality principles are defined in Article 5. The State is obliged to apply a policy of equality, solidarity and mutual support among the various ethnic communities. Acts of discrimination on the basis of ethnicity is also prohibited. The diverse ethnic communities reserve the right to use their own languages and writing to preserve their ethnic identity and to nurture their fine customs, traditions and cultures. Article 52 expresses that the citizens are equal before the law. Two Articles expressly regulate the rights of the individual and community rights.

Contemporary Challenges

Although the guarantee of freedom of religion is explicitly stated in the Constitution, there are still a number of regulations below it that in opposition against it. One of them is The Ordinance on Beliefs and Religions in 2004. The main document concerning the policies and practices of religion and belief in contains

²²⁰ U.S. Department of State, "International Religious Freedom Report 2010 Vietnam" Bureau of Democracy, Human Rights, and Labor, 17 November 2010, <http://www.state.gov/j/drl/rls/irf/2010/148903.htm> (accessed on 3 October 2012)

²²¹ Article 70

²²² Article 112

reaffirmations of citizens' rights to freedom of religion and freedom not to follow a particular religion as set in Article 70 of the Constitution.²²³

The Ordinance contains six parts: (I) General Provisions; (II) Belief Activities of Believers and Religious Activities of Followers, Priests, Monks and Dignitaries; (III) Religious Organizations and Operation; (IV) Assets of Belief or Religious Establishments and Social Activities of Religious Organizations, Followers, Priests, Monks and Dignitaries; (V) International Relations; and (VII) Implementation of Provisions.

In terms of religious organizations, this regulation confirms that the Government only recognizes organizations that meet the stipulations and have been registered. Among these requirements, the Organization consists of members having the same beliefs, principles and religious rites, which are not contrary with nation's fine traditions, customs and interests; has a charter or statute expressing its guidelines, objectives and way of religious practice, closely associated with the nation and not contrary to law provisions; has head office and organizational structure; and does not have an appellation not identical to that of another religious organization already recognized by the competent State agency.²²⁴

This rule also contains a policy that authorizes the State to control religious activity. Conference or Congress of the Organization could only be organized after they are approved by authorities in each level, such as central and provincial agencies.²²⁵ Terms of registration are also strictly arranged.²²⁶

Article 38 also confirms that if there is a conflict between national legislation and international conventions which has been ratified, then the latter shall win.²²⁷ However, in practice actually it often contradicted with international conventions that have been ratified by the State of Viet Nam.

²²³ "Ordinance on Beliefs and Religions 2004 (No. 21/2004/PL-UBTVQH11)," Socialist Republic of Viet Nam, http://moj.gov.vn/vbpbq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7818

²²⁴ Article 16 (1)

²²⁵ Article 18 (1), (2), and (3)

²²⁶ Article 19

²²⁷ See Article 38, Ordinance on Beliefs and Religions (no. 21/2004/pl-ubtvqh11) Socialist Republic of Viet Nam http://moj.gov.vn/vbpbq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7818 (accessed on 3 October 2012)

A National Assembly Decree 22/2005 concerning the guidelines for implementing the Ordinance 21/2004 was released. The decree provides further instructions on the Ordinance on Religion and Belief. It contains a number of procedures for unregistered religious organizations in order to register their places of worship, clerics, activities, and therefore they can operate openly.²²⁸

An organization can be registered and recognized if it has 20 years of “stable religious operation”. The Government is given specified time to consider the submission of registration. The authorities have 45 days to raise questions or concerns regarding the submission. National-level registrations have a 60-day review period.²²⁹

In 1981 the Government established a policy of one umbrella organization named Vietnamese Buddhist Sangha (VBS). The organization incorporates all groups within Mahayana Buddhism such as Theravada, and Bhikshu Buddhism.²³⁰

Since the merger, the Government no longer recognizes the existence of the Unified Buddhist Church of Viet Nam (UBCV).²³¹ However there are several recently recognized religious organizations that have Buddhist influences, although they are separate and distinct from the VBS. Of these the Pure-Land Buddhist Home Practice faith has the largest membership with more than 1.3 million followers

Right now the Government officially recognizes Buddhist, Catholic, Protestant, Hoa Hao, Cao Dai, Baha'i, Muslim, Pure Land Buddhist Home Practice, Threefold Southern Tradition, and Threefold Enlightened Truth Path as religious organizations. Those who practice alternative movement or sect of Buddhists, Protestants, Hoa Hao, and Cao Dai are not recognized and not registered as religious organizations in the country.²³² Currently there are 32 religious organizations recognized by Viet Nam Government.²³³

²²⁸ “International Religious Freedom Report 2010 Vietnam”

²²⁹ “International Religious Freedom Report 2010 Vietnam”

²³⁰ “International Religious Freedom Report 2010 Vietnam”

²³¹ UBCV was founded in 1964. Buddhist monks of this group are very prominent in the antiwar movement during the 1960s and 1970s. This group is known for its critical position against the authority which they assessed as discriminative and favoring the Catholic. Zachary Abuza, *Renovating politics in contemporary Vietnam*, (Colorado: Lynne Rienner Publishers, 2001), 191

²³² “International Religious Freedom Report 2010 Vietnam”

²³³ “Kebebasan beragama di Vietnam merupakan kenyataan yang tidak bisa diputarbalikkan,” 3 August 2012 <http://vovworld.vn/id-ID/Ulasan-Berita/Kebebasan-beragama-di->

On 4 February 2005, the Prime Minister issued Instruction on Some Tasks Regarding Protestantism. It contains prohibition of coercion to adhere to convert religion and it creates favorable setting for the Protestants to build places of worship and to register their organization.²³⁴

In the dissemination of religious books, the government requires all religious publishing to be done by the Religious Publishing House, which is part of the State Publishing House's Office of Religious Affairs. From 2006 to 2008, the Religious Publishing House published close to 1,800 different books and other publications, totaling more than 4.5 million copies

The government does not permit religious instruction in public schools; however, it permitted clergy to teach at universities in subjects in which they are qualified. Buddhist monks have lectured at the Ho Chi Minh Political Academy. Catholic Pastors have taught at Ho Chi Minh City universities. The Government did not allowed them to wear religious dress as clergy.

Catholic, Protestant, Muslim, and Buddhist groups are allowed to provide religious education to children. Catholic religious education, on weekends or evenings, is permitted in most areas and has increased in recent years. Khmer Theravada Buddhists and Cham Muslims regularly hold religious and language classes outside normal classroom hours in their respective pagodas and mosques. Religious groups are not permitted to operate independent schools beyond preschool and kindergarten.²³⁵

The Religious Publishing House has not yet acted on a longstanding request to allow printing of the Bible in the H'mong language. The delay was due to the fact that the government recognizes only an archaic form of the H'mong language that is not in regular use today and cannot be read by the average H'mong. The proposed H'mong translation is a more current form of the language.

Government restriction against religious activities in Viet Nam is still common. Local police still barred Hoa Hao community in the commemoration of the death anniversary of Hoa Hao founder, Huynh Phu. During the Buddhist festival in

[Vietnam-merupakan-kenyataan-yang-tidak-bisa-diputarbalikkan/99437.vov](#) (accessed on 3 October 2012)

²³⁴ Tam The Hong Mai, "Human Rights in Vietnam: A Debatable Issue" Thesis for Master of Art Faculty the Center for International Studies of Ohio University, June 2008, 29-30

²³⁵ "International Religious Freedom Report 2010 Vietnam"

May and August 2011, Da Nang police blocked access to the Giac Minh and Temple Cu. Its followers were also intimidated.²³⁶

A few small churches that affiliating with the Inter-Evangelistic Movement (IEM) still reported the difficulties they met in some locations in Dien Bien Province. So far the police still actively dissolve church meetings. The local Government rejected the registration of IEM. Officials reportedly pressured the Church to convert religion.

Case of violence experienced by Nguyen Thanh Nam from Hoa Xuan Ward, Cam Le District in Da Nang was allegedly interrogated and beaten on two occasions during police detention over his planning and participation in the May 2010 funeral of Ho Nu and burial in a local Catholic cemetery. This case was the impact of local bureaucrats' policy to transform the graveyard in that district as area of ecotourism development. The closure sparked a backlash and lead to a conflict between authorities and society.²³⁷

In May and June, two small house churches affiliated with the unrecognized United Gospel Outreach Church reported disrupted services. Both Churches are in Long An and Tien Giang Provinces. Still in May, the UBCV in Da Nang was prohibited by police from holding Vesak Day celebrations to honor Buddha's birthday. Approximately 300 followers were denied entry into the Giac Minh Pagoda for the celebrations. A priest with Cao Dai faith in Tay Ninh was convicted for "slandering an on-duty official". Cao Dai is one of unregistered local Vietnamese faiths. The priest was arrested in November 2009 after criticizing several police officers for actions against religious followers of the unrecognized Cao Dai faith.²³⁸

A number of cases concerning coercion to convert religion occurred in a number of regions. In Pha Xom Village in Xa Dung commune of Dien Bien Dong District in Dien Bien Province, in June 2010, the village chief asked several Protestant households to renounce their faith by December 2010 and return to

²³⁶ Human Right Watch, "Country Summary, World Report 2012: Vietnam," January 2012 http://www.hrw.org/sites/default/files/related_material/vietnam_2012.pdf (accessed on 3 October 2012)

²³⁷ "Vietnam: Widespread Police Brutality, Deaths in Custody," 22 September 2010, <http://www.hrw.org/news/2010/09/22/vietnam-widespread-police-brutality-deaths-custody> (accessed on 3 October 2012)

²³⁸ "International Religious Freedom Report 2010 Vietnam"

traditional beliefs, or face expulsion from the village. The individuals claimed they were also fined \$10.50 (VND 200.000).

In Dien Bien Dong District of Dien Bien Province, district officials pressured 10 Christian convert families in the Ho Kaw Village in Nam Son Commune to return to their traditional beliefs. The case happened in 2009.

A number of people from Hmong Protestants suffered acts of violence for refusing to convert religion. They were allegedly detained, handcuffed and beaten by police officers. The violence caused some of them stopped practicing their religion under pressure from local officials and family members. In early January 2009 ECVN leaders in Lao Cai Province reported local officials in the Ban Me Commune told Protestants to renounce their faith or face fines. In December 2008 local officials from Sin Ho District in Nam Han Commune of Lai Chau Province pressured a lay deacon and 32 Protestant families to renounce their faith, according to church officials.²³⁹

²³⁹ “International Religious Freedom Report 2010 Vietnam”

CHAPTER IV

THE ATTENTION OF THE UNITED NATIONS CONCERNING RELIGIOUS FREEDOM IN ASEAN: REVIEW OF CHARTER AND TREATY BODIES

A. BRUNEI DARUSSALAM

Brunei Darussalam went through the UPR process in 2009. Working Group meeting was conducted on December 9, 2009, with Government delegation led by Ambassador Mr. Pehin Dato Lim Jock Seng, Minister of Foreign Affairs and Trade II. Working Group adopted the Report on 11th December and then it was adopted by the Plenary Session of the UN Human Rights Council on January 4, 2010 through resolution A/HRC/13/14. Brunei Government accepted 33 recommendations, rejected 27 recommendations and provided general response for 25 recommendations.

Government UPR Report; In the UPR Report, the Government of Brunei Darussalam emphasized that this state is a country that consists of multi ethnics population, with 67 percent of them are Malays, 23 percent are indigenous, and 11 percent are Chinese. Islam is the official State Religion and other religious faiths could also be practiced.²⁴⁰

In the context of religious harmony, the Brunei Government report indicates that the harmonious inter-religious and inter-ethnic relations in Brunei Darussalam can be witnessed during Eid and during the Chinese New Year celebrations, because for Brunei, the question of understanding and tolerance is very important. His Majesty's government therefore supports the idea of the Alliance of Civilization, and participated in many inter-faith dialogues organized by both regional and international organizations.²⁴¹

²⁴⁰ See, UPR Working Group Report: Brunei Darussalam, (A/HRC/13/14, 4 January 2010).

²⁴¹ Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, paragraph 10.

UPR Recommendations; In the UPR mechanism, there are a number of religious freedom issues that emerged, either as the comment of the United Nations states or in recommendations. Myanmar noted the practical measures to strengthen human rights without racial and religious discrimination.²⁴² Brazil asked about further measures to combat ethnic, religious and gender discrimination and guarantee of fundamental freedoms (including religious freedom).²⁴³

Australia and Sweden asked for clarification on Brunei Darussalam's efforts to ensure freedom of religion (paragraph 40 and 48). The United States of America remained concerned at restrictions on religious freedom, including the ban on religious groups such as the Baha'i, bans on proselytizing by religious groups other than the Shafi'i school of Islam, and bans on the importation of religious materials such as the Bible, the establishment of new places of worship, and the teaching of other religious traditions.²⁴⁴ The United Kingdom expressed concern about restrictions on religious freedoms (paragraph 59) and New Zealand encouraged the State to invite the Special Rapporteurs on freedom of religion or belief.

There are 2 UPR recommendations accepted by the Government of Brunei in terms of freedom of religion, i.e. continued efforts to promote and protect human rights at family level and to maintain tolerance (paragraph 10) and to share positive and best experiences in terms of religious tolerance in Brunei Darussalam (paragraph 31).

Derived from the report of UPR Working Group, there are a number of recommendations that were rejected and given response by the Government of Brunei. Among the explicitly rejected recommendations none was associated with freedom of religion; however the Brunei Government rejected recommendations that urging it to ratify international conventions, including the Convention of ICCPR (paragraphs 90.1).

Some recommendations responded by the Government of Brunei were concerning the abolition of restrictions on religious freedoms (paragraph 91.17); to

²⁴² Report of the Working Group on the Universal Periodic Review: Brunei Darussalam (A/HRC/13/14, 4 January 2010), paragraph 24

²⁴³ Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, paragraph 36.

²⁴⁴ Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, paragraph 57.

approach to issues of race, citizenship and religion to foster an inclusive society in which all are equally protected (paragraph 91.13); to lift the ban on the importation of religious teaching materials and scriptures in order to enhance and protect freedom of religion and worship (paragraph 91.18) as well as to give permission to members of all religious groups to practice their beliefs freely and allow members of other religious minorities to import scriptures, proselytize, establish new places of worship and instruct their believers, in line with the right to freedom of religion (paragraphs 91.19).

Special Procedure; The Compilation prepared by the Office of the High Commissioner for Human Rights (2009) recorded that in 2002 report, the Special Rapporteur on Freedom of Religion or Belief noted similar concerns about the reservations and declarations based on religious considerations.²⁴⁵ In 2008, the Special Rapporteur on freedom of religion and belief also noted that women in Brunei Darussalam face discrimination in the application of religious laws, in particular in areas of divorce, inheritance, custody of child and child citizenship.²⁴⁶

Treaty Bodies; Brunei ratified 2 International Human Rights Conventions and 1 Optional Protocol to CEDAW in 2006, CRC in 1995 and OP CRC-SC in 2006. Brunei has not ratified most of the other international Human Rights Conventions. From both Conventions, only CRC that has been reported by the Government of Brunei and received its concluding observation from the Committee; therefore only this Convention will be reviewed in the context of religious freedom.

CRC; CRC Committee conveyed their concerns at the disparities in the enjoyment of children's rights, which is covered in the Convention concerning freedom of religion of children practicing religions other than Islam and of non-national children. The Committee is further concerned that religion is indicated on identity cards, as this

²⁴⁵ Compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Brunei Darussalam (7 August 2009), paragraph 3 (A/HRC/WG.6/6/BRN/2).

²⁴⁶ Compilation prepared by OHCHR, (A/HRC/WG.6/6/BRN/2), paragraph 15.

may lead to practice of discrimination.²⁴⁷ Therefore, The Committee recommended that the State party to take all necessary measures to ensure that all children within its jurisdiction enjoy all the rights set out in the Convention without discrimination (in accordance with article 2 of the Convention).

The Committee also reminded the Government of Brunei to pay close attention to the Committee's General Comment No. 1, which aims to provide rights of Child's education that respects human rights, tolerance and gender equality and religious and ethnic minorities.²⁴⁸

B. INDONESIA

Same as Philippines, Indonesia has also been through 2 cycles of Human Rights Council UPR, first in 2008 and the second in 2012. In the first session, the review by the Working Group was performed on April 9, 2008. The delegation of the Government of Indonesia is Ambassador Rezlan Ishar Jenie, Director General of the Foreign Ministry's Multilateral Affairs. In April 11, 2008 meeting, the Working Group adopted the report of Indonesia and then endorsed in plenary of the UN Human Rights Council on May 14, 2008 through resolution A/HRC/8/23.

The second Indonesia UPR review was conducted by the Working Group on 23 May 2012 and adopted on 19 September 2012. Indonesia received 150 recommendations, rejected 30 recommendations and no pending recommendations or lacking explanation.

UPR process can evolve as reference in observing the extent of attention transpired, both from statements of every State or the UPR recommendations. Before we browse further on international attention, it will be outlined in brief the method of Government in portraying issues of religious freedom in Indonesia, especially in the UPR process of 2012.

²⁴⁷ Concluding observations CRC: Brunei Darussalam, (CRC/C/15/Add.219, 27 October 2003), paragraph 26

²⁴⁸ Concluding observations CRC: Brunei Darussalam, paragraph 29

Government UPR Report; In its report, the Government of Indonesia highlighted efforts that were undertaken relating to the fulfillment and protection of the rights to freedom of religion, through the National Commission of Human Rights and the Ombudsman Commission of the Republic of Indonesia, which address the problem of Human Rights violation, including against religious freedom contravention.²⁴⁹ To increase Human Rights awareness, the Government is committing Human Rights training for stakeholders, such as religious leaders, to encourage interfaith dialogue to create tolerance and interreligious harmony.²⁵⁰

In legal context, the Government argued that Indonesian Constitution and ideology guarantees the right to freedom of religion and belief as one of the basic and non-derogable human rights, although in practice the Government recognizes that the problem lies in how to create and maintain public order and to ensure that this right is fully promoted and protected. These have given rise to the issues of the Ahmadiyya and disputes regarding the construction of worship places.

The Government also recognized the efforts of civil society to promote religious harmony. It is noted that various fora of dialogue between religious groups have been established, including the Religious Harmony Forum (Forum Kerukunan Umat Beragama/FKUB), which are present at national and regional levels.²⁵¹

With vastly diversified societies in terms of religions as well as ethnic groups like Indonesia, the Government tirelessly promotes religious tolerance and harmony, including through interreligious dialogue in many provinces in Indonesia, by involving various stakeholders and religious leaders.²⁵² In addition, policies evaluation was also implemented to have it more corresponding to Human Rights, for example in the deliberation of discussion of draft Law on Religious Harmony.

Ahmadiyya; Regarding the Ahmadis, the Government stated in its report that Indonesia already has law No. 1/PNPS/1965 which provides the basis for

²⁴⁹ Report of the Government for UPR See, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Indonesia (A/HRC/WG.6/13/IDN/1).

²⁵⁰ Report of the Government of Indonesia to UPR 2012, p. 11 – 12.

²⁵¹ This Forum aims to manage and improve harmonious interfaith relations in Indonesia by disseminating of various rules relating to religious issues, conducting discussions in communities and providing input to Central and Regional Governments, including providing input to the establishment of houses of worship and mediating conflicts.

²⁵² Report of the Government of Indonesia to UPR 2012, paragraph 60

maintaining public order in the community in terms of religious issues. According to the report, this Act does not prohibit the Ahmadiyya from practicing and professing their religion, but the prohibition of preaching/proselytizing the religion. Segment of the Act, the 2008 Joint Ministerial Decree on Ahmadiyah reemphasized the prohibition to carry out preaching/proselytizing to others beyond the present Group.²⁵³

The establishment of houses of worship; on the issue of places of worship establishment, the report mentioned that the Government has fulfilled its duty in ensuring the right to practice religion, while at the same time; the Government also needs to ensure public order. The existing mechanism dealing with this issue, namely Joint Ministerial Regulations (PBM) No. 9 and 8 of 2006 govern this issue. Nevertheless, certain cases cannot be settled under this mechanism. One of the outstanding cases which remain to be a challenge is Taman Yasmin Church in Bogor.²⁵⁴

UPR Recommendations; the condition of religious freedom in Indonesia drew the attention of the Special Rapporteur of the UN Human Rights Council. In 2008, the Special Rapporteur stated that the prohibition against Ahmadiyya through the Joint Ministerial Decree in Indonesia increased the risk of attacks against them by vigilante groups. In 2011, four Special Rapporteurs sent letters to the Government of Indonesia also related to the increasing attacks against the Ahmadis. Also included in these was the communication from the United Nations High Commissioner for Human Rights, Navin Pillay.

In the UPR mechanism, Indonesia drew serious attention on Human Rights topic from States of the United Nations. No less than 27 countries conveyed their concerns, namely Austria, Qatar, Bangladesh, Brazil, France, Italy, Lebanon, Norway, Argentina, Japan, Australia, Canada, Spain, the Republic of Korea, China, South Africa, Sweden, Switzerland, Timor-Leste, Ukraine, the United Kingdom, Denmark, Netherlands, United States, and Slovakia.²⁵⁵

²⁵³Report of the Government of Indonesia to UPR 2012, paragraph 62

²⁵⁴ Report of the Government of Indonesia to UPR 2012, paragraph 63

²⁵⁵ Report of the Working Group on the Universal Periodic Review: Indonesia (A/HRC/21/7)

Of a number of recommendations that surfaced, there are a few issues of religious freedom that can be asserted here, inter alia: the urge to guarantee the full exercise of freedom of religion, and the measures to protect members of religious groups minorities from the acts of violence (Recommendation paragraphs 108.111, 108.112, 108.113, 108.115), encouraging efforts to fight against all forms of discrimination and to respect the rights of religious minorities (paragraph 108.68, 108.102, 108.107, 108.107, 108.110), enhance religious tolerance and harmony among the vast and diverse society of Indonesia through the existing Religious Harmony Forum (paragraphs 108.97, 108.100, 108.109, 108.139), Review existing laws and policies and repeal or amend where necessary to ensure their compatibility with the right to freedom of religion or belief, in line with Indonesia's Constitution and its international obligations, including to strengthen efforts to ensure that perpetrators are brought to justice (paragraph 108.98, 108.99, 108.103, 108.104, 108;105, 108.108, 108.109, 108.112), implement institute trainings and campaigns to raise awareness for State officials in the issue of rights of religious groups (paragraphs 108.101) and to strengthen the socio-economic capacity of minority groups (108.144).

However, some recommendations were not accepted by the Government of Indonesia, such as to invite a Special Rapporteur on Freedom of Religion (paragraph 109.17, 109.18 and 109.19) and the urge to revise or repeal the regulations or decisions that restrict freedom of religion, including Act No. 1/PNPS/1965 and Joint Decree regarding the Ahmadiyya.

Special Procedure; In 2006, when UN Special Procedures were still under the auspice of High Commissioner for Human Rights, Indonesia received a communication from the Special Rapporteur related to the threat of Islamist hardliners who warned Christian groups who helped victims of tsunami in Aceh from alluring children to convert their religion. Special Rapporteur received reports that hard-line groups called the FPI has deployed hundreds of its members to Aceh in order to prevent the influence of foreign military and humanitarian volunteers in the area.

In July of the same year, Special Rapporteur also sent communication as regards 3 women, whom have been reported by Indonesia Ulema Council (MUI) for the reason that all three of them had been alleged to have lured Muslim children to

convert religion given by way of gifts. It happened in the event of Happy Week, camping program for Christian children and some Muslim children were invited guests. When the communication was dispatched, the three women were detained in Indramayu prison

Another *Urgent Appeal* was sent on November 16, 2006 related to the social service activity organized by the congregations of 3 churches in Jatimulya, Bekasi. It was hinted by approximately 300 Muslims that prevented them from conducting relief activity and organizing service at the same place. The congregations were later moving and looking for location elsewhere, but Muslim groups still following them and imparting abusive statements. It has been continuing until finally the activity was disbanded. The police thus did not take any action over this incident.

In the communication, Special Rapporteur also conveyed that 5 weeks earlier the police of Bekasi also had sealed 3 churches for the reason that those Churches often hosted social services on a regular basis.

In response to the urgent appeal, the Government of Indonesia clarified that 200 members of police forces have been doing prevention against such action and declared that the location used by the Church to organize the service was specifically not an official church. Instead of the residents sealing the place down, the local regulations prohibit the use of residence as a worship site. Once closed, the Church was given permission to provide social services by the highway of Jati Mulya.

In the same communication, the Special Rapporteur also transmitted the murder two female students in Poso by 6 unidentified men. Both were attacked when they heading to school in Christian High School, Central Sulawesi. According to information, one of the woman's skulls was placed in front of a newly built church. For the communications, the Government also delivered its reply.²⁵⁶

The Special Rapporteur also imparted a communication relating to the attack against 25 Ahmadiyya families of Ketapang, Lombok, by unidentified people which resulted in 3 houses damaged and one person injured. The attackers also threatened the Ahmadis to flee from their village on November 3, 2005, prior to the celebration of Eid al Fitr. According to Special Rapporteur, it had been hinted by a fatwa issued

²⁵⁶ See, Civil and Political Rights, Including the Question of Religious Intolerance. Addendum: Summary of cases transmitted to Governments and replies received (E/CN.4/2006/5/Add.1, 27 March 2006), paragraph 151 – 161.

by the Indonesian Ulema Council (MUI) as well as a number of assaults that had occurred earlier which have not been resolved by the police.

For such information, the Government stated that the fatwa issued by the MUI has been the subject of lengthy discussions within the country and the State has no right to interfere in the religious affairs. The Fatwa is an update of another fatwa that had been issued earlier in 1984.

Associated with the incident, according to the Government's reply, the police have made various efforts to prevent it. Police have prevented direct physical conflict between the attackers and the Ahmadis, including asked the *imam* at the local level to keep the peace.²⁵⁷

On January 19, 2006, the Government of Indonesia accepted the Urgent Appeal of the Special Rapporteur on Freedom of Religion or Belief related to the leader of Eden Community. According to Special Rapporteur on Freedom of Religion or Belief, on December 28, 2006, a group of Muslims besieged the place of Eden community and threatened to burn the place. Subsequently the police took Ms. Lia Aminuddin on the pretext for 'securing' her, although then Lia Aminuddin was charged with defamation article (blasphemy). The community was forced to discontinue its activities.

Of those allegations, the Special Rapporteur on Freedom of Religion or Belief regretted that Indonesian Government did not respond to the communication and hoped Indonesian Government would pay attention to international norms which gives the right of every person to freely practice their religion and have a place of worship.²⁵⁸

On November 26, 2007, Indonesia received communications from the Special Rapporteur on Freedom of Religion or Belief associated with the Baha'i community in Palolo, Donggala Central Sulawesi, as reported by the Special Rapporteur on Freedom of Religion or Belief in A/HRC/7/10/Add. 1, paragraphs 112-114. In this communication, the Special Rapporteur on Freedom of Religion or Belief received reports that local authorities, in this case, officials from the Ministry of Religious

²⁵⁷ Civil and Political Rights, Including the Question of Religious Intolerance, (E/CN.4/2006/5/Add.1, 27 March 2006), paragraph 162 – 165

²⁵⁸ Report of the Special Rapporteur, Asma Jahangir; Addendum: Summary of cases transmitted to Government and replies received, (A/HRC/4/21/Add.1, 8 March 2007), paragraph 174 – 176.

Affairs, requesting the adherents of Baha'i to renounce their religion and return to their original religion, Islam.

In reply to the communication, the Government of Indonesia stated that they have met the adherents personally and been informed that they voluntarily returned to Islam.²⁵⁹

The Special Rapporteur on Freedom of Religion or Belief sent Urgent Appeal to the Government of Indonesia on April 21, 2008 related to the ban on the Ahmadiyya in Indonesia and perceived potential risk that would be endured by the Ahmadis. The Special Rapporteur received reports that the Monitoring of Spiritual Beliefs in Society Task Force (Bakor Pakem) on April 16, 2008 declared that Ahmadiyya has strayed from the teachings of Islam and decided that the teachings and activities of the Ahmadis are prohibited. It was also imparted by the Prosecutor's Office in their Conference Press.

In response to the urgent appeal, the Government of Indonesia transmitted a reply declaring that freedom of religion is guaranteed by law and the Constitution in Indonesia. As for the Ahmadiyya issue, it is associated with various things and in many cases the relationship between Ahmadiyya community and belief communities in Indonesia have spawned a lot of tension. In this case, through dialogue and a number of meetings, the Government of Indonesia would like to resolve this issue, until finally the Joint Decree (SKB) of Minister and Prosecutor's Office banned Ahmadiyah from proselytizing adherents of other religions. The Government stated that the SKB in no way has interfered conviction affairs.²⁶⁰

Treaty Bodies; As well as Philippines, Thailand and Cambodia, Indonesia ratified most of the International Human Rights Conventions, so there are quite a lot of documents that can be traced to comprehend international attention to the issue of religious freedom. Among the conventions that have been ratified are the ICERD, ICESCR, ICCPR, CEDAW, CAT, CRC, ICRMW, and CRPD. To date, Indonesia has yet to ratify the ICCPR-OP1 and OP2 (only signing it in 2000), OP CAT, OP CRC-AC (signed

²⁵⁹ Report of the Special Rapporteur, Asma Jahangir; Addendum: Summary of cases transmitted to Governments and replies received (A/HRC/13/40/Add.1, 16 February 2010), paragraph 107 – 113.

²⁶⁰ Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir; Addendum A/HRC/10/8/Add.1, 16 February 2009, paragraph 55 – 69

it in 2001), OP CRC-SC (signed it in 2001), CPD and OP-CPD (both were signed in 2007).

Of a number of conventions that have been ratified, only 4 Conventions have been reported by the Government of Indonesia in terms of implementation of the Convention, i.e. CRC, CEDAW, CERD and CAT. Until this present study is prepared, the Government has already delivered the first report to ICCPR and IESCR, and has been waiting for plenary schedule of the Committees respectively. In this case, there are only four Committees that delivered the Concluding Observations to the Government and shall be reviewed here in relation to the issue of freedom of religion.

CRC; CRC Committee underscored the rights of children belonging to such minority or ethnic groups. The Committee appreciated the enactment of the Human Rights Act of 1999 which guarantee the rights to freedom of religion and to worship for every individual. However, the Committee on the Rights of the Child regretted that the children of ethnic or minority groups are not recognized in this Act and these children do not have access to education, health and other services. From here, the Committee recommends so as the Social Welfare Community Program can run agenda which are specifically directed to children belonging to such minority or ethnic.²⁶¹

CEDAW; Indonesia has reported twice to the Committee of CEDAW Convention implementation, so that there are two concluding observation that can be reviewed in this study, of 2007 and 2012. In 2007, the Committee only mentioned the rising fundamentalist religious groups who discriminated women, including the emergence of various local regulations; therefore the Committee encouraged the efforts to repair and reform the legislation. In addition, the issue of female circumcision that led to violations of women's rights based on religion was also released in the recommendations.²⁶²

In 2012, the Committee also mentioned the increasing fundamentalist religious group of people that derogate women's rights. In addition to various cases of violence and breach of the rights of religious and minorities groups, the

²⁶¹ Concluding Observation CRC 2004: Indonesia (CRC/C/15/Add.223, 26 February 2004), paragraph 90 – 91

²⁶² Concluding Observation CEDAW 2007: Indonesia (CEDAW/C/IDN/CO/5, 10 August 2007), paragraph 15, 16 and 21

Committee specifically put issue on women who have to confront twofold discriminations, including sexual violence and intimidation suffered by women of Ahmadiyya, Christians, Buddhists and Baha'i minorities.²⁶³ From here, the Committee recommended that the Government of Indonesia should implement every effective effort to eliminate discrimination and violence, including sexual violence and intimidation faced by women of Ahmadiyya, Christians, Buddhists and Baha'i minorities.

In addition, in paragraph 47 the Committee also gave their concern to the absence of protection of women to perform interfaith marriages and the existence of discrimination against women in inheritance law.²⁶⁴

CERD; In paragraph 12 the CERD Committee appreciated the Government's policy (Presidential Decree No. 6/2000) regarding practices of religions, beliefs and traditions of Chinese community in Indonesia, which no permission required.

Relating to freedom of religion, the Committee questioned the Government about the existence of 6 recognized religions and unrecognized other religions in Indonesia, which is often referred to in law and regulation. The Committee noted that this rule would have implications for the religion and belief of indigenous and ethnic groups in Indonesia. Moreover, in Act on Population Administration (No. 23/2006) every person is required to write out his religion in identity card (KTP), so that adherents of any religion outside the official 6 are often discriminated. The Committee also noticed that these groups have difficulty in registering their marriage and obtain birth certificate for their children.

Therefore, the Committee transmitted so as to the State to treat every religion and belief in a fair manner and ensure that minorities and indigenous peoples have freedom of thought, of conscience and of religion. The Committee also encourages the State to repeal religious identity in ID CARD and as well as birth and marriage certificates for minorities and indigenous peoples.²⁶⁵

²⁶³ Concluding Observation CEDAW 2012: Indonesia, paragraph 45

²⁶⁴ In the tradition of Islamic law, men have 2 portions of inheritance, whereas women only a portion. This rule is put in place in Indonesia, in particular for Muslims, inter alia through a system of religious courts.

²⁶⁵ Concluding Observation CERD 2007: Indonesia (CERD/C/IDN/CO/3, 15 August 2007), paragraph 12 and 21

CAT. In 2008 the Committee of CAT conveyed their recommendations specifically against agitation and acts of violence aimed at minority groups, in particular at the Ahmadis and minority religious groups. The Committee considered that the State, in particular police officers, always failed and was reluctant to seriously investigate the violence, including providing immediate protection to Ahmadiyya.²⁶⁶

The Committee also alluded to the State apparatus, in company with the Minister's decree, which criminalizing Ahmadiyah, including to what has been submitted by the Special Rapporteur on Freedom of Religion or Belief (as in E/CN.4/2006/5/Add. 1, paragraph 163). The Committee believed that there is no excuse or exception whatsoever to perpetrate violence against them. Specifically the Committee conveyed that the Joint Decree has put the Ahmadiyya adherents in vulnerable position of getting bad treatment and physical abuse.

The Committee recommended so as to Indonesia ensuring protection for the whole groups, as noted in General Comment No. 2 of CAT. The State must also guarantee fast, impartial and effective investigation on various violence and discrimination including those occurred directly against minority religions and ethnics and punish the perpetrators. The State also should condemn the propagation and criminal act of hate (hate speech and crime) and all forms of violent discrimination. Lastly, the Committee suggested the Government of Indonesia to invite the Special Rapporteur on Freedom of Religion or Belief to make a visit to Indonesia.²⁶⁷

C. CAMBODIA

UPR Cambodia was held from 30 November to 11 December 2010. The Review by the Working Group was conducted on December 1, 2010, with Government representatives chaired by Ambassador Mr. Ith Rady, Secretary of State, Ministry of Justice and Deputy Chairman of Human Rights Committee of Cambodia. The Working Group adopted the report on December 3, 2009 and then

²⁶⁶ Concluding Observation CAT 2008: Indonesia (CAT/C/IDN/CO/2), paragraph 19

²⁶⁷ Concluding Observation CAT 2008: Indonesia, paragraph 19

endorsed it in plenary on 17 March 2010. Cambodia received 91 recommendations and none of them were rejected, postponed or went without explanation.

National Government's UPR Report. Report of the Government of Cambodia specified the issue of freedom of religion or belief in single section. According to this report, the issue of religion and culture is the foundation of development and fortification of social capital and can not be separated from economic development. As a tolerant Country, endowed with cultural diversity and tradition, the Government of Cambodia seeks strong programs in advancing intercultural and social harmony among the people, without any discrimination based on race, religion and background.²⁶⁸

This report conveys that the King's Administration gives an extensive freedom in exercising religion and belief, which is characterized by a variety of houses of worship, from various religions.

UPR Recommendations; In the UPR recommendations, the issue of freedom of religion did not appear in the recommendations or statements from other countries. The issue of freedom of religion only appeared in the explanation or reports the Government of Cambodia.²⁶⁹

Special Procedure; In the Charter-Based mechanisms, including the special procedures, Cambodia has several important records regarding freedom of religion; actually it happened only in 2008. In his report, the Special Rapporteur on Freedom of Religion or Belief sent a letter to the Government of Cambodia, in particular the Ministry of Religion and Belief, related to Government's ban against the monks who conducted demonstrations or long-march on streets that could upset public order. According to source, this was done by the Government of Cambodia to restrict activities of monks from Khmer Kampuchea Krom. This instruction asserted that the monks who participated in the demonstration will be punished in accordance with Buddhist norms and national legislation.

²⁶⁸ See, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Cambodia (A/HRC/WG.6/6/KHM/1), paragraph 59.

²⁶⁹ See, Report of the Working Group Report on UPR: Cambodia (A/HRC/13/4, 4 January 2010)

A Communication was sent by the Special Rapporteur on Freedom of Religion or Belief on August 2, 2007, together with the Special Rapporteur of Freedom of Opinion and Expression and the Special Rapporteur on the Defenders of Human Rights. The Special Rapporteur on Freedom of Religion or Belief received a reply from the Government of Cambodia in reference to these accusations. Second Communication between the Special Rapporteur on Freedom of Religion or Belief and the Government of Cambodia was also associated with the Khmer Krom community members, namely Mr. Tim Sa Khorn. Upon this letter; the Government of Cambodia also replied and provided answer to the Special Rapporteur.²⁷⁰

Treaty Bodies; in the mechanism of treaty based, Cambodia is one of States that ratify many International Human Rights Conventions. Reports have been made periodically in the implementation of the Conventions and have resulted in a number of recommendations (concluding observations). From some of those Treaty Bodies recommendations, Cambodia received a good position in context of religious freedom, since the entire Committees (namely, ICCPR, CERD, CRC and CEDAW) did not convey their concern in the issue of freedom of religion.²⁷¹

D. LAOS

The condition of Human Rights in Laos was reviewed in general in the UPR process in 2010. The Review was conducted on May 4, 2010, with Government representatives led by Deputy Foreign Minister Phongsavath Boupha, Laos. On May 6, 2010, the Working Group adopted its report and endorsed it in plenary session of the UN Human Rights Council on June 15, 2010 through resolution A/HRC/15/5. Laos accepted 86 recommendations and rejected 18 recommendations. There was no pending recommendation or no response.

²⁷⁰ See the description of the case in the report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Addendum: Summary of cases transmitted to Governments and replies received, (A/HRC/7/10/Add.1, 28 February 2008), p. 6 – 9.

²⁷¹ See for example the recommendations of ICCPR Committee in 1999 *Concluding Observations of ICCPR: Cambodia*, (CCPR/C/79/Add.108, 27 July 1999).

National Government's UPR Report. In the report of Laos Government, there were some subjects mentioned with regard to the issue of religious freedom. The positive point was the willingness of the Government of Laos to receive the Special Rapporteur on Freedom of Religion or Belief to visit Laos, from the 23rd – 30th November 2009.²⁷² The Government report also stated that freedom of religion and belief is guaranteed in the Constitution of the Lao PDR, in article 9 and 43; including in the Prime Minister's Decision No. 92/PM that will protect and regulate the organization and adherent of religions in Laos. Everyone has the right to profess religion or not to embrace any religion, as the report mentioned.

The Mission of the Special Rapporteur on Freedom of Religion or Belief recorded a number of important things related to religious freedom in Laos. The Special Rapporteur on Freedom of Religion or Belief concluded that the people of Laos in general are very tolerant in the topic of religion. However, in the last 12 years Laos received serious allegations of Human Rights violation regarding freedom of religion, such as the arrests based on religion and the campaign of State apparatus to force the Christians to renounce from their religion.

In the most recent case, the Special Rapporteur on Freedom of Religion or Belief noted that at the level individual and policy, indeed there has been a violation of rights to freedom of religion and belief, where religious minorities have not obtained access to a higher education. The Special Rapporteur on Freedom of Religion or Belief recommended that the State to take affirmative action for the minority. The Special Rapporteur also noted that the State is supposed to stop the prohibition of freedom of movement in context of religious activity, as well as to arrange training for prison wardens regarding human rights and in particular on freedom of religion.²⁷³

UPR Recommendations; In the UPR mechanism, there are a number of concerns related to the state of religious freedom in Laos. France, Australia and Switzerland conveyed their concerns against discriminatory practices and regulations onto

²⁷² See, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Lao People's Democratic Republic (A/HRC/WG.6/8/LAO/1).

²⁷³ See the Report of Special Rapporteur on Freedom of Religion or Belief's Visit to Laos in *Mission to the Lao People's Democratic Republic-Addendum: Report of Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir*, (A/HRC/13/40/Add.4, 27 January 2010).

ethnic Hmong in terms of religious freedom. Slovenia and Italy appreciated the visit of the Special Rapporteur on Freedom of Religion or Belief and expected Laos to be able to implement the transmitted recommendations. Denmark questioned indirect discrimination towards religious minorities and the efforts of fulfilling religious freedom. Australia underlined treatments to minorities and the allegation of detention based on religion.²⁷⁴

There are a number of UPR recommendations accepted by the Government of Laos, inter alia the encouragement to take measures in protecting freedom of religion and belief having regard to the enjoyment of those rights, as well as ensuring freedom of religion to run freely, without any discrimination as to international Human Rights principles (paragraphs 98.35). Another recommendation was to take steps, including through legislation, to protect citizen from any discrimination based on religion and belief and to punish the perpetrators of violence (offense) against the right of religious freedom (98.37).

Recommendations on paragraph 98.38 encouraged Laos to carry out all recommendations conveyed by Special Rapporteur on Freedom of Religion or Belief and to fix the conditions that have occurred lately, including any discrimination that constantly occurred in fields of legislation and practice (98.38). Revision on Decision 92 to be in accordance with the principles of Human Rights and Freedom of Religion also became a recommendation and was accepted by the Government of Laos (98.39). Lastly, Laos received recommendation to ensure the presence of the competent authorities, in particular at the local and district level, which recognize the protection of individual rights in religious freedom (98.40).

Special Procedure; On September 8, 2008, along with the Special Rapporteur on Torture and Working Group of Arbitrary Detention, the Special Rapporteur on Freedom of Religion or Belief delivered a joint Urgent Appeal to the Government of Laos. It was related to the detention of a priest, Sompong Supatto, and two students and members of the Church, Mr. Boot Chanthaleuxay and Mr. Khamvan Chanthaleuxay, on August 3, 2008 at Boukham village, by the local police.

²⁷⁴ Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic (A/HRC/15/5, 15 June 2010)

According to information obtained by the Special Rapporteur on Freedom of Religion or Belief, those men were arrested for refusing to sign a statement to renounce from Christianity. According to the report, police officers who detained them said, that all three of them will be released if they signed the statement. They were being detained, with their hands handcuffed and feet chained to wood log.

Upon this concern, the Government of Laos delivered a response to the Special Rapporteur on Freedom of Religion or Belief and committed some inspection to local officials, the Police station of Ad-Saphangthong in Savanhakhet province. The Lao Government said that the news is untrue and groundless. The local Government responded that they never committed the alleged torture or other treatment. All of those three men have been doing activities that had been perceived as threatening the security and therefore they were arrested by the police. After conducting an investigation, those three men were released.²⁷⁵

Treaty Bodies; Laos is an ASEAN State that has ratified scores of International Human Rights Conventions, inter alia the ICERD, ICESCR, ICCPR, CEDAW, CRC, OP CRC AC and SC, and CRPD. From those Conventions, Laos recently delivered a report on the implementation of the 3 Conventions, namely CERD, CEDAW and CRC. Although it has ratified ICCPR, ICESCR and CPRD, but their implementation have not been reported yet by the Government of Laos. In this case, this present research could only put forward three recommendations of the Committees related to the freedom of religion.

CEDAW and CERD; CEDAW Committee did not convey their recommendations or concerns related to women's rights in freedom of religion and belief. CERD Committee transmitted their concern related to the remaining existence of discrimination suffered by certain ethnic groups in exercising their freedom of religion. The Committees recommended that the State should take steps to eliminate any discrimination and that everyone can enjoy the rights to freedom of religion.²⁷⁶

²⁷⁵ Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir *Addendum: Summary Of Cases Transmitted To Governments And Replies Received*. (A/HRC/10/8/Add.1, 16 February 2009), paragraph 129 – 133.

²⁷⁶ The report was adopted by the Committee from Special Rapporteur on Freedom of Religion or Belief. Concluding Observation CERD 2012: Laos (CERD/C/LAO/CO/16-18, 9 March 2012), paragraph 14

CRC; CRC Committee stated, even though Lao's Constitution does not recognize the existence of official State religion, the Committee found that minority religious groups, particularly children, suffered derogation of their rights to freedom of religion, which manifested from violations and rejection from getting the right to education in public schools. The Committee delivered a recommendation so that the State can ensure the rights to freedom of religion for children to be achieved, especially for minority groups, as well as to promote tolerance and interreligious dialogue.²⁷⁷

E. MALAYSIA

For the first time, Malaysia went through the UPR process in 2009. The review by the Working Group was accomplished on February 11, 2009 and was adopted in the plenary of the UN Human Rights Council on June 12, 2009. The Government of Malaysia accepted 62 recommendations, rejected 22 and 19 recommendations without specific explanation (general response). No recommendations were pending.

National Government's UPR Report. In the National Government's UPR Report, Malaysia only alluded to one paragraph relating to freedom of religion, namely at paragraph 114. The Government stated that in enforcing the principles of universal Human Rights, Malaysia stressed the values of Human Rights in accordance with its historical context, including the diversity of religion, social and cultural. This was to ensure the manifestation of and maintained social harmony. The practice of Human Rights in Malaysia, according to the report, reflected Asian values that very closely related to the welfare and goodness of collective community, which was really different from the rights of individual.²⁷⁸

²⁷⁷ Concluding Observation CRC 2011: Laos, (CRC/C/LAO/CO/2 17 January – 4 February 2011), paragraph 36 and 37

²⁷⁸ National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Malaysia (A/HRC/WG.6/4/MYS/1/Rev.1), paragraph 114.

In the Charter-Based mechanisms, issues of religious freedom in Malaysia quite frequently emerged up and became concerns, inter alia from the Special Rapporteur on Freedom of Religion and in the UPR mechanism.

UPR Recommendations; There are a number of issues of religious freedom that appeared in the report or recommendations of the Working Group of the UPR. In the interactive dialogue and response, ²⁷⁹ Australia noted on the existence of non-Muslims cases (mainly Malay ethnic groups) within the Sharia law and encouraged public discussion in the issue of religious freedom.

In UPR Recommendations, the Government of Malaysia received only 3 recommendations relating to freedom of religion, i.e. continuing promotion of Human Rights in accordance with international commitments, religion and culture (paragraph 10), sharing experiences in education, tolerance and Islam ingenuousness (paragraph 52), as well as experience in strengthening education, specifically in context of multicultural and multi-religion (paragraphs 55).²⁸⁰

Special Procedure; In the Record of the Special Rapporteur on Freedom of Religion or Belief of 2006 that the Special Rapporteur on Freedom of Religion or Belief has made correspondences in three occasions with the Government of Malaysia from November 2004 to November 2006. The Special Rapporteur on Freedom of Religion or Belief regretted the failure of Malaysian Government to invite the Special Rapporteur on Freedom of Religion or Belief to visit. ²⁸¹ In 2007, the Special Rapporteur on Freedom of Religion or Belief also appended in her communication: results of her observation, questions on some topics and her observation results in terms of the alleged violations of the rights to freedom of religion by the Government of Malaysia. Two communications were in the form of urgent appeals and a communication was associated with the practice of banned books by the Government of Malaysia.

²⁷⁹ Report of the Working Group on the Universal Periodic Review: Malaysia, (A/HRC/11/30, 5 October 2009), paragraph 34

²⁸⁰ Report of the Working Group on the Universal Periodic Review: Malaysia.

²⁸¹ See the Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir concerning *Civil and Political Rights, Including the Question of Religious Intolerance* (E/CN.4/2006/5, 9 January 2006) and *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council"* (A/HRC/4/21, 26 December 2006).

It was mentioned in the report that in the case of Mr. Everest Moorthy,²⁸² the Special Rapporteur on Freedom of Religion or Belief regretted the absence of any response from the Government and she hoped the Government of Malaysia can provide detailed information regarding legal proceedings of this case.

The Communication dated on 18 July 2006; the Special Rapporteur on Freedom of Religion or Belief and the Special Rapporteur on Freedom of Opinion and Expression sent a letter to the Government of Malaysia relating to the banning of 18 books containing interreligious studies, which was executed by the Ministry of Internal Security of Malaysia based on the 1984 Act section 9, paragraph (1). Upon the letter, the Government of Malaysia had sent a reply and it has been received by the Special Rapporteur on Freedom of Religion or Belief.²⁸³ The second Urgent Appeal was transmitted by the Special Rapporteur on Freedom of Religion or Belief and the Special Rapporteur for the Independence of Court, which was associated with death threats and intimidation to a lawyer, Malik Imtiaz Sarwar, who advocated his client, Ms. Lina Joy, in the Federal Court of Malaysia because she allegedly has converted out of Islam (apostate).²⁸⁴ However, the Special Rapporteur on Freedom of Religion or Belief did not receive any response from the Government of Malaysia.

On April 21, 2008 the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, also delivered an urgent appeal to the Government of Malaysia relating to the condition of Mr. P. Uthayakumar, Mr. Manoharan, Mr. R. Kengahadharan, Mr. V. Ganabatirau and Mr. T. Vasanthakumar, of Hindu Human Rights Action Force foundation (HINDRAF). Those five people have been detained under Internal Security Act on allegation that their activities had threatened the security of the State. While in custody, they were forbidden to worship, no access to

²⁸² This communication is categorized as Urgent Appeal that was sent on 22 December 2005, the day before the occurrence of the alleged violation of freedom of religion on 23 December. See brief review of Mr. Everest Moorthy's case in the Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, concerning *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council"*, (A/HRC/4/21/Add.1, 8 March 2007), p. 51 – 52, and paragraph 217-218.

²⁸³ The Report of the Special Rapporteur on Freedom of Religion or Belief, A/HRC/4/21/Add.1, 8 March 2007, p. 52, paragraph 220-221.

²⁸⁴ Letter sent by Special Rapporteur on Freedom of Religion or Belief on 23 August 2006.

go to the temple or prayer room, and there is no time allotted to prayer.²⁸⁵ Over this letter, the Government of Malaysia delivered reply, which said that HINDRAF is a society organization that had not been registered, as well as reported the condition of prisoners and denied allegations that they had been prohibited to practice religion.

Treaty Bodies; Malaysia only ratified two International Human Rights Conventions, CEDAW and CRC. Moreover, they were adopted with certain amount of reservations, i.e. as far as the Conventions do not conflict with Islamic law and the Constitution. Malaysia has not ratified most of other Human Rights Conventions, including ICCPR, ICERD, and ICESCR. In this context, only 2 Conventions will be reviewed to observe the international attention on the issue of religious freedom in Malaysia.

CEDAW and CRC; CEDAW recommendations to the Government of Malaysia in 2008 did not allude specifically about freedom of religion, especially related to women's rights.²⁸⁶

In recommendations of the CRC Committee, a number of cross-cutting issues were shared with freedom of religion, including within its legislation issue saying that Malaysia is implementing different definition of a child in the Islamic law and civil law. These differences may have implications for the legal disputes between non-Muslim mother and the father who converted into Islam. The Committee recommended the State to form an inter-sectors Committee addressing this issue, including reviewing legislations to be adapted with principles stated in the Convention on the Rights of the Child.²⁸⁷

In paragraphs 75, CRC Committee recommended the Government of Malaysia to continue to allocate enough resource, to include human rights education - including the rights of the child - into the curricula, particularly with regard to the development of respect for human rights, tolerance and equality of the sexes as well as religious and ethnic minorities and indigenous peoples.

²⁸⁵ Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir: *Summary of cases transmitted to Government and replies received* (A/HRC/13/40/Add.1, 16 February 2010), p. 44, paragraph 177.

²⁸⁶ Concluding observations CEDAW 2008: Malaysia (CEDAW/C/MMR/CO/3, 7 November 2008)

²⁸⁷ Concluding Observation CRC: Malaysia, (CRC/C/MYS/CO/1), paragraph 15

CRC Committee also specifically underlined about children, which belong in such groups of minority and indigenous people. In paragraphs 105 Concluding Observation, the Committee conveyed: As regards the right of the child belonging to ethnic, religious or linguistic minorities or to indigenous peoples to enjoy his or her own culture, to profess and practice his or her own religion and to use his or her own language.

F. MYANMAR

Myanmar has gone through only one cycle of UPR, in 2011. UPR Working Group's observation was conducted on January 27, 2011, with a delegation of the Government of Myanmar led by Tun Shin, Deputy Attorney General, State Attorney's Office of Myanmar. The Review was conducted on 31 January 2011 as well as the adoption of the Working Group's report. The UN Human Rights Council endorsed the report on March 24, 2011 through resolution A/HRC/5/9. Myanmar accepted 77 recommendations, rejected 92 recommendations, and 12 recommendations without any clear response and 13 pending recommendations.

National Government's UPR Report. The first cycle report of the Government of Myanmar (2012) underscored that Myanmar has established the Committee on Human Rights. This Committee is responsible in the field of internal affairs, legislation, social, labor, health, education and international affairs, including issues associated with religions, development, women and children rights.²⁸⁸ According to this report, the rights of freedom of thought, conscience and religion are provided, including the prohibition of any propaganda for war and any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence (paragraph 41).

In context of religious freedom,²⁸⁹ Myanmar has constitutive foundations, both in the Constitution of 1947 and 1974. Similar things are also listed in the

²⁸⁸ Myanmar. National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar (A/HRC/WG.6/10/MMR/1)

²⁸⁹ In its Report, Government of Myanmar put a special theme on freedom of religion in the Report.

Constitution of Myanmar of 2008. According to this report, in section 362 of the Constitution stated that: "The Union (Myanmar) also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union ". According to the Government, the guarantee of freedom of religion can also be seen from the practice of annual pilgrimage which is coordinated by the Government, specifically by the Minister of Religious Affairs, in company of the existence of various houses of worship in the regions of Myanmar.

UPR Recommendations; Myanmar was scheduled in the first cycle UPR in 2011. Working Group reviewed the entire report and information on January 27, 2011 and it was adopted at the Plenary on June 8, 2011. There were 77 accepted recommendations, 95 rejected, 12 recommendations with an unclear response and 13 pending recommendations.²⁹⁰

Only 3 accepted recommendations was related to freedom of religion, inter alia ensuring that ethnic and religious minorities were given their fundamental rights and put an end to discrimination against them (paragraph 104.29, 104.52) and promote interreligious dialogue and cooperation at national and local level (paragraph 104.40)

While the rejected recommendations are the requirement to conduct effort to adjust national laws and the Constitution with international standards and to eliminate restrictions on fundamental rights, including guarantees of freedom of diversity (paragraph 107.8), to improve the birth registration system (paragraphs 107.12), to receive the visit of Country Rapporteur and Thematic Rapporteur in terms of an independent court and freedom of religion (paragraph 107.22), to abolish the policy and practice of discrimination, forced assimilation and persecution against ethnic and religious minorities, including the Rohingya (paragraph 107.27, 107.62 and 107.67), to investigate and punish cases of intimidation, harassment, persecution, torture and forced disappearances, including against religious minorities (paragraph 107.30), and to release those who were detained for political, ethnic and religious activities (paragraphs 107.51).²⁹¹

²⁹⁰ "Myanmar: Responses to Recommendation", accessed from www.upr-info.org

²⁹¹ "Myanmar: Responses to Recommendation", accessed from www.upr-info.org

Special Procedure; On February 28, 2008, together with the Special Rapporteur on Freedom of Opinion and Expression, the Special Rapporteur on the Situation of Human Rights Defenders and the Special Rapporteur on Human Rights Conditions in Myanmar, the Special Rapporteur on Freedom of Religion or Belief delivered a letter to the Government of Myanmar regarding Mr. U Gambira, a Buddhist monk who led the protests in August and September 2007, including his brother, father and one member of National League for Democracy (NLD).

Further information received by the Special Rapporteur was that in January 2008 Mr. U Gambira and Mr. Aung Kyaw Kyaw have been charged with Law on Unauthorized Assembly and were threatened a maximum of 3 years of imprisonment; including Ms. Su Su Nway that was rumored in unhealthy conditions and threatened with Article 124, 125 and 505 of Criminal Law on charges of incitement that led to the disintegration of public order. It was strongly suspected that those people suffered torture or ill-treatment.

The Government of Myanmar responded to the allegation to Special Rapporteur on Freedom of Religion or Belief, and the Special Rapporteur appreciated the cooperation of the Myanmar Government. The Special Rapporteur on Freedom of Religion or Belief also remarked on the amount of arbitrary detentions and judicial processes which not independent in Myanmar, including against monks who performed peaceful demonstration. The Special Rapporteur on Freedom of Religion or Belief encouraged Myanmar to be more democratic and to reform itself in transition period, inter alia with multi-party system and the civil government.²⁹² On September 28, 2007, the Special Rapporteur on Freedom of Religion or Belief, together with other Special Rapporteurs, also delivered Urgent Appeal related to the method of the Government of Myanmar not in favor of the monks who committed demonstrations; however the Government of Myanmar did not provide a response.

Earlier, on May 10, 2007, the Special Rapporteur on Freedom of Religion or Belief also delivered an Urgent Appeal to the Government of Myanmar relating to violations of freedom of religion/belief in Burma, specifically opposed to minority groups. According to information received by the Special Rapporteur, the Council for

²⁹² Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir *Addendum: Summary of Cases Transmitted to Governments and Replies Received*, (A/HRC/10/8/Add.1, 16 February 2009), paragraph 152-157

Peace and Development was actively restricting the rights of religious freedom and not taking any action to prevent or punish the perpetrators of persecution against religion or belief groups.²⁹³

As happened to the Christian, they were forced to destroy their own Church and religious symbols, as well as reportedly on the orders of the Government they were forced to build Buddhist temples, even in areas where none of Buddhist adherent exists. In addition, Bible translation into local languages is prohibited, as well as the prohibition to import Bible from another country.

Muslims stated, that they are not allowed to build, expand or improve existing mosque or madrassa, therefore mosques are in a bad condition/wobbly. In other areas, the land for mosque was seized by the authorities, as happened in Sittwe; a Buddhist temple was built on the mosque's location. The Special Rapporteur also alluded to the issue of the Rohingya, which are not recognized administratively and their rights are violated.²⁹⁴

Over this allegation, the Government of Myanmar did not convey any response to Special Rapporteur on Freedom of Religion or Belief.

Treaty Bodies; In context of Treaty Bodies, Myanmar only ratified two core Conventions, CEDAW and CRC, therefore the condition of religious freedom can only be monitored from both mechanisms only. Other Conventions, up to the year of 2011 were not ratified by the Government of Myanmar.

CRC; Based on the previous recommendations (CRC/C/15/Add. 237, paragraph 20), the Committee believed that the State should formulate strategic budget for children in vulnerable circumstances by giving affirmative actions, including for children from groups of minority ethnic and religion.²⁹⁵ At paragraph 25, the Committee also reiterated the previous question about the occurrence of double discrimination committed by the State, in particular to women and children who are in vulnerable

²⁹³ See, report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir Addendum Summary of cases transmitted to Governments and replies received, (A/HRC/7/10/Add.1, 28 February 2008), paragraph 183 - 185.

²⁹⁴ Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, (A/HRC/7/10/Add.1, 28 February 2008), paragraph 178 - 182

²⁹⁵ Concluding observations CRC 2012: Myanmar (CRC/C/MMR/C, 14 March 2012), paragraph 18

conditions, such as those from minority ethnic groups and religions (including children of Rohingya).

Later, the Committee conveyed the recommendations so that the State take action to change or ensure the principle of non-discrimination based on gender, ethnicity, religion, or other background through the process of legislation and policy making. Another issue, the Committee gave attention to the statement of religion on ID CARDS.²⁹⁶

Specifically related to child's freedom of religion, the Committee conveyed its attention, namely that although the rights to religion, belief and thought have been strengthened in the Law concerning Child, but it didn't apply on the field. The Committee received reports of some children who were placed in monastery and forced to convert their beliefs to Buddhism, without their parents' consent or approval. In fact, the Government strived to encourage kids in Sagain Dragon ethnic groups to convert to Buddhism.²⁹⁷ Thus, at paragraph 46, the Committee encouraged the State to respect in full the right of thought, conscience and religion and to stop the violations as mentioned in paragraph 45.

Another attention was also specially delivered by the Committee related to children that involved in conflict, including the prohibition to engage children as workers or military soldiers, in particular children who belong in such minority ethnic and religion.²⁹⁸

Lastly, the Committee reiterated some issues in the previous recommendation (CRC/C/15/Add. 237, paragraph 27) that children who belong in ethnic groups, customs, religion and other minority groups, in particular children of Rohingya, have faced double discrimination and restrictions on the form of obstruction to get their fundamental rights and their right to be protected from discrimination.²⁹⁹

CEDAW; The Committee provides in-depth attention to the existence of multiple restrictions and various forms of discrimination against women Muslim in Rakhine

²⁹⁶ Concluding observations CRC 2012: Myanmar, paragraph 41

²⁹⁷ Concluding observations CRC 2012: Myanmar, paragraph 45

²⁹⁸ Concluding observations CRC 2012: Myanmar, paragraph 81 and 82

²⁹⁹ Concluding observations CRC 2012: Myanmar, paragraph 96

regions, which impacted on all aspects of their lives, such as the limited space of movement; limited access to health care, decent housing and food; forced labor; limitations for marriage and pregnancy. With this, the Committee encouraged the Government to eliminate all forms of violence and discrimination against women in the region.³⁰⁰

Furthermore, when the State issued Temporary Certificate registration for the Muslim minorities in Northern Rakhine based on the Nationality Act of 1982, the Committee argued that the State had denied their citizenship rights; and it awfully derogated the use of their rights, whether civil, political, economic, social and cultural, as well as lead to other discrimination practices.³⁰¹

G. PHILIPPINES

Until 2012, Philippines has undergone 2 cycles of UPR process, in 2008 and 2012. For the first session, a review by the UPR Working Group was accomplished from 7 to 18 April, 2008, with the delegation the Executive Secretary Minister and Chairman of the Human Rights Committee of Philippines. On April 15, 2008 the Working Group adopted the report and through Resolution A/HRC/8/28 United Nations Human Rights Council endorsed the Report of the Working Group on the Universal Periodic Review on Philippines, in the 8th Session, Agenda Item 6.³⁰²

The second session of the UPR Philippines took place in 2012. Review of Working Group was carried out on 29 May 2012 and the adoption of recommendations in plenary was conducted on September 20, 2012. In the plenary session, the Government of Philippines accepted 62 recommendations and pending 26 recommendations. None of these recommendations were rejected or not responded by the Government of Philippines.³⁰³

³⁰⁰ Concluding observations CEDAW 2008: Myanmar, (CEDAW/C/MMR/CO/3, 7 November 2008), paragraph 42 and 43.

³⁰¹ Concluding observations CEDAW: Myanmar, paragraph 32

³⁰² See, Report of the Working Group on the Universal Periodic Review 2008: Filipina, (A/HRC/8/28), p. 3.

³⁰³ Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/13/PHL/2, 30 March 2012).

Government's Report. Not so many issues became the concerns of the U.N. Human Rights Council relating to freedom of religion in Philippines. Of some recommendations and documents (including Country Reports in the UPR process), only a few things that can be put forward here, namely the conditions in the southern Philippines, policy of security force, UN Committee's recommendations on the Child and UPR Recommendations.

Related to the peace process in Philippines, the National Government's Report of UPR to the UN Human Rights Council (paragraphs 26 and 27) mentioned that under the Agreement on the Protection of Civilian Component (APCC) of the International Monitoring Team (IMT), the Government of Philippines and the MILF always paid attention to humanitarian and human rights laws in protecting residents and civilians in areas of conflict. The Agreement also mentioned that both are committed not to invade the civilian properties and possessions, including religious places.

In the issue of the security forces, the Government ensured that the members of the security forces have been trained in the field of Human Rights and their responsibility to protect human rights and Human Rights defenders. According to the Government of Philippines, plans have been drawn up from the *Bayanihan* consultations involving religious, academic, private sector, and non governmental organizations.³⁰⁴

UPR Recommendations; Working Group on UPR of Philippines in 2012 did not convey specific recommendations relating to freedom of religion, except with regard to the issue of procedures of the implementation of Family Planning.³⁰⁵ Similarly, in the Periodic Report of the UN Special Rapporteur for Freedom of Religion every year (2008 – 2012), the Philippine was not a concern in the report.

Special Procedure; In the annual report of the Special Rapporteur on Freedom of Religion or Belief in 2008, the Philippines became one of States alluded in it, which was associated with the Urgent Appeal presented by Special Rapporteur on

³⁰⁴ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Philippines (A/HRC/WG.6/13/PHL/1)

³⁰⁵ Report of the Working Group on the Universal Periodic Review 2012: Filipina (A/HRC/21/12)

Freedom of Religion or Belief in the case of V. Berlin Guerrero, a pastor at the Malabanin Union Church of the Philippines who were in police custody. It was said that the priest was transported using a closed car to an unknown location and later he was interrogated. He was forced to give the names of his family, friend and leader of a non governmental organization in southern Tagalog, including computer password and email address. During interrogation, he was beaten on the head with a blunt object, such as drinking bottle and by hands. Then he was wrapped with a plastic bag until it was difficult for him to breathe.

Upon this allegation, the Government of Philippines delivered a response declaring that priest arrest has been made in accordance with the procedure and warrant. He was alleged to have committed a murder and strongly alleged as one of the top leaderships of the Communist Party of the Philippines in South Kagalog. As for the allegations of torture, according to the Government's response, the fact was grossly overstated by the National Democratic Front (NDF). In paragraph 218 of the report, the Special Rapporteur on Freedom of Religion or Belief conveyed appreciation to the Government of the Philippines who have responded to such communications.

Treaty Bodies; The Philippines is one of States in Southeast Asia that ratified many international Human Rights Conventions, inter alia ICERD, ICESCR, ICCPR, ICCPR OP-1, ICCPR OP-2, CEDAW, OP CEDAW, CAT, CRC, CRC OP-AC, CRC OP-SC and ICRMW. Until 2012, Philippine is reviewing CRPD and have not ratified OP-CAT, OP-CRPD and CED.

There are a number of recommendations of Treaty Bodies that can be underlined related to religious freedom in the Philippines: the Concluding Observations of CRC, CERD and CAT. The UN Committee on Human Rights based on the Convention on Civil and Political Rights (ICCPR) did not give any recommendation relating to freedom of religion in the Philippines. It is becoming a world of positive religious freedom conditions in Philippines, because the main Convention that explicitly mentioned the protection of the rights and freedom of

religion did not convey any recommendation against violations of those rights, especially in the context of Article 18 of ICCPR.³⁰⁶

Committee of CERD in its concluding observation conveyed two concerns related to freedom of religion to the Government of Philippines, first, to appreciate the establishment of a standard procedure by the National Police Commission to ensure the absence of any discrimination based on gender, religion, ethnic or political affiliation in the recruitment, selection and appointment of members of the national police.³⁰⁷

Second concern was presented in paragraph 15 related to delays in the enactment of the draft Bill "Anti Profiling based on Race and Religion" by Philippines Congress. The Committee expected the Government to provide an explanation which is more all-inclusive in association with this delay, as the Philippines have not had comprehensive rules related to anti-discrimination yet.

The CAT Committee also delivered a note related to the issue of religious freedom in Philippines in a Concluding Observation, inter alia the existence of acts of harassment and violence against Human Rights defenders, which even happened to be victims of gross Human Rights violations, including some religious figures.³⁰⁸ With this, the CAT Committee recommended so as the Philippines performs the measures that are needed to ensure the existence of comprehensive monitoring and protection mechanism.

In addition, based on the General Comments of CAT Committee No. 2, paragraph 21, the CAT Committee conveyed that the State should ensure the protection of specific groups from all risks of ill-treatment.³⁰⁹

³⁰⁶Compare, for example, with the UN Human Rights Committee's Recommendations to other countries in the study.

³⁰⁷ Concluding observations CERD, (CERD/C/PHL/CO/20, 23 September 2009), paragraph 8

³⁰⁸ Concluding observations CAT (CAT/C/PHL/CO/2, 29 May 2009), paragraph 5

³⁰⁹ Paragraph 21 of CAT Committee General Comments No. 2 says, that:

"The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, color, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should,

From a number of recommendations outlined above, the UN Human Rights bodies' views related to the condition of religious freedom in the Philippines are obvious. With no record appears, when viewed from the international concerns, the condition of religious freedom in Philippines is at a positive level. A number of issues that occurred are not cases that demonstrate State's omission or government's activeness in violation of religious freedom. The absence of specific remark on violations of freedom of religion and belief in the ICCPR, particularly relating to Article 18 and the UPR Recommendations can be a simple measure of the good condition of religious freedom in the country.

H. SINGAPORE

The Human Rights condition in Singapore was generally reviewed within the UPR mechanism in 2011. Review by the Working Group was accomplished on May 6, 2011 with Government delegation led by Mr. Ong Keng Yong, Ambassador in Ministry of Foreign Affairs of Singapore. Working Group adopted the report on May 10, 2011 and then it was adopted by the plenary session of the UN Human Rights Council on September 22, 2011. The Government of Singapore accepted 84 recommendations and rejected 28 recommendations.

National Government's UPR Report. Singapore's report stipulated that managing the interracial harmony and religion is the main priority of the Government of Singapore. With the principle of equality, the Government also did not hesitate to take action against anything that threatens this unity and since its independence Singapore has been avoided itself from big sectarian violence.³¹⁰

Singapore's Constitution explicitly provides protection for ethnic and religious minorities, who are charged to the responsibility of the Government. Singapore also gives special position to Malay, as natives of Singapore and the State

therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above".

³¹⁰ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Singapore (A/HRC/WG.6/11/SGP/1)

is obliged to protect, support and advance the interests of politic, education, religion, economy, social and culture of the Malay people.

The Report also mentioned that the Internal Security Act (ISA) is used by Singapore to neutralize national security threats, such as a group of extreme race or religion. ISA managed to overcome the threat of terrorism in Singapore, a branch from Jamaah Islamiyah. Singapore also considered national priorities to combat any discrimination based on race and religion. The principle of Meritocracy, secular government and multiracial is adopted strongly by the State and applied in its relation with the whole community.

Singapore has the Act on Management of Religious Harmony, Law on Incitement, Law concerning Public Order and Criminal Law that prevented any attempt to attack a certain group and lead to social conflict. The Presidential Council for Minority Rights considered materials and reports, including legislation, in order not to harm any race and religious community.

Under the Community Engagement program in 2006, the Nation Steering Committee (NSC) on Racial and Religious Harmony provided a platform for the community, ethnicity, religion and the Government to relate to one another, building a network and trust, as well as to formulate strategies for strengthening inter-community interaction.

The initiation by the community also helped the promotion of racial and religious harmony, as conducted in 2003; a group of major religions issued the Declaration of Religious Harmony, which confirmed the commitment of the State.³¹¹

UPR Recommendations; There are a number of recommendations that appear related to the freedom of religion that were submitted by the UN States to the Government of Singapore, inter alia were mostly encouragement for Singaporean Government to continue and strengthen inter-community harmony amongst ethnic and religion, social cohesion, including encouraging what has been done by the Society (Paragraph 94.20).

Indonesia and Algeria recommended that Singapore should constantly work to promote and protect human rights, including interreligious tolerance (paragraphs 94.21 and 94.22). The recommendation also mentioned that Singapore

³¹¹ National report UPR: Singapore (A/HRC/WG.6/11/SGP/1)

should share positive experiences to other states in context of religious tolerance, in addition to Slovenia that delivered a recommendation to repeal or at least minimize the scope of public space limitation for issues of race, religion, language and politics, including within it to ensure that the right to expression and assembly can be enjoyed as a whole (paragraph 95.6 and 96.35).

Special Procedure; Special Rapporteur on Contemporary Forms of Racism, Discrimination, Xenophobia and Intolerance recorded the issues that have been submitted by the CRC Committee related to the restriction of public space/debate space.³¹²

In April 2010, the Special Rapporteur on Contemporary Forms of Racism Discrimination, Xenophobia and Intolerance visited Singapore and noted that Singaporean Government really has applied threats in terms of racism, discrimination, xenophobia and intolerance. With this, the Special Rapporteur encouraged the States to take steps to resolve this issue and promote social cohesion, interreligious tolerance and inter-ethnic harmony. The Special Rapporteur also saw that it is necessary for the State to foster an understanding and respect among ethnic groups and different religions.³¹³

Treaty Bodies; Same as Brunei Darussalam, Singapore has just ratified two International Human Rights Conventions and one additional protocol. The Conventions are the CRC in 1995 and CEDAW in 1995, as well as the OP CRC-AC. Both had also been submitted to its Committee and each had produced concluding observation.

CEDAW and CRC; CEDAW Committee did not allude particular issues related to freedom of religion, but the CRC highlighted two important issues, one of which was related to the freedom of assembly and expression.

³¹² A/HRC/WG.6/11/SGP/2: 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: Singapore

³¹³ Mission to Singapore: Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai (Addendum), (A/HRC/17/40/Add.2, 25 March 2011).

Paragraph 37 Concluding Observation of the Committee CRC noted, although the children are encouraged to express their views in forums, but the Committee looked at the forum as still very limited and children's rights to expression in practice has not been fully guaranteed. The Committee also conveyed their concern regarding the existence of restrictions so as citizens to only speak afar from sensitive issues, such as language, race, religion and politics, which should get approval from the authorities.³¹⁴

Furthermore, the CRC Committee welcomed the State's efforts to ensure the rights of children which belong to ethnic, religious and language minorities, as well as their rights to enjoy cultural rights and to practice their language and religion. However, the Committee noted the existence of policy that still discriminating certain minority ethnic groups, including the enjoyment of right to religion and the use of language in everyday life. Therefore, the Committee recommended that the State should strengthen the guarantees of those rights and provide to ethnic minorities an equal opportunity.³¹⁵

I. THAILAND

Thailand recently has undergone a one-time review of UPR, in contrast to Indonesia and the Philippines. UPR Working Group on Thailand was conducted on 5 October 2011, with a delegation led by Sihasak Phuangkitkeow, Special Envoy of the Government of the Kingdom of Thailand. On October 7, 2011, the Working Group adopted the Report and then it was adopted by the plenary session of the UN Human Rights Council on 8 December 2011 through resolution symbol A/HRC/2/8. The Government of Thailand accepted 134 recommendations and rejected 49 recommendations. None was pending or without a clear position.

National Government's UPR Report. The Government of Thailand only conveyed one issue related to freedom of religion, which stated that the religious conflict in

³¹⁴ Concluding Observation CRC: Singapore (CRC/C/SGP/2-3, 4 February 2011) paragraph 37-38

³¹⁵ Concluding Observation CRC: Singapore, paragraph 71-72

Southern Thailand was not natural, but caused by unequal economic and social factors from earlier policies, including ethnic and historical factors.³¹⁶

The mechanism of the Treaty Based;Thailand has ratified a number of conventions, including CERD, CCPR, CESC, CEDAW, CAT, CRC, the Convention on Disabilities and a number of other Conventions. The attention of the committees on the issue of freedom of religion shall be the international focus to Thailand, particularly a number of conventions have generated some concluding observations, namely the CCPR, CEDAW and CRC

UPR Recommendations; There are a number of issues of religious freedom that appeared in the report of the UPR Working Group, which were conveyed by the Islamic Human Rights Commission (IHRC), Amnesty International (AI), the United Kingdom and Australia, all of which were related to the condition of minorities and South Thailand. IHRC conveyed about discrimination against Muslims in the exercise of their religion. AI said that police officers deployed paramilitary forces to attack those who were accused as involved in the attack of the Al-Furqan mosque in 2009 which led to 10 reportedly people dead.³¹⁷

United Kingdom conveyed the appreciation on the transition process in Thailand and United Kingdom strongly supported the Commission of Truth and Reconciliation and hoped to improve the situation in Southern Thailand (paragraph 26), while Australia encouraged the dialogue and investigation for impartiality in Southern Thailand (paragraph 36).

A number of UPR Recommendations related to religious freedom – also in South Thailand issues –are to increase the effort in resolving of southern Thailand issues (paragraph 88.54, 88.55) and to evaluate the Master Plan that has been established in this area (paragraphs 88.65); included within it to conduct investigations of allegations of Human Rights violations and bring the perpetrators before court, as well as to abolish the status of security/emergency in these areas (paragraphs 88.67, 88.68, 89. 39).

³¹⁶ Government Report submitted for UPR: Thailand. National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Thailand (A/HRC/WG.6/12/THA/1)

³¹⁷ 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: Thailand (A/HRC/WG.6/12/THA/3).

Special Procedure; In the annual report of the Special Rapporteur on Freedom of Religion or Belief in 2009, Thailand became one of the countries that received a good deal of attention. It was mentioned that a communication was sent to the Government of Thailand on June 2, 2006 in conjunction with the Special Rapporteur for the Human Rights and Fundamental Freedoms of Indigenous Peoples. This communication was associated with the dismantling of ethnic Hmong's graves at Wat Tham Krabok, while for Hmong community the tombs are their Holy places. In this case, the dismantling of the grave was same as injuring the religion and culture of the Hmong. Over these accusations, the Government of Thailand then delivered a response on July 9, 2008 and it was comprised in the report of the Special Rapporteur Human Rights and Fundamental Freedoms of Indigenous Peoples (A/HRC/9/9/Add. 1, paragraphs 475-478).³¹⁸

Earlier, in 2005, the Special Rapporteur on Freedom of Religion or Belief also delivered a letter to the Government of Thailand relating to the consecutive murder of a number of Buddhist adherents by militant Muslims, which took place between November 2004 and June 2005. Another communication has also been carried out by the Special Rapporteur on Freedom of Religion or Belief in a similar incident in June 2004.³¹⁹

Based on the letter, the Special Rapporteur on Freedom of Religion or Belief the Government regretted that Thailand did not convey any responses about these cases and expected that the Government to be able to resolve the situation. The Special Rapporteur on Freedom of Religion or Belief appealed to the Government of Thailand to refer to Paragraphs 8 (a) of Resolution No. 2005/40, which encouraged the Government to always attempt to eliminate the practice of intolerance and discrimination based on religion or belief. The Special Rapporteur also hoped that the Government can always seek dialogue among religions and beliefs to be more tolerant and to mutually understand each other.

³¹⁸ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir Addendum: Summary of Cases Transmitted to Governments and Replies Received. (A/HRC/10/8/Add.1, 16 February 2009), paragraph 193 – 195. See pula Report of the Special Rapporteur on Freedom of Religion or Belief of 2007 (A/HRC/4/21/Add.1, 8 March 2007), paragraph 288-290.

³¹⁹ Civil and Political Rights, Including the Question of Religious Intolerance Addendum: Summary of cases transmitted to Governments and replies received, (E/CN.4/2006/5/Add.1, 27 March 2006), paragraph 348-352.

Treaty Bodies; Until 2011, Thailand has ratified a number of International Human Rights Conventions, among them the ICERD, ICESCR, ICCPR, CEDAW, OP-CEDAW, CAT, CRC, OP CRC AC and SC, and CRPD. Thailand has not yet ratified OP-ICESCR, ICCPR-OP1, ICCPR-OP2, OP-CAT, ICRMW, CRPD-OP, and CED. From a number of conventions that have been ratified, only 3 Concluding Observations of the Committees that have been accepted by the Government of Thailand, so, only these three Conventions that will be the reference in looking at the issues of freedom of religion and belief in Thailand. Three of the Conventions are the ICCPR, CRC and CEDAW

ICCPR; In particular, the Committee did not deliver recommendations in the issue of freedom of religion as in Article 18 ICCPR. However, in paragraph 24, the Committee delivered a concern related to the structural discrimination by the State against minority groups, in particular the groups who lived in the Highlands. Hence, the Committee delivered a recommendation so the State guarantees the enjoyment of rights as a whole for every minority group that was mentioned in the Convention. The States must also respect the right of everyone to profess their religion and use their own language with other members of the community.³²⁰

CRC and CEDAW; Paragraph 33 of the CRC Committee emphasized discrimination that constantly occur against children, especially girls, indigenous children, children of groups of ethnic and religious minorities, the children of refugees and asylum seekers, children of migrant workers, children living on the streets, and children living in rural and poor areas. In addition to paragraph 33, the Committee used the term of minorities in general. In the CEDAW, the Committee did not deliver any recommendations relating to the issue of freedom of religion and belief.³²¹

J. VIETNAM

³²⁰ Concluding observation ICCPR 2005: Thailand (CCPR/CO/84/THA, 8 July 2005), paragraph 24

³²¹ Concluding Observation CRC 2012: Thailand (CRC/C/THA/CO/3-4, 17 February 2012) See pula, A/HRC/WG.6/12/THA/2: 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: Thailand

UPR mechanism in Viet Nam was implemented in 2009. Meeting of the Working Group was accomplished on May 8, 2009 and the report was adopted in the plenary on September 24, 2009. There were 94 recommendations accepted by Viet Nam, 46 recommendations were rejected, 5 recommendations without any explanation and 1 pending recommendation.

National Government's UPR Report. In the National Government's UPR Report, Viet Nam conveyed that the 1992 Constitution stated that Viet Nam is rule of law state, guarantees every citizen to enjoy political, economic and social rights, as well as equality before the law. Included also in this case is the right of freedom of religion and belief.³²²

The report mentioned that Viet Nam also always supports the UN Human Rights Council and in cooperation with UN Human Rights mechanisms, inter alia by receiving a visit of the Special Rapporteur Freedom of Religion or Belief in 1998. The construction of the legal system is also achieved in the context of Human Rights, including the Act on Religion and Belief. Twenty million inhabitants of Viet Nam are followers of different religions, 80 percent of population profess beliefs. Viet Nam considers religion and belief as the needs of the community and always works to establish better conditions. The Government also has always encouraged the dialogue among religions and beliefs, as well as increased exchange of views about religion and beliefs.

UPR Recommendations; In the UPR Working Group Report on Viet Nam, the issue of freedom of religion became the attention of a number of countries. United Kingdom conveyed their concern related to the commitments of Viet Nam in international mechanisms, as well as the Special Rapporteur on Freedom of Religion or Belief.³²³

New Zealand and Germany urged Viet Nam to invite again the Special Rapporteur on Freedom of Religion or Belief. Italy and Argentina encouraged Viet Nam to take measures to ensure the respect and enjoyment of rights to religious

³²² A/HRC/WG.6/5/VNM/1: National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Viet Nam

³²³ Report of the Working Group on the Universal Periodic Review: Vietnam, (A/HRC/12/11), paragraph 51.

freedom and worship in full. The Republic of Korea encouraged the strengthening of civil liberties and political rights, including freedom of religion.

Lastly, the recommendation from Italy and Poland encouraged the State under discussion to make efforts to ensure the rights to freedom of religion or belief, including reviewing the regulations prevailing at all level to be in accordance with Article 18 of ICCPR Convention.³²⁴

Special Procedure; Viet Nam is one of ASEAN states that received the visit of the Special Rapporteur on Freedom of Religion or Belief in 1998. In the document E/CN.4/1999/58/Add 2, the Committee delivered detailed report concerning the condition of religious freedom in Viet Nam. In between the outline comprised in this report were about the legal regulation on religious freedom, policy in the field of tolerance and anti discrimination against religion and belief, the situation of religious communities in the State (Buddhist, Catholic, Cao Dai, Hao Hao, Protestantism and Islam), finally the conclusions and recommendations.³²⁵

In addition to the visit, Viet Nam was also recorded in a number of reports of the Special Rapporteur on Freedom of Religion or Belief, which in November 25, 2009, the Special Rapporteur on Freedom of Religion or Belief delivered communications to the Government of Viet Nam relating to the expulsion of the monks from the monastery of Bat Nha and Phuoc Hue temple. Rumored, that on September 27, 2009, about 150 people armed with wooden sticks and hammers attacked the monastery of Bat Nha. Some uniformed Police officers were also included in this group to block the streets and lead marches toward the monastery. This troupe rudely expelled 370 monks. Some of them were beaten and four nuns were sexually abused.

Once expelled, the monks and nuns took refuge in the Temple of Phuoc Hue in Bao Loc. However, the following day, the police threatened the abbot of the shrine and declared that they have no right to refuge in the shrine. Massive campaigns were conducted in Bao Loc to damage the reputation of the temple's abbot, using pamphlets and announcement over loudspeakers in schools and on the highway.

³²⁴ Most recent Italy and Poland's recommendations (paragraph 101) were taken into consideration by the Government of Viet Nam to be implemented.

³²⁵ See the Complete Report of the Special Rapporteur on Freedom of Religion of Belief, Mr. Abdelfattah Amor: *Visit to Vietnam*, (E/CN.4/1999/58/Add.2, 29 December 1998)

The police also threatened to attack it if they continue to receive refugees, same as they had destroyed the monastery of Bat Nha. Due to the doggedness, eventually the monastery's abbot surrendered those 15 monks and nuns, who were subsequently arrested by the police.

Upon the allegations, the Government of Viet Nam delivered a response to Special Rapporteur on Freedom of Religion or Belief and stated that the news was not true at all. The Government stated that no one attacked the Bat Nha or Phuoc Hue shrines. According to the Government, the monks and nuns of Lang Mai sect had left Bat Nha because the principal of the monastery has no longer allowed them to stay. As stated by information from the principal of the monastery, said the Government, the Lang Mai sect has conducted a number of activities that violate the Charter of Viet Nam Buddhist Sangha, such as deciding for themselves to appoint Administrative Deputy of Bat Nha and carrying out religious training without the consent of the Abbot.³²⁶

In December 2009, the Special Rapporteur on Freedom of Religion or Belief sent another Urgent Appeal to the Government of Viet Nam relating to Father Thadeus Nguyen Van Ly (63 years), a Catholic pastor. He was charged with 8 years of imprisonment and once again detained in prison Ba Sao on charges of making propaganda against the Socialist Party of Viet Nam (Viet Nam Criminal Law in Article 88). He was arrested in February 2007 and put on trial in March 2007, without being accompanied by a lawyer. While in prison, his health was failing with stroke, high blood pressure and a range of other diseases.

Based on the Urgent Appeal, on March 19, 2010 the Government of Viet Nam delivered a response stating that Mr. Nguyen Van Ly had committed offense against the law of Viet Nam and was claimed with 8 years of imprisonment. The Government stated that they had allowed the Father Van Ly to be advocated by lawyer, but he refused. With the condition of his health, the Government stated that

³²⁶ See full answer the Government of Viet Nam on behalf of Allegation the Special Rapporteur on Freedom of Religion or Belief in the Report of the Special Rapporteur on Freedom of Religion or Belief

See Complete Report of the Government of Vietnam on Allegation of Special Rapporteur on Freedom of Religion or Belief in Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir. Addendum Summary of cases transmitted to Governments and replies received. (A/HRC/13/40/Add.1, 16 February 2010) paragraph 272-265

the detention of Father Van Ly was postponed for 12 months and they returned him to the province of Thua Thien to restore his health.³²⁷

In February 2010, the Special Rapporteur on Freedom of Religion or Belief also delivered a communication to the Government of Viet Nam relating to the family of Mr. Sung Cua Po, Mr. Sung A Sinh and Mr. Hang A Xa who converted into Protestant from Animism. According to information received by the Special Rapporteur, the local police was inciting the masses to cussing and throwing those 3 people and their families. It was rumored that three of them were taken to the Office of the People's Committee of Na Son district and pressured to renounce from his religion. Mr. Sung Cua Po was fined with 8 millions Dongs (approximately USD 430) and one pig. A Sung Sinh and Hang A Xa were also fined with one pig each.

The trio then received a second summons to the Office of the People's Committee of Na Son, via a letter signed by the Chief of the Police Station of Na Son. Against Sung Cua Po, by taking his wife and family as hostages, the police forced Sung Cua to renounce from his newfound religion, otherwise police will hit him to death, confiscate his inheritance property, make his wife a widow and his child to lost his father. With the coercion, Sung Cua Po then was constrained to sign the letter that has been provided by the police and returned to its traditional religion. Similar things happened to two other men.

On June 17, 2010, the Government of Viet Nam delivered a response over this allegation and stated that the information about the existence of coercion against the three people to abandon Christianity and return to Animism was untruthful news. According to the Government, on the contrary, one of the three men, after converting to Christianity, thus destroying his family's animism worship places, including his father's, which still adhered to traditional religion. The problem only on the process of the settlement of disputes among family members and the authorities did not interfere at all. The Government of Viet Nam stated that the police always respect the freedom of religion and belief, as set forth in the Constitution.³²⁸

³²⁷ Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt; Addendum: Summary of cases transmitted to Governments and replies received, (A/HRC/16/53/Add.1, 14 February 2011), paragraph 422 – 230.

³²⁸ See the complete report and Government's comments in the Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt (A/HRC/16/53/Add.1, 14 February 2011), paragraph 432 – 447.

The third communication in the report of the Special Rapporteur on Freedom of Religion or Belief 2011 also noted its communication with the Government of Viet Nam with respect to the actions of the army, police forces, anti-riots security forces and local police who surrounded, attacked and threatened the Degar Christians who residing in 32 villages in the province of Gia Lai. This was related to the standpoint of the population in these villages who left their old religion and officially joined the Evangelical Church of Viet Nam. For this, the Government of Viet Nam did not convey any response or reply.³²⁹

Previously, on January 30, 2007, the Special Rapporteur on Freedom of Religion or Belief also conveyed his concern related to Mr. Ksor Daih who was captured in 2004 after two years in hiding since participating in peaceful protest in 2001 for religious rights and supporting organizations entitled with the Montagnard Foundation. He was jailed and received recurrent punch and kick. In fact, during the process, one of his eyes has been blind, all over his body has gotten many scars and he has been able to walk normally only lately. In addition to Daih Ksor, there were also 2 others who were with him, namely Ksor Jak and Ksor Har.

On this allegation from Special Rapporteur, the Government of Viet Nam delivered the answers and information related to the case. According to the Government, those three persons were involved in an organization called Fulro, an organization of robbers, who in the 2001 demonstration three of them provoked the mass to rally in order to establish the Dega State. Thus, according to the Government, all three of them have tried to threaten the security and sovereignty of the State.³³⁰

In 2007 (February), the Special Rapporteur on Freedom of Religion or Belief conveyed the Urgent Appeal to the Government of Viet Nam relating to the arrest of Nguyen Van Ly, a Catholic and one of the editors of the magazine Tu do Ngôn luan. He has been an activist since 1977 that supporting movement of freedom of speech, expression and religion, who had been arrested several times by the Government of Viet Nam.

³²⁹ Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt (A/HRC/16/53/Add.1, 14 February 2011), paragraph 448 – 452

³³⁰ Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir Addendum Summary of cases transmitted to Governments and replies received, (A/HRC/7/10/Add.1, 28 February 2008), paragraph 293 – 300.

Over these accusations, the Government of Viet Nam replied that in carrying out its duties, the Government always respected the principle of human rights and democracy, including in a series of arrest of Nguyen Van Ly. The arrest in 2007 was carried out since Van Ly had broken the law of Viet Nam, which had caused a tumult, disturbed public order and set up an illegal organization.³³¹

On October 19, 2007, the Special Rapporteur on Freedom of Religion or Belief sent again a communication to the Government of Viet Nam relating to the arrest of Mr. Kpa Kin, a Christian who was involved in the 2004 demonstrations and disappeared until he was arrested in 2005. In the process of detention, he was subjected to torture and was hospitalized. Over these accusations, the Government of Viet Nam delivered a response and stated that the Kpa Kin has done illegal activity and over his ordeal the Government has been providing health care services.³³²

On November 30, 2007, the Government of Viet Nam once again received a communication from the Special Rapporteur on Freedom of Religion or Belief regarding Tim Sa Khorn, the Abbot at the Temple of North Phnom Denh and member of the Cambodia's Khmer Korm. In 1979 he obtained the citizenship of Cambodia because he had repeatedly suffered persecution in Viet Nam. After being processed in a year he was sentenced by the Court on November 8, 2007 for committing "sabotage of unity policy" as set forth in article 87 of Viet Nam criminal law.

The Government of Viet Nam then clarified the information that had been obtained by the Special Rapporteur on Freedom of Religion or Belief, stating that on 30 June 2007 Tim Sa Khorn was arrested for entering the territory of Viet Nam without permission. He was detained by border guards. He joined a number of ethnic Khmer minorities in North Viet Nam and organized mass of Khmer minority

³³¹ Report of the Special Rapporteur on Freedom of Religion or Belief, A/HRC/7/10/Add.1, 28 February 2008, paragraph 301 – 310

³³² Report of the Special Rapporteur on Freedom of Religion or Belief, A/HRC/7/10/Add.1, 28 February 2008, paragraph 311 – 313

groups in Viet Nam to hate Viet Nam, on the pretext that the Government has suppressed ethnic Khmer.³³³

Treaty Bodies; Viet Nam has ratified a number of International Human Rights Conventions. Among the conventions that have been evaluated and contained concluding observation are the ICCPR, ICESCR, CEDAW, CERD and CRC.

ICCPR; The Concluding Observation of the UN Human Rights Committee in 2002 underlined, that the information submitted by the Government of Viet Nam relating to freedom of religion has not been adequate and sufficiently comprehensible to describe the condition of those rights in Viet Nam all together. In a number of reports received by the Committee it is noted that certain religious practices were restricted and threatened and the Committee was very concerned about the implementation of Article 18 of the Convention in Viet Nam. The Committee also gave their attention to the existence of the allegations of ill-treatment and detention of religious leaders and the Government failed to deliver the information.

Therefore, the Committee expected the Government of Viet Nam to be able to convey the latest information related to the number of religions' adherents throughout all communities and the number of places of worship, including ensuring State apparatus to guarantee religious freedom.³³⁴

CERD; CERD Committee also conveyed their concern and recommendations related to the condition of religious freedom in Viet Nam. In its Concluding Observation in 2012, the Committee said that the State should be able to ensure the rights of groups of minority ethnic and religion to be protected in reference to article 70 of the Constitution, the laws and other relevant policies. In line with these, there are several other issues delivered by the Committee, inter alia the inconsistency of reports of discrimination and restriction on practices faced by a number of Christians and Buddhists among the Khmer Krom.

³³³ Report of the Special Rapporteur on Freedom of Religion or Belief, A/HRC/7/10/Add.1, 28 February 2008, paragraph 314-319

³³⁴ Concluding observation CCPR 2002: Vietnam, (CCPR/CO/75/VNM, 26 July 2002)

Another significant thing for the Committee was discriminatory articles against groups of ethnic and religion, as stated in article 8 and 15 of the Law concerning Religion, Belief and Religious Activities (2004), which prohibits religious activities that threaten State security.

Later, the Committee also informed practices of discrimination in the registration system (hộ khẩu) to ethnic minority groups residing in the "not recognized" religious groups, including in the field of employment, social security, health care, education and the right to movement. Lastly, the Committee noticed that there were attacks and threats in opposition to certain religious groups and activities, as happened at the monastery of Bat Nha.³³⁵ Therefore, the Committee conveyed the recommendations for the State to cope with double discrimination practices experienced by minority groups, especially those who are in the "not recognized religious groups".

CRC and CEDAW; Viet Nam has ratified the Convention of CRC and CEDAW, as well as reporting the execution of both conventions to each Committee. Both these Committees did not convey specific recommendations related to issues of freedom of religion and belief in Viet Nam.

³³⁵ Concluding Observation 2012: Vietnam, CERD/C/VNM/CO/10-14, 9 March 2012

CHAPTER IV
THE CRUCIAL POINTS OF THE GUARANTEE OF FREEDOM OF RELIGION
IN SOUTHEAST ASIA

A. Crucial Points

Universality versus Locality

In the survey made by Human Right Centre, the application of constitutionalism and rule of law principles indeed have gradations in each ASEAN member-state. Brunei and Myanmar are referred as countries that did not show the existence of division of powers.³³⁶

Although the structure of the State of Brunei provides legislature and judiciary institutions, but the final decision is in the hands of *Yang Di-Pertuan*. At the same time he also became Commander in Chief of the armed forces of Brunei Darussalam, the highest authority of the executive agencies, as well as religious leader.

Gradations and the diversity practices of the Constitution and the rule of law are affected by a number of factors. Among other things is the debate regarding universality versus particularity of human rights; whether the concept of West Human Rights fits with the culture in South East Asia. In the late 80s this debate surfaced when negative view over human rights violations grew in Malaysia, Indonesia, and Burma. Three leaders of the countries believed such criticism is precisely part of Western efforts to impose their view over the people of South East Asia. They claimed a definition of Human Rights that is better suited to the culture and more in line with their needs.

The debate over contextualization of Human Rights also emerged after a term was popularized by the Singapore Senior Minister Lee Kwan Yew and former Prime Minister of Malaysia Mahathir Mohammad as Asian Values. In a certain level Mahathir Mohammad. According to Lee, the first thing sought by Nations in Asia is economic development that is supplemented with a strong leadership, instead of giving freedom and human rights. This struggle found its footing momentum in the middle of increasing economic growth such as in South Korea, Singapore, Hong

³³⁶ Mahdev Mohani, "Rule of Law for Human Rights in the ASEAN Region: A Base-line Study," in David Cohen, et al, *Rule of Law for Human Rights in the ASEAN Region: A Base-line Study* (Depok: Human Right Resource Centre, 2011), 27

Kong, and Taiwan. The phenomenon was appraised as contributed by Confucianism.³³⁷

In countries with a majority of Muslim population and are incorporated in the OIC such as Indonesia, Malaysia, and Brunei; the universality of Human Rights in some ways is in opposite with values in Islam; for example the right to converse religion and inter-religion marriage. For this reason, the practice of religion conversion-particularly off Islam - and inter-religion marriage is still difficult to be accepted and subjected to restrictions. Unlike those 3 countries, a number of countries thus expressly mention in its Constitution the independence to alter religion (conversion); one of them is Laos.

Another factor in the debate over the implementation of universal Human Rights is the principle of non-intervention (non-interference) in the ASEAN Charter. Member States could not interfere with the domestic affairs of another member state of ASEAN. This principle, which then makes the other Member states are reluctant to respond to further issues of human rights. In each State, this principle seems to be used to cover the practice of human rights violations committed against citizens.

That reluctance appears in the case of Rohingya in Myanmar. The ASEAN Foreign Ministers' statement concerning recent progress in Rakhine, Myanmar that was signed on August 17, 2012 'only' tries to support variety of efforts made by the Government of Myanmar to restore conducive-situation in Rakhine, Myanmar. ASEAN also stated that they are always ready to help the Government of Myanmar, in particular concerning to humanitarian aid. In the statement, there isn't any speech sounds harder than that.³³⁸

State Favoritism

In context of South East Asia, state favoritism seems very difficult to be eliminated 100%, given the history of the relations of state-religion. The religion accounted for the development of the country and vice versa. In some Western

³³⁷ Ignas Kleden, "Hak Asasi Manusia: Siapa Manusia dan Seberapa Jauh", in Rhoda E. Howard, *HAM Penjelajah Dalih Relativisme Budaya* (Jakarta: PT. Pustaka Utama Grafiti, 2000), xiii

³³⁸ "Statement of ASEAN Foreign Ministers on the Recent Developments in the Rakhine State, Myanmar Phnom Penh, Cambodia, 17 August 2012", ASEAN, <http://www.aseansec.org/documents/Statement%20of%20ASEAN%20FM%20on%20Recent%20Developments%20in%20the%20Rakhine%20State.pdf> (accessed on 14 September 2012)

countries, certain favoritism of religion is also applied. The point that needs to be observed precisely is whether favoritism for religion generates discriminating treatment against other religions and beliefs.

Looking for a point of balance is not easy. Moreover, a number of countries that set the State-religion such as Malaysia, Brunei, Cambodia, as if proved themselves that the policy of State-religion became a way for violation and discrimination against citizens who embrace other than the official religion. However, most of the Southeast Asian countries' Constitution also stressed the existence of guarantee of fair treatment to the residents with other religions and beliefs.

In Malaysia, the State-religion becomes foundation in applying dualism of law: the public law and private law (Sharia law). The resolution of Islamic issues such as conversion of religion, funeral, foster-care rights, and others in the Sharia Court is likely to side with the majority principle.

In the matter of state religion, Brunei has a unique case. The country is a lot more specific in preferring "Safi's" Islamic school of thought as official sect. Therefore, not only the non-Muslims who repeatedly become the victims of discrimination and violation; those of other Islamic sects are also frequently victimized.

Although not making Buddha as State religion, in the Constitution Myanmar expressly provides special position for it as religion of the majority. This causes the State's restraint for Buddhist is more loosely than for other religions, likewise with Thailand.

On the other hand, states that expressly consecrate themselves as secular countries such as the Philippines and Singapore could not escape at all from the challenges of discrimination. For example the Philippines, which up to now face the problem of separatism in Mindanao; similar to Aceh, which experienced by Indonesia in earlier times.

Limitation Problem

Guarantee of freedom to religion at external region is restricted to some prerequisites. Article 29, line 2 of Declaration of Universal Human Rights confirms that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations determined by law solely for the purpose of securing appropriate

recognition and respect of the rights and freedoms of others. The limitation must also meet the requirements of moral importance (morality), the public order and the general welfare in a democratic society.

This restriction is also regulated by article 18, paragraph 3 of ICCPR. The Covenant affirms the freedom to manifest particular religion or belief can only be restricted by law and is required for defending public safety, public order, public health, public morals and basic freedoms or rights of others (fundamental rights and freedoms of others).³³⁹

In the issue of freedom to religion, restrictions related to 'public morality' embody therein the values of religion professed by citizens. In many cases, the restriction by reason of religious values is more precisely based on the religion of the majority. By implication, religion and beliefs of other minorities suffer discrimination. Whereas the restrictions on the manifestation of religions or beliefs for the sake of moral considerations should be set to be based on the principles that did not only come from a single tradition.³⁴⁰

This kind of problems, for example, occurred in Indonesia, Malaysia, and Brunei Darussalam, which have majority of Muslim. By reasons of contradicting with Islamic values, the freedom to manifest a particular belief can be restricted. For example the cases of defamation of religion through the PNPS Act number 1 of 1965 or in the case of utilization of the word "Allah" by Christians.

Other restriction that may be problematic in its application is the principles of 'national security' and 'public safety'. Although justified by international law, its application cannot be executed with elastic and arbitrary mechanism. Reason of national security also cannot be used as ground for restrictions with a vague and arbitrary category and can only be applied when there is adequate protection and effective recovery from abuse of power.³⁴¹

In a number of countries in South East Asia, the restrictions set forth in the international instruments are generally enshrined in the constitutions of most of the

³³⁹ See Article 18 Paragraph 2 International Covenant on Civil and Political Rights 1966. Adopted and opened for signing by the UN General Assembly, 16 December 1966. Came into force on 23 March 1976 <http://www2.ohchr.org/english/law/ccpr.htm> (accessed on 15 September 2012)

³⁴⁰ See point 8 General Comment No. 22 (48)

³⁴¹ "Standardizing human rights in ASEAN," 28 August 2012, <http://www.hrwg.org/en/ASEAN/aichr/document/item/3869-standardizing-human-rights-in-ASEAN> (accessed on 10 September 2012)

countries in South East Asia. Part of them incorporates a number of other conditions. Viet Nam has the term of “not conflicting with State policy” or Myanmar with its ‘National Security’.

In practice, a number of countries also consign restriction articles in its Constitution into a number of lower regulations. Laos, for example, applies a policy of religious activity such as the dissemination of religion through the LFNC; for example: Viet Nam in The Ordinance on Beliefs and Religions in 2004. The limitation that has been outlined as far as it does not conflict with the traditions, customs and noble interests of the nation. Myanmar outlaws someone on the basis of religion to engage in political activity.

These limitation clauses are not uncommonly used by authority to silence critical voices of citizens and maintain the legitimacy of power. Practices of Human Rights violation often use the limitation clauses as shield. A number of countries in South East Asia even still continue to enact iron legislation (draconian laws). In Malaysia there is the Internal Security Act and Singapore with Societies Act.

Marginal Issues

The issue of Freedom of Religion in ASEAN up to now is nevertheless a marginal issue. Civil societies that actively voicing Human Rights hitherto, did not mention it a lot. In forum of ASEAN Civil Society Conference (ACSC) that contained various workshop themes, for example, did not include the issue of Freedom of Religion. So far there isn't any task force for this issue.³⁴² Apparently it is the reason that cause ASEAN member states have not made freedom of religion issue as their concern yet; in contrast to the issue of migrant workers.

Similar to that, minority issues also have not significantly become a concern. In practice, ASEAN member states have not quite hold the sensitiveness toward minority groups. Favoritism of any particular religion or ethnic group often leads to discrimination and intolerance against minorities. These issues are definitely important, because Asia is a region with the largest number of ethnic groups. The estimated number roughly reaches 260 million out of a total of 300 million people in

³⁴² Rafendi Djamin, “Masyarakat Sipil dan Kebebasan Beragama di ASEAN” Papers presented in regular meetings of HEW in Jakarta 31 July 2005, 5

the world. In Southeast Asia, the largest minority ethnic groups are in Myanmar, approximately 135 ethnic groups with a total of 14.4-19.2 million people.³⁴³

The Ratification of International Instruments

A number of countries have not ratified the International Covenant that guarantees and legally binds States parties who ratify it. This policy has a direct implication and procedure so that these countries comply with the clauses therein, in particular regarding guarantee of freedom to religion. With the ratification as well, they are obliged to report periodically the guarantee of freedom in their respective countries.

Countries that have not ratified the ICCPR are Brunei Darussalam, Malaysia, Myanmar, and Singapore. These countries also have not ratified the Convention of the Elimination of All Forms of Racial Discrimination.

However, another way to strengthen the guarantee of independence can be made by emphasizing the implementation of guarantees of freedom to religion that exist in a number of conventions that have been ratified by those countries. For example: through CEDAW in which all ASEAN member states have ratified it. In CEDAW, guarantee of anti-discrimination on the basis of religion and belief can be incorporated in clause of 'social, cultural, civil or any other field'. Another Convention is the guarantee of freedom to religion that exists in a number of articles in the Convention on the Rights of Child.

International Attention

Based on abovementioned description, in general it seems that a number of large problems on guarantees of freedom of religion and belief among ASEAN member states still show as dominant cases. Some countries that did not have big problem in context of freedom of religion are Cambodia and Singapore.

With this situation, basically the opportunities for the future of Human Rights are open; that institutionally ASEAN can seek to conduct more effective effort and strategy in the protection of guarantee to freedom of religion and belief. Moreover, ASEAN has just adopted the ASEAN Declaration on Human Rights in 2012 that will be the main reference for ASEAN States in promoting and protecting human rights.

³⁴³ Asia Indigenous Peoples Pact (AIPP) and the International Work Group for Indigenous Affairs (IWGIA); "How Many Indigenous People are there in Asia?" Chiang Mai 2010.

It also undoubts the role of a strong civil society in every country, because the position of civil society became one of the decisive implementations of independent and accountable Human Rights. On the other hand, the openness of the States to involve civil society in the development of Human Rights cannot be separated. ASEAN is a regional community that has diversity of culture, ethnicity, language and religion, thus putting the difference and pluralism into regional policy frameworks of each and every country becomes an inevitability that cannot be refuted again for the sake of the continuity of the region. The State and civil society should be together in realizing these goals.

B. Brief Review on Right to Freedom of Religion in ASEAN: Mapping of Issues and Problems

Based on the framework provided by the United Nations Special Rapporteur on Freedom of Religion and aforementioned outline, the following is the brief review of the conditions and situation of rights to freedom of religion in Southeast Asia.³⁴⁴

a. Forum Internum

The Forum internum, as we understand in the concept of human rights law, is a category of non-derogable rights, or rights which altogether should not be reduced in any way. In fact, the pressure to adopt a particular religion/belief or coercion to renounce from the religion/belief of his conviction is still happening.

The simplest example is the practice of religious freedom in Indonesia, which is often referred to as a country that respects difference. Minister of Religious Affairs, Suryadharma Ali, affirmed that one of Ahmadiyya groups indeed should be dissolved because it is judged as disturbing religious harmony in Indonesia. According to him, the presence of Ahmadiyya followers is contrary to the core teachings of Islam. "Ahmadiyya must be stopped because it is contrary to the core teachings of Islam. If it has been stopped, then it could not continue its activities anymore," as stated by Minister of Religious Affairs after he met the Chairman of People's Consultative Assembly of the Republic of Indonesia (MPR RI), Tuesday, August 31, 2010.³⁴⁵

³⁴⁴Further description of these conditions will be described in the next section of this research.

³⁴⁵ "Menag: Ahmadiyah Memang Harus Dibubarkan", *Kompas*, 31 August 2010

Such statement produces justification for the use of violence and discrimination by a group of Islamic hardliners against the Ahmadiyya congregation. For example, incident of violence that occurred when thousands of people attacked the community of Ahmadiyya followers in Cikeusik, Banten Province, which resulted in three casualties and five people wounded. In such cases, law enforcement officials, especially the police, were not seriously prevent or failed to take actions to protect the Ahmadis during the invasion. Local governments, by involving military apparatus (TNI) and the police, thus encourage the Ahmadiyya community to return to the teachings of Islam in order to resolve problem. In these circumstances, the coercion of religious beliefs by official State structures happened in Indonesia.

b. *Forum Externum.*

The Forum externum, in this case is the freedom to manifest religion or belief, which associated with a number of issues, including: freedom to worship, to own places of worship, religious symbols, teachings and dissemination of materials relating to religion and belief, to communicate with other community at various levels, etc. In the concept of law on civil and political rights (ICCPR), it might be subject for restriction (derogable rights); however it should be distinguished between limitation efforts and excessive methods to execute coercion or restriction that would impair somebody or a community in practicing his religion or belief.

A state that draws attention is Myanmar. In the record of Freedom House (2011), Bible and Koran translation into local language is considered as something illegal. Religious organizations do not need to register to the Government, but if the institutions organize an activity, such as education, charity event, etc; they must obtain permission from the Government.

In Myanmar hitherto, violation of religious freedom still happens, such as the continued imprisonment of Buddhist Monks in the country, the detention of Muslim community in Rangoon area as a consequence of teaching which is not recognized by the Government, as well as a number of interrogation and abuse against followers of the Baptist in Kachin. In the framework of education, such as an Islamic community who wish to organize Koran recitation must hold in advance the permission from local authority, police, and so on. In fact, law enforcement agencies often interrogate the substance of that teaching or education, before and after the education/teaching conducted.

c. *Discrimination*

Acts of discrimination against any particular religion or belief become common phenomena in Southeast Asia countries, although they appeared in different ways.

Such as the condition of minorities and in South Thailand, it is recorded that discrimination against the Muslims in exercising their religion still occurs. Similar thing also happened when Myanmar issued a Temporary Certificate of registration to the Muslim minority in the Northern Rakhine; based on the Nationality Act of 1982, the State had denied their citizenship rights and this extremely restricts the exercise of minority's rights, whether civil, political, economic, social and cultural rights, as well as leads to other variant of discrimination practices.³⁴⁶ In the UPR mechanism of Laos, a number of States' consideration emerged to convey their concerns against discriminatory practices and regulations against Hmong ethnic in terms of religious freedom.³⁴⁷

In context of Indonesia, AICHR representative from Indonesia, Rafendi Djamin (2011) stated that entrenched discriminatory policies have been occurred, particularly with regard to the enactment of the Law on PNPS 1/1965. For example, concerning the recognition of some religions as 'official religion' (legal religion). CERD has actually recommended the elimination of the provision in 2007, but the law is still in effect to this day. The enactment of the law has consequence against minority religions, although they were have been categorized as 'official'; discrimination often occurred, for example, the difficulties endured by a number of Christian groups who tried to establish church or religious services.

d. Vulnerable groups

Vulnerable groups, especially minorities in some ASEAN states have suffered so much discrimination, violence and all forms of violations against human rights, simply because of their ethnicity or religion as a minority.

In Myanmar, Chin society has been marginalized and even impoverished under the military junta of Myanmar; they suffer arbitrary arrests, torture of Christian pastors, missionaries and church workers, and the destruction of worship places belonging to the Christian, all of which carried out by or based on the orders

³⁴⁶ Concluding observations CEDAW: Myanmar, paragraph 32

³⁴⁷ Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic (A/HRC/15/5, 15 June 2010)

of State authorities. This situation is overturned with limitations of freedom in conducting religious gathering. Such events still traumatize minority groups in Myanmar, especially the Chin community.³⁴⁸

In responding to the 3rd and 4th official reports of Myanmar to the CRC (the Committee on the Rights of Child), February 2012, the Committee once again questioned the ongoing problems that occurred with regard to all forms of discrimination in Myanmar, particularly concerning minority religions and ethnics.

Article 1 of the 1992 Declaration (*the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*) states that,

“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. States shall adopt appropriate legislative and other measures to achieve those ends.”

Minorities’ problems in Myanmar indeed become very serious, because the Government often refuses to recognize Rohingnya Muslims as citizens, and even forces restrictions over many civil and political affairs, including marriage. They also have difficulty to obtain construction permit or even simply to repair mosque, though they are allowed to perform maintenance. In the region of Arakan, government officials refused to grant a permit for the renovation of mosques with only one exception, which is the big mosque at Maung Daw.³⁴⁹

The adverse situation concerning the protection of vulnerable groups in Indonesia; in a country that actually has had a tradition of pluralism with ethnic and culture diversity, unfortunately a number of legal, policy, and administrative actions have been systematically restrict freedom. In fact, in some cases, the Government was silent and thus failed in preventing violence, aberration and discrimination against minority groups or individuals based on religion.

³⁴⁸ “Burma’s ‘forgotten’ Chin people suffer abuse”, BBC online, <http://news.bbc.co.uk/2/hi/asia-pacific/8626008.stm> (accessed on 20 October 2012)

³⁴⁹ Rachel Fleming, “Persecution and coerced conversion of ethnic Chin Christians in Burma”, *paper for 2nd International Conference on Human Rights in Southeast Asia*, SEAHRN, Jakarta, 17-18 October 2012.

Setara Institute (2010) for example, has recorded at least 286 cases of violence against religious freedom issues, and 103 of them have been carried out by government officials as the main perpetrator. Out of 103 cases, 79 were done deliberately, including the statements of public officials. The rest, violence occurs due to State's omission. Discrimination against religious minorities was conducted directly or indirectly. State officials were also involved in dissolving, belaboring worship facilities, even physically assaulting them. It is far from their obligations to protect the citizens.

e. Intersection of freedom of religion or belief with other human rights

Actually, violation of religious freedom is also started from or resulted in the violation of other human rights; for example, the problem of religious freedom with regard to freedom of expression. One of them is in Brunei for example. The Government routinely censors over magazine articles that publish issue of belief or other conviction, removes or deletes pictures of statue or the cross of Christ and other Christian religious symbols.

In Myanmar, deteriorating situation of religious freedom also related to the lack of protection of civil and political rights, such as guarantees of fair trial in resolving legal case. According to the Thailand-based Assistance Association of Political Prisoners in Burma (AAPP), at the end of the year an estimated 130 monks remained in prison, many of them arrested after the September 2007 peaceful prodemocracy demonstrations. During the year, some of the monks, as well as other political prisoners, remained in remote jails away from their family members, limiting their access to basic necessities

In Indonesia, the situation of religious freedom violation also comes with a number of violent acts or other human rights violations. In Djamin's note (2011), the problem of religious freedom in Indonesia can be summed up straightforwardly into a number of categories, inter alia: first, the target of violence that is always directed against minorities (such as Muslims, Christians, and local beliefs); Second, the methods (discrimination, physical violence, murder, forcible relocation, criminalization of violence victims, and systematic stigma). Third, the modus operandi (in general, the offense is made legally through discriminatory State legislation, which directly attacks freedom of religion. In practice, discriminative legislation reflects the interest of a small group of the majority religion, which claiming the benefit for all. And so in such context, the State is guilty for deliberately

committing or omitting something in some cases. Fourth, no regard to international human rights instruments that have been ratified. This happens because there are so many discriminative laws and regulations, especially local legislations.

The above situation complements the adverse record of Indonesia concerning human rights with regard to freedom of religion.

f. *Other cross-cutting issues*

'The cross-cutting issues ' relates to: derogation, limitation, legislative issues and the defenders of freedom of religion.

As previously described, freedom of religion is regulated in all Constitutions of the States that comprised in ASEAN. However, in practice, forms of derogation, limitation and also the enactment of legislation at a lower level with substances that legitimized the limitation and derogation of human right, happen easily. In short, although the Constitution guarantees freedom of religion, but other laws and policies are precisely contrary to the Constitution and limit the rights itself.

For example, the Constitution of Brunei Darussalam stated,

"The religion of Brunei Darussalam shall be the Muslim religion according to the Shafi'i sect of that religion: Provided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam."

However, in the findings of Freedom House (2011) other regulations and legal policies put limitations against minority religious groups that are not related to the Shafeite teachings in Sunni Islam. Law and regulation in general restricts access of religious reading or literature and religious meeting and gatherings in public for non-Muslim communities.

In Indonesia, Christian churches and Church-associated schools are permitted, for security reasons, to improve, expand and renovate the buildings. Nevertheless, as suggested by Djamin (2011), the process of approval is relatively time-consuming and complicated.

In 2008, the Government issued a joint ministerial decision that freezing the Ahmadiyya Qadiyani Jamaat's activities. In particular, violation of proselytizing others into Ahmadiyya Jamaat would generate legal consequence of 5 years of imprisonment for desecration of religion (blasphemy). In April 2010, the Constitutional Court has been examining the Law on Prevention of Blasphemy of 1965, which affirmed that Government has the power to order restrictions on the

question of religious freedom based on security reasons. The law provides a maximum penalty of 5 years in prison for desecration of religion cases.

In Viet Nam, article 70 of its Constitution mentions the subject of “the policies of the State” (the State policies). This relates to the enforcement of restrictions on religious freedom. The concept of 'State policy', which occurs in reality is awfully vague and holds expandable interpretation. This allows the State policy to design all forms of restriction in order to guarantee public safety, order, health or morality and other fundamental rights and freedoms, but it could proliferate further, including limitations that are not regulated in international laws.

Eventhough a greater concern is raised by article 4 of the Constitution, which affirmed the four principles of the Vietnamese Communist Party as the “guiding force” of the State and of society (paragraph 9). Therefore, the policies of State with communist party have certain ideology in perceiving religion. Accepting religion as the opium of the people must be combated. In this connection, the Directive of 2 July 1998 recognizes religious belief as a fulfillment of spiritual need and establishes guidelines for its control.³⁵⁰

g. Issues for the Considerations and Recommendations Conveyed to the State, including in particular regarding freedom of religion and belief

Special attention to the issue of freedom of religion and belief has been demonstrated through numerous forums, both in ASEAN's internal forum as well as international forums. In the ASEAN forum, it has been repeatedly discussed or alluded to, although extremely inadequate and seemed like merely statements without any institutional follow up action.

The Secretary-General of ASEAN, Surin Pitsuwan, has repeatedly referred to the issue of freedom of religion and belief, in particular addressing specifically to the last situation in Rohingya. He expressed the need of 'blocks' (bloc) in the framework of humanitarian assistance for refugees of Rohingya.

The following are a number of his statements related to the situation of violence in Burma,

³⁵⁰ Special Rapporteur, E/CN.4/1999/58/Add.2, paragraph 102-103 (country visit to Viet Nam).

“... The bloc should be “part of a solution to the problem” that escalated in June with the bloody clashes that displaced around 60,000 people.”³⁵¹

“I have made a proposal [to our member countries] that ASEAN should once again offer humanitarian assistance, like we did during the aftermath of Cyclone Nargis four-and-a-half years ago”³⁵²

“Myanmar [Burma] becoming the chair of the ASEAN will be the focus of the attention of how it is handling such an issue. There must be some roadmap to the solution”, Surin said on the sidelines of ASEAN’s 45th anniversary celebrations.³⁵³

Other statements coming from Cambodian Prime Minister Hun Sen, which also confirms the overturned situation of freedom of religion or belief, as stated here:

“We have seen that religious conflict has been spreading in the world and it has just flowed into our ASEAN region.... Practically, violence and mutually brutal killings among different religious believers in some of ASEAN member states in the recent past are a new event that is attracting interest from international community.”³⁵⁴

Efforts to raise the issue of the guarantee of religious freedom were taken seriously by networks of civil society and non-governmental organizations, as conducted through the UPR mechanism (*Universal Periodic Review*).

In the 21st Regular Session of the Human Rights Committee (HRC), the oral statement of Item 6 UPR in the Plenary on Indonesia (Thursday, 20 September, 2012), declared:

³⁵¹ ‘Myanmar May Allow Rakhine Probe’, *Jakarta Globe*, 8 December 2012.

³⁵² ‘Myanmar May Allow Rakhine Probe’, *Jakarta Globe*, 8 December 2012.

³⁵³ ‘ASEAN mulls providing Rohingyas humanitarian aid’, *AFP*, 8 August 2012
<http://www.dvb.no/news/asean-mulls-providing-rohingyas-humanitarian-aid/23236> (accessed on 10 November 2012)

³⁵⁴ The Opening Session of the 8th ASEAN socio-cultural community council meeting at the Peace Palace in [Phnom Penh](http://phnom-penh.info/hun-sen-calls-for-religious-harmony-in-southeast-asia/). <http://phnom-penh.info/hun-sen-calls-for-religious-harmony-in-southeast-asia/> (accessed on 29 October 2012)

“Madam President, we note that the government expressed during the UPR Working Group session on 23 May 2012 its commitment to ensure the freedom of religion for all including the Ahmadiyah. The accepted recommendations to hold law enforcement officials accountable and conduct human rights trainings (108.112) should be immediately implemented in response to the violent attacks against the followers of the religions that are not included in the Constitution”

As described earlier, so many cases of violence have made elements of civil society to fight further for the rights and freedom of religion, especially by establishing network at international level. One of powers that work in this issue is the Asian Forum for Human Rights Development to control the processes and mechanisms of accountability for Human Rights at the international level, including to actively campaigning for the efforts to fight against all forms of violence based on particular religion.³⁵⁵ As well as Human Rights Watch that actively documents and promotes situation and condition of religious freedom in a number of states, including in South East Asia.

³⁵⁵ FORUM-ASIA Press Release, “Indonesia: Lenient Sentences on Killings of Ahmadiyah Perpetuate Impunity”, 3 August 2011, <http://www.forum-asia.org/?p=10821> (accessed on 19 October 2012)

CHAPTER IV

RECOMMENDATIONS

In this section, a number of important things shall be summed up for the efforts to encourage a better change in the guarantee and protection of freedom of religion or belief. There are a number of things that are fundamental and should be noted in looking at the situation of freedom of religion and belief in Southeast Asia:

FIRST, the recognition of freedom of religion has become a cornerstone of the Constitution in the respective Member State of ASEAN, so there shall not be real reason for a State unable to develop tolerance and guarantee/protection for freedom of religion.

SECOND, although the constitutional guarantees are available, in practice there are still so many refutations against the stipulation and realization of freedom of religion/belief, either through laws instrumentation or political policy of State administrator.

THIRD, institutionally, ASEAN organization has been less resiliently pushing the process forward in order to develop freedom of religion and belief. The conveyed statement has been more likely toward a concern, without accompanied by more advanced, concrete and powerful efforts in providing the protection to freedom of religion/belief.

FOURTH, violence, discrimination, suppressive legislation policy as well as omission of those situations are the characters of weak guarantee of freedom of religion and belief that so easily found in the Member States of ASEAN.

FIFTH, however, there have been efforts of criticism, correction and constructive suggestion through official United Nations mechanism, as conducted by States under the UPR mechanism and system of international Human Rights laws, which as a minimum gave the effect of improvement efforts in the domestic level of ASEAN Member States.

SIXTH, a number of notes and critical recommendations, whether based on notes from Human Rights Council and Committees as well from other UN member states have contributed to the efforts in enforcing the guarantee to freedom of religion and belief. This is a politic of international law that puts all the states must openly accept criticism and suggestions from international community as part of a shared commitment to build a good relationship among states.

SEVENTH, as described in the UPR reports, Indonesia and Myanmar are two States that received the biggest portion of the criticism and recommendations among UN countries. For Indonesia, the note is a sharp criticism upon the process of democratization which is supposed to be a reference for other Member states of ASEAN. While for Myanmar, the note is a sharp criticism, mainly associated with violent incidents in Rohingya. These become homework for all, not only for Myanmar but also for the ASEAN community as a whole to build an area that is conducive to the development of human civilization.

Such situation is necessary for strengthening Human Rights in ASEAN, both confirming the possibility of a special mechanism as well as building cooperations.

1. It takes stronger encouragement of ASEAN Human Rights mechanism that prioritizes further and guarantees the protection of freedom of religion and belief, through the efforts to eliminate discriminatory rules/provisions against particular religion or belief.
2. ASEAN needs to support cooperation, communication, and exchange of experience/learning regarding the practice of respect and protection of freedom of religion among fellow members of ASEAN, especially with regard to the diversity of ethnicity, religion and belief that so richly flourishing in daily life of ASEAN community.

To strengthen and respond to a number of challenges in reinforcing the guarantee of Freedom of Religion in Southeast Asia, there are some significant measures to be conducted:

FIRST, ensuring alignment of regulation between the Constitution and lower regulations in the reinforcement of guarantee for religious freedom; it is also important to clarify the implementation of limitations principle in domestic laws of a number of ASEAN member states to be in line with the principle of universal limitations as provided for in ICCPR.

SECOND, eliminating the implementation of draconian laws such as the Internal Security Act in Malaysia or Societies Act in Singapore to open more public spaces and undoubt the existence of diversity, as well as prevent the emergence of similar regulations in other ASEAN states.

THIRD, encouraging the manifestation of a policy that protects minorities, specifically the minority of religion and beliefs;

FOURTH, strengthen the role of the ACWC, AICHR and other ASEAN Human Rights bodies and ensure that AHRD can be implemented by all ASEAN States.

FIFTH, conducting harmonization between domestic laws of ASEAN Member States with International Human Rights Instruments to guarantee the issue of Freedom of Religion;

SIXTH, encouraging ASEAN member states that have not to ratified ICCPR and the Convention on the Elimination of All Forms of Discrimination to immediately organize ratification measures

SEVENTH, encouraging civil society networks in Southeast Asia such as the ASEAN Civil Society Conference, ASEAN People's Forum, and Solidarity for Asian People's Advocacy or other networks in strengthening the promotion of Freedom of Religion issue. This effort is expected to be able to make the ASEAN member states to respond to and make it as their concern in the field of Human Rights reinforcement.