

**PROMOTING FREEDOM  
OF RELIGION OR BELIEF  
IN ASEAN:**

A Guidebook for ASEAN  
Human Rights Bodies

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# Chapter One

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## PREFACE

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## A. Introduction

The right to freedom of religion or belief belongs to every person and is fundamental in human rights. From the Universal Declaration of Human Rights' point of view, the aforementioned right is guaranteed in any situation and cannot be excluded or delayed. Every State must guarantee and protect the right to freedom of religion and belief. However, situational and conditional changes, such as the impact of globalization in various States and societies, nowadays have shown symptoms of increasing religious teaching-based intolerance and violence, particularly against religious minorities, sects, or local religion, beliefs and new religious movements. ASEAN countries are not excluded.

At the same time, disparity of treatment and discrimination continue to be a legacy in ASEAN countries and societies. The symptom of intolerance occurs with violations against the right to freedom of religion or belief, either by the State or by society when the State is unable to provide protection for victims or prevent intolerance and violence. On the other hand, the spread of democracy systems' values, parts of societies demand the removal of disparity of treatment as well as prevention of intolerance, violence, and discrimination in all aspects. Those two paradoxical tendencies demand attention.

Aside that ASEAN's plan to establish the ASEAN Community 2015 is also an important factor in why the freedom of religion and belief in ASEAN needs attention. The ASEAN Political-Security Blueprint has affirmed the importance of respecting differences, advancing tolerance, inter-religious and inter-belief mutual understanding as well as advancing respect and appreciation for a variety of regions

and harmony among societies in ASEAN, which also includes the entity of religion or belief. Moreover, as a region marked by plurality of populations and societies, respect for and guarantee of protection of every person's freedom of religion or belief has become a demand of the ASEAN Community.

Since being established, ASEAN has been increasing its attention to human rights issues, which has intensified in the last decade. The ASEAN Charter became one of the main bases for advancing human rights, particularly related to the right to freedom of religion and belief. As stated by Article 14 Paragraph (1) of the ASEAN Charter, advancing and protection of human rights and fundamental freedoms have become ASEAN's objectives, including by establishing the ASEAN Intergovernmental Commission on Human Rights (AICHR). As realization of that attention, ASEAN has as well formed the ACWC to provide protection for women and children in the region.

In particular, AICHR is mandated to, among other things, encourage, strengthen, and build capacity in regards to human rights, either for ASEAN itself, institutions under ASEAN or for ASEAN Member States or Societies. In this matter, AICHR's effort to establish a human rights standard in the region has also become an important achievement that needs appreciation, despite criticism and rejection from a number of parties against the Declaration. By being adopted, the ASEAN Human Rights Declaration (AHRD) has become a pillar for human rights development in the region, including in advancing and protecting the right to freedom of religion or belief.

Article 22 of the AHRD adopted in 2012 affirms 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. Article 23 also states that every

person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium.

#### **ASEAN HUMAN RIGHTS DECLARATION**

##### **Article 22**

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

##### **Article 23**

*Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.*

To carry out its mandate and functions, particularly in implementing Article 22 regarding protection and advancement of the freedom of religion and belief, it is important for AICHR and ACWC to have a basic modality. In addition to the lack of official explanation issued by the AICHR or ACWC pertaining to the implementation of Article 22, unfamiliarity with freedom of religion or belief issues in ASEAN has been an obstacle in itself for AICHR to advance and protect the freedom of religion or belief. Whereas, AHRD has firmly mandated the matter with the AIHCR having a functional structure and role.

In this matter, ASEAN's increasing attention to human rights enforcement, specifically in freedom of religion or belief issues, needs to be complemented by comprehensive and practical reference or guidance, in particular in exercising the norms stated in Article 22. With this background, this book is a result of research conducted to support AICHR's works in protecting and advancing the freedom of religion and belief, as well as being one reference to help strengthen and achieve AICHR's and ACWC's objectives and mandates.

#### **AICHR' MANDATE AND FUNCTIONS**

##### **Article 4**

- 4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;*
- 4.2. To develop the ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;*
- 4.3. To enhance public awareness of human rights of the peoples of ASEAN through education, research and dissemination of information;*
- 4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;*

## B. Book's Objectives

In addressing principles and norms of freedom of religion or belief, either in the discourse of international human rights law or on a theoretical level, this book will be a reference for ASEAN human rights bodies, especially the AICHR and ACWC, as well as for duty bearers, non-governmental organizations, academicians and other elements that pay attention to freedom of religion or belief in Southeast Asia. In particular, this book is for:

### AICHR and ACWC

- To carry out the mandate to protect and advance freedom of religion or belief in ASEAN.
- To mainstream freedom of religion or belief into other ASEAN sectoral bodies.
- To push and ensure that ASEAN's policies and instruments are in line with principles of freedom of religion or belief.
- To assess or evaluate policies issued by ASEAN within the scheme of protection and advancing of freedom of religion or belief in ASEAN.
- To provide conceptual and action guidance for AICHR's and ACWC's bodies.
- To understand diversity and plurality in ASEAN in order to build a peaceful and harmonious community.
- To identify problems occurring and develop a framework for cooperation among Member States to solve said issues.
- To understand the rights enshrined in Article 22 of the ASEAN Human Rights Declaration and the pursuit of protecting them.

### ASEAN Member States and NHRIs

- To identify programs or policies that can be utilized to advance and protect freedom of religion within a national context.
- To become a modality in establishing cooperation between national entities and ASEAN's sectoral or human rights bodies.
- To provide guidance to advance and protect the freedom of religion or belief at a national level.
- To become a modality for States in collaborating with civil society groups, non-governmental organizations, religious organizations, or other domestic entities in advancing and protecting the freedom of religion or belief.
- To understand the character of ASEAN Member States in order to establish dialogue and harmony among societies in ASEAN.
- To understand the coverage of rights enshrined in Article 22 of the ASEAN Human Rights Declaration.

### Civil Society, Academicians and Other Stakeholders

- To portray problems occurring in relation to the freedom of religion and belief and frame them with other problems in ASEAN.
- To become a guidance to encourage governments, ASEAN bodies and human rights bodies in ASEAN to protect and advance freedom of religion and belief.
- To assess and evaluate works of ASEAN, ASEAN's sectoral bodies and ASEAN human rights bodies (AICHR and ACWC) in protecting and

- advancing the freedom of religion or belief.
- To understand the diversity of religion or belief entities in Southeast Asia and seek inter-religious or -belief dialogue.
- To understand the coverage of rights enshrined in Article 22 of the ASEAN Human Rights Declaration.

### C. Why is it important for ASEAN to address this?

The year 2015 is a target for when the ASEAN Community, a community imagined as a unity, is to be established, equipped with close relationships among members, ensuring a long term relationship and mutually beneficial, peaceful, stable and prosperous cooperation. After ten ASEAN Leaders declared in 2007 in Cebu, the Philippines to accelerate the establishment of the ASEAN Community from 2020 to 2015, achieving this target became more urgent for the ASEAN Community. Peaceful, stable and prosperous are some key words to establish that community.

Therefore, the enforcement and protection of the freedom of religion is substantial and urgent due to changes in society showing increasing intolerance and even violence and discrimination based on difference in religion or belief. Meanwhile, given its plural and multicultural traditions and characteristics and its peaceful, stable and prosperous conditions vis-à-vis the guarantee of freedom of religion and belief, ASEAN has its chance to be an example for other regions. On the contrary, denial of freedom of religion and belief, accompanied by ASEAN's plurality and variety, would threaten the ASEAN Community itself.

Enforcement of international human rights-based freedom of religion and belief is fundamentally a state duty, but societal participation plays an equally important role, particularly non-government, civil society and religious organizations. This relates to the pluralistic character of the ASEAN community, as well as the flow of

globalization which is marked by unstoppable migration and an increasingly borderless cyber community. The last two phenomena have complexified the circumstances of ASEAN societies.

One implication is an increasing sentiment - often referred to as religious nationalism - among ASEAN societies. This has increased complexity by increasing the frequency of intolerance, tension, violence and even murders in the name of religion in ASEAN countries. Almost all ASEAN countries face problems associated with religious-based intolerance, tension and violence, with different intensities and qualities. States are often trapped into following the mainstream, so that they are unable to act to protect and guarantee the rights of victims of intolerance and violence. The implication is that the widening flow of information means this phenomenon affects not the country in question, but also other countries.

On the other hand, the ASEAN Charter affirming commitment of ASEAN Member States and ASEAN to enforce human rights through the AICHR and ACWC has made the two ASEAN's human rights bodies more significant and strategic in carrying out the mandate to protect and advance the freedom of religion and belief. Both have become more strategic actors in ASEAN, hence their presence should be supported by all states and elements of society, in particular to advance and protect the freedom of religion and belief in the region.

So far, AICHR and ACWC themselves haven't had guidance on how they can play their role and carry out their mandate to collaborate with ASEAN Member States, ASEAN sectoral bodies or national entities from civil society organizations in order to advance and protect the freedom of religion and belief. Aside of that, the absence of cooperation mechanisms between human rights bodies and civil society has as well become an obstacle to establish more effective and strategic cooperation for the protection of freedom of religion or belief.

In addition to the institutional reasons mentioned above, historically religious issues have been an important component in the emergence of insecurity or interference with national security, when its religion and religious adherents are not well managed by the state. Ethnicity and religion often have very close ties to long inter-group conflicts in history: the Serbians and Croats in Yugoslavia, the Sunnis and Shi'ites in Iraq or between Muslims and Christians. Inter-communal violence led to the killing of 21 Coptic in Al-Komesh, Egypt in 2000, and to horrific bloodshed in Gujarat, India in 2002, while sectarian violence broke out in Nigeria when it sought to become host for *Miss World*, in addition to many other cases across the world. All these cases, which are based on religious identity, suggest that religion has the potential to destroy if not managed well.<sup>1</sup>

Many experts and researchers have thus emphasized the importance of guaranteeing religious freedom for national security, including social wellbeing and security, which suggests there is a strong correlation between religious freedom and a number of other social benefits. States with strong guarantees of freedom of

religion tend to have a higher Gross Domestic Product (GDP), higher literacy rate and many other positive social indicators. Highly evident is the strong correlation between religious freedom and an increase in pluralism, peace and stability in society.<sup>2</sup>

According to some research, the protection and promotion of freedom of religion or belief is also related to beneficial conditions in society, such as:

1. Improved human and social development. Freedom of religion and belief improves a community's access to healthcare, education, and facilitates greater economic equality. A healthy, well-educated populace results in a more efficient workforce. Economic equality reduces societal pressures that may result in riots or other conflicts.
2. Reduced corruption. Freedom of religion and belief reduces corruption. Corruption steals from a business's bottom line, weakens competitive markets, and erodes the moral fabric of society.
3. Stronger democratic institutions. Freedom of religion and belief strengthens legal, judicial, and other democratic institutions. Strong democratic institutions provide order to society and protect property rights.
4. Fewer conflicts and wars. Freedom of religion and belief reduces conflict and war. Violence can bring a community to a standstill, threaten investment, and impair markets.
5. Economic growth. Freedom of religion and belief facilitates economic expansion, which allows communities to grow and provides businesses with opportunity to improve profitability.

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<sup>1</sup> Editors' Introduction in Tore Lindholm, et al., *Kebebasan Beragama Atau Berkeyakinan: Seberapa Jauh (Facilitating Freedom of Religion or Belief: A Deskbook)*, (Jakarta: Kanisius, 2010), translator Rafael Edy Bosko and M. Rifa'i Abdullah, 6

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<sup>2</sup> Editors' Introduction in Tore Lindholm, et al., *Kebebasan Beragama Atau Berkeyakinan: Seberapa Jauh*, 8

6. Favorable employment environment. Freedom of religion and belief creates a better employment environment. Healthy, happy, and well educated employees are more productive and generate better results for businesses.
7. Improve business results. Freedom of religion and belief allows business to demonstrate that they are responsive to human rights issues, engaging stakeholder expectations and promoting relationships with ethically sensitive customers, business partners, and investment funds.<sup>3</sup>
3. There is a strong link between freedom of religion or belief issues and each of ASEAN's policies and practices.
4. Understanding clearly the challenges of protecting freedom of religion or belief can lead to better solutions to addressing the issues. It also impacts on implementation of national obligations to international standards, in regards to political, civil, economic, social or cultural rights.

Hence, setting out from the aforementioned various problems of freedom of religion and belief in the ASEAN region, and also the importance of freedom of religion or belief in sustainability and development of societies, this book is specifically designed to open the path for the advancing and protecting the freedom of religion and belief in ASEAN, particularly for AICHR and ACWC as the mandate holders of protection of human rights in ASEAN, as well as for Member States, ASEAN sectoral bodies and civil society or non-governmental organizations.

In addition to these factors, there are several reasons why it is important ASEAN is concerned with the right to religious freedom:

1. Freedom of religion or belief is a part of human rights and is recognized as a non-derogable right.
2. In all ASEAN countries, there are marginalised religious minorities;

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<sup>3</sup> BYU Management Society, "Corporate Social Responsibility and Religious Freedom", accessed <http://liberia.byums.org/ckfinder/userfiles/files/Website%20-%20CSR%20and%20Religious%20Freedom.pdf>; See also, Brian J. Grim and Roger Finke, "Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?" in *American Sociological Review*, Vol. 72, No. 4 (Aug., 2007), 633-658.

## D. How to Use this Book?

The draft of this Guidebook has been discussed at the Regional Consultation on Promoting Freedom of Religion and Belief in the ASEAN, 19-20 February 2014, in Jakarta, which was attended by experts, representatives of the AICHR and ACWC, Member States of ASEAN, think tanks, international and regional NGOs, and also members of civil society from ASEAN member countries. A number of participants and experts have given input to the draft of the Guidebook, particularly regarding to issues of religious freedom in Southeast Asia and some aspects that need exploration.

This book is intentionally made simple so it can be accessed by as many parties as possible. In particular, this book is aimed to be a:

- Reference for AICHR and its commissioners to carry out the mandate to advance and protect human rights, especially in relation to freedom of religion and belief as enshrined in Article 22 of the ASEAN Human Rights Declaration.
- Reference for other ASEAN's human rights bodies, such as the ACWC, or sectoral bodies.
- Reference for Member States to perform their responsibility to protect and advance the freedom of religion and belief on a national level, including establishing a framework for cooperation among ASEAN human rights bodies.
- Reference in enforcement of human rights, particularly in freedom of religion and belief issues, for human rights defenders or non-governmental activists, civil society organizations and

members of the public that want to have a basis for their point of views and activities in regards to guaranteeing and protecting the freedom of religion and belief within ASEAN Member States and Societies.

For the Commissioners of AICHR and other ASEAN bodies, this book can be used to monitor implementation of freedom of religion and belief and as a basis to draft reports on the condition of the guarantee and protection of freedom of religion and belief within ASEAN. Moreover, this book can become a reference to identify problems and submit input to States within ASEAN, as well as a guidance to pursue prevention and early warning of human rights violations, particularly as regards the protection and guarantee of freedom of religion and belief in the ASEAN region.

For non-governmental activists, human rights defenders, civil society and the public, this book can become a basis and guidance to submit input regarding AICHR's duties related to its mandate and function to enforce human rights and freedom of religion and belief in ASEAN. On one hand, this book gives guidance for AICHR and other ASEAN human rights or sectoral bodies but on the other hand, it also provides the opportunity for society's more intensive participation in the advancing and protection of freedom of religion and belief in the ASEAN region.

This book consists of several parts:

- **Part One:** sets out the rationale for the importance of protection and promotion of religion and belief in

- ASEAN in brief and the purposes of this book.
- **Part Two:** focuses on a conceptual framework of freedom of religion and belief, some important terms in Southeast Asia related to freedom of religion or belief, and state obligation on protection and promotion of freedom of religion or belief.
- **Part Three:** explores the situation of freedom of religion and belief in Southeast Asia, including the constitutional guarantees, legal frameworks and mapping of ratification of international instruments. This part also focuses on the opportunities and significances of protection of freedom of religion or belief in ASEAN, especially related to the Roadmap of the ASEAN Community 2015, guarantee of freedom of religion and belief in ASEAN documents, and ASEAN on protection and promotion of freedom of religion and belief.
- **Part Four:** This part breaks down the concept of freedom of religion and belief which stated in the ASEAN Declaration on Human Rights (AHRD) into specific explanation, based on international instruments and documents, regional standards and academics' perspectives. This part begins with the guarantee of FoRB (freedom of religion and belief) in the AHRD and continues with an explanation of the three components of protection of FoRB in AHRD, namely: the right to freedom of thought, conscience, and belief; intolerance and discrimination, and; incitement of hatred based on religion and belief. This part also explains minority rights in the context of freedom of religion and belief.
- **Part Five:** focuses on an overview of international and regional mechanism on protection and promotion of FoRB. Firstly the book explains the international protection frameworks, both charter and treaty based mechanism. Second, this part focuses on regional protection of FoRB, including the European region, inter-American and African human rights mechanisms.
- **Part Six:** This part consists of practical tools on protection of freedom of religion or belief in the context of implementation, especially in attempt to integrate freedom of religion and belief into the framework of ASEAN human rights mechanisms.

## E. Source of the Guidebook

In explaining concepts and issues, this Guidebook uses a number of resources and references, including:

1. International Convention, United Nations and UN Specialized Agencies
  - Universal Declaration of Human Rights, 1948 (UDHR)
  - Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
  - International instruments on human rights, especially the Convention on Civil and Political Rights, 1966 (ICCPR).
  - United Nations Human Rights Committee General Comment 22
  - Reports of the United Nations Special Rapporteurs
  - Resolutions of United Nations General Assembly and Human Rights Council

- Other United Nations and specialized-agency documents
- 2. ASEAN Instruments
  - ASEAN Charter
  - ASEAN Human Rights Commission
  - ASEAN Community Blueprints
  - Term of Reference of ASEAN Intergovernmental Commission on Human Rights
  - Statement by ASEAN Leader (Summit) and Ministerial Meeting (AMM).
- 3. Regional Instruments
  - European Convention on Human Rights, 1950
  - EU Guidelines on the promotion and protection of freedom of religion or belief
  - American Convention on Human Rights, 1969
  - African Charter on Human and Peoples' Rights, 1982
  - Declaration of Human Rights in Islam (Cairo Declaration), 1990
  - Statute of the OIC Independent Permanent Human Rights Commission (IPHRC).
- 4. Scholarly writings.

## Chapter Two

# FREEDOM OF RELIGION OR BELIEF AND LOCALITY IN SOUTHEAST ASIA: KEY WORDS AND CONCEPTUAL FRAMEWORK

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## A. Key Words in the Freedom of Religion or Belief

**Agnosticism:** A doctrine professing those human beings do not know the existence of everything beyond the phenomenon of their experiences. This refers to a popular term related to skepticism toward questions about religion.

**Apostasy:** Denial or rejection of a certain religion or politic or principle.

**Atheism:** A criticism toward or rejection of belief in God. Atheism is the opposite of theism, where the latter affirms the reality of and seeks to show the existence of God. Atheism is different to agnosticism, which questions whether God exists or not. In atheism, the inexistence of God is a certainty.

**Belief:** Something in human life that is equal with that given by God or gods of certain religious faiths. Other definitions state that belief is a system of interpretation consisting of personal faith in basic structures, modality and functions of the world. But belief is not a scientific system. As far as to claim perfection, belief also includes perceptions toward humanity, viewpoints on life, and morals. Ideas such as humanism, atheism, agnosticism can be categorized as beliefs.

**Blasphemy:** A violation due to behavior being perceived as a sacrilege or insult against God or other things seen as sacred. This action is judged as being against God or faith, but in practice it is treated as a violation against a religion's believers. This concept derives from monotheistic religions, such as Judaism, Christianity and Islam.

**Bullying:** Use of superiority in a physical capacity or quantity to put others to shame or obstruct them from gaining property or status.

**Coercion:** State or Non-State action, including by using threats of physical violence or legal sanction, to force believers or non-believers to follow a belief or religion, to deny a religion or belief, or to convert to another religion or belief. Certain policies or practices aiming for or causing these things, such as those limiting access to education, health services, employment and other guaranteed rights, are categorized as coercion.

**Conversion:** Changing or converting to another religion or belief.

**Destruction:** Remoteness, physical violence, omission from places in which to earn a livelihood, armed attack and murder (including genocide).

**Discrimination:** Every differentiation, exception, limitation or preference based on race, gender, ethnicity, religion, belief, disability, age, sexual orientation, political language or other arguments, national or social origin, nationality, wealth, birth or other skin color, statues that has objectives or effects to abolish or reduce recognition, enjoyment, exercise of human rights and fundamental freedoms on equal footing in political, economic, social, cultural or other public living sectors.

**Exclusion:** Denying the possibility of meeting basic needs or fully participating in society, such as a certain communal activity.

**Expulsion:** Official or forceful eviction, chasing out or denying rights to enter or be present in a certain place, social group, profession or group activity, including from places on which a livelihood might depend, such as a workplace or residence.

**Forum *externum*:** Fundamental rights associated with the manifestation of *forum internum*. These rights are a form of

religious manifestation. There are eleven rights covered by *forum externum*. *First*, the freedom of worship either individually or collectively, closed or open; *second*, the freedom to build places of worship; *third*, the freedom to wear religious symbols; *fourth*, freedom of observance of holidays and days of rest; *fifth*, the freedom of appointing clergy; *sixth*, the freedom of teaching and disseminating materials including missionary activity, *seventh*, the right of parents to ensure the moral and religious education of their children; *eight*, registration; *ninth*, the right to communicate with individuals and communities on religious matters at the national and international level; *tenth*, the right to establish and maintain charitable and humanitarian institutions/solicit and receive funding; *eleventh*, the right to conscientious objection.

**Forum *internum*:** Fundamental rights in the “inner” and private sphere of an individual that have to be free of external intervention, including that coming from State powers, in any given situation, even during war. These rights are non-derogable. *Forum internum* covers freedom of thought, freedom of conscience and freedom of religion, including rights to non-coercion that otherwise may disturb one’s freedom to practice or choose a religion or belief based on his/her choice.

**Freedom:** Being free in public space and free of detention, pressure and despotic rules. Freedom can be divided into two categories: *negative freedom* and *positive freedom*. *Negative freedom* is related to areas in which the subject, either individual or group, is allowed to do or to be something without intervention. This freedom is called *freedom from*. *Positive freedom* is associated with what or who will become the source of control or intervention that influences someone being able to do or to be one thing rather than

another. This freedom is also known as the *freedom to*.

**Harassment:** A behavior deliberately intended to intimidate or degrade other people, often meant to force them to leave a certain organization, community or group.

**Hate speech:** Any action encouraging hatred based on nationality, race or religion that is also a provocation to discrimination, hostility or violence.

**Hate crime:** Hate crimes are criminal acts committed with a biased motive. It is this motive that makes hate crimes different from other crimes. A hate crime is not one particular offence. It could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term “hate crime” or “bias crime”, therefore, describes a type of crime, rather than a specific offence within a penal code.

**Hatred:** A mindset or mental condition characterized by strong and irrational emotions derived from feelings categorized as significant degradation, hostility and dislike towards a certain target group.

**Hostility:** Form of action - beyond mindset, but also implying a certain situation where a mindset is followed up by action. It is a manifestation of hatred - that hatred is a realization of strong and irrational emotion derived from feelings categorized as significant degradation, hostility and dislike towards a certain target group.

**Minority:** A group smaller than that of the general population in a state, with a non-dominant position, of which members have a different ethnicity, religion or even language from the general population, and show, albeit implicitly, solidarity and are directed to preserve their culture, tradition, religion or language.

**Non-theism:** A religious and non-religious attitude characterized by the absence or rejection of theism or any belief in God.

This is an umbrella term for other forms, including agnosticism, skepticism and atheism. This term is usually used in the field of Christian apologetics and generally liberal theology.

**Ostracism:** Acting as if another is absent or non-existing. The refusal to talk about or recognize others or their culture.

**Peace:** Free of threats or violence, either directly or indirectly, aimed at harming one's freedom, independence or integrity.

**Prejudice:** A judgment based on negative generalization and stereotypes rather than facts or specific actions of individuals or groups.

**Propaganda:** Hidden strategy, technique and manipulation to disseminate public opinion, information and policy to achieve political, economic or other objectives. Dissemination can be aimed to help or attack a certain organization or people.

**Proselytization:** An attempt to invite others to convert to another religion or belief.

**Racism:** An action that differentiates human beings based on physical traits, such as skin color, hair, texture and facial features. These physical categories become a basis to define intelligence, attitude and action. The end result of this categorization is that race becomes a measurement of value, wherein a certain race is considered more superior than another.

**Religion:** An organized system of belief, rituals and rules used to worship God. Due to the absence of a sole definition of religion, some experts draw on a range of criteria for religion. *First*, faith in God or "The Highest"; *second*, a comprehensive perception toward the world and the purposes of human existence; *third*, belief in an afterlife; *fourth*, communication with "God" through worship and prayers; *fifth*, certain perspective on moral obligations derived from moral codes or conception about characteristics of God; *sixth*, practices

involving repentance and remission of sins; *seventh*, "religious" feelings of admiration, guilt and worship; *eighth*, use of holy texts; *ninth*, an organization to incorporate aspects of religious practices and to promote and preserve certain practices and belief.

**Religious intolerance:** An attitude involving negative prejudice nuanced by certain beliefs, affiliation or religious practices, either towards individuals or groups. Intolerance can be in the form of disseminating false information regarding a group or the practice of a belief, even though the inaccuracy of such information can easily be checked and revised; disseminating hatred against all groups; ridiculing or belittling a certain faith group for the belief and practice its members exercise; attempting to force others to convert to one's belief or religious practice; limiting the human rights of identifiable members of religious groups; devaluing other religions as worthless and evil; obstructing one's freedom to convert to another religion.

**Scapegoating:** Blaming a certain group for traumatic events or social problems.

**Segregation:** Forcefully separating people of different race, religion or gender, usually aimed to harm a certain group (including Apartheid).

**Stereotyping:** Portraying all members or groups with the same, usually negative, label or characteristics.

**Teasing:** Bringing to attention an individual's actions, attributions or characteristics in a way that tends to be ridiculing or insulting.

**Theism:** A perception that everything is limited and acknowledgment of the existence of The Highest or the Excellency. The Highest is perfect and beyond human interpretation. In other words, theism is a belief in one God. In short, theism is a belief in God as being personal, existing and active in the world's and nature's

governance and organization. This concept is adopted by major religions, such as Islam, Christianity and Judaism.

**Tolerance:** Respect toward, acceptance and appreciation of the wealth of the world's cultural diversity, forms of expression and means of being human.

**Violence:** Deliberate use of physical power or dominance against other individuals, groups or communities that results in or has

potential to cause injury, death, psychological suffering, failure in development or omission of other human rights.

**Xenophobia:** Implausible fear of foreigners. This fear is also manifested as hatred of foreigners. Xenophobia is one roots leading to racism and discrimination. Xenophobia also causes violence against people with different national origins.

## B. Locality in Southeast Asia: Key Words and Terms

***Aliran Kepercayaan* (Traditional Belief):** Statement and exercise of a personal relationship with God based on faith realized through devotion and observance of religious duties to God as well as implementation of magnanimity, whose teachings are derived from Indonesia's local customs. These beliefs are differentiated from religion and are seen as unrecognized religions.

**Animism:** The word 'animism' derives from the Latin word *anima*, meaning soul or breath. It is usually applied to any religious beliefs which recognizes spirits or a spirit world inherent and controlling within the physical world. Animism can be found in many tribal or primal religions. Primal religions are those which are ancient, in existence before the advent of world religions such as Christianity, Buddhism, Hinduism. Animism is also found within most of the world religions in East Asia, including Southeast Asia, in the form of folk religion. Most of states in Southeast Asia have a small percentage of animism groups amongst their populations, including: Vietnam 3%, Cambodia 3%, Malaysia 2%, Philippines 2%, Indonesia 1% and Myanmar 1%.

***Bomoh:*** An important link between animism and the Islam in Malaysia of today

is provided by the Malay *bomoh*, a kind of shaman. While *bomohs* keep a low profile in these times of greater Islamic orthodoxy – no *bomoh* operates out of an office, and there are no college courses to train *bomohs* or listings of practitioners in the telephone directory – the fact is that every Malay community can still summon a *bomoh* when it's felt one is needed to cure disease, bring rain during droughts, exorcize spirits from a newly cleared plot before building work starts or rein in the behavior of a wayward spouse.

***Bumiputera:*** A Malay term mostly used in Malaysia to refer to the indigenous people of the archipelago. The term derives from the word "*bhumiputra*" in Sanskrit. It is literally translated as "sons of the earth" (*bhumi* = earth or land, *putra* = son). This can also be interpreted as "native son."

**Chin:** Ethnic minority from the Sino-Tibetan region. They live in areas from western Myanmar's mountains to Mizoram in Southeastern India and parts of Bangladesh. As a community, they also practice religion and consist of a number of ethnic groups, such as *Asho*, *Cho*, *Khumi*, *Kuki*, *Laimi*, *Lushai* and *Zomi*. They respectively speak Tibet-Burmese language.

**Hoa Hao:** in full Phat Giao Hoa Hao, a nationalistic and xenophobic Vietnamese

neo-Buddhist secret society that was formed in 1939 by the Buddhist reformer Huynh Phu So.

**Karen:** A term that refers to a number of ethnic groups from Tibetan-Central Asia. Karen people speak 12 languages, related and understood each other. Most Karen people practice Buddhism. Some of them followed Christianity during the British colonization. They are estimated to be about 30 percent. This group includes various ethnicities, such as *Karen*, *Padaung*, *Bghai* and *Brek*.

**Khmers:** Ethnic majority in Cambodia. Its accounts for about 90 percent of the total population. They speak the Khmer language, part of the Mon-Khmer language family. The majority of Khmers practice Buddhism which combines elements of Theravada Buddhism, Hinduism, animism and their ancestral religion. Most of them live on the borders of Thailand and the Mekong Delta.

**Lao:** Ethnic majority in Laos. They are part of Lao Loum. Some of them live in Cambodia and Thailand. Lao people initially moved from Indochina to Laos during French colonization. The language they speak is a derivative of Thai.

**Malay:** Ethnic group inhabiting the Malaysian Peninsular and parts of nearby islands within the Southeastern Asia region, including the eastern coast of Sumatra, the coast of Kalimantan and small islands. Malay people speak Austronesia (*Melayu-Polinesia*) dialect. At the end of the 20<sup>th</sup> century, Malay people constituted more than half of the Malay Peninsular's (West Malaysia) population and one-eighth of East Malaysia's (Sarawak and Sabah) population.

**Moro:** Ethnic minority in the Philippines. It makes up about five percent of the total population. They live in Mindanao in the southern part of the country. The major

groups among Moro people are *Maguindanao*, *Marano*, *Tausug*, *Samal*, *Bajau*, *Yakan*, *Ilanon*, *Sangir*, *Melabugnan* and *Jama Mapun*. Most Moro people practice Sunni Islam. The name Moro itself was initially used by Spanish colonizers.

**Rohingya:** Ethnic minority in Myanmar. It is estimated to be about four percent of the population. They live in Northern Arakan, especially in Maungdaw, Buthidaung, Rathedaung, Akyab and Kyauktaw. Their ancestors came from Bengali of Bangladesh. Some of their ancestors moved to Arakan during the British colonization (1824-1948).

**Semang:** Semang (or Negritos), of whom there are around two thousand, live in the northern areas of the Peninsula, Malaysia. They comprise six distinct, if small, tribes, related to each other in appearance – they are mostly dark-skinned and curly haired – and share a traditional nomadic, hunter-gatherer lifestyle. However, most *Semang* nowadays live in settled communities and work within the cash economy, either as labourers or selling jungle produce in markets. Perhaps the most frequently seen Semang tribe are the Batek, who live in and around Taman Negara.

**Taoism or Daoism:** indigenous religio-philosophical tradition that has shaped Chinese life for more than 2,000 years. In the broadest sense, a Daoist attitude toward life can be seen in the accepting and yielding, the joyful and carefree sides of the Chinese character, an attitude that offsets and complements the moral and duty-conscious, austere and purposeful character ascribed to Confucianism. More strictly defined, Daoism includes: the ideas and attitudes peculiar to the *Laozi* (or *Daodejing*; “Classic of the Way of Power”), the *Zhuangzi*, the *Liezi*, and related writings; the Daoist religion, which is concerned with the ritual worship of the Dao; and those who identify themselves as Daoists.

## C. Freedom of Religion and Belief: Conceptual Framework

### 1. Religion and Belief

The term “religion” is a word that is not easily defined by law. Therefore, to avoid philosophical and ideological debate on the term, international human rights law uses the term “freedom of thought, conscience and religion” as a reference, rather than defining “religion” rigidly. At the beginning of its development, all international instruments referred to these three freedoms. It has only been recently that international norms also protect the manifestation or expression of freedom of religion or belief.<sup>4</sup>

For abridging and for the sake of this Guidebook, religion is defined as: *“Belief systems, ceremonies, and rules that are organized and used to worship God”*.

Some religious experts refer to several criteria on religion. First, religion involves having a conviction in God or “The Most High”; Second, an overview about the world and human purpose; Third, a belief about life after death; Fourth, communication with “God” through worship and prayer; Fifth, certain perspectives about moral duties that come from moral codes or from conceptions about God’s nature; Sixth, practices involving conversion and forgiveness of sins; Seventh; feeling of “religiousness” about amazement, guilt and worship; Eighth, the use of holy texts; Ninth, organization to facilitate incorporation of aspects from religious practice and to

promote and preserve certain practices and beliefs.

From that definition, it can be said that “religion” in terms of international human rights laws covers all religions and beliefs that have been in existence, whether it be traditional religions that have been around for a long time, revelation religions, or new religious movements. Classifying traditional religions and certain other convictions as beliefs outside religion is in opposition to the above concept because the term “belief” is used to refer to one’s freedom to declare having no religion or being an atheist, or other convictions that are not included in the definition of religion.

Meanwhile, the term “belief” is used to identify a conviction that is not included in the religion norms, such as atheism, agnosticism and rationalism. Therefore, “belief” has to be interpreted as having a close relationship with “religion”. It does not refer to political, science, or social convictions. The term “belief” is also in union with the Universal Declaration of Human Rights to protect one’s rights to declare having no religion or being atheistic.<sup>5</sup>

For the sake of this Guidebook, belief is defined as: *“Something that fills a place in a human’s life that is equal to something that has been given by god or gods of this certain religious belief”*. Another definition mentions belief as *“An interpretation system that consists of personal belief about basic structure, the way something is done (modality), and the function of the world, yet a belief is not a*

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<sup>4</sup> Abdelfattah Amor, Special Rapporteur on Freedom of Religion and Belief, started using this last term in reports ever since he was appointed in 1987 in U.N. Doc. E/CN.4/58 (1999). Natan Lerner, “The Nature and Minimum Standard of Freedom of Religion and Belief”, *Brigham Young University Law Review*, LERN-FIN.DOC (9/25/2000), 907.

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<sup>5</sup> Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*. (New York: United Nations, 1960), 1.

*scientific system*". As far as perfection is claimed, a belief also covers perception of humanity, life, and morals. Basic ideas such as humanism, atheism, and agnosticism can be categorized as beliefs.

Special Rapporteur on the freedom of religion or belief, Abdelfattah Amor, explicitly mentioned "agnosticism", "free thinking", "atheism" and "rationalism" as examples of "beliefs" that are protected by ICCPR Article 18. He then suggested a change in name (title) of the UN Special Rapporteur, from "Special Rapporteur on Issues of Religious Intolerance" to "Special Rapporteur on Freedom of Religion and Belief" that was accepted by the UN Human Rights Commission in the 2000/33 resolution.

In this respect, the term "belief" and "religion" have to be understood in a broad way. Article 18 of the ICCPR does not merely limit the implementation of traditional religions or religions and beliefs that have institutional characteristics or similar practices within the traditional religions. Therefore, the Human Rights Committee does not differentiate between religions or beliefs that have been long or newly formed, or religions or beliefs held by minorities.<sup>6</sup>

In many countries around the world, the members of non-traditional religious movements or so-called new religions are often objects of suspicion, either at the administrative or social levels, and some have experienced quite serious limitations on their freedom of religion and belief. The Special Rapporteur on the Freedom of Religion or Belief attests that the terms "religion" and "belief" should be defined in a broad sense and the protection of human rights should not be limited to the members of traditional religions or

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<sup>6</sup> Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, Forty-eighth session, 1993, U.N. Doc. 30/07/1993 CCPR/C/21/Rev.1/Add.4, paragraph 2

religions/beliefs that adhere to analogue practices. The substance of a religion or a belief should be defined by its followers, while their freedom to manifest their religion or belief may only be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.<sup>7</sup>

## 2. What is Freedom of Religion and Belief?

Freedom of religion can be connected with two elements. They are represented by the freedom to make "a choice" and the freedom from "restraint" or "shackles". This forms a free attitude with "no coercion which would impair one's freedom to have or to adopt a religion or belief of choice".

If someone is not allowed to choose something, he will not be free. The more a person is allowed to choose more than one choice, the more freedom will be felt, and the more choices to be chosen, the wider the freedom is. Therefore, if someone is limited to one religion, he/she will not be free, and the degree of one's freedom increases with the number of religions or beliefs that can be adhered to. In this case, the freedom of religion also encompasses one's freedom to convert from one religion to another religion.<sup>8</sup>

Under international law, freedom of religion or belief is categorized into two main components. They are:

- a) The freedom to adopt or not adopt a religion or a belief based on one's choice (including the right to

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<sup>7</sup> U.N. Office of the High Commissioner for Human Rights (OHCHR), *Interim report of the Special Rapporteur on freedom of religion or belief*, U.N. Doc. A/64/159 (July 17, 2009) (delivered at 63th session, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms), Paragraph 29 – 31.

<sup>8</sup> Arvind Sharma, *Problematizing Religious Freedom*, (London & New York: Springer Dordrecht Heidelberg, 2011), 74.

convert). This component is often called *forum internum*.

- b) The freedom to manifest one's religion or conviction, either individually or in community with others and in public or private, through observance and practice, observance, charity activities or religious teaching. This component is often identified as *forum externum* or religious manifestation.

### 3. Scope of Freedom of Religion or Belief

Protection of freedom of religion and belief includes protection of rights, either individually or in community, in public or private, observance, charity, or teaching in many kinds of activities. Freedom to adopt or change a religion or belief is only centered in the area of individual conviction or conscience. Therefore, any intervention from outside is prohibited.<sup>9</sup>

**Worship** extends to ritual and ceremonial acts giving direct expression to belief, the application of ways and ritual objects, the display of symbols, and the use of ritual formulae, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group.

**The practice and teaching** of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to

prepare and distribute religious texts or publications.<sup>10</sup>

As a part of universal human rights, the rights to freedom of thought, conscience, and religion should also be defined in accordance to the UDHR and other provisions under it. Therefore, the State may not grant the right either to an individual or to a certain community. On the contrary, the State has to respect everyone's right to have a religion or belief as something that is absolute, that cannot be derogated, because all people have the same status and rights under international human rights, based on their dignity.

#### What religions or beliefs are included in the Freedom of Religion or Belief?

The starting point to determine the application of freedom of religion or belief should come from the knowledge of each person, all people, about their religions and beliefs that make the various perceptions and understanding exist. Therefore, the concept of international human rights protects every one, either with a belief in theism, non-theism, or atheism, or the right to not to believe in any religion or belief whatsoever.

The Special Rapporteur on freedom of religion or belief, Arcot Krishnaswami, mentioned that the term "religion or belief" that is known in the international human rights standard also includes all theism, agnotism, free thought, atheism, and rationalism. The broad meaning towards religion or belief is also used by the Special Rapporteur in categorizing religion or belief that reflects respect to peoples's position as rights holders based on their dignity as free and liberated humans.

<sup>9</sup> Arcot Krishnaswami, *Study of Discrimination*, 16.

<sup>10</sup> Human Rights Committee, *General Comment No. 22*, paragraph 4.

### Box 2.1 The Coverage of Rights and Recognition of Religion by the State

The Special Rapporteur on the Freedom of Religion or Belief has wistfully recorded that some States seem to still limit the freedom of religion or belief by registering certain religions only.

For example, in some States, only monotheistic religions are permitted to fully enjoy the freedom of religion. Some States use the concept such as “traditional religions”, “patriotic religious associations”, “known religions” as the starting point that places new communities or religious groups that are not well-known outside of full and equal legal protection with regards to the freedom of religion of belief, sometimes even leading to their discrimination.

In some States, the pleasure of the freedom of religion and belief is only limited to orthodox manifestations of religion or belief, while those who are “outside of this religion” (heterodox) are not accommodated. Several States also distinguish between “religion” and “sects” to count out minority members from the protection of religious freedom.

The Special Rapporteur on the Freedom of Religion or Belief also regrets the fact that there are still some States that see an individual’s affiliation with certain religions as a foundation on which to grant legal documents, such as identity cards, passports, and birth and marriage certificates. Consequently, some citizens who are not affiliated with these beliefs do not receive these documents. Having said this, some court decisions in some States have brought this discriminative policy to an end.<sup>1</sup>

Freedom of religion and belief also includes people as religious followers or traditional and non-traditional followers, members of groups (big or small), minority groups and minorities within minorities, people who convert and re-convert to their previous religion or belief, people who dissent, or voice other critical views, including female groups that are often overlooked by many religious traditions in the world.<sup>11</sup>

#### 4. Misperceptions about Freedom of Religion and Belief

Freedom of religion has been recognized as an international standard. However, recently, the concept has been made obscure and sets aside the universal principles of freedom and equality. According to Heiner Bielefeldt, this is evident through various signs such as fighting against religious defamation, the State’s urging of religious harmony, or in the form of promoting a secular state ideology.

Misperceptions are also seen in State efforts to guarantee the freedom of religion only to certain religious groups and set aside other religious groups. This is against universal principles. An authoritative regime leads to policies to fight against religion defamation, protect long standing religious identities, or remove the public realm from religious symbols, which is based on the interpretation of the State itself, eventually leading to a view that deviates from human rights principles. And so the principle of State neutrality or secular politics by the State can also violate religious freedom.

Therefore, as guarantor of the right to freedom of religion or belief, the State is supposed to actively protect and advance the freedom of religion or belief. However at the same time, it should also practice respecting the freedom of every conviction and belief that any one individual holds.<sup>12</sup>

<sup>11</sup> U.N. Office of the High Commissioner for Human Rights [OHCHR], *Report of the Special Rapporteur on freedom of religion or belief*, Heiner Bielefeldt, A/HRC/19/60, 22 December 2011, paragraph 30 – 31.

<sup>12</sup> Heiner Bielefeldt, “Misperception of Freedom of Religion and Belief”, *Human Rights Quarterly*, Volume 35, Number 1, (February 2013): 34.

## D. State Obligation on Freedom of Religion and Belief

There are three obligations in international human rights laws that should be implemented by States, i.e. the obligation to protect, respect and fulfill human rights. All three are obligations of the State for the sake of realizing the full protection and fulfillment of human rights for every individual. The Vienna Declaration and Programme of Action confirm these obligations:

*“There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favorable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights”. (Para. 13)*

Particularly in the context of freedom of religion and belief, these obligations are embedded in the State. The State is not only obliged to respect religious freedom, but also has to actively protect the freedom from interference of third parties. The State is also obligated to promote an atmosphere of tolerance and respect for religious diversity, including in this case to make efforts to encourage inter-religious and cultural dialogue to improve social stability, appreciate diversity, encourage inter-community respect, whether at a global, regional, national or local level.<sup>13</sup>

The UN Commission on Human Rights (presently the Human Rights Council) urges the State to ensure that constitutional and legislative systems provide adequate

and effective guarantees of freedom of thought, conscience, religion and belief, to all persons, without discrimination, as well as to restrain from violating such rights; including to guarantee the compensation for the violated victims and to put in force the law upon the perpetrators, either State or non-State actors.

The Special Rapporteur on Freedom of Religion or Belief also encourages State parties to establish an impartial independent institution which is capable of receiving complaints and facilitating reconciliation regarding violations of freedom of religion and belief. This agency must be independent and autonomous from the Government, so it can work in accordance with the principles of international human rights, including when it strives to reconcile the religious groups or beliefs in dispute.

### Obligation to Respect

This obligation refers to the duty of the State not to intervene in the implementation of human rights; such as the right to life, the right to personal freedom or the right to privacy. Some of the keywords in this obligation are: not committing actions that undermine the integrity or liberty of a person; not interfering or intervening in an individual's freedom; and the obligation to create an appropriate environment.

In the perspective of freedom of religion and belief, responsibility of the State is manifested in its efforts to restrain from interfering in the freedom of any individual to profess a particular belief or religion freely, from imposing a particular teaching, and to respect the freedom of every person to adopt, change and renounce religion. It is not only at the *internum* level, State obligation to respect freedom of religion should also be

<sup>13</sup> U.N. Office of the High Commissioner for Human Rights (OHCHR), *Interim report of the Special Rapporteur on freedom of religion or belief*, Bielefeldt, Heiner, U.N. Doc A/66/156 (July 18, 2011), (delivered at 66<sup>th</sup> session, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms), paragraph 38.

implemented on a person's religious manifestations in *forum externum*, such as respect of the right to worship, to establish a house of worship or consecrated site, and to organize religious services.

### **Obligation to Protect**

The obligation to protect human rights is emphasized in measures taken by the State to confront human rights violations, whether committed by State or non-State actors. In detail, this obligation involves: taking measures to prohibit the violation of human rights; eliminating factors that reduce, obliterate or deprive the enjoyment of rights; adopting active procedures to fulfill human rights; as well as preventing human rights violations committed by third parties.

As regards religious freedom, this right manifests itself on the protection for every person not to be disturbed, reduced or deprived from his right to freedom of religion or belief, whether by State actors or non-State actors. This obligation also requires the State to prevent violations of this right and resolve any violations that occur. Thus, the State must guarantee that freedom of religion and belief, in the *internum* or *externum* forums, is not to be broken by a third party; for example the imposition of joining or leaving of particular religion and actions of blocking religious group from establishing houses of worship.

### **Obligation to Fulfill**

The obligation to fulfill human rights emphasizes on the positive efforts of the State through legislative, judicial and administrative mechanisms to ensure the implementation of human rights at the national level in a more concrete manner. These obligations include: facilitating and promoting human rights, i.e. by creating a

condition of full enjoyment of human rights; and providing facility to enjoy the right when an individual is unable to achieve it.

Within freedom of religion or belief, this obligation is manifested in efforts of the State to create conditions for the enjoyment of the right to freedom of religion and belief for every individual, through legislative, administrative and judicial measures. Moreover, the State must also promote and encourage the realization of adequate conditions for communities to enjoy this right, such as organizing inter religious dialogue, fostering attitudes of tolerance and mutual respect, providing advanced education that is in accordance with the principles of freedom of religion, as well as facilitating religious groups to manifest their teachings in practice; including the obligation of the State to fulfill the right of every person to obtain religious education in schools according to their chosen religion or belief.

### **Violations of Human Rights**

In this context, violation of human rights is an act by the State, whether active or passive, which causes these obligations to be unfulfilled. This kind of violation against human rights is an exclusively different offense in comparison with criminal offences/crimes. The infringement of human rights is every breach or crime committed by the State apparatus (state actor) through acts of abuse of power – by commission or by omission – which is the State's failure to fulfill its obligations and responsibilities under international human rights laws.

Infringement occurs when legal products, policies or practices adopted by the State are deliberately violated, ignored or fail to meet the standard of Human Rights in a normative manner.

**Box 2.2 Elimination of Discrimination and Intolerance**

Specifically in the struggle to eliminate discrimination and intolerance based on religion/belief, the U.N. Human Rights Commission Resolution Number 2005/40 affirms the obligation of the State to perform a number of actions, i.e.:

- (a) to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction;
- (b) to provide legislative or executive policy to eliminate discrimination and to achieve equality among individuals;
- (c) to exert the utmost efforts to ensure respect for and the protection of religious places, sites, shrines and religious expressions as well as distinctive measures toward vulnerable groups;
- (d) to review registration practices (or religion or belief) in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others, in public;
- (e) to ensure the right of all persons to worship or assemble (in activity) in connection with a religion or belief and to establish and maintain religious places, as well as the right of all persons to write, issue and disseminate relevant publications;
- (f) to ensure the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions;
- (g) to ensure that no one within the jurisdiction of a State is deprived of the right to life, liberty, or security of person because of his religion or belief; that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice to all perpetrators of violations of these rights in a fair, independent and impartial process;
- (h) to ensure that no one is discriminated on the basis of religion or belief relating to access to public services, such as education, employment, health care, humanitarian aid or social benefits;
- (i) to ensure that no official documents are withheld from the individual (ID card, passport, birth certificate, and other documents) on the grounds of religion or beliefs, as well as to assure that everyone has the right to refrain from disclosing information concerning one's religious affiliation on such documents;
- (j) to ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided.<sup>1</sup>
- (k) The institutions of executive, administrative and political leaders must develop a policy that based on Human Rights and communication strategy to raise awareness and educate public with regard to the diversity of religions, so that they can accept the existence of other religion or belief.

### Other Measures

Against the incitement of hatred, the State is required to find the most effective way to protect every individual from incitement and provocation of hatred and violence by other parties. At the very least, 4 things must be conducted by the State to combat the incitement of hate speech, namely:

- (1) The prohibition of hate speech through legislation policy.
- (2) Independent and impartial judicial mechanism that examines and resolves cases of incitement of hatred or hate speech.
- (3) Administrative policies at the internal level of Government institutions or law enforcement apparatuses.
- (4) Community awareness about the importance of tolerance and respect among followers of religions/beliefs.<sup>14</sup>

With regard to preventive approaches, the Special Rapporteur would like to emphasize that members of religious minorities need to have their voices heard by being given adequate access to decision makers and State authorities. The State should also eliminate the cause of irrational fears about some religious groups and prevent those fears being exploited for political purposes, as well as to assure participation of minorities in political and economic fields.

For the children of minority groups of religion/belief, the State must specifically ensure equal opportunities and equal access to education in order to prevent adverse economic and social consequences for new generations. In this regard, the State needs to envisage empowering members of those religious communities that have suffered on

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<sup>14</sup>ILCR, *Menyebarkan Kebencian atas Dasar Agama adalah Kejahatan* (Dissemination of Hate Speech on the Basis of Religion is a Crime), (Jakarta: ILRC, 2012), p. 13.

account of historic discriminatory practices, by continually monitoring the progress of such affirmative actions.

It is important for educational institutions to ensure that students receive good quality religious education that promotes religious tolerance, mutual understanding and respect in accordance with the principle of religious freedom. This, among other things, can be achieved by teacher-training programmes that may help to ensure that teachers have a non-biased attitude to different religious or belief communities.

The State is also obliged to prevent the misuse of religion/belief and traditional practices which contravene human rights principles and the UN Charter, such as female genital mutilation, violence and discrimination against women on the grounds or in the name of religion or belief or in accordance with cultural and traditional practices (UN General Assembly resolution 63/181).<sup>15</sup>

In order to foster a climate of religious tolerance, it would be advisable for States to devise proactive strategies. Inter alia:

- (a) To provide inter-religious and intra-religious dialogue, without using any coercion or violence, by ensuring the space and access for all religions/beliefs, therefore generating an open and unprejudiced interaction of understandings.
- (b) To make sure that political leadership takes a clear and human rights-based approach on the question of religious tolerance and communicates its position both throughout party cadres and to the public at large.

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<sup>15</sup> U.N. Office of the High Commissioner for Human Rights [OHCHR], *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*, U.N. Doc. A/HRC/13/40 (21 Dec. 21, 2009) (delivered at the 13th Session Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development of the U.N. General Assembly), Paragraph 52 - 58

- (c) In addition to legislation, the State must also have primary tools to counter religious intolerance, such as dialogue and good quality inclusive education and the State should refrain from interfering with the freedom of thought, conscience and religion of individuals.
- (d) To enforce the rule of law and the functioning of democratic institutions that encourages this strategy.<sup>16</sup>

### Effective Remedies for Victims of FoRB Violations

In the concept of human rights, justice for victims of religious freedom violations is set out in the “*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*” introduced in the General Assembly Resolution No. 40/34. The declaration states that victims are:

*“Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”*

*“The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”<sup>17</sup>*

This declaration represents a general framework on justice, and as such includes

violations of religious freedom. In this matter, each victim must be treated compassionately and with respect for their dignity, justice mechanisms must be employed and they should be compensated for the losses they have experienced. This right also includes the right to knowledge of, and access to, justice and restitution.

The Declaration mentions several rights entitled to victims, including the:

- Right to be respected and recognized.
- Right to access free and competent legal aid.
- Right to information, to what extent his/her case has improved.
- Right to be present and contribute his or her views to the decision makers.
- Right to legal consultancy.
- Right to protection of physical and personal integrity.
- Right to compensation from the perpetrators or from the state.<sup>18</sup>

In regards to compensation or restitution, the declaration states that the perpetrator or the third party responsible for the violation must fairly compensate the victim, their families, or dependants. This also includes return of possessions or payment for damage sustained, payment of fees, provision of services or restoration of rights.<sup>19</sup>

Should the perpetrator or third party fail to provide compensation, the state must provide financial compensation to: 1) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; 2) The family, in particular dependants of persons who have died or become

<sup>16</sup> U.N. Office of the High Commissioner for Human Rights [OHCHR], *Interim report of the Special Rapporteur on freedom of religion or belief*, Asma Jahangir, U.N. Doc. A/64/159 (July 17, 2009) Paragraph 73

<sup>17</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Paragraph 1 and 2.

<sup>18</sup> Khairul Fahmi, et al., *A Policy Paper: Remedy for the Victim's Right of Freedom of Religion/belief Violation*, (Jakarta: Pustaka Masyarakat Setara, 2013), 38.

<sup>19</sup> Paragraph 8 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

physically or mentally incapacitated as a result of such victimization.<sup>20</sup>

The declaration also emphasizes the assistance that should be given to victims, whether it be material, medical, psychological and social, from the government or other voluntary means. Victims should be informed of the availability of these services, and police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims.

Resolution No. 35/2005 on the *Basic Principles and Guidelines on The Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* provides more detail about the remedies, which included 4 important aspects: 1) Restitution; 2) Compensation; 3) Rehabilitation; 4) Satisfaction and guarantees of non- repetition.<sup>21</sup>

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<sup>20</sup> Paragraph 8 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

<sup>21</sup> Khairul Fahmi, et.al., *A Policy Paper: Remedy for the Victim's Right of Freedom of Religion/belief Violation*, 39.

**Box 2.3**  
**Effective Remedies for Victims**

**Restitution** should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

**Compensation** should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and *psychological and social services*;

**Rehabilitation** should include medical and psychological care as well as legal and social services;

**Satisfaction** should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

**Guarantees of non-repetition** should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

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## Chapter Three

# CONDITIONS OF FREEDOM OF RELIGION OR BELIEF IN ASEAN: OPPORTUNITIES AND CHALLENGES

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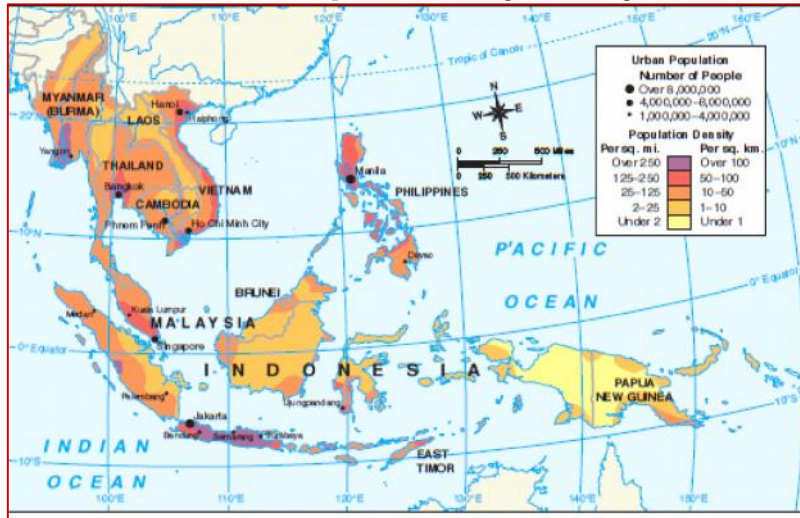
## A. ASEAN

The Association of Southeast Asian Nations (ASEAN) was established August 8, 1967 in Bangkok, Thailand by five countries: Indonesia, Malaysia, Philippines, Singapore and Thailand.<sup>22</sup> Brunei Darussalam joined on January 8, 1984, Vietnam joined on July 28, 1995, Lao PDR and Myanmar (Burma) joined on July 23, 1997 and Cambodia joined on April 30, 1999.<sup>23</sup> Since its formation in 1967, ASEAN has lived through a major shift in the regional strategic environment of Southeast Asia.<sup>24</sup>

Its establishment was marked with the signing of the ASEAN Declaration 1967 also known as the Bangkok Declaration. One of the points noted the seven intents and purposes of ASEAN, namely accelerating economic growth, social progress and cultural development, including enhancing

regional peace and stability by way of respect for justice and the rule of law in the relationships between countries in the region, including adherence to the principles of the Charter of the United Nations. “*ASEAN has always placed itself within the framework of the United Nations and its Charter, invoking its practices and precedents, measuring itself against its norms*”.<sup>25</sup>

In building relationships and cooperation among countries, through the Treaty of Amity and Cooperation in Southeast Asia (TAC) 1976 ASEAN members outlined following principles: First, mutual respect for the independence, sovereignty, territorial integrity of all nations; Second, the right of every state to lead its national existence free from external interference, subversion and coercion; Third, non-interference in the internal affairs of one another; Fourth, settlement of differences and disputes by peaceful means; and Fifth, renunciation of the threat of use of force; Sixth, effective cooperation among themselves.<sup>26</sup> The first ASEAN summit in Bali in 1976 confirmed an emerging consensus to keep ASEAN from becoming a military alliance by limiting defense cooperation among members to a bilateral level outside of the aegis of



<sup>22</sup> ASEAN Secretariat, “Overview,” <http://www.aseansec.org> (accessed on February 25, 2014). See also on the same webpage, “The ASEAN Declaration”, (Bangkok Declaration), Bangkok, 8 August 1967

<sup>23</sup> International Council on Social Welfare, Civil Society and the Association of Southeast Asia Nations (ASEAN), (Bangkok: International Council on Social Welfare, 2011), 6

<sup>24</sup> Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, (London and New Work: Routledge, 2001), 4.

<sup>25</sup> Rodolfo C. Severino, *ASEAN Today and Tomorrow: Selected Speeches of Rodolfo C. Severino, Jr.*, (Jakarta: ASEAN Secretariat, 2002), 56

<sup>26</sup> “Treaty of Amity and Cooperation in Southeast Asia” Article 2 (Bali, 24 February 1976). Asean Secretariat, *Treaty of Amity and Cooperation in Southeast Asia*, (Jakarta, ASEAN Secretariat, 2005), accessible at <http://www.asean.org/archive/TAC-KnowledgeKit.pdf>

ASEAN.<sup>27</sup>

In a further development, the member countries signed the ASEAN Charter at the 13<sup>th</sup> ASEAN Summit in November 27, 2007. The Charter is the main document that provides the legal status and institutional framework of ASEAN. It also contains the norms, roles, values, and the formulation of clear purposes for the ASEAN organization. The ASEAN Charter will play a very significant role in the development of ASEAN Community.<sup>28</sup> The Charter is also a form of accountability of mechanisms and legal compliance of Member States. After each country ratified the Charter, it went into effect on December 15, 2008.

The Charter was adopted by the ten heads of state and government of the ASEAN members at the ASEAN Summit in Singapore coinciding with the 40 year anniversary of ASEAN being a legal force.<sup>29</sup> The Charter is legally binding; moreover it is also becoming a personally binding document within member countries.<sup>30</sup>

The preamble to the Charter makes an assertion in regards to the enforcement of human rights values, to adhere “the principles of democracy, rule of law and good governance, respect for and protection of human rights and fundamental freedoms”.<sup>31</sup>

Likewise one of the purposes of the establishment of ASEAN, among the fifteen, stated, includes respect for human rights values and fundamental freedoms; “*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 the rights and obligations of the Member States of ASEAN.*”<sup>32</sup>

In the context of human rights and fundamental freedoms, there are at least four goals oriented towards protection, reverence (respect), fulfillment and promotion of human rights. First, is to ensure that people in ASEAN member countries live in peace in a world that is just, democratic and harmonious; Second, strengthen democracy, promoting good governance and law enforcement (rule of law), and promote and protect human rights and fundamental freedoms by focusing on the rights and responsibilities of member countries of ASEAN; Third, improve the lives of the people of ASEAN by providing open access to resource development and justice, and; Fourth, promote a community oriented ASEAN in which all sectors of society are encouraged to participate in and benefit from the process of ASEAN integration and community development.<sup>33</sup>

In achieving the objectives of ASEAN, member states also tied the principle of respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice.

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<sup>27</sup> Amitav Acharya, *Constructing a Security Community in Southeast Asia*, 47

<sup>28</sup> Kazushi Shimizu, “The ASEAN Charter and the ASEAN Economic Community” in *Economic Journal of Hokkaido University*, Vol. 40 (2011), 73.

<sup>29</sup> See ASEAN Charter, on <http://www.aseansec.org> (accessed February 25, 2014)

<sup>30</sup> Chapter II Article 3 ASEAN Charter: ASEAN, as an inter-governmental organization, is hereby conferred legal personality.

<sup>31</sup> Preamble of the ASEAN Charter

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<sup>32</sup> ASEAN Charter Article I (7)

<sup>33</sup> See, ASEAN Charter Article I (4), (7), (II), and (13)

## B. Religion and Diversity in ASEAN Countries

With a population of about 608 million (2010),<sup>34</sup> Southeast Asia is known as a region with diversity of ethnicities, religions, beliefs, and traditions. Southeast Asians live in two environments; land and maritime. The land area (also known as Indochina-consists of Cambodia, Laos, Myanmar, Thailand, and Vietnam), and the rest are Brunei, Malaysia, Indonesia, Philippines, and Singapore known as a maritime region.

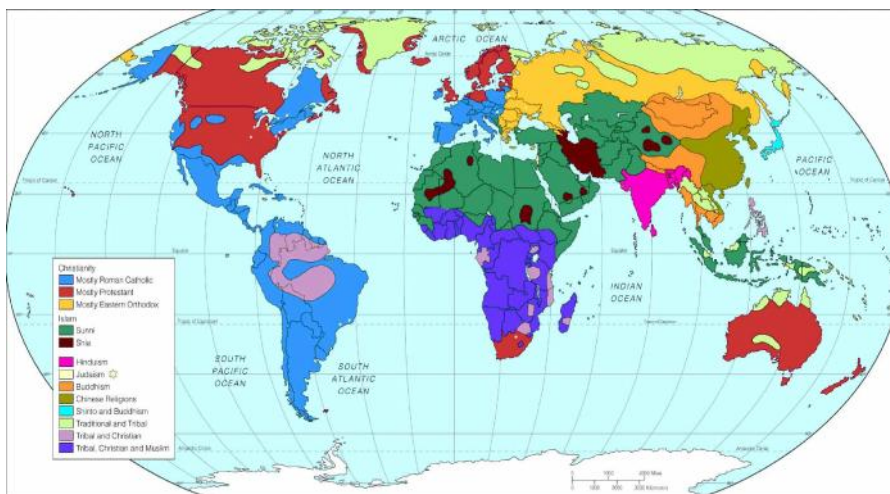
‘Southeast Asia has an amazing diversity of humankind. Most of the major religions of the world have strong roots in some *part* of the region. Hundreds of languages flourish. Some aboriginal tongues are thousands of years old and are spoken by small numbers of people. Others are spoken by millions. ...This region is

one of considerable cultural diversity’.<sup>35</sup>

The ethnic mix in ASEAN Countries is great. There are Malay, Chinese, Khmer, Burmese, and Vietnamese, as well as Thai, Hmong, Indian, Madurese, Javanese, Sundanese, Lao Loum, Lao Theung, and many other peoples. Some cultures are thousands of years old and have remained relatively unchanged through time. Others have readily mixed with other peoples and cultures to create new ethnic blends.<sup>36</sup>

In terms of religion, Islam is the most widely embraced in the Southeast Asian region, by approximately 36.8% of the total population of Southeast Asia. Most are found in Indonesia, Malaysia, and Brunei Darussalam. Buddhism (26.8%), the second largest religion in Southeast Asia is largely embraced in Thailand, Cambodia, Laos, Myanmar, Vietnam and Singapore.

Map of World Religions<sup>1</sup>



Christians (22,1%) in the Philippines, eastern Indonesia, and east Malaysia. In the Philippines, the majority of the populations are professed Roman Catholics.

*(More detail about the religious population, see following Table 3.1).*

<sup>34</sup> The Association of Religion Data Archives (ARDA), “South-Eastern Asia” [http://www.thearda.com/internationalData/regions/profiles/Region\\_16\\_1.asp#S\\_1](http://www.thearda.com/internationalData/regions/profiles/Region_16_1.asp#S_1) (accessed on February 25, 2014).

<sup>35</sup> Douglas A. Phillips, *Modern World Cultures: Southeast Asia*, 56

<sup>36</sup> Douglas A. Phillips, *Modern World Cultures: Southeast Asia*, 55

**Table 3.1 Demography of ASEAN Countries<sup>37</sup>**

Country	Population	Religion	Language	Ethnic Majority	Year	Resource
Brunei	423,000	Islam (82%). Islam Shafi'i sect (official); Buddhism; Christianity, Local beliefs	Malay, English		2011	Official estimate (pdf)
				Malay		Brunei Statistical Office
Cambodia	13,396,000	Buddha (96%); Buddhism; Islam; Christianity; Animism			2008	2008 census (pdf)
			Khmer	Khmers		National Institute of Statistics
Indonesia	237,641,000	Islam (87 %); Protestantism; Roman Catholicism; Hinduism; Buddhism	Indonesian		2010	2010 Census
				Javanese		Board of National Statistic, Indonesia
Lao PDR	6,256,000	Buddhism (65%); animism (32.9%)	Lao		2010	Official estimate
				Lao		Lao Statistics Bureau
Malaysia	28,835,000	Islam (61,3%) (official); Hinduism, Buddhism; Taoism; Confucianism; Christianity; Sikhism; animism	Malay, English, Chinese, Tamil	Malay	2010	Population clock
						Department of Statistics
Myanmar (Burma)	47,963,000	Buddhism (90%), Christianity; Islam; Hinduism, Animism		Bamars/Burmans	2010	UN estimate
			Myanmar			Central Statistical Organization
Philippines	92,340,000	Roman Catholic 83%; Protestant; Muslim; Buddhist; animist; others 3%			2010	2010 census
			Filipino, English, Spanish			National Statistics Office
Singapore	5,184,000	Buddhism (42.5%), Islam Christianity; Taoism/Chinese traditional beliefs; Hinduism; Sikhism;	English, Malay, Mandarin, Tamil	Chinese	2011	Official estimate Statistics Singapore
Thailand	65,500,000	Buddhism (94%); Islam; Christianity; Hinduism;	Thai	Thai (Tai)	2010	2010 census National Statistical Office

<sup>37</sup> <http://www.nationsonline.org/oneworld/population-by-country.htm> (accessed 16 January 2014). Refer to the directory resource of Minority Rights Groups (MRG) for religion data <http://www.minorityrights.org/directory> (accessed on January 16, 2014).

		traditional belief systems				
<b>Vietnam</b>	87,840,000	Buddhist (9.3%); Catholic; Hoa Hao; Cao Dai; Protestant; Muslim	Vietnamese	Kinh	2011	Official estimate GSO

Table 3.2 Religious Adherents in Southeast Asia <sup>38</sup>

RELIGIOUS ADHERENTS	SOUTHEAST ASIA
Baha'i	0.2%
Buddhist	26.8%
Chinese Universalist	1.9%
Christian	22.1%
Confucianist	0.2%
Ethnoreligionist	4.6%
Hindu	1.2%
Jain	<0.1%
Jewish	<0.1%
Muslim	36.8%
Shintoist	<0.1%
Sikh	<0.1%
Spiritist	0.0%
Taoist	<0.1%
Zoroastrian	<0.1%
Neoreligionists	2.3%
Atheist	1.1%
Agnostic	2.9%
Baha'i	0.2%
Buddhist	26.8%
Chinese Universalist	1.9%
Confucianist	0.2%
Ethnoreligionist	4.6%
Hindu	1.2%
Jain	<0.1%
Jewish	<0.1%
Muslim	36.8%
Shintoist	<0.1%
Sikh	<0.1%
Spiritist	0.0%
Taoist	<0.1%
Zoroastrian	<0.1%
Neoreligionists	2.3%
Atheist	1.1%
Agnostic	2.9%

<sup>38</sup> The Association of Religion Data Archives (ARDA), "Religious Adherents, 2010 (World Christian Database)," [http://www.thearda.com/internationalData/regions/profiles/Region\\_16\\_2.asp](http://www.thearda.com/internationalData/regions/profiles/Region_16_2.asp) (accessed on February 25, 2014)

Many of the religions in ASEAN Countries (including Buddhism, Hinduism, Islam, Confucianism, and Christianity) have roots that can be traced back thousands of years. Some religions, Hinduism, Confucianism, and Buddhism, for instance, have roots in South Asia; Christianity and Islam came from the Middle East, spread either by Europeans or Arab traders and missionaries. Some religions or beliefs are practiced only by a small number of people in limited areas, such as Sikhs are in Malaysia and Singapore (but there is little evidence of them elsewhere).

In the other hand, local religions abound in the region and include a wide variety of beliefs. One of these is animism, which is strong in Lao PDR, Indonesia and other countries. Animism is often tied closely to Buddhism in countries such as Laos, Vietnam, Burma, Thailand, and Cambodia, where ancestors are frequently worshipped. At the same time, many Muslims in Indonesia also incorporate aspects of animism, as do Christians and Hindus in parts of the aspects of animism, as do Christians and Hindus in parts of the region, especially in the rural area. Each of these religions has its own beliefs and story about how it arrived in Southeast Asia.<sup>39</sup>

There are also many minority groups in the ASEAN Countries. In this context, using Will Kymlicka concept of minority, the minority groups in Southeast Asia can be grouped into four categories: ethnic minorities, languages minorities, religious minorities, and indigenous peoples. Ethnic, language, and religious minorities assume the umbrella term of ethnic minorities. This is distinguished from indigenous people.

Indigenous peoples can be interpreted as indigenous or native to a particular region. Their origins differ from the general population, and they share certain relationships. Minority groups in a particular area usually trace their origins

back hundreds of years, and share a common identity with other groups, or at least another country.

In the Philippines, for example, Muslim Mindanao Moros are considered the ethnic minority with strong ties to the religious and cultural communities in the neighboring countries of Malaysia and Indonesia. While other groups such as the Mindanao Lumad are collectively called the Igorots or indigenous peoples.

In brief, minorities can be interpreted as ethnic, religious, national, language or traditional groups that are generally smaller in number compared to the majority populations in any one region.

Most experts split minorities into three groups. First, new social movements including movements by homosexuals (gays and lesbians), the urban poor, the disabled, feminists, sects or cults and "new" religions; second, national minorities consisting of tribes within a nation that once stood alone and had their own government, but have since become a nation-state; third, ethnic groups including immigrants who left the community of their native countries and have joined other communities, such as the ethnic Chinese and Arabs in Indonesia.<sup>40</sup>

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<sup>39</sup> Douglas A. Phillips, *Modern World Cultures: Southeast Asia*, 59

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<sup>40</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority*, (Oxford: Clarendon Press, 1996), 10-11

**Table 3.3 Ethnic minorities and indigenous peoples in Southeast Asia** <sup>41</sup>

Country	Ethnic minorities/indigenous peoples	Total
<b>Brunei</b>	Chinese	47,000
	Indigenous peoples (mainly Marut, Kedayana, and Dusun)	19,000
<b>Myanmar</b>	Karen	4,000,000
	Shan	2-4,000,000
	Mon	1-4,000,000
	Buddhist Arkanese (Rakhine)	2,000,000
	Muslim Arakanese (Rohingyas)	1,000,000
	Zo (Chin)	2-3,000,000
	Kachin	1-2,000,000
	Palaung-Wa	1-2,000,000
	Other minorities (including Akha, Danu, Kokang, Pao and Naga)	1-1,500,000
Chinese, Tamils and other minorities of Indian origin	1,000,000	
<b>Cambodia</b>	Cham	200,000
	Chinese	200,000
	Khmer Loeu (hill tribes)	75,000
	Vietnamese	100,000
<b>Indonesia</b>	Chinese	3,000,000
	Sundanese	29,000,000
	Madurese	9,200,000
	Minang	4,700,000
	Balinese	3,300,000
	Buginese	4,400,000
	Banjarese	2,200,000
	West Irians/West Papuans	1.100.000
	South Moluccans	1.000.000
	Batak	4.100.000
	Other linguistic minorities	34.000.000
	'National' minorities (including Gayo and Alas of Northern Sumatra, Minahasans of Northern Sulawesi, and Dayaks of Kalimantan)	2.800.000,-
<b>Laos</b>	Phuthai	440,000
	Khamu	389,000
	Hmong	231,168
	Lue	102,760
	Other hill tribes	436,000
	Chinese and Vietnamese	225,000
<b>Malaysia</b>	Chinese	5,300,000
	Indians/South Asians	1,600,000
	Iban (Sea Dayaks)	500,000
	Malaysia Bidayuh (Land Dayaks)	140,000
	Melanau	96,000

<sup>41</sup> Gerard Clarke, "From ethnocide to Ethnodevelopment? Ethnic minorities and indigenous Peoples in South East Asia," *Third World Quarterly*, Vol. 22, No. 3 (June 2001), 417-418

	Orang Asli	80,000
<b>Philippines</b>	Moro Muslims	3,500,000
	Filipinos Lumad	1,500,000
	Igorot	1,000,000
	Caraballo	460,000
	Negrito	410,000
	Mangyan	120,000
	Palawan	70,000
<b>Singapore</b>	Malays	434,000
	Indians (South Asians)	229,400
<b>Thailand</b>	Karen	402,000
	Hmong	126,000
	Lahu	78,000
	Other hill tribes	184,000
	Malay Muslims	700,000
<b>Vietnam</b>	Chinese	1,100,000
	(Viets) Tay	1,400,000
	Thai/Tai	1,200,000
	Muong	1,000,000
	Kho Me (Khmer)	1,000,000
	Hoa	870,000
	Nung	810,000
	Hmong	670,000
	Mien	570,000
	Gia Rai	280,000
	E De	230,000
	Other hill tribes	1,800,000

## C. Constitution, International Instruments, and Religious Freedom in ASEAN

Freedom of religion and belief has become an important part of the development and establishment of ASEAN. The preamble of the ASEAN Charter affirms the importance of complying with the principles of democracy, rule of law and good governance, respect for and protection of human rights and fundamental freedoms, including in this aspect are about the freedom of religion or belief.

This is reinforced in the Association's aims (Article 1 Charter paragraph (7)), which state that ASEAN aims 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 obligations of the Member States of ASEAN".

To achieve the objectives set out in Article 1 above, the Charter reaffirmed and upheld the basic principles contained in other ASEAN declarations, agreements, conventions, concords, treaties and instruments. Each State is required to be guided by the special principles, one of which is the principle of respect for the different cultures, languages, and religions of the peoples of ASEAN, including the fundamental freedoms, the promotion and protection of human rights, and social justice. These principles are stated in Article 2 (i) and (j):

*"ASEAN and its Member States shall act in accordance with the following principles respecting different cultures, languages, and religions of the peoples of ASEAN, while emphasizing their common values in the spirit of unity in diversity".*

*"Respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice".*

Referring to national Constitutions of ASEAN Countries, in general, ASEAN member states are committed to upholding freedom of religion of belief. This guarantee refers to respect for both forum *externum* and forum *internum*.

The guarantee of protection in AHRD can be categorized into three groups. Firstly, constitutions that provide broad guarantees of human rights; secondly, constitutions which provide a guarantee of human rights with some restrictions; thirdly, constitutions with few guarantees of human rights.<sup>42</sup>

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<sup>42</sup> Further information about the guarantee of national Constitution in ASEAN Countries, see, Alamsyah Djafar, et.al., *Freedom of Religion or Belief in Southeast Asia: Legal Framework, Practices, and International Concerns*, (Jakarta: HRWG, 2012).

**Table 3.4 The Guarantee of the Freedom of Religion in the constitutions of ASEAN member states**

Negara	<i>Forum Internum</i>	<i>Forum Externum</i>	Restrictions
<b>Philippines</b>	Article III.5 <i>“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.”</i>	Article III.5 <i>Idem</i>	-
<b>Indonesia</b>	Article 29 (2) <i>“The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief.”</i>	Article 28E;	Article 28J
<b>Thailand</b>	Section 5; 37 <i>“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.”</i>	Chapter III. Section 37 <i>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.</i> <i>In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religion, a religious sect or creed or observing religious principles or religious precepts or exercising a form of worship in accordance with his or her different belief from that of others.</i>  Chapter V, Part. 4 Section 79 <i>The State shall 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.</i>	Chapter III. Section 37 <i>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.</i>

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<p><b>Myanmar</b></p>	<p>Article 34 <i>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.</i></p>	<p>Article 34 Idem</p> <p>Chapter VIII Article 348</p> <p><i>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.</i></p> <p>Article 348 <i>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</i></p>	<p>Article 34 <i>Idem</i></p> <p>Chapter VIII Article 354</p> <p><i>Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:</i></p> <p><i>(a) to express and publish freely their convictions and opinions;</i> <i>(b) to assemble peacefully without arms and holding procession;</i> <i>(c) to form associations and organizations;</i> <i>(d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.</i></p> <p>Chapter VIII Article 360.</p> <p><i>(a) The freedom of religious right given in Section 34 shall not include any economic, financial, political or other secular activities that may be associated with religious practice.</i> <i>(b) The freedom of religious practice so guaranteed shall not debar the Union from enacting law for the purpose of public welfare and reform.</i></p>
<p><b>Malaysia</b></p>	<p>Article 11.1 <i>Every person has the right to profess and practice his religion and to propagate it."</i></p>	<p>Article 3. (1) <i>Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation.</i></p> <p>Article 8.5b : <i>This Article does not invalidate or prohibit any provisions or practice restricting office or employment connected with the affairs of any religion or of an institution</i></p>	<p>Article 11. 4: <i>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.</i></p> <p>Article 11.5 <i>This Article does not authorize any act contrary to</i></p>

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		<p><i>managed by a group professing any religion, to persons professing that religion;</i></p> <p>Article 11.1 <i>Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.</i></p> <p>Article 11.2 <i>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.</i></p> <p>Article 11.3 <i>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.</i></p> <p>Article 12.2 <i>Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose.</i></p> <p>Article 12.3 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.</p>	<p><i>any general law relating to public order, public health or morality.</i></p>
<b>Brunei Darussalam</b>	<p>Article 3 <i>"[P]rovided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam."</i></p>	-	-
<b>Laos</b>	Article 43	Article 9	Article 9

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	<i>“Lao citizens have the right and freedom to believe or not to believe in religions.”</i>	<i>The State respects and protects all lawful activities of Buddhists and of followers of other religions, [and] mobilizes and encourages Buddhist monks and novices as well as the priests of other religions to participate in activities that are beneficial to the country and people. All acts creating division between religions and classes of people are prohibited.</i>	<i>Idem</i>
<b>Cambodia</b>	Article 43 <i>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.</i>	Article 31 <i>The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.</i>	Article 31 .... <i>The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.</i>  Article 43 <i>Idem</i>
<b>Singapore</b>	Article 15.1; <i>(1) Every person has the right to profess and practice 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.</i>	Article 15.3 <i>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.</i>	Article 12 (3).b <i>This Article does not invalidate or prohibit any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion.</i>  Article 15.4 <i>This Article does not authorize any act contrary to any general law relating to public order, public health or morality.</i>

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<b>Vietnam</b>	Article 70 <i>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.</i>  <i>Public places of religious worship are protected by law.</i>  <i>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.</i>	Article 70 Idem	Article 70 idem
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## D. Ratification of International Instruments

A number of ASEAN countries have already ratified several international human rights instruments. Vietnam was the first ASEAN country to ratify the ICCPR (24 September 1982), followed by the Philippines on October 23, 1986, Cambodia on May 26, 1992, Thailand on October 29, 1996, Indonesia on February 23, 2006 and Laos on September 25, 2009.<sup>43</sup> Thus, four countries have not ratified the ICCPR which became core instrument on protection and promotion of freedom of religion or belief.

The Philippines was also the first country to ratify the ICERD, on June 7, 1974. It was followed by Vietnam on September 24, 1982, Cambodia on May 26, 1992, Thailand on September 5, 1999, Indonesia on February 23, 2006, and Laos on February 13, 2007. Four countries have yet to ratify.<sup>44</sup> The six countries that have ratified the Convention on the Elimination of All Forms of Discrimination are the Philippines on September 15, 1967, Vietnam on June 9, 1982, Cambodia on November 28, 1983, Laos on February 22, 1974, Indonesia on June 25, 1999, and Thailand on January 28, 2003.<sup>45</sup> All of ASEAN Countries have ratified International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Convention on the Rights of the Child (CRC).

Unlike a Declaration, the Convention (under treaty body mechanism) was form of international agreement that was legally binding. State Parties who ratified these conventions were obliged to adhere to their rules, including taking strategic measures to implement the Convention at the national context.<sup>46</sup> If the state does not yet have regulations or its regulations oppose the covenant, they need to be compiled or adjusted. Meanwhile, to ensure the protection and promotion of these rights a number of procedures and monitoring mechanisms have been implemented, and related bodies established.<sup>47</sup>

Thus, ASEAN Countries that have ratified the ICCPR and other covenants are subject to the rules which are legally binding. For further details see following Diagram on international human rights instruments ratified by ASEAN countries.<sup>48</sup>

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<sup>43</sup> American Bar Association Rule of Law Initiative, "Experts' Note on the ASEAN Human Rights Declaration," Washington, May 2012, on <http://www.americanbar.org>. Data on states that have ratified the covenant is available in the "International Covenant on Civil and Political Rights," at <http://treaties.un.org>

<sup>44</sup> "International Covenant on Economic, Social and Cultural Rights," at <http://treaties.un.org>

<sup>45</sup> "International Convention on the Elimination of All Forms of Racial Discrimination," at [www.treaties.un.org](http://www.treaties.un.org)

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<sup>46</sup> More detail about the treaty bodies mechanism will be explained in Chapter Fifth of this Book.

<sup>47</sup> Dadang Juliantara (ed), *Jalan Kemanusiaan Panduan untuk Memperkuat Hak Asasi Manusia* (Guide for Strengthening of Human Rights), (Yogyakarta: Lapera Pustaka Utama: 1999), 113-114

<sup>48</sup> David Cohen, *Rule of Law for Human Rights in the Asean Region: A Base-line Study*; (Depok: Human Right Resource Centre, 2011), 26-27

**Table 3.5 Status of Ratification of the International Instruments by ASEAN Countries (April 2013)<sup>49</sup>**

Instrumen	Brunei	Kamboja	Indonesia	Lao PDR	Malaysia	Myanmar	Filipina	Singapura	Thailand	Viet Nam
ICERD		28 Nov 1983	25 Jun 1999(a)	22 Feb 1974(a)			15 Sep 1967		28 Jan 2003(a)	9 Jun 1982(a)
ICCPR		26 Mei 1992(a)	23 Feb 2006(a)	25 Sep 2009			23 Okt 1986		29 Okt 1996(a)	24 Sep 1982(a)
ICCPR OP-1		27 Sep 2004(s)					22 Ags 1989			
ICCPR OP-2							20 Nov 2007			
ICESCR		26 Mei 1992(a)	23 Feb 2006(a)	13 Feb 2007			7 Jun 1974		5 Sep 1999(a)	24 Sep 1982(a)
ICESCR-OP										
CEDAW	24 Mei 2006(a)	15 Okt 1992(a)	13 Sep 1984	14 Ags 1981	5 Jul 1995(a)	22 Jul 1997(a)	5 Ags 1981	5 Okt 1995(a)	9 Ags 1985(a)	17 Feb 1982
OP CEDAW		13 Okt 2010	28 Feb 2000(s)				12 Nov 2003		14 Jun 2000	
CAT		15 Okt 1992(a)	28 Okt 1998	26 Sep 2012			18 Jun 1986(a)		2 Okt 2007(a)	
OPCAT		30 Mar 2007					17 Apr 2012(a)			
CRC	27 Des 1995(a)	15 Okt 1992(a)	5 Sep 1990	8 Mei 1991(a)	17 Feb 1995(a)	15 Jul 1991(a)	21 Ags 1990	5 Okt 1995(a)	27 Mar 1992(a)	28 Feb 1990
OP-CRC-AC		16 Jul 2004	24 Sep 2012	20 Sep 2006(a)	12 Apr 2012(a)		26 Ags 2003	11 Des 2008	27 Feb 2006(a)	20 Des 2001
OP-CRC-SC	21 Nov 2006(a)	30 Mei 2002	24 Sep 2012	20 Sep 2006(a)	12 Apr 2012(a)	16 Jan 2012(a)	28 Mei 2002		11 Jan 2006(a)	20 Des 2001
OP-CRC-CP									25 Sep 2012	
ICRMW		27 Sep 2004(s)	31 Mei 2012				5 Jul 1995			
CPED			27 Sep 2010(s)	29 Sep 2008(s)					9 Jan 2012(s)	
CRPD	18 Des 2007(s)	20 Des 2012	30 Nov 2011	25 Sep 2009	19 Jul 2010	7 Des 2011(a)	15 Apr 2008	30 Nov 2012(s)	29 Jul 2008	22 Okt 2007(s)
OP-CRPD		1 Okt 2007(s)								
Statuta Roma		11 Apr 2002					30 Ags 2011		2 Okt 2000(s)	

(s) = Signature

(a) = Accession/ratification

<sup>49</sup> Jakarta Legal Aid and ABA ROLI, *Manual Pelatihan Advokasi Hukum Asia Tenggara Memperkuat Sistem Hak Asasi Manusia ASEAN Melalui Advokasi Hukum* (Jakarta: Jakarta Legal Aid and ABA ROLI, 2013), 21

## E. ASEAN Community and Challenges of the Guarantee of Freedom of Religion/Belief

The reality of the diversity that is present and living in ASEAN member countries was an important asset in building nation-states that are stable and democratic. If properly managed and developed, this diversity complements the weaknesses among groups of citizens.

The values that grow out of growing diversity of religions, beliefs and traditions of citizens have the potential to increase the strength of a nation. On the contrary, if diversity is not properly managed and utilized by the State, it can result in horizontal or vertical conflict between groups.

A study conducted by Aurel Croissant and Christoph Trinn (2011) about conflict in Asia and Southeast Asia emphasized the susceptibility for religion and belief to set off conflict in the region. Cultural conflicts involving religious sentiment in the study was the most frequently occurring conflict, compared to interstate conflict.<sup>50</sup>

As mentioned before, historically religious issues have been an important component in the emergence of insecurity or interference with national security, when its religion and religious adherents are not well managed by the state. Ethnicity and religion often have very close ties to long inter-group conflicts in history: the Serbians and Croatians in Yugoslavia, the Sunnis and Shi'ites in Iraq or between Muslims and Christians. Inter-communal violence led to the killing of 21 Coptic in Al-Komesh, Egypt in 2000, and to horrific bloodshed in Gujarat, India in 2002, while sectarian violence broke out in Nigeria when it sought to become host for *Miss*

*World*, in addition to many other cases across the world. All these cases, which are based on religious identity, suggest that religion has the potential to destroy if not managed well.<sup>51</sup>

Severino gave a concern in this context;

*“For all of ASEAN’s progress in pulling Southeast Asia together, centrifugal tendencies remain. These tendencies arise from the great diversity of ASEAN’s membership, diversity in size, levels of development, natural and human resources, histories, cultures, languages, religions, races, economic and social institutions, political systems, and values and traditions. This diversity is certainly greater than that of Europe or Latin America and has, moreover, been increased by ASEAN’s recent enlargement. ASEAN, therefore, must carefully nurture its cohesion. Its institutions and processes must be allowed to evolve slowly. The pace of that evolution cannot be forced.”*<sup>52</sup>

Therefore,

*“...It is important to remember in all this that ASEAN remains a region of great diversity – in size, levels of development, natural and human resources, histories, cultures, languages, religions, races, economic and social institutions, political systems, and values and traditions.”*<sup>53</sup>

<sup>50</sup> Aurel Croissant and Christoph Trinn, “Culture, Identity and Conflict in Asia and Southeast Asia,” *ASIEN IIO (January 2009)*, 13-43

<sup>51</sup> Editors’ Introduction in Tore Lindholm, et.al., *Kebebasan Beragama Atau Berkeyakinan: Seberapa Jauh (Facilitating Freedom of Religion or Belief: A Deskbook)*, (Jakarta: Kanisius, 2010), translator Rafael Edy Bosko and M. Rifa’i Abdullah, 6.

<sup>52</sup> Rodolfo C. Severino, *ASEAN Today and Tomorrow*, 15 – 16.

<sup>53</sup> Rodolfo C. Severino, *ASEAN Today and Tomorrow*, 232.

These challenges are increasing amid efforts to succeed in building the ASEAN Community (ASEAN Community 2015). In other words, the success of this vision (of ASEAN Community) will be realized if the fundamental rights of citizens, one of them religious freedom or belief, are guaranteed, protected, respected and fulfilled. This vision can only be realized in a stable and open society.

The idea of an ASEAN Community (ASEAN Community) is part of the organization's commitment to maintain the relevance of its existence as well as realize the mandate of implementing the aims of ASEAN. The idea is implemented through the adoption of heads of State/Government of the ASEAN Vision 2020, and was accelerated to 2015.<sup>54</sup> This document was signed on the 30th anniversary of ASEAN. It agreed on a "Shared vision of ASEAN as Southeast Asian nation, farsighted (outward looking), and living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies."<sup>55</sup>

This community, as embodied in the Bali Concord II documents, was built on three pillars: a Political-Security Community, Economic Community and Socio-Cultural Community.<sup>56</sup> None are exclusive, nor do they stand on their own. All three are actually closely related and mutually reinforce each other to ensure the Southeast Asia region is resilient, peaceful, stable and prosperous, at least according to the government of each member state. Each pillar is guided by a blueprint that serves as

a road map in realizing the ASEAN Community.

One of the main reasons was to accelerate regional integration and thus strengthen ASEAN's centrality to ensure that ASEAN remains the driving force behind regional development.<sup>57</sup>

### 1. ASEAN Political-Security Community (APSC)<sup>58</sup>

APSC wants to ensure that the ASEAN Community will live and thrive in an environment that is peaceful, democratic, and harmonious. Guided by the Blueprint, APSC was designed by ASEAN to be a community based on shared rules, norms and values. It also binds ASEAN Member States to share responsibility for security to realize a compact and stable region. Commitment to the APSC is not at all detrimental to the sovereignty of each member state or their right to pursue an independent foreign policy and defense and, more importantly, the right to non-interference in the internal affairs of each member state.

Since ASEAN was established in 1967, the ASEAN countries can be proud of one substantial achievement: no war broke out. This does not mean that differences did not arise among member states on issues of politics and security. A number of differences and tensions that exist in ASEAN regarding certain issues frequently appeared. However member states have always been determined and committed to resolving disputes through peaceful means.

In this context, the fulfillment and protection of freedom of religion or belief

<sup>54</sup> Initially the ASEAN Community was envisioned for 2020, but during the 12th ASEAN Summit, on January 2007 in Cebu, the Philippines, this was accelerated to 2015.

<sup>55</sup> Please see "Asean Vision 2020" at <http://www.asean.org/news/item/asean-vision-2020> (accessed on February 6, 2014)

<sup>56</sup> Secretariat ASEAN, "Declaration of Asean Concord II (Bali Concord II)," at <http://www.asean.org/news/item/declaration-of-asean-concord-ii-bali-concord-ii> (accessed on February 6, 2014)

<sup>57</sup> Secretariat ASEAN, "Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015," at <http://www.asean.org/component/zoo/item/about-asean-overview-cebu-declaration-on-the-acceleration-of-the-establishment-of-an-asean-community-by-2015?Itemid=185> (accessed on February 6, 2014)

<sup>58</sup> Secretariat ASEAN, *ASEAN Political-Security Community Blueprint*, (Jakarta: Secretariat ASEAN, 2009) <http://www.asean.org/archive/5187-18.pdf> (accessed on February 6 2014)

which leads to peace and stability in the region becomes an important aspect to achieve effectiveness of the ASEAN Community.

In this case then APSC can also support and encourage:

- a. Inclusive culture and peace which includes respect for diversity, the promotion of tolerance and mutual understanding between faith, religion, and culture, and in the curriculum of academic institutions throughout ASEAN.
- b. Programs and activities that aim to promote a culture of peace, inter-religious and inter-faith dialogue in the region.
- c. Promotion of respect and appreciation of the diversity of the region and harmony among the people in ASEAN.
- d. Dialogue and integration among different religious and ethnic groups.<sup>59</sup>

## 2. ASEAN Economic Community (AEC)<sup>60</sup>

The final goal of ASEAN economic integration is the full realization of the ASEAN Economic Community. ASEAN countries will be transformed into “a single market and production base; highly competitive area; region of equitable economic development, and the area that is fully integrated into the global economy”.

AEC is often compared to the EU single market, although the AEC is not a customs union or internal market such as the EU. Before the AEC, in early 1977, ASEAN had laid the foundation for even deeper integration. And in 1992, for example, the organization implemented the *Common Effective Preferential Tariff for the ASEAN*

*Free Trade Area (AFTA)*. Through the creation of AFTA, ASEAN member countries were encouraged to reach a common goal: reducing and eliminating trade tariffs, with some exceptions, to further facilitate trade. Reduction of business cost effectively translated into making ASEAN more competitive and efficient.

## 3. ASEAN Socio-Cultural Community (ASCC)<sup>61</sup>

One of the characteristics and basic elements of the ASEAN Socio-Cultural Community (ASCC) Blueprint which must be fulfilled is respect for the diversity of cultures, languages, and religions throughout the ASEAN community, with emphasis on common values in the spirit of unity.<sup>62</sup> ASCC is a cultural resistance in the region, which is in accordance with the principles and spirit of cooperation, shared responsibility, the promotion of human and social development, respect for fundamental freedoms, gender equality, the promotion and protection of human rights and social justice.

ASCC gives “*ASEAN a humanitarian face*” and wants ASEAN to be people-oriented and have a social responsibility. In line with ASEAN character, as being a “*caring and sharing community*”, the basic purpose of this organisation is to raise the living standard of the people and for the betterment of the whole society in general.

ASCC will work to ensure that ASEAN citizens will benefit from the integration initiatives. ASEAN member countries are expected to invest in the fields of education, training, science and technology, job creation, and social protection of citizens.

<sup>59</sup> See paragraph A.1.9 in *ASEAN Political Security Blueprint*

<sup>60</sup> Secretariat ASEAN, “Declaration on the ASEAN Economic Community Blueprint.” <http://www.asean.org/news/item/declaration-on-the-asean-economic-community-blueprint> (accessed on February 6, 2014)

<sup>61</sup> Secretariat ASEAN, *ASEAN Socio-Cultural Community Blueprint*. (Jakarta: Secretariat ASEAN, 2009). <http://www.asean.org/archive/5187-19.pdf> (accessed on February 6, 2014)

<sup>62</sup> See paragraph 7 in *ASEAN Socio-Cultural Community Blueprint*

Cross-cutting issues such as poverty reduction, closing the development gap, and equitable economic growth, will also be one of the issues in the declaration of this community.

ASCC is expected to bring public awareness to the acceptance of regional identity and out of the box thinking in regards to domestic identity. To achieve this, the citizens of ASEAN should, first and

foremost, be able to promote national awareness of the regional and shared identity. ASEAN also encourages closer people-to-people contact by making it easier to obtain fee-free visas, be involved in educational exchange, and combining ASEAN studies into the educational curriculum.

## F. Issues and Crucial Challenges for the Guarantee of Religious Freedom in ASEAN

A comprehensive study about the condition of freedom of religion or belief in Southeast Asia was undertaken by HRWG in 2011 which highlighted the problems and violations of religious freedom in Southeast Asian countries, both in terms of the legal framework and also practice in the field. The study also mapped the recommendations submitted by UN human rights bodies, both Treaty Bodies and Charter Bodies, for ASEAN countries specifically related to freedom of religion or belief.<sup>63</sup>

So as not to repeat what has been described elsewhere, this guidebook will only map the most dominant offenses in ASEAN countries in the context of compliance and protection of the right to freedom of religion or belief. *(See Table 3.6 Issues and Challenges of Freedom of Religion or Belief in ASEAN).*

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<sup>63</sup> See, Alamsyah Djafar, *Freedom of Religion and Belief in Southeast Asia*.

**Table 3.6 Issues and Challenges Freedom of Religion or Belief in ASEAN**

<b>Forum Internum</b>	Misdirection and prohibition by state and non-state actors on minority sects and beliefs
	The occurrence of various intimidating actions and violence of non-state and state actors against the figures of religions / minority beliefs
	Coercion in building a place of worship for different religions / beliefs
<b>Forum Externum</b>	Government ban and confiscation of books or religious information from religious minorities
	Restrictions and sealing of places of worship of minority groups
	Rejection of the establishment of places of worship of minority communities
	Prohibition of use of words that are considered belonging to a particular religion by the minority
	Government ban and restrictions on religious gatherings of minority groups
	Prohibition on preaching and expression
<b>(State) Discrimination &amp; Intolerance</b>	As a vulnerable group, religious minorities still face state discrimination in the field of public services such as recording religion when marrying
	Minorities cannot get identity card because they are not considered citizens
	Minority groups experience physical violence and intimidation by the majority
	Discrimination occurs through legislation and regulations
	Minority groups who became refugees as a result of physical attacks do not have access to good services
	There are still many acts of intolerance committed by both state and non-state actors such as statements by state officials and defamation by the majority religious group
<b>Intersection issues and other fundamental rights</b>	Media censorship and policy issues related to religious books or displaying religious symbols of religious minorities
	Ineffectiveness of the judicial process in a fair settlement of legal cases related to religious issues or members of certain religious groups
	Criminalization of religious writings on the internet deemed offensive

	to certain religious groups
	Prohibitions or restrictions on forums and activities because they are contrary to religious values and beliefs or disturb public order
	As a vulnerable group, migrant workers and refugees still face obstacles in fulfilling their religious rights

<b>Limitation</b>	In some countries, there are still restriction of the freedom of religion or belief that are not in accordance with international instruments
	Limitations on the guarantee of the freedom of religion or belief are not created by legislation. Reasons for restrictions are because they are not strictly defined, often can be used by both state and society to suppress critical groups or discriminate against minority groups. Other terms that appear to be used as excuses are for reasons of " <i>national security</i> ," <i>State policy</i> ", or " <i>state security</i> ".
	A number of countries in Southeast Asia still continue to apply "iron law" (draconian laws) that can restrict the freedom of expression of citizens
	Consideration of religious values as the reason for restriction is often practiced only by referring to one particular religion, not the common values that exist in every religion and tradition. The impact is that typical values of one religion re often different from the typical values and teachings of other religions, which in turn restricts forum interim rights
	Discriminative restrictions on the right to freedom of religion and belief are often excused with the explanation that western human rights are not compatible with the culture and values of Asia, and an increasing economic level does not require human rights. In some countries restrictions are also implemented with the reason that western human rights are not universal and therefore need to adapt to the local context

<b>Legislation</b>	<b>Some countries have not ratified a number of international instruments</b>
	Some countries have ratified international instruments but have not adjusted their domestic laws
	A number of countries still have laws that are contrary to the principle of freedom of religion
	A number of countries do not yet have specific laws that protect human rights defenders

## G. Opportunities and Significance

### 1. Society Aspects

With demographic conditions and contemporary developments in Southeast Asia today, the guarantee of freedom of religion and belief in ASEAN has relevance and tremendous urgency, for a number of reasons.

**First**, the basic character of the ASEAN community has always been pluralistic and multicultural. This picture has been described in the foregoing discussion and preamble and also confirmed in the ASEAN Charter, that although ASEAN as a community or association of countries has a single identity, within it each state and society has their own individual identity. Thus, the principle of unity in diversity is a cornerstone of the ASEAN identity. In fact this is so much so, that the diversity and plurality of Southeast Asian societies cannot be separated from its identity as a region.<sup>64</sup>

**Second**, the religious character and a strong spirituality in ASEAN society and countries make the position of religion and belief important in the lives and relationships between communities and within countries. On one level, the power and influence of religion or belief brings a positive dimension to public and government officials, including the giving of personal spiritual guidance.

On the other hand, the existence of religion or belief within a community or country often also raises issues over the guarantee of faiths and beliefs, especially for minorities and religious groups and beliefs that are considered deviant or to

resemble mainstream religions in each community and state.

This fact often causes negative backlash from the majority and can even lead to threats, violence and murder. So although it is the obligation of the state and stakeholders, religious identity is firmly entrenched in the community and tends to be a reason to follow the will of the majority and ignore the responsibilities of the state to protect and guarantee the rights and freedoms.

**Third**, it is a common symptom of globalization that every person can easily move from one place to another, from one country another country, and from one community to another community, which has led to increasingly widespread massive migration flows. Both domestic and inter-country, in the context of ASEAN, this has added plurality and multicultural in each region or country in the region. Migration has brought with it a series or a set of different cultural backgrounds of each person's identity, so inevitably areas where migrants are located are areas of dialogue, interaction and negotiation of culture, with elements of an increasingly complex culture. In this case, the project of the ASEAN Community in 2015 is to encourage the integration of the ASEAN community, which increasingly necessitates embracing the diversity and plurality within it.

**Fourth**, also an impact of globalization, the flow of information through social media and the internet has become a very effective tool to disseminate information that occurs in all parts of the world, not least in Southeast Asia and in issues related to religious identity and beliefs. As if out of Pandora's box, ASEAN people begin to understand the existence of different identities in the vicinity, with a background of language, culture, religion, race,

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<sup>64</sup> Charles Hirschman, "Ethnic Diversity and Change in Southeast Asia", in Calvin Goldscheider, ed., *Population, Ethnicity and Nation Building* (Boulder: Westview Press, 1995), 19.

ethnicity and different tribes. At the same time, the existence of a group is not an absolute, because a religious/belief group may be a majority in some countries, but becomes a minority in another. Vice versa, a minority in one country might be the majority in countries outside of ASEAN.

In this case, protecting the freedom of every person to embrace a religion or faith is very important, especially to prevent the emergence of hostility between peoples within ASEAN, should they see people of the same religion being discriminated against in another state. As a region, ASEAN must ensure that everyone who is included in it is not discriminated against, ostracized or does not become victim to violence and intolerance, because this will lead to similar treatment in other areas. The increasingly widespread and sophisticated flow of information and communication, including over the internet, can stimulate the emergence of new sentiments based on religion and belief in a country just because of discriminatory practices or policies in another country.

## 2. Constitutional Aspects

Almost all countries in ASEAN have a majority religion which is very close to the state, and some have a formal or semi-formal state religion explicitly stated in their constitution. Its majority position and close relationship with the state, or even as the formal state religion, means the majority religion often and almost always affects hegemonic policies on religion and belief, either in the form of intervention and restrictions particularly against minorities or new sects that deviate from the norm, or in the form of bias towards the majority when there is conflict and discrimination, rather than protecting minorities or victims.

However, in fact, the problem lies not in the position of the majority religion, because in the West, including Europe,

America and Australia, each state also has a religious majority and some even still consider a formal majority religion as the state religion. In the United Kingdom, as an example, the King or Queen is still affiliated with a particular church, the Anglican Church. In addition to the King or Queen, it is customary for the leader of the political party that wins an election to give a kind of report to the Anglican Church. However, the existence of a majority religion as a formal religion, or even an element that must be fulfilled during state and government ceremonies, does not necessarily lead to intervention against religion and belief and neglect of the state's duty to protect and ensure the rights of minorities.

Despite having a majority religion and a formal state religion, the state is completely independent in the task of protecting its citizens and fully guaranteeing freedom of religion or belief, including the right not to believe in anything. Thus, a strong religious character associated with the majority and the close relationship of religion and the state should not interfere with the duties the state as the guarantor and protector of religious freedom.

The constitutions of ASEAN countries provide explicit guarantees for embracing religions and beliefs, although some explicitly or implicitly recognize the majority religion as a formal state religion. But in practice, governments in ASEAN countries are often inconsistent with their explicit constitutions. Various events in ASEAN countries show excessive state or government intervention in the religious identity of citizens, which results in discrimination against minority faiths, sects considered deviant, or beliefs that resemble a majority or formal religion.

Thus, it is not surprising that the guarantee and protection of freedom of religion or belief is still a marginalised

issue within ASEAN, including in the human rights bodies of ASEAN. In three Blue Prints of Economics, Political Security, and Social and Cultural Rights, for example, issues of religious freedom and its protection or guarantee is not explicitly listed as an item that is important, although in principle ASEAN recognizes the importance of maintaining plurality and harmony in the region. This might be due to the fact that issues of religion and belief in ASEAN are still seen as something that are taken for granted in society so that human rights violations in the context of freedom of religion or belief is considered normal.

However, in various policies, statements or other documents, ASEAN, the AICHR and other ASEAN human rights bodies, have expressed concerns about this issue. Of course this is an opportunity for ASEAN and human rights bodies in the region to pay more attention to issues of freedom of religion or belief, because as a region consisting of such diverse and different social elements, inevitably ASEAN must ensure the promotion and protection of the rights of every person in the region.<sup>65</sup>

### 3. AICHR Modalities and Opportunities

#### a. Overarching with overall responsibility of human rights

AICHR's Term of Reference (TOR) identifies itself as a body that is "the overarching human rights institution" in ASEAN with the entire responsibility for the promotion and protection of human rights in ASEAN (AICHR TOR 6.8). These provisions provide guidance for the AICHR to play a role in all aspects related to human rights, covering at least, but not limited to, three main mandates:

- 1) The responsibility of the AICHR is to seek information from ASEAN Member States in the field of promotion and protection of human rights to seek the best approach in the field of human rights;
- 2) Improving compliance and protection of human rights in the Member States and encourage its human rights obligations at the national level;
- 3) Establishing a framework for cooperation and standard setting through the human rights conventions or other human rights instruments (TOR 4.2).<sup>66</sup>

AICHR's identity, which covers all aspects of human rights in ASEAN and Member States, and is associated with its mandate of promotion and protection, in principle provides AICHR the main modality to promote the right to freedom of religion or belief, both within ASEAN and amongst Member States. AICHR can utilize its mandates to achieve maximum protection and respect for freedom of religion and belief, including encouraging States to carry out their international human rights obligations in the field of freedom of religion and belief, and raise awareness and understanding of the community.

#### b. Overarching with ASEAN Sectoral Bodies

This modality is strengthened when paired with Article 6.9 of the TOR which reaffirms that the role of the AICHR covers all ASEAN sectoral bodies.

*"The AICHR shall work with all ASEAN sectoral bodies dealing with human rights to expeditiously determine the modalities*

<sup>65</sup> Comprehensive study on the guarantee of human rights in the Constitution of ASEAN Countries, including freedom of religion or belief, also was undertaken by HRWG in 2011. See, HRWG, *Constitutionalism and the Declaration of ASEAN Human Rights*, (Jakarta: HRWG, 2011).

<sup>66</sup> Indonesian Representatives to AICHR And ACWC Non Paper, "Outcome Document of the Expert Meeting on Effective Alignment Among Human Rights Institution and Mechanism," (Nonpaper presented in the Meeting conveyed by Indonesian Representative to AICHR and ACWC, Jakarta 6 - 7 December 2010), 30

*for their ultimate alignment with the AICHR. To this end, the AICHR shall closely consult, coordinate and collaborate with such bodies in order to promote synergy and coherence in ASEAN's promotion and protection of human rights”.*

Substantively, this provision puts the AICHR as the main body responsible in the region to manage and maintain the coherence and consistency of the values it promotes as regards to universal human rights standards and international conventions that have been established.

AICHR has a duty to ensure that the approaches used by ASEAN as a whole reflect consistency with universal values, unity, interconnectedness, and the principle of non-discrimination.

Fulfillment and promotion of freedom of religion or belief in ASEAN basically is closely related to the existence of the AICHR, which covers all ASEAN sectoral bodies. AICHR can be an observer and assessor of policies issued by ASEAN in general and by ASEAN sectoral bodies to ensure they conform to the protection and promotion of freedom of religion or belief. AICHR is responsible for ensuring the coherence and consistency of ASEAN in ensuring the freedom of religion or belief in each policy, including the approaches used, either in policy or practice.

In this case, the authority of AICHR to undertake consultation, coordination and collaboration with sectoral bodies in ASEAN is a channel and means to ensure the freedom of religion is truly guaranteed in ASEAN policy. Through open dialogue with all stakeholders in ASEAN, the AICHR can also increase awareness and understanding of the actors in ASEAN as regards the guarantee of the right to freedom of religion and belief, which is expected to be reflected in their policies.

c. Relationship with Regional and International Institutions

Another role of the AICHR in carrying out its human rights mandate in the field of freedom of religion and belief is its authority to consult with agencies and entities at the national, regional or international levels. On issues of religious freedom, the AICHR can perform a number of consultations with the institutions and entities to get answers and solutions to the violations that arise. These consultations can be conducted in an effort to come up with solutions to the problems and provide maximum protection to the victims, as well as fully guaranteeing the right to freedom of religion and belief. Consultation is carried out with the agreement and consent of each party involved.

Through its overarching function AICHR can:

- a) Recommend that all ASEAN sectoral bodies related to human rights comply with international human rights standards as set out in the UDHR, Vienna Declaration and Programme of Action, an international human rights instrument to all Member States ASEAN, including the ASEAN instruments related to human rights, taking into account regional and national particularities, mutual respect for differences in historical background, culture and religion.
- b) Work with ASEAN sectoral bodies in the field of human rights and to harmonize consistently with the AICHR.
- c) Work with ASEAN sectoral bodies in the field of human rights through the proper channels to determine the modalities of its alignment with ASEAN, including:

- 1) Conducting consultations with sectoral bodies in the process of drafting the TOR;
  - 2) Cooperating with sectoral agencies to ensure the TOR review is consistent with the role of AICHR;
  - 3) Attending, when invited, meetings of the relevant ASEAN sectoral bodies, organizing joint meetings, if needed, in the promotion and protection of human rights;
  - 4) Complementing reports and publications;
  - 5) Organizing joint activities, whenever possible;
  - 6) Organizing special meetings, when necessary, to discuss specific issues relating to the promotion and protection of human rights;
  - 7) Determining areas of activity in terms of duplication of or inconsistencies in activities by the subsidiary bodies;
  - 8) Considering the combined inputs from ASEAN sectoral bodies in preparing the AHRD.
- d) Provide advisory services and technical assistance in the field of human rights to ASEAN sectoral bodies when requested.<sup>67</sup>

#### AICHR's Principles

In principle, ASEAN is guided by:

- 1) The principles of ASEAN as set out in Article 2 of ASEAN;
- 2) The principles of international human rights, including the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and the avoidance of double standards and politicization;
- 3) Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms lie in each Member State;
- 4) Providing a constructive and non-confronting approach, as well as enhancing mutual cooperation for the promotion and protection of human rights;
- 5) Adopting a revolutionary approach that can contribute to the development of norms and standards of human rights in ASEAN.<sup>68</sup>

<sup>67</sup> "AICHR Guideline on the Operations", adopted by AICHR on March 12, 2012

<sup>68</sup> Pasal 2 Term of Reference AICHR

## H. Protection and Promotion of Human Rights in ASEAN: Mechanisms and Instruments

During its development, ASEAN made human rights issues an important issue in the region. It is characterized by a number of mechanisms of development and setting standards of protection and fulfillment of human rights, such as the establishment of an ASEAN human rights bodies and the ASEAN Human Rights Declaration.

In this section, we describe the human rights mechanisms contained in ASEAN, and also the human rights standards that have been generated, especially the AHRD, to identify the role of the protection and promotion of freedom of religion or belief in the region.

### 1. ASEAN Intergovernmental Commission on Human Rights (AICHR)

The Cha Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights which was adopted on October 23, 2009 in Thailand was the starting point for the establishment of an ASEAN human rights commission, known as the ASEAN Intergovernmental Commission on Human Rights. Establishment of the AICHR also marks a historic milestone in the ASEAN community building process and a means for progressive social development and justice for the people of ASEAN as a whole.

AICHR is composed of ten representatives from the ten ASEAN member countries. The agency works in accordance with the terms of reference determined by a meeting of Foreign Ministers of ASEAN.<sup>69</sup> AICHR's

framework is set out in the "Terms of Reference (TOR) of the ASEAN Intergovernmental Commission on Human Rights" (hereby referred to as Terms of Reference) approved at the ASEAN Foreign Ministers Meeting, July 20, 2009, in Thailand. The Terms of Reference include the establishment of the AICHR's purpose, principles, composition of members, and general and final rules.

#### AICHR's Purposes

AICHR was established under the mandate set out in Article 14 of the ASEAN Charter, with the objectives:

- To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
- To contribute to the realization of the purposes of ASEAN as set out in the ASEAN Charter;
- To promote human rights in the regional context, take into account national and regional specificities, mutual respect for the different historical backgrounds, cultures and religions;
- To improve regional cooperation to assist efforts nationally and internationally in the promotion and protection of human rights;
- To uphold international human rights standards as outlined in the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments in which ASEAN Member States are Contracting States

<sup>69</sup> See, Article 14 (1) and (2) of the ASEAN Charter.

#### ***Mandates and Functions***

The AICHR's TOR state that the human rights body has 14 mandates and functions, namely, to:

- 1) Develop strategies to promote and protect human rights and fundamental freedoms.
- 2) Develop an ASEAN Human Rights Declaration and other related instruments.
- 3) Increase public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information.
- 4) Promote increased capacity for better implementation of human rights obligations effectively by Member States of ASEAN.
- 5) Encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments.
- 6) Promote the full implementation of ASEAN instruments related to human rights.
- 7) Provide consulting services and technical assistance on issues of human rights to ASEAN sectoral bodies upon request.
- 8) Conduct dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders.
- 9) Consult, if necessary, with national, regional, and international institutions as well as entities related to the promotion and protection of human rights.
- 10) Get information from ASEAN Member States on the promotion and protection of human rights.
- 11) Promote the common approaches and positions on issues of interest to ASEAN human rights.
- 12) Submit an annual report or other reports of activities, if necessary, to the ASEAN Foreign Ministers Meeting.
- 13) Run the other tasks that may be set by the ASEAN Foreign Ministers Meeting.

## **2. ASEAN Commission on Protection of the Rights of Women and Children (ACWC)**

The ASEAN Commission for the Protection of the Rights of Women and Children or ACWC was formed on April 7, 2010. ACWC was established based on the Vientiane Action Programme 2004 - 2010 which was adopted at the 10th ASEAN Summit of 2004. The purpose of the ACWC is to promote and protect the rights of women and children in ASEAN, taking into account differences in historical, political,

socio-cultural, religious and economic contexts.

ACWC aims also to enforce the promotion, protection and fulfillment of the rights of women and children in ASEAN, encouraging their participation in achieving the ASEAN Community, enhancing regional and international cooperation; to run the international human rights instruments and agreements related to women and children, and to realize the stability and harmony in region. In principle, the AICHR ACWC has guidelines as above.

### ***The mandate and its functions***

In the ACWC's TOR the mandate and functions held by the Commission are:

- 1) To promote the implementation of international and ASEAN instruments related to the rights of women and children.
- 2) Establish policies, programs and innovative strategies to promote and protect the rights of women and children.
- 3) Increase public awareness and education on the rights of women and children in ASEAN.
- 4) To advocate for women and children, especially vulnerable and marginalized groups, and encourage ASEAN to improve their condition.
- 5) Build the capacity of relevant stakeholders at all levels, administrative, legislative, judicial, civil society, group leaders, and those advocating for women and children, through technical assistance, training, and workshops.
- 6) Assist in the reporting of CEDAW, CRC, the Universal Periodic Review and the report to the Treaty Board if requested by Member States.
- 7) Assist Member States in the implementation of CEDAW and CRC's Concluding Observations or other Treaties related to the rights of women and children, if requested by the Member States.
- 8) To encourage ASEAN countries to collect and analyze disaggregated data, such as gender and age, related to the protection of women and children.
- 9) To promote studies and research related to women and children associated with their protection.
- 10) To encourage ASEAN to undertake a periodic review of national legislation, regulations, policies, and practices concerning women and children's rights.
- 11) Facilitate the sharing of experience and best practices, including thematic issues, among ASEAN Member States in the implementation of CEDAW and CRC.
- 12) Encourage and enhance measures, mechanisms and strategies for prevention and elimination of all forms of violence against women and children.
- 13) To encourage ASEAN to consider access and ratification of international instruments.
- 14) Encourage the participation of women and children in ASEAN dialogue and consultation on issues relating to women and children.
- 15) Provide advisory services (guidance) in the field of promotion and protection of the rights of women and children.
- 16) Carry out the duties mandated by ASEAN Leaders and Foreign Ministers concerning women and children.

## Chapter Four

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# PROTECTION FRAMEWORK OF FREEDOM OF RELIGION AND BELIEF IN ASEAN

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## A. ASEAN Human Rights Declaration

In the Term of Reference (TOR), AICHR mandated to arrange ASEAN Human Rights Declarations containing human rights cooperation framework through various ASEAN conventions and other various instruments.<sup>70</sup> This mandate was finished by the submission of ASEAN Human Rights Declaration (AHRD) by AICHR Representatives at the 45<sup>th</sup> ASEAN Ministerial Meeting (AMM) in Phnom Penh, Cambodia. With some responses and corrections from parties, the Draft was scheduled to be adopted by ASEAN Leaders in the ASEAN Summit in Cambodia, December 2012.<sup>71</sup>

General Principle of the Declaration affirms that “All persons are born free and equal in dignity and rights”. It is also confirmed that every person entitled to rights and freedom set forth herein, without distinction of any kind, such as race, gender, age, language, religion, politics, or other opinions, national or social origin, economic status, disability or other status. More firmly, Article 22 of the Declaration guarantees the freedom of religion or belief, by stating 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”.*<sup>72</sup>

<sup>70</sup> Look at the second Mandate and Function of AICHR in Asean Secretariat. *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights* (Jakarta: ASEAN Secretariat, 2009), 6

<sup>71</sup> “Menlu RI Sambut Penyerahan Deklarasi HAM ASEAN,” Wednesday, 10 July 2012, <http://www.deplu.go.id> (accessed on 10 September 2012)

<sup>72</sup> See Asean Human Rights Declaration Article 22 in Asean Secretariat. “Asean Human Rights Declaration,” <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration> (accessed on February 25, 2014)

Guarantee of freedom of religion or belief in ASEAN Human Rights Declaration following the international instruments and documents by confirmed “freedom of thought, conscience and religion”. Besides, this Declaration firmly prohibits the all of form of intolerances, discriminations and incitements of hatred based on religion or belief.

As a legal document that has been approved by all ASEAN Member States, Human Rights Declaration can be a basic modality for the building and enhancement of human rights in Southeast Asia, as well as for a reference to AICHR in undertaking its mandates and functions. Moreover, at the supra-national level, the Declaration can be the base for new norms in the foreign relations amongst ASEAN States because the Declaration has become a collective commitment of all States to be implemented in the future.

Referring to Article 22 of ASEAN Human Rights Declarations, at least there are several aspects of freedom of religion or belief that are contained within the Article. In the other hand, as the ASEAN commitment to the United Nations Charter and the relationship between ASEAN as a regional bodies and the United Nations as a multilateral body, it is then understandable that basically the principles and norms that are contained in the ASEAN Human Rights Declaration are rooted in the norms that had been built previously in the United Nations globally. In this regard, the newness of the human rights mechanism in ASEAN basically does not become an obstacle for the enhancement and protection of the freedom of religion or belief in ASEAN, because the norms have been built strongly in the United Nations

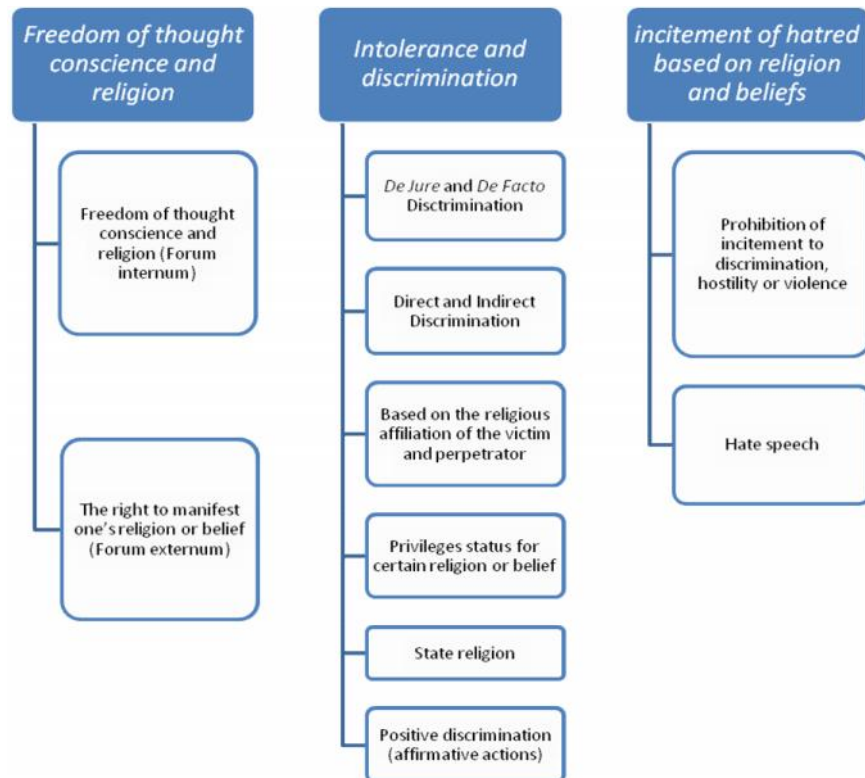
instruments, even for several regional instruments of human rights.

Therefore, this part will identify the principles of the freedom of religion or belief that is contained in Article 22 of AHRD and explore it based on the norms that had been built internationally or with some sufficient theoretical references that are in accordance with the principles. Article 22 of AHRD could be derived as follows:

- a) Freedom of thought conscience and religion;
- b) Intolerance and discrimination;
- c) Incitement of hatred based on religion and beliefs.

Normatively, the above three things have become the attention of the United Nations mechanism in enhancing and protecting the freedom of religion or belief, either documents issued by the United Nations General Assembly, the Human Rights Council, Committees (particularly the Human Rights Committee), the Special Rapporteur on the Freedom of Religion or Belief, Declarations or other Instruments that have been the main reference to explain of the freedom of religion or belief, including also the ASEAN human rights instruments.

**Diagram 4.1 Mapping of Rights in the Article 22 ASEAN Human Rights Declaration<sup>73</sup>**



<sup>73</sup> From various sources

Diagram 4.2 Component of Rights “Freedom of thought conscience and religion”<sup>74</sup>

Internum	Externum
<ul style="list-style-type: none"><li>•Thought, conscience and religion</li><li>•Adopt, change or renounce a religion or belief</li><li>•Freedom from coercion</li></ul>	<ul style="list-style-type: none"><li>•Freedom to worship</li><li>•Places of worship</li><li>•Religious symbols</li><li>•Observance of holidays and days of rest</li><li>•Appointing clergy</li><li>•Teaching and disseminating materials (including missionary activity)</li><li>•The right of parents to ensure the religious and moral education of their children</li><li>•Registration</li><li>•Communicate with individuals and communities on religious matters at the national and international level</li><li>•Establish and maintain charitable and humanitarian institutions/solicit and receive funding</li><li>•Conscientious objection</li></ul>

<sup>74</sup> From various sources

## B. Conceptual Framework Freedom of Religion and Belief in ASEAN

### 1. Freedom of thought conscience and religion

The three series of the above rights namely the freedom of thought, conscience and religion are the first pair of the three important elements that is contained in AHRD. Structurally, the use of these three words is in connection with the practices and documents that have been issued by the United Nations or regional human rights instrument. Those three series of rights are also known as the freedom of religion or belief in *forum internum*. Paragraph 1 Article 18 on ICCPR attests to the freedom of religion and belief in the context of forum internum that cannot be interfered by noone.

Article 18 ICCPR has become the main United Nations instrument, especially the Special Rapporteur on Freedom of religion or belief. The Article consists of four paragraph that attest to certain provision, they are: one's right to be free in thought, conscience and religion; free from coercion to manifest his/her freedom; freedom to practice the teaching of religion or belief and the limitations to the freedom; rights of the parents or legal guardians to ensure the religious and moral education of their children. The four components that are in Article 18 are explained again by the Human Rights Committee on General Comment Number 22.

#### UNGA Resolution on

Elimination of all forms of intolerance and of discrimination based on religion or belief

Urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end:

- (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one's religion, including the right to change one's religion or belief, is violated;
- (b) To ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights;
- (c) To ensure that no one is discriminated against on the basis of his or her religion or belief when accessing, inter alia, education, medical care, employment, humanitarian assistance or social benefits;
- (d) To review, whenever relevant, existing registration practices in order to ensure that such practices do not limit the right of all persons to manifest their religion or belief, alone or in community with others and in public or private;
- (e) To ensure that no official documents are withheld from the individual on the grounds of religion or belief and that everyone has the right to refrain from disclosing information concerning one's religious affiliation on such documents against one's will;
- (f) To ensure that everyone has the right and the opportunity to have access, on general

terms of equality, to public service in one's country, without any discrimination on the basis of religion or belief;

- (g) To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and their right to establish and maintain places for these purposes and the right of all persons to write, issue and disseminate relevant publications in these areas;
- (h) To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected;
- (i) To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration and destruction;
- (j) To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided.<sup>75</sup>

#### **a. Rights to Freedom of Thought, Religion and Belief**

According to the Human Rights Committee on their General Comment on the freedom of religion and belief (Article 18 ICCPR), this right encompasses the freedom of thought about all things, personal belief, and commitment towards religion or belief, individually or in community with others. The basic characteristic of this freedom is also reflected in the reality that this provision cannot be derogated even in time of public emergency, as mentioned in Article 4.2 in Covenant.<sup>76</sup>

#### **Box 4.1 Guarantee to the Freedom of Thought, Religion and Belief**

##### **Article 18 verse (1) ICCPR**

"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching."

##### **1981 Declaration of the General Assembly Article 1 (1)**

"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice..."

##### **General Comments of HRC No. 22, Para. 3**

"Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice".

<sup>75</sup> UNGA, *Resolution Elimination of all forms of intolerance and of discrimination based on religion or belief*, A/RES/63/181 Sixty-third session, distributed 16 March 2009, Paragraph 9.

<sup>76</sup> Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, Forty-eighth session, 1993, U.N. Doc. 30/07/1993 CCPR/C/21/Rev.1/Add.4, paragraph 2

**b. Adopt, change or renounce a religion or belief**

With regards to the rights to adopt, convert, or renounce a religion or belief, UN Special Rapporteur on the Freedom of Religion and Belief (later known as UN SR FoRB), Asma Jahangir, explains that this is manifested in four forms, they are:

- a) A situation when the State tries to change, re-change, or prohibit someone's conversion, such as a threat to kill them and their families, eliminate their freedom, torture fiercely, or threaten by discharging them from jobs.
- b) A situation when the religion conversion is prohibited by law and is given sanction such as punishment to the "apostate", breaking the relationship and disinherit, marriage cancellation, property lost or breaking the rights on children.
- c) A situation when the majority members try to change or re-change the minority religious groups using coercion, including when the minority group attacks them individually or the religious place.
- d) A situation when there is "an unethical" transition by giving a monetary benefit to susceptible groups that become the transitional target.<sup>77</sup>

**Box 4.2 Article 18 (2) ICCPR**

"No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

**Box 4.3 General Comments HRC 22 paragraph 5**

The Committee observes that the freedom to "hold or accept" a religion or belief also encompasses the freedom to choose religion or belief, including the right to change the religion or belief that he holds with another religion or belief, or by adopting atheism view, and the right to adhere to a religion or belief.

<sup>77</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report of the Special Rapporteur on freedom of religion or belief*, Asma Jahangir, UN.Doc. A/HRC/6/5. (20 July 2007) (delivered at 6<sup>th</sup> session of Human Rights Council, Item 3 of the provisional agenda, 13th Session Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development), paragraph 7-8

### c. Freedom from coercion

Article 18 (2) ICCPR also asserts freedom everyone freedom from coercion. The term “coercion” in ICCPR is interpreted broadly, including the use of a physical coercion threat and criminal code by a State so that the followers and non-followers obey their religion, retract their religion or belief that have been held and to change his religion, either through the policy or practice. Consequently, the law that prohibits one’s religion conversion that someone will still hold on one religion or belief is not accepted in the international Human Rights law. On the contrary, each State has a duty to ensure that everyone in the territory and under jurisdiction can manifest their religion or belief freely, without coercion of fear.<sup>78</sup>

religion or belief groups, to reject their religion or belief, or to change their religion or belief.

Policies or practices have the same purposes or effects, for example the policy or practice that limits the access to education, health service, job, or the rights that are assured by article 25 and other policies in the Covenant (ICCPR). It also does not agree with article 18.2 (ICCPR) mentioning that the same protection is given to all followers of non-religious belief.”

#### Box 4.4 Prohibition from Coercion

##### UDHR

“Everyone has the right to freedom of thought, conscience and religion; this right includes 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.”

##### ICCPR Art. 18 (2)

“No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

##### 1981 Declaration of the General Assembly Article 1 (2)

“No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”

##### ICCPR General Comment Number 22 paragraph 5

“Article 18.2 (ICCPR) prohibits coercion that can impair one’s right to embrace or accept one religion or belief, including the use of physical coercion threat or law sanction to force people to believe or not believe their

<sup>78</sup> OHCHR, *Report of the Special Rapporteur on freedom of religion or belief*, Asma Jahangir, UN.Doc. A/HRC/6/5, paragraph 9.

**Box 4.5 Fundamental Principles on the FoRB**

Normative principle on the freedom of religion and belief can be simplified to eight elements, they are:

- 1) **Forum Internum.** Everyone is entitled to the freedom of thought, belief, and religion. This right includes everyone's right to have, hold, or defend or convert the religion or belief.
- 2) **Forum Externum.** Everyone has 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.
- 3) **Non Coercion.** No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”
- 4) **Non Discrimination.** State country is obliged to respect and guarantee the freedom of religion or belief to all persons that are in the territory and is subject to the law area or jurisdiction, the right of freedom religion or belief with no distinction as to race, colour, gender, language, religion or belief, politics or opinion difference national or ethnic origin, wealth, birth or other status.
- 5) **The parents or the legal guardian rights.** State Parties are entitled of respecting the freedom of parents, or as the case may be, the legal guardians to ensure that the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up”.
- 6) **The freedom of Organization and Legal Status.** The vital aspect from freedom of religion or belief to religious community is the freedom to organize and unite. Therefore, religious community has freedom of religion or freedom, including the independent right in managing the organization.
- 7) **Permitted limitations.** Freedom of manifesting someone's religion or belief can only be limited by laws and is intended to protect public safety or order, health, public moral or other's basic rights.
- 8) **Non-Derogability.** State Parties are not allowed to derogate the freedom of religion or belief in any circumstances.<sup>79</sup>

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<sup>79</sup> Editor's Introduction with Nazila Ghanea, in Tore Lindholm and Cole Jr. Durham, ed., *Facilitating Freedom of Religion or Belief: A Deskbook*, (Leiden: Koninklijke Brill NV and Martinus Nijhoff Publishers, 2004), xxxvii-xxxix

## 2. The right to manifest one's religion or belief (Forum Externum)

In diagram 4.1. above it is described that the freedom of thought, conscience or belief, also encompasses external aspect from the freedom of religion or belief, which is known as “forum externum”. The *forum externum* includes several right components, such as the freedom of worship, place of worship, religious symbols, day of rest, the establishment or religious leaders, the teaching and spreading of religious matters, religious and moral education for children, registration, the establishment of charity and humanitarian institutions, communication in person or in community, and objection based on conscience. Therefore, to further understand the first component from the three series that is contained in ASEAN Human Rights Declaration, it is important

to analyze the derivative rights that are covered in this forum *externum*.

As has been mentioned above, the freedom of religion or belief also includes the manifestation from the teaching of the religion or belief. This manifestation also encompasses several things, they are: freedom of worship, worship places, religious symbols, the observance of holidays and days of rest, choosing religious leaders, teaching and spreading religious materials (including the missionary activities), parent's right to ensure religion and moral education to the children, registration, communication in person or in groups in terms of religious problems, either in the national or international level, building and managing charity institution, humanity and accepting funding, and objection because of conscience.

### Box 4.6 The right to manifest one's religion or belief

#### ICCPR

##### Article 18 (1)

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

##### Article 18 (3)

“Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

##### 1981 Declaration of the General Assembly Article 1 (1)

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.”

##### Article 1 (3)

“Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”

##### Human Rights Committee General Comment 22 Para. 4

“The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the

use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications”

### a. Freedom of Worship

This right encompasses the freedom of worship and gathering in a religious meeting, including the freedom of making, acquiring and using the stuff and items that are needed in ceremonies or religious tradition. This right to worship is not only limited to the registered religions or belief, but to all religious groups, especially minorities. According to the Special Rapporteur on Freedom of Religion and

Belief, in many cases, especially those that strike the minority groups, they are prohibited to carry out religious activities without any agreement from the State or registration in advance.

However, this right is unlimited, such as a ritual that involves human in a sacrifice that simultaneously violates one’s fundamental right. Therefore, this kind of ritual can be prohibited.

#### Box 4.7 Freedom of Worship

##### 1981 Declaration of the General Assembly Article 6 (a)

“The right to freedom of thought, conscience, religion or belief includes the freedom, to worship or assemble in connection with a religion or belief...”

##### Article 6 (c)

“The right to freedom of thought, conscience, religion or belief includes the freedom, to make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief”

Commission on Human Rights resolution 2005/40 (paragraph 4 (d)) and Human Rights Council resolution 6/37 (paragraph 9(g)) and General Assembly resolution 65/211 (paragraph 12 (g))

“Urges States to ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief [...]”

##### Human Rights Committee general comment 22 Para. 4

“The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including ... the use of ritual formulae, and objects ....”

### b. Place of Worship

The things that are included in the place of worship are worship places, cemeteries, or religious sites that are more than just materials. Those are attached to certain religions or belief. The limitations towards worship places, other religious places or these holy places are not only

violent to one’s right individually, but also the group right of individuals that become the religion followers. Therefore, the General Assembly Resolution 55/254 on Protection of Religious Places urges each State to encourage the culture of tolerance and respect of the diversity of religion and

the holy places, to represent the importance of collective aspects that have been an inheritance to mankind.

However, places of worship are also misused by non-State actor for illegal purposes, such as to keep weapons or to

make them hiding places for hostages. Therefore, it does not belong to right categorization if these kinds of worship places are used as places to do illegal action that are not functioned as worship places.

#### Box 4.8 Place of Worship

##### 1981 Declaration of the General Assembly Art. 6 (a)

“The right to freedom of thought, conscience, religion or belief includes the freedom, to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes”.

##### Human Rights Council resolution 6/37 para. 9 (e) and 9 (g)

“The Human Rights Council urges States, to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction”.

“The Human Rights Council urges States, to ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes ...”.

##### Human Rights Committee General Comment 22 Para. 4

“The concept of worship extends to [...] the building of places of worship.”

#### a. Religious Symbols

The concept about religion, observance and religious practices also encompasses showing symbols that are

included in the tradition of religious ceremonies, such as the wearing of distinctive clothing or head coverings.

#### Box 4.8 Religious Symbol

##### 1981 Declaration of the General Assembly Art. 6 (c)

“The right to freedom of thought, conscience, religion or belief includes the freedom, to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief”.

##### Human Rights Commission resolution 2005/40 4 (b)

“The Commission on Human Rights urges States, to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and religious expressions are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction”.

##### Human Rights Committee General Comment 22 Para. 4

“The concept of worship extends to ... the display of symbols”.

“The observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or head coverings ....”

In many cases, these religious symbols are closely related to two problematic things. On one side, there are many people (religious followers) around the world that are barred from identifying themselves through symbols. On the other side, in several countries, everyone is demanded to always show their religious symbols in public domain. Therefore, according to SR FoRB, the undertaking of this freedom should be done to protect both, either by allowing the use of religious symbols or not forcing the use of the religious symbols.

The report of Special Rapporteur (one other thing is included in E/CN.4/2005/61, paragraph 65) clarifies that the majority of judicial corporations and international quasi judicial corporations consider the expression of the religious symbols as a manifestation of religion or belief that is included in the *forum externum*, compared to just being a belief (*forum internum*). In accordance to this, religious symbols can be restricted.<sup>80</sup>

#### Box 4.9 Indicators of Religious Symbols Limitation

##### Aggravating Indicators

- This limit is done to eliminate the individual freedom to act upon his religion or belief;
- This limit is meant to or is lead to one discrimination bluntly or differentiation that are obscured, depending on the involving religion or belief;
- Freedom limit as a purpose to protect moral is based on the principles that come from the exclusivity of just one tradition;
- The exception on the probation to use religious symbols, either in written or collusively, is adjusted to the dominate religion or belief or the people in charge;
- In reality, the governmental corporations

<sup>80</sup> Special Rapporteur on FoRB, *Rapporteur's Digest on Freedom of Religion and Belief: Excerpts of the Reports from 1986 to 2011* by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications, 22

apply the restriction that are done discriminatively with a discriminative purpose, for example by arbitrarily target certain community or group such as women;

- No due account is taken of specific features of religions or beliefs, e.g. a religion which prescribes wearing religious dress seems to be more deeply affected by a wholesale ban than a different religion or belief which places no particular emphasis on this issue;
- The use of coercion method and sanction that are applied against individual who does not want to wear religious dress or symbol by using religious perspective.

##### Neutral Indicator

- Literally, the restriction or prohibition that is done using languages that are clausal and neutral and covers all (groups of religion or belief).
- The limitation does not reveal the inconsistency or bias towards certain religious groups, minority groups or susceptible groups.
- As photographs on ID cards require by definition that the wearer might properly be identified, proportionate restrictions on permitted headgear for ID photographs appear to be legitimate, if reasonable accommodation of the individual's religious manifestation are foreseen by the State.
- This intervention is very much needed to protect women rights, minority religions and susceptible groups.
- Accommodating different situations according to the perceived vulnerability of the persons involved might in certain situations also be considered legitimate, e.g. in order to protect underage schoolchildren and the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>81</sup>

<sup>81</sup> OHCHR, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*, U.N. Doc. E/CN.4/2006/5 (9 January 2006) (delivered at 62<sup>nd</sup> Session, Civil and Political Rights, Including the Question of Religious Intolerance) Paragraph 55.

## b. Religious Holidays

Freedom to perform religious holidays and ceremonies according to a religion or belief has become an important aspect in the concept of religious freedom. This is meant to give opportunities to the followers of religion or belief to hold ceremonies and spiritual religious traditions.

This is practiced extensively in some States by giving recognition of religious holidays through legislation, not limited to certain religions, including by giving the freedom for students in schools to respect the holiday. In many practices, religious holidays have been a place for different religious people to know one another, to know each culture and religion, and to develop dialogue amongst different faith.

### Box 4.10 Religious Holiday

#### 1981 Declaration of the General Assembly Art. 6 (h)

“The right to freedom of thought, conscience, religion or belief includes the freedom, to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief”.

#### Human Rights Committee General Comment 22 Para. 4

“The concept of worship extends to ... the observance of holidays and days of rest”.

## c. The Establishment of Religious Leaders

Freedom of thought, conscience and religion also covers the freedom to educate, establish, and choose or point the religious leaders. Religious communities, differently, have their own ways and methods in establishing this institution. The interference of States towards this education of practice may result in the lack of religious leaders.

In practice in several States, they establish these religious leaders. Therefore, the Special Rapporteur clarifies the importance of giving freedom to religious or belief groups to on their own choose their leaders, priests or religious teachers.

### Box 4.11 The Establishment of Religious Leaders

#### General Assembly Declaration 36/55 1981 Art. 6 (g)

“The right to freedom of thought, conscience, religion or belief includes the freedom, to train, appoint, elect or designate by succession appropriate leaders [...]”.

#### Human Rights Committee general comment 22 Para. 4

“In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers ....”

## d. Teaching and disseminating religious materials (including missionary activity)

The Report of the SR FoRB clarifies that every religion or belief has a freedom to write, make and disseminate the publication containing religious teaching in places that are appropriate for the purposes.

Included in this category is the activity to spread a religion or belief that is accepted as a legal religious expression and these activities cannot be categorized as a violation of the freedom of religion or

belief principles as long as those who are involved in the missionary activity have been adults and have conscience, and are able to think freely, these also show that there is no interdependence or hierarchy connection between the missionaries and the objects of missionaries.

Violation against this aspect including also a sensory practice, a prohibition, confiscation and mutilation of religious literature, excepts if the matters contain

hatred advice based on nationality, race and religion that lead to discrimination, hostility and coercion, as clarified in Article 20 (2) ICCPR. In accordance with this, the Human Rights Committee General Comment No. 22 paragraph 7, states that:

*“According to article 20, no manifestation of religions or beliefs*

*may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts”.*

**Box 4.12 Teaching and disseminating religious materials**

**1981 Declaration of the General Assembly Art. 6 (d) and (e)**

“The right to freedom of thought, conscience, religion or belief includes the freedom, to write, issue and disseminate relevant publications in these areas”;

“The right to freedom of thought, conscience, religion or belief includes the freedom, to teach a religion or belief in places suitable for these purposes”.

**Commission on Human Rights resolution 2005/40 (paragraph 4 (d)) and Human Rights Council resolution 6/37 (paragraph 9 (g))**

“Urges States, to ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications in these areas”.

**Human Rights Committee General Comment 22 Para. 4**

“In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, ... the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications”

**e. Rights to religious and moral education for children**

This right includes the freedom of parents of legal guardians to ensure the education of religion and moral to children according to their conviction. This is clarified in the Final Document International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination 2001, that states:

*“The right of parents, families, legal guardians and other legally recognized caregivers to choose schools for their children, and to ensure their religious*

*and/or moral education in conformity with their own convictions, and with such minimum educational standards as may be laid down or approved by the competent authorities, in a manner consistent with the procedures followed in the State for the application of its legislation and in accordance with the best interest of the child”.*

In practices, children are often banned to get access to education that is in accordance with the parent and the religion teacher resulting in the things that are not expected.

**Box 4.13 Religious and moral teaching for children**

**ICCPR Art. 18 (4)**

“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

**CRC Art. 14 (2)**

“States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child ... (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”

**ICESCR Art. 13 (3)**

“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to [...] ensure the religious and moral education of their children in conformity with their own convictions.”

**Migrant Workers Convention Art. 12 (4)**

“States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

**1981 Declaration of the General Assembly Art. 5 (1), (2) and (4)**

“The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up”.

“Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle”

“In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle”.

#### f. Registration

Report of the Special Rapporteur on FoRB notes that the registration that is regulated by a State towards religion or belief does not mean to limit the freedom of religion and belief of certain religious communities. The freedom of religion is also not limited to the registered religious members.

Registration is not supposed to be a prerequisite for someone to manifest the religions or beliefs, but it should only be

the identity of individual law and for getting the benefits from it. Therefore, the registration procedure shall be easy and quick, and shall not be dependent upon formal requirements in terms of the number of members or the time of the religion existence. In this respect, the concept of human rights does not allow the authority of certain religion to disconnect the registration of other religious groups.

##### Box 4.14 Registration

**Commission on Human Rights resolution 2005/40 (paragraphs 4 (c) and 4 (e)) and Human Rights Council resolution 6/37 (paragraphs 12 (e) and 12 (h))**

**Urges States, to review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private;". Urges States, "To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected."**

#### g. Communication with individuals and community nationally or internationally in the religious matters

Everyone that comes from the minority groups has the rights to build and maintain, without discriminating, freely and peacefully, the relationship between the members of the groups and other

minority groups, including the relationship amongst countries that are based on the relationships of nationality or ethnic, religion or language.

##### Box 4.15 Communication

**1981 Declaration of the General Assembly Art. 6 (i)**

"The right to freedom of thought, conscience, religion or belief includes the freedom, to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."

#### h. Establishing charitable and humanitarian institutions and receiving funding

Human Rights Commission of the United Nations (replaced by Human Rights Council) ensures that everyone or communities are free to build or maintain charity or humanitarian institutions, and is

fully protected, although principally, these institutions are not have obligation to handle social, health, and educational affairs. They are also entitled to solicit and receive voluntary financial and other

contributions from individuals and institutions that in some cases, these are limited, in particular, funding from abroad. Every restriction to the funding must be clarified by the laws and is totally

necessary to keep the safety of public, law, health, morals, and fundamental rights, such as prohibiting the coming in of the funding help that is misused to develop military groups and violence.

**Box 4.16 Establishing charitable and humanitarian institutions**

**1981 Declaration of the General Assembly Art. 6 (b) and Art. 6 (f)**

“The right to freedom of thought, conscience, religion or belief includes the freedom, to establish and maintain appropriate charitable or humanitarian institutions”.

“The right to freedom of thought, conscience, religion or belief includes the freedom, to solicit and receive voluntary financial and other contributions from individuals and institutions.”

Commission on Human Rights resolution 2005/40 (paragraph 4 (e)) and Human Rights Council resolution 6/37 (paragraph 12 (h))

Urges States, to ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected”

**i. Conscientious Objection**

The Special Rapporteur FoRB draws attention to resolution 1989/59 of 8 March 1989 of the Commission on Human Rights of the United Nations, reaffirmed *inter alia* in 1991 (resolution 1991/65 of 6 March 1991) and in 1993 (resolution 1993/84 of 10 March 1993), which recognizes the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights.

With regard to the third category of violations, the Special Rapporteur wishes to stress that the right of conscientious objection is a right which is closely linked with freedom of religion or belief.<sup>82</sup>

<sup>82</sup> SR on FoRB, *Rapporteur's Digest on Freedom of Religion and Belief*, 45 – 46.

**Box 4. 17 Conscientious Objection**

**Human Rights Committee general comment 22 Para. 11**

“Many individuals have claimed the right to refuse to perform military service on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service.

The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service.”

### 3. Registration and Recognition of Religion or Belief by a State

The problems of registration and recognition of a religion or belief by a state is crucial to be revealed here, particularly to refer to the standard and instrument of international human rights in connection with the rights of individuals or groups to enjoy the freedom of religion or belief.

In the human rights conceptual framework, the registration of a religion or belief is not an obligation and does not become a prerequisite to manifest a certain religion. This registration is only as a form of a legal institution, inasmuch as in several collective activities of communities of religion or belief usually needs lawful status that is recognized as a legal entity with the responsibility of corporate law.

While the position of human's dignity that cannot be denied as the right holder of the freedom of religion and belief is the highest normative rank that is independent, compared to the administrative procedures that are needed to get a lawful status. The information needed in the registration of a group of religion or belief is only needed to determine the attributive status of a legal entity.

The administrative decision that is issued by the State cannot be seen as an act of mercy. However, according to the international law, a State is obligatory to take an active participation in facilitating the full enjoyment of human rights, including the freedom of religion and belief. By not providing the law choice that can be accessed by all groups of religions or beliefs, the State has actually failed to undertake its duties in accordance with the human rights and the freedom of religion or belief principles.<sup>83</sup>

One concept in the freedom of religion that is related with the above registration is about the "recognition". Recognition is one of the key terms that has been disputed and misunderstood in the concept of the freedom of religion and belief. This misunderstanding can lead to a negative effect on the fulfillment and protection of the freedom of religion or belief, because it can blur out the duties of international human right that is carried out by the State.<sup>84</sup>

#### a. Three Meanings of Recognition

The Special Rapporteur of the Freedom of Religion or Belief differentiates three meanings of the recognition, they are:

*Firstly*, the most fundamental from "recognition" is a feeling to respect the position of all persons as the right holder of the freedom of religion and belief, as the derivative of humanitarian dignity that is attached to a person;

*Secondly*, the recognition in the sense of providing the status of legal entity to a religious group that may be needed to do a lawful act collectively. In order to get this status, some "recognition procedures" are needed. They are formed not to hamper, either in *de facto* or *de jure*, access to the lawful status.

*Thirdly*, recognition with the meaning of a certain special status for some groups of religion or belief is often in the form of advantageous acts such as the tax abolition or the subsidiary supply to a certain group of religion or belief.

The three meanings of recognition above are relevant to the conduct of freedom right to religion and belief by a

<sup>83</sup> OHCHR, *Report of the Special Rapporteur on freedom of religion or belief (SR FaRB), Heiner Bielefeldt*, A/HRC/19/60 (22 December 2011).

<sup>84</sup> OHCHR, *Report of the SR FaRB, Heiner Bielefeldt*, A/HRC/19/60, paragraph 20 - 25

State. However, those three have different implications. Human position as the right holder becomes the main foundation for the right fulfillment. Therefore, he cannot be banned with administrative problems in the “recognition procedures” because these procedures are only necessary for lawful needs of a religious community. In this respect, the procedures that are made by a State should be quick, transparent, fair, open and not discriminating. In other words, the State should ensure that every individual can enjoy the freedom of thought, conscience and religion or belief on the basis of the respect for human beings’ dignity that is attached to them. Respecting the freedom of religion or belief as this human right does not depend on the procedure of administrative registration because the position of the right holder is independent and it does not need any agreement from a State.

Meanwhile, the last meaning that is in connection with the special right of certain religious groups does not always have an implication on the freedom right of religion and belief. Only if the State wants to implement this, it has to undertake it based on the equal and non-discriminative principles. A State should ensure that the special status given by *de jure* or *de facto* does not create a discriminative act towards religion the holders of other religions or beliefs. Moreover, a special position given by a State to a group of religions or belief cannot be an instrument for a State to harm individual rights from a minority group.<sup>85</sup>

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<sup>85</sup> OHCHR, *Report of the SR FoRB, Heiner Bielefeldt, A/HRC/19/60*, paragraph 25

#### **b. Difficulties faced by unregistered communities of religion or belief**

The unregistered communities of religions and beliefs usually face various difficulties in building the community. Without the status of lawful character, for example, they cannot open a bank account or get involved in financial transaction. Worship places are also usually built on the ground of personal belonging informally. Therefore, if this person dies, the community asset turns out to be a problem to religious groups or inheritors.

Community groups of religions or beliefs that do not have this lawful status also get obstacles when they want to establish private religious schools. It also affects the parents or legal guardians that are entitled to ensure education for their children in accordance with the teaching of their religions and morals. Even more, this thing can threaten the generation of a community if the high school that educates religious figures is not enabled because they do not have a status of legal entity. The absence of this lawful status threatens the life continuity of the community of religion and belief in a long term.

The absence of the lawful status can also have a negative impact on the chance of the followers of religions or beliefs to celebrate days of rest or ceremonies according to their religions and beliefs. Another problem is related to the establishment of institutions. By having no status of legal entity, the financial responsibility and risk have to be taken by personal individual of the members in a society.<sup>86</sup>

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<sup>86</sup> OHCHR, *Report of the SR FoRB, Heiner Bielefeldt, A/HRC/19/60*, paragraph 45 – 52

**Box 4.18 Recommendation of the UN SR FoRB on the Registration of Religion or Belief**

Specifically and in details, Special Rapporteur on Freedom of Religion and Belief has conveyed the recommendations to a State related with the registration of a religion or belief, they are:

- 1) Systematically, a State has to build any steps to explain the understanding about respect towards everybody's right for the freedom of religion and belief as a universal Human Rights that is based on human's dignity.
- 2) A State has to forbear to give pressures to a group of religion and belief whose members choose not to be registered as a legal entity under domestic law.
- 3) A state has to instruct all law upholders and other governmental institutions that religious activities from the unregistered community of religion or belief is legal because the human position that has a freedom right to religion and belief is more eminent compared to procedural registration.
- 4) A State has to offer choices and procedures that are suitable for groups of religions or beliefs to get a lawful status if they want. The administrative procedures should be done with the passion to serve the enjoyment of the freedom of religion or belief to all persons. Therefore, the process should be quick, transparent, fair, inclusive, and non-discriminative.
- 5) Registration should be based on the clear elements and law formality. Therefore, it does not depend on the broad formal requirements such as the number of members, the length of time for the community existence, the content and teaching of the religion or belief, the community structure, or the way it appoints the religious figures.
- 6) A State has to ensure that there is no certain religious community that has "veto" right to determine the registration status of groups of other religions or beliefs, either in *de facto* or *de jure*.
- 7) A State has to give an effective law recovery for individuals or groups that complain about rejection in the registration of a religion or belief.
- 8) A state has to forbear from detaching or eliminating the lawful status of certain religions or beliefs that it has owned as an instrument to control and bring a community to bay that is considered as inappropriate with the culture building of a State.

#### 4. The Restriction of the Freedom of Religion or Belief

In the scheme of international human rights law, it is possible that there are right restrictions by a State, including in carrying out the freedom of religion and belief. This is clarified in Section 18 article

(3), the International Convention of Civil and Political Rights, as well as the General Comment No. 22, Human Rights Committee of the United States.

##### Box 4.19 Restriction

###### Article 18 (3) ICCPR

“Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”

##### a. Derogation

Even though it is possible that there are limitations to the freedom of thought, conscience and religion, as well as the freedom of coercion to have or adopt certain religion or belief, and the freedom of parents or the legal guardians to guarantee the education and moral of their children, there are rights that cannot be limited.

The limitations are only possible to the manifestation aspects of religions or belief.<sup>87</sup> This regard mentioned in the Article 4 of International Convention on Civil and Political Rights (ICCPR) and more explained in the General Comment No. 5 of Human Rights Committee.<sup>88</sup>

##### b. Limitation

Limitation according to Article 18 (3) ICCPR is enabled to be regulated in the law provision and is necessary to protect public safety, public order, health, or morals or the fundamental rights and freedoms of others.

In defining the limitation area that is allowed, the need to protect rights that are guaranteed by the ICCPR Convention

should first be taken into consideration, including the rights to the equality and non discrimination in any fields (as regulated in Article 2, Article 3 and Article 26 ICCPR).

Therefore, the limitation meaning in the human rights concept is different with the derogation that is defined as having no space to do the limitations. In this respect, freedom limitation to religion and belief should be done and should be justified lawfully by referring to the requirement that are stated in Article 18 article (3) ICCPR, even in the serious and urgent condition of public. This limitation is only limited to the efforts to protect public safety, public order, health, or morals or the fundamental rights and freedoms of others.

**Public safety:** It should be interpreted limitedly because it is different in meaning of public safety in other sections in the civil and political conversion. This limitation is justified, according to Manfred Nowak, as in the situation of some religious groups that are assembling to do religious procession, funeral ceremonies, rites and religious tradition that specifically threaten the safety of others of their own lives (soul, physic, and health) and other materials.<sup>89</sup>

<sup>87</sup> Human Rights Committee, *General Comments No. 22*, OHCHR, *Report of Special Rapporteur A/HRC/6/5* (20 July 2007), paragraph 44.

<sup>88</sup> Human Rights Committee, *General Comment No. 5: Derogation of rights (Art. 4): 31/07/81*, Adopted on Thirteenth session, 1981.

<sup>89</sup> ILCR Team, *Law and Human Rights Guarantee for the Freedom of Religion*, (Jakarta: ILCR, 2009), 12

**Article 4 of the ICCPR**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

**Public order:** It is to prevent disturbance over public order in a limited meaning, such as rules in the registration of hearse burial with an intention to regulate traffic. Therefore, people who use the streets are not bothered by the ceremony of hearse burial. Here, public order is interpreted tightly to keep the flow of traffic from being disturbed by the ceremony of hearse burial. The limitation act by a State towards the freedom of religion or belief can be justified.

**Health and public moral:** Moral in this understanding should come from various social, philosophical, and religious traditions, not only from one tradition.<sup>90</sup> Therefore, the moral may not only be taken exclusively from one tradition, such as ritual or religious ceremonies in the case of “black masses” (religious rites that requires coition), religious ceremonies or religious traditions that oblige circumcision for women in Africa, or oblige the followers to drink poison. On the ground of the reasons, a State can limit the manifestation of one’s religion or certain religion.

**Fundamental rights and freedom:** They are rights that cannot be derogated or limited in whatsoever condition, such as the right to live, the right not to be tortured, the

right to freedom of thought and conscience, the right to religion, the right to be admitted as a person before the law, and the right to not to be prosecuted on the basis of law that is not deteriorate. The manifestation limit to religion or belief can be done when it threatens the fundamental right and freedom as mentioned above.

The Special Rapporteur FoRB clarifies that the limitation cannot be imposed for discriminative purposes or be applied in a discriminative way and the limitation should be directly connected. It should also be proportional with the specific need that has been a reason by a State. The steps chosen in implementing the limitation are supposed to develop religious tolerance and avoid negative view towards a certain religious community.<sup>91</sup>

**a. Restriction by the Law**

Besides, the limitation should be regulated and guaranteed by law. It cannot be implemented in ways that violate the rights to freedom of religion and belief that has been assured in the ICCPR convention Section 18, including the limitation that are not allowed outside the reasons that have been regulated in verse 3 Section 18 in this ICCPR.

<sup>90</sup> Human Rights Committee, *General Comments No. 20*, paragraph 18.3

<sup>91</sup> OHCHR, *Report of UN SR on FoRB, A/HRC/6/5 ...*, paragraph 45

The law regulation that is meant constitutes the result of legislation process, not ineptly released by the law enforcers, executive and legislative institution. It is the result of legal legislation process, in accordance with justice norms.<sup>92</sup>

**Box 4.20 Human Rights General Comment No. 22: Limitation**

Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.

Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and 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 Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on

<sup>92</sup> Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices* 18

the full scope and effects of limitations under article 18 (3), both as a matter of law and of their application in specific circumstances.

*General Comment No. 22 para. 8*

**Box 4.21 Limitation**

**Limitation to the Endangering Religious Minority**

In connection with this limitation, The Special Rapporteur on Freedom of Religion or Belief gives a special attention to the existence of limitation practice towards a minority group of religion or belief that is considered to be endangering the society with a pretext that the group threatens other's rights, both public order or inappropriate with the State culture.

The Special Rapporteur on Freedom of Religion or Belief clarifies two things. First, even though it is possible that there are dangerous practices on behalf of religion or belief, the reason cannot be accepted if it is only simplified by the teaching form or the type of certain religion such as minority group or new religion movement. On the contrary, that presumption should be based on the clear empirical proof and may not be based on mere presumption or negative projection that often reflects stereotype and prejudice.

Second, the limitation to protect other's rights or public's interest towards dangerous religious manifestation should be implemented tightly as prescribed in section 18 article (3) ICCPR. This limitation can only be permitted if it is decided lawfully and is truly used to achieve a legal purpose (they are protection over safety, order, health, or morals or the fundamental rights and freedoms of others). The limitation has to also fulfill the proportionality requirement; the most minimal limitation as possible and is implemented strictly without discrimination.

In some cases, limitation is defined as efforts to eliminate certain groups of religions and beliefs from the right protection of religious freedom, as what has befallen to the minority group, traditional religion or groups that are considered inappropriate with the culture of State's religions. These limitations are definitely in conflict with the Human Rights concept that respects human's dignity.<sup>93</sup>

<sup>93</sup> OHCHR, *Report of UN SR on FoRB, Heiner Bielefeldt, A/HRC/19/60, paragraph 35 - 39.*

## 5. Prohibition of Discrimination, Intolerance, and Violence

The second component from the freedom aspect of religion or belief that is regulated in Section 22 of ASEAN Human Rights Declaration is about the prohibition from intolerance and discrimination. Discrimination and intolerance have also been an important part in the establishment of human rights globally, with several declarations, resolutions or other documents that have specifically put the basic principle.

To know more about the understanding and the meaning of the second component from the three right series of the freedom of religion or belief in the ASEAN Human Rights Declaration, this part will focus on the explanation on the prohibition from discrimination and intolerance by referring to the building of norms and standard globally that has been initiated ever since.

Prohibition from discrimination was originated from the principle of human rights admiration and the fundamental rights that are universal to all human beings without discriminating on race, gender, language or religion, or other distinction. Ever since it was established, the Special Rapporteur FoRB has paid attention to the prohibition from religious discrimination and is perpetuated in the whole treaty or the main international human rights instrument. In this respect, the States have duties to forebear from discriminative acts towards individuals or groups based on religion and belief (obligation to respect), and prevent discrimination to happen, including from non-state actor (obligation to protect), and to take steps to ensure that everyone in their certain State area has human rights wholly, without discrimination in whatever ways (obligation to promote).<sup>94</sup>

<sup>94</sup> OHCHR, "Combating discrimination based on religion or belief", OHCHR, accessed

The principle of non-discrimination is generally perceived as one of the most important in the field of human rights. It is overarching and therefore applies to all human rights, including the right to freedom of religion or belief.<sup>95</sup> Article 2 (1) ICCPR asserts about this non-discrimination that obliges every State to respect and guarantee all people in its area and becomes the jurisdictional subjects of rights enunciated in the Covenant (ICCPR) will be exercised without discrimination of any kind such as race, skin color, gender, religion, political view or else, social origin or nationality, ownership, birth status or other status.<sup>96</sup>

### Box 4.23 The Principle of Non-Discrimination

Through *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, the United States clarify the principles of anti-discrimination based on the religion and belief by stating that:

"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching".

"No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others".<sup>97</sup>

[http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination\\_religious.aspx](http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination_religious.aspx) (accessed on February 24, 2014)

<sup>95</sup> SR on FoRB, *Rapporteur's Digest on Freedom of Religion and Belief*, 53

<sup>96</sup> Human Rights Committee, *General Comment No. 18: Nondiscrimination*, Session thirty seven, 1989, U.N. Doc. UN. HRI\GEN\Rev.1 at 26 (1994), paragraph 2.

<sup>97</sup> UNGA, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Doc. UN. A/RES/36/55, (25 November 1981), Article I.

**Box 4.22 Non-Discrimination**

**ICCPR**

Article 2 (1): “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...].”

Article 5 (1): “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”

Article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...].”

Article 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

**ICERD Article 5**

“...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (d) Other civil rights, in particular: [...] (vii) The right to freedom of thought, conscience and religion”.

**ICESCR Article 2 (2)**

“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as [...] religion [...].”

**CRC Article 30**

“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”.

**1981 Declaration of the General Assembly**

Article 2 (1): “No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

Article 3: “Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the international covenants on human rights, and as an obstacle to friendly and peaceful relations between nations”

Article 4 (1): “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.”

Article 4 (2): “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.”

The enjoyment of freedom of religion or belief is on the same step. However, it does not mean that the equal acts towards everyone are identical. Discrimination does not only happen when individuals or groups in the same situation are treated differently, but it is also when the individuals or groups are treated equally in a different situation. In this respect, the non-discriminative principle prohibits the equal treatment in different situation (unjustified distinctions); on the contrary; prohibiting the equal treatment in a different situation (unjustified comparisons).

The principles of everyone's right equality to thought, conscience and religion prohibits someone to be the discrimination target by the State, institution, groups or individuals, with the reason of religion or belief.

Referring to Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, discrimination and intolerance basing upon religion means:

*“Every distinction, exclusion, limitation, or preference are based in the religion or belief and are aimed or make a result in the abolition and dilution (the individuals or groups) of recognition, enjoyment, use of Human Rights and freedom based on the equal position”.*

In the other word, discrimination based on religion is defined as treatment towards someone unkindly because of the religious conviction that he has. Religiousness, in this respect, is not only about religions that have been great and organized, such as Buddhism, Christianity, Hinduism, Islam, or Jewish. They also include all beliefs that powerfully hold religious beliefs, ethics or morals. Religious discrimination also includes the treatment to someone differently because he or she is

married, is associated or in connection with certain members of religious groups.

The guarantee of discrimination prohibition also includes the guarantee for minority groups of religion or belief to not discriminate in enjoying the human rights and fundamental rights, including economic, social, and cultural rights.<sup>98</sup>

In efforts to eliminate discrimination and intolerance, the United Nations appeals to every State to:

- (1) Taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all parts of the world, and devoting particular attention to practices that violate the human rights of women and discriminate against women, including in the exercise of their right to freedom of thought, conscience and religion or belief.
- (2) Promoting and encouraging, through education and other means, understanding, tolerance and respect in all matters relating to freedom of religion or belief and undertaking all appropriate efforts to encourage those engaged in teaching to promote mutual understanding, tolerance and respect.<sup>99</sup>

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<sup>98</sup> OHCHR, *Resolution 10/25 on Discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights*, 10<sup>th</sup> Session, (27 March 2009).

<sup>99</sup> UNGA, *Resolution 63/181 on Elimination of all forms of intolerance and of discrimination based on religion or belief*, UN Doc., (2008), A/Res/63/181, (16 March 2009), paragraph 12.

Box 4.24 Forms of Intolerances

Intolerance stems from a belief held by a group of individuals as a system of belief or way of life which is considered as higher above others. It can generate a range of consequences from something simple, such as impolite behavior or disregarding the existence of others, in the course of elaborate social system such as Apartheid and up to deliberately endangering others by preparing an act of annihilation.

- a) *Sexism*: policies or attitudes that drive out women from full participation in society and from the opportunity to enjoy all aspects of Human Rights; based on reason that men are higher of degree than women.
- b) *Racism*: act of denying Human Rights on the base of race differences; anchored in the rationale that featuring some groups of particular race to be superior to other races.
- c) *Ethnocentrism*: marginalizing out on the basis of language or culture; derived from the idea of judging level differences by the values of 'higher' culture against other culture.
- d) *Anti-Semitism*: prejudiced, discriminative and unilateral injustice attitudes and behaviors against Jewish.
- e) *Nationalism*: a belief that a nation is greater and possesses more rights than other nations.
- f) *Fascism*: system of belief that the State should tolerate those who are deviant and uncommon and should retain authority to control the lives of its citizens.
- g) *Xenophobia*: irrational fear and dislike against foreigners and those who are culturally different; they are convinced that "outsiders" will harm the community.
- h) *Imperialism*: subjugation of people or society against others for the purpose of controlling and subjecting their wealth and resources.
- i) *Exploitation*: the use of society and labors' time with an unjust compensation; the slovenly and wastefully use of natural resources and environments.
- j) *Persecution of religion*: Imposing the enforceability values or teaching of a particular religion toward others, rooted in *raison d'être* that the specific religion is the only correct interpretation and contains spiritual truth.<sup>100</sup>

<sup>100</sup> UNESCO, *Tolerance: the threshold of peace A teaching / learning guide for education for peace, human rights and democracy*. (Paris: UNESCO, 1994).

**a. Discrimination: *De Jure* and *De Facto***

The 1981 Declaration confirms three important points, are: First, the principle of non-discrimination which applies to State or non-State as potential actors. The State has an obligation to refrain from committing discriminative treatments against individuals or groups because of their beliefs and religions; as well as it must take necessary measures to prevent and eliminate discrimination perpetrated by non-State actors.

Second, the 1981 Declaration affirms that discrimination is act of 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. This implies that not all distinctions, exclusions, restrictions or preferences are counted as discrimination, because in fact the distinction for the temporary affirmative action is needed to lead to the elimination of conditions that cause or support a discriminatory situation, including on the grounds of religion and belief.

Third, referring to the “purpose” or “effect” of distinction, exclusion, restriction or preference based on religion and belief, then the Declaration of 1981 confirms protection from formal discrimination (*de jure*) and actual discrimination (*de facto*). Both are closely related. *De jure* discrimination is originated or listed in the legislation of a State, while *de facto* discrimination is discriminatory act that occurs as a result of those legal regulations or policies in practice. *De jure* discrimination is addressed through a change or cancellation of the discriminative policy, while *de facto* discrimination can be addressed through measures that are likely to lead to the elimination of discriminating practices as soon as possible.

**Box 4.25 The Difficulty of Identifying Non-State Actors**

Discrimination by non-State actor tends to be indistinguishable in comparison to discrimination that perpetrated by the State. For example, there may be a problem to determine whether religion based associations have disregarded job applications from people who derive from different religious groups or whether they forced applicants to release any of their identity that affiliated with religion they profess.

Another example is when a group of religion or belief excludes particular (religion or belief) community from utilizing property in tenancy relationship. In order to determine whether the action in the above example comprises the category of discrimination, we need to perform in-depth analyses on case by case basis.

*(Rapporteur’s Digest on Freedom of Religion and Belief)*

**b. Direct and indirect discrimination**

Discrimination can also be classified as “direct discrimination” and “indirect discrimination”.

Direct discrimination occurs when a law, regulation, policy or practice directly gives rise to discrimination and distinction of treatment (which is not objectively justified) that expressly based on the religion and belief of an individual.

Indirect discrimination stems from law, policy or practice that doesn’t seem to lead to inequality, but it sets discrimination in motion when it is implemented. Indirect discrimination is very likely to occur in the absence of intention of the perpetrator, therefore this form of discrimination at times is difficult to detect or prove. But when it has been identified, the country should immediately take appropriate measures to rectify the situation.

Where there is discrimination – whether *de jure* or *de facto*; directly or

indirectly – the State must urgently address the existing imbalances; accordingly deep study and analysis on the socio-economic situation of particular religious communities is vital for the State in order to take adequate measures.

**c. Discrimination and Intolerance:  
Viewpoint of Victims and  
Perpetrators**

In carrying out his mandate, the Special Rapporteur on Freedom of Religion or Belief provides overview of patterns and issues related to discrimination, namely: 1) discrimination and violence based on the religious affiliation of the victim; and 2) discrimination and violence based on actors or arrogated to the religious tenets of the perpetrator.

1) Discrimination and violence based on the religious affiliation of the victim

The distinction in this form of discrimination is to identify the practice of discrimination, either *de jure* or *de facto*, directly or indirectly, based on religion and belief professed by the victim. Faith differences or impartiality (toward particular religion) sometimes raise inter-religious or intra-religious issue, which then induces discriminative act against the victims, due to their impartiality or their professed beliefs. It often happens in practices of prohibiting a person to enroll a school, obtain a job in the Government or corporation owing to their religion or belief affiliation. Acts of violence and threat against minority religious groups emerge as well from non-State actors, whom every so often immune to law proceedings.

These discriminative actions are discrimination and violence that generally suffered by religious minorities around the world. Most minority religions are in vulnerable situation, which sometimes harsher when the State specifically targeting them, by registering names of

their members and checking on them. Worse still when the State's legislation openly discriminates individuals based on their religion or belief, as well as group that is perceived as not so devout in professing particular religion.

This form of discrimination also takes place on place of worship or building owned by particular religion/belief groups. These sacred places are often invaded or destructed, as well as against the individuals or groups of their religious believer.

Discrimination repeatedly crops up as a result of national policies, laws or practices which are designed by State to combat terrorism, which sometimes yields adverse impact on the enjoyment of freedom of religion or belief. The situation of religious minorities (which most likely to be associated with terrorism) has been worse after the 11 September 2001 incident and it caused them to be increasingly alienated from the surrounding communities, who previously had lived together without suspicion. In this regard, the efforts of combating terrorism must also ensure the measures taken must be in accordance with international law, such as Human Rights, refugee and humanitarian laws.

Other forms of discrimination based on religious affiliation of the victim:

- a) Registration procedures for religious groups that are applied discriminatively by Governments that restrict the freedom of religion or belief of minorities, such as new religious movements or of indigenous people's religion.
- b) Uncalled-for State interferences in religious teachings and dissemination of related publications, for example, as the State censored, monitored and wrote sermons, or even persecuted religious leaders.

- c) A number of restrictions against the various forms of religious expression, such as against the wearing of special clothing or head covering; or rather, women are forced to wear religious dress in public in certain countries.<sup>101</sup>
- 2) Discrimination Based on Religious Teachings of the Perpetrator

Other patterns of discrimination and/or violence that have had been monitored by the Special Rapporteur on Freedom of Religion or Belief are practices of using justifications of particular religions in the actions taken by the offenders or perpetrators. To that end, referring to the Declaration of 1981, it is important for the State to encourage understanding, tolerance and respect in issues relating to freedom of religion or belief; as well as ensuring that the exploitation of a particular religion or belief for purpose that in contrast to the Charter of the United Nations, human rights instruments, goals and principles of the Declaration of 1981, is not acceptable.

Discrimination or violence that declares itself on behalf of religion or belief is the heart of many conflicts related to issues of religion and frequently also related to particular ethnic group, nationality, politic or historical background.

Such practices are found in many countries worldwide. Angelo Vidal d'Almeida Ribeiro, the Special Rapporteur on Freedom of Religion or Belief that firstly received this mandate, in his report in 1993 noted on how difficult it was to restrain or eliminate the spread of extremists and fanatical views, as well as overcoming the distrust against certain religious groups. Although discrimination or violence sometimes materialized due to a long history of various aspects of

economic, social, political or cultural in society, these practices were often precisely caused by sectarian fanaticism and dogmatic view.

The second mandate holder of the Special Rapporteur on Freedom of Religion or Belief, Abdelfattah Amor, insisted that the nature of religious extremism has harmed rights of individuals and communities toward peace and has undermined Human Rights as a whole. Like a cancer, he noted, extremism is contagious to adherents of certain religions or to other external religions. This disease can be contracted by any group within any religion. It emerges openly or latently, covertly or overtly, potentially or explicitly bearing violence; therefore it is range of causes must be addressed and prevented, including its economic and social factors. This extremism manifested in such phenomena as collective self murder by followers of certain religion, acts of terrorism by religious movements, as well as a suicide attack on the grounds of religion.

In its course of action, motif and pattern of discrimination derived from the increasingly diverse perpetrators' convictions. Cutting-edge occurrences in point as uttered by the Special Rapporteur on Freedom of Religion or Belief in two of his reports (A/HRC/13/40/Add.1 and A/HRC/10/8/Add.1) indicate the trend of such, including riots and attacks on places of worship in a country, which were carried out by members of certain religious groups that seek to impose their interpretation of religious law on everybody within the region. Another case's was situated in the accusation of blasphemy, certain religious groups threatened to isolate entire towns and attack existing minorities in the area if the local police would not arrest five members of the minority religion.

<sup>101</sup> OHCHR, *Report of the SR on FoRB, Asma Jahangir*, A/HRC/12/40, 21 December 2009, paragraph 34 – 38.

Another incident noted was when members of minority religions died after the offender had forced to see the victim's identity card that revealing his religion. Other cases compiled by the Special Rapporteur on Freedom of Religion or Belief in his report (A/HRC/7/10/Add.3; A/HRC/10/8/Add.2, A/HRC/10/8/Add.3, and A/HRC/13/40 / Add.3) show this tendency, i.e. the incidence of sectarian violence, persecution and cruelty that had been committed in the name of religion.

#### **d. Combating Intolerance, Incitement and Violence**

Through the UN Human Rights Council Resolution 16/18 and UN General Assembly Resolution 66/178 global community recognized the importance of combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief.<sup>102</sup>

The resolution reaffirmed the positive role that the exercise of the right to freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance, and deeply concerned about incidents of intolerance, discrimination and violence against persons based on their religion or belief in all regions of the world.

In this respect, the Resolution deplored any advocacy of discrimination or violence on the basis of religion or belief, and strongly deplored acts of violence against persons on the basis of their religion or belief, as well as any such acts directed against their homes, businesses, properties, schools, cultural

centers or places of worship, and all attacks on and in religious places, sites and shrines in violation of international law.<sup>103</sup>

#### **UNGA Resolution A/RES/66/167**

*Expresses deep concern* at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programmes and agendas pursued by extremist organizations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments;

*Expresses concern* that the number of incidents of religious intolerance, discrimination and related violence, as well as of negative stereotyping of individuals on the basis of religion or belief, continues to rise around the world, condemns, in this context, any advocacy of religious hatred against individuals that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, as set forth in the present resolution and consistent with their obligations under international human rights law, to address and combat such incidents;

*Condemns* any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audiovisual or electronic media or any other means;

*Recognizes* that the open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred, and expresses its conviction that a continuing dialogue on these issues can help to overcome existing misperceptions.<sup>104</sup>

In this context, the Resolution 66/177 calls upon all States to:

- (a) Take effective measures to ensure that public functionaries, in the conduct of their public duties, do not discriminate against an individual on the basis of religion or belief;
- (b) Foster religious freedom and pluralism by promoting the ability of members of all religious communities

<sup>102</sup> See UNGA, *Resolution 66/167 on Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief*, 27 March 2012, A/RES/66/167.

<sup>103</sup> UNGA, *Resolution 66/167*.

<sup>104</sup> UNGA, *Resolution 66/167*... Paragraph I - 4

to manifest their religion and to contribute openly and on an equal footing to society;

- (c) Encourage the representation and meaningful participation of individuals, irrespective of their religion or belief, in all sectors of society;
- (d) Make a strong effort to counter religious profiling, which is understood to be the invidious use of religion as a criterion in conducting questioning, searches and other law enforcement investigative procedures.

The Resolution also calls upon all States to adopt measures and policies to promote the full respect for and protection of places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they are vulnerable to vandalism or destruction; calls for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs.

In the term of evaluation and follow up mechanism, the Resolution encourages all States to consider providing updates on efforts made in this regard as part of ongoing reporting to the OHCHR, and in this respect requests the OHCHR to include those updates in her reports to the Human Rights Council. This Resolution requests also the Secretary-General to submit to the General Assembly at its sixty-seventh session a report on steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, as set forth in the present resolution.<sup>105</sup>

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<sup>105</sup> UNGA, *Resolution 66/167...* Paragraph 5 – 10

#### **e. Privileged Status for Particular Religion or Belief Groups**

Many countries give special status to communities of particular religion or belief, or a few of them, either by law or in practice. These are like financial subsidies, tax exemptions, or membership on public broadcasters.

If a country gives special status on behalf of communities of religion or belief, then the State should ensure that the provision, conceptually or in practice, does not discriminate others.

In many cases, the favoritism policies or practice for certain group of religion or belief thus discriminated other religion or belief groups. The establishing criteria are mostly blurred or not even defined by any means. Sometimes it is rooted in pretext that a religion or belief has played an important role in the development of the State, so it is worth to be regarded specially, though discriminating other religious groups.

#### **f. Official Religions of the State (State Religion)**

There are numerous countries that have made particular religion as the State religion which is specified in their Constitution. The practical implications of the establishment of State religion could be very different from one country to another, but they revolve around the protection of a particular religion from the competition with other religions or of public criticism.

In some extreme cases, only the followers of official State religion are allowed to exercise their religious convictions. Several countries only recognize the status of citizens based on a person's compliance of official religion. Other practices, for instance, those who take important positions, such as President, Prime Minister, members of

Parliament, the King, the Queen, the Attorney General, Head of Court or members of the National Commission on Human Rights, should openly declare their loyalty to the official religion by taking oath.

Nevertheless, incidents in many countries show that the official religion of the States has had at risk of seriously discriminating minority groups.

Under international human rights law, State religion is not prohibited. However, the State also has obligations, either *de jure* or *de facto*, not to discriminate other groups of religion or belief.

Human Right Committee General Comment No. 22 paragraph 9 states:

*“The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers”.*

**Box 4.26 Recommendations of the SR on FoRB**

1. If the State gives special status to a particular religion or belief group or other groups, then such status must comply strictly with the principle of non-discrimination and must fully respect the right to freedom of religion or belief of all persons;
2. This status should not be used as a tool by the State for purposes of national identity politics, as this may have detrimental effects for the situation of minority groups, either individually or in community.<sup>106</sup>

<sup>106</sup> OHCHR, *Report of the SR on FoRB, Heiner Bielefeldt*, A/HRC/19/60..., paragraph 73

**g. Positive Discrimination (affirmative action)**

*Is there any affirmative action? How does the international human rights law look at it?*

The Human Rights Committee in General Comment suggest that the principle of equality sometimes requires State Parties to take affirmative actions in order to diminish or eliminate conditions that cause or encourage the unrelenting discriminations, which prohibited by the ICCPR. For instance, in a country wherein there are general conditions that apply to a specific part of the population that prevent or restrict them from enjoying human rights, then the State should take specific measures to amend the conditions. Such actions may include the granting of preferential treatments to those groups of people in certain areas in comparison to the majority of other population. However, as long as such actions are required to rectify the discrimination that occurs, they are justified by the ICCPR.<sup>107</sup>

The Human Rights Committee also observed that not all partiality treatment is an act of discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve purposes which are vindicated by the Covenant.<sup>108</sup>

<sup>107</sup> Human Rights Committee, *General Comments No. 18 :Non-Discrimination...*, paragraph 10

<sup>108</sup> Human Rights Committee, *General Comments No. 18 :Non-Discrimination...*, paragraph 13

**Box 4.27 Affirmative Action**

The Human Rights Committee affirmed that if in a certain portion of the population of a State seems to be stymied from enjoying their Human Rights; therefore the State should take specific action to improve its condition. Such action may include the granting of subsidies for a certain period of time or preferential treatment in specific matters, which sets it apart from other populations. However, this preferential treatment is only allowed as long as such action is applied to relieve them from historical practices of discrimination, and also it is in temporary manner. In view of the Convention on Civil and Political rights, such distinction is allowable.

The UN Special Rapporteur asserted that these affirmative actions are essential to empower the communities that have been vulnerable and have suffered historic discriminatory practices. However, these deeds should also be measured for their effectiveness through various ways, so that their progress can be identified and monitored.

caused problems by assigning the same lessons to groups of minority religions/beliefs. These minorities, in some cases, are not given a choice except for receiving religious lessons instructed by major communities. Only in a few cases that schools are able to give religious lessons to all students of different groups of religion and belief.

**h. Religious Education and Public School**

Religious education is an issue that sparked controversy in many communities globally. A number of countries have religious lessons in public schools for the teaching of particular religions, while in some others public schools provide historical lessons of different religions.

In the perspective of human rights, the later practice (i.e. giving historical lesson of religions) is not reasonably problematic, provided that those classes on history of religions are presented in a neutral and objective way. On the other hand, regarding public schools that imparting religious education (in the former case), the ICCPR confirmed that the regulation should be along the lines of Article 18 (4) of the Convention, which is not discriminatory or as alternative to accommodate the request of parents/guardians

In some countries, religious lessons are compulsory, which every so often

**Box 4.28 Religious Education and Public School**

**Article 18 paragraph (4) ICCPR**

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Human Rights Committee General Comments No. 22 (article 18 paragraph (6))**

The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

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In view of this legal background, fundamental questions of school education related to issues of religion or belief – including the definition of educational principles, the compilation of the topics of the school curriculum, basic institutional and organizational arrangements, etc. – require a high degree of sensitivity. Whenever possible, these questions should not be decided without due consultation of all parties involved, including members of religious or belief communities, while taking care that international human rights standards are respected. In this context, the Special Rapporteur would like to refer to a study prepared under the guidance of his predecessor, which states:

*“Again, the main focus being human rights, what is relevant is that education on religious trends, traditions and movements as well as convictions, be provided in a fair and objective way, stimulating the curiosity of the audience, encouraging it to question their bias and stereotypes about cultures, religions and views other than the one which they see as being part of their own identity. Succeeding in portraying the others so that they can recognize themselves provides not only a valuable and inspiring educational experience; it also help create understanding and mutual respect between different communities or world-views”.*<sup>109</sup>

<sup>109</sup> OHCHR, *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt*, 15 December 2010, A/HyRC/16/53, paragraph 26

## 6. Prohibition of Incitement / Hate Speech

The last component listed in the ASEAN Human Rights Declaration is about the prohibition from *incitement of hatred based on religion and belief*. This last component is closely related to the guarantee for the freedom right to expression and opinion that is basically explained in Article 23 of ASEAN Human Rights Declaration. Since there is no detailed explanation about Article 22 and 23, this part will discuss about the problem by using the principles of international human rights that have been established.

Thus, this analysis can also give clarity and direction on how the freedom right to religion and belief that is guaranteed in Article 22 AHRD and the freedom right to speech that is regulated in Article 23 AHRD can be manifested, without having to be assertive.

Freedom of speech and expression is a situation that is tremendously necessary for the development of every human being. Both are essential in every society and become the foundation for free and democratic community. Nevertheless, in the conception of human rights, freedom of speech and belief are not absolute and can be limited in accordance with the principles and standards that have been established.<sup>110</sup>

One of the restrictions that are made possible by the ICCPR is stated in Article 20 paragraph (1) and (2). In context of freedom of religion and belief, paragraph (2) article 20 states:

*“Any advocacy of national, racial or religious hatred that constitutes incitement*

*to discrimination, hostility or violence shall be prohibited by law.”*

Article 20 (2) ICCPR obliges States parties to prohibit by law any act which promotes hatred on the basis of nationality, race or religion that is incitement to commit discrimination.<sup>111</sup>

Article 20 ICCPR states that any propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. This provision is not contradictory with article 19 ICCPR, in view of the fact that both corroborate each other and contain specific tasks and responsibilities of the State.

Restrictions under article 20 (2) are intended to combat the advocacy of hatred based on national identity, racial, or any religion that engenders provocation of discrimination, hostility or violence, whether such propaganda or advocacy aims internal and external situation of the State in concern. In this regard, the UN Human Rights Committee requires the State to declare clearly through its regulations that propaganda and incitement of hatred are in opposition to public policy and convey adequate sanctions for violation of the provisions. The State shall also refrain from committing such propaganda and should strengthen the role of the independent judiciary to prosecute every case of violation against the article 20 (2).<sup>112</sup>

<sup>111</sup> Human Rights Committee, *General Comments No. 18: Non-Discrimination*, 37<sup>th</sup> Session (10 November 1989). Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994).

<sup>112</sup> Human Rights Committee, *General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred*, 19<sup>th</sup> session, 1983, U.N. Doc. HRI/GEN/1/Rev.1 at 12 (1994); Human Rights Committee, *General Comments No. 34* 102<sup>th</sup> 2011, UN Doc., CCPR/C/GC/34, (12 September 2011), paragraphs 50 – 52.

<sup>110</sup> Limitation of the right to freedom of expression and opinion has been described by the Human Rights Committee in the General Comments No. 34 (Article 19: Freedom of Opinion and Expression). 102<sup>nd</sup> session, Geneva, 11-29 July 2011, CCPR/C/GC/34

Although human rights laws prohibit hate speech, human rights conception does not classify “criticism” against certain religious teachings as part of this category, therefore the State may not utilize the article 20 (2) of ICCPR as justification for criminalizing, suppressing or stopping criticism that occurred in particular religion. State should also prohibit any individual or certain religious groups to commit violence against those who post criticism or have critical views against religious teachings. The State must encourage and promote both rights (freedom of expression and freedom of religion) through national law and guarantee a peaceful dialogue concerning crucial aspects in a multicultural society.<sup>113</sup>

In the international human rights perspective, hate speeches is actually part of the hate crimes. Hate crimes are criminal acts committed with a “bias motive” that makes hate crimes different from other crimes. A hate crime is not one particular offence; it could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term “hate crime” or “bias crime” describes a type of crime, rather than a specific offence within a penal code. A person may commit a hate crime in a country where there is no specific criminal sanction on account of bias or prejudice. The term describes a concept, rather than a legal definition.<sup>114</sup>

As mentioned above, hate crimes always comprise two elements, are: “a criminal offence” committed with a “bias motive”. A criminal offence is that an act is committed that constitutes an offence under ordinary criminal law. This criminal act is referred to in this guide as the base offence. Hate crimes always require a base

offence to have occurred. If there is no base offence, there is no hate crime.

The “bias motive” is that the criminal act is committed with a particular motive. It is this element of bias motive that differentiates hate crimes from ordinary crimes, because the perpetrator intentionally chose the “target” of the crime because of some “protected characteristic”, there are:

- The target may be one or more people, or it may be property associated with a group that shares a particular characteristic.
- A protected characteristic is a characteristic shared by a group, such as race, language, religion, ethnicity, nationality, or any other similar common factor.<sup>115</sup>

#### Box 4.29 Definition and Term

The terms ‘**hatred**’ and ‘**hostility**’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.

The term ‘**advocacy**’ is to be understood as requiring an intention to promote hatred publicly towards the target group;

The term ‘**incitement**’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

(*The Camden Principles*)

<sup>113</sup> See A/HRC/6/5 paragraph 38-39; SR on FoRB, *Rapporteur’s Digest on Freedom of Religion and Belief*.

<sup>114</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Hate Crime: A Practical Guide*, (Poland: OSCE ODIHR, 2009), 16

<sup>115</sup> OSCE ODIHR, *Hate Crime: A Practical Guide*, 16

**Box 4.31 The Principle of Application of Criminalization Articles on Hate Speech**

1. There has to be malice in general (public intent) of incitement leading to violence, hostility, and discrimination.
2. Restriction on freedom of expression should be clear, meticulously defined, and governed by the rule of law. Furthermore, limitations are indeed necessary and proportionate to the purpose of the restriction itself;
3. The restriction does not endanger the exercise of the right itself, and is the final action;
4. The trial of hate speech case should be carry out by independent and impartial court.

## 7. Protection of vulnerable and minority groups

This part is basically leading to the analysis of special rights that are regulated in the human rights law generally and in the context of freedom of religion or belief specifically. Besides, the issues that are in this part are actually inherently related to the context in ASEAN. Therefore, analyzing them in this book becomes very important that the rights of the susceptible group can be taken into account according to the character and specialty.

### a. Children and Freedom of Religion and Belief

Children's right in freedom of religion and belief is a relatively multifaceted problem, given that it does not only touch the interests of children, but also concerning parents or guardians. Article 14 (1) and (2) of the Convention on the Rights of the Child (CEC) guarantee that States Parties shall respect the right of the child to freedom of thought, conscience and religion, in a manner consistent with the evolving capacities of the child.

Freedom of religion and belief is also related to the interest of the child's right, especially when children often befall into victims of discriminatory treatment, either from the State or non-State actor. In this case, Article 14 (1) of the Convention on the Rights of the Child confirms that: "*States Parties shall respect the right of the child to freedom of thought, conscience and religion*", in addition to "*...rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving*

*capacities of the child*" (Article 14 paragraph (2)).

Referring to "evolving capacities" in the CRC, the Special Rapporteur on Freedom of Religion or Belief recognized the existence of differences of the age in defining maturity based on various practices in every State worldwide. To that end, the Special Rapporteur recommended that maturity and evolving capacities to be approached case by case in accordance with the specific circumstances of each situation, as also defined in article 12 (1) of the CRC. The teaching should also be in a way that is fair and balanced, does not lead to indoctrination, eliminates prejudice and contradictory conception to freedom of religion, as well as ensures the respect for and acceptance of pluralism and diversity of religions or beliefs.<sup>116</sup>

In this regard, the Special Rapporteur emphasized that no individual shall be subject to coercion which interfere with his freedom to have or profess a religion or

<sup>116</sup> OHCHR, Interim report of the Special Rapporteur on freedom of religion or belief, 17 July 2009, A/64/159, paragraph 25 - 28

belief of his choice, including in this case is against the forcible marriage of child (female) that impacts on her own religion or belief.<sup>117</sup>

#### **b. Women and Freedom of Religion and Belief**

The UN Human Rights Commission Resolution No. 2005/40 affirms that: "*In which the Commission on Human Rights invites the Special Rapporteur to address situations of violence and discrimination that affect many women as a result of religion or belief*" (paragraphs 5 letter b).

The Commission also encourages the Special Rapporteur on Freedom of Religion or Belief to continue to carry out his mandate using gender perspective, including identifying gender-based violations, in collecting information and his recommendations. This is once more confirmed by the UN Human Rights Council Resolution 6/7 by encouraging State parties to guarantee the right, adequate and effective measures in assuring the freedom of religion and belief of women.

In practice, a lot of women suffer discrimination because of religion they profess and it is compounded by their gender identity. A number of regulatory legislations in some States assert that mothers' right is less than fathers in terms of the determination of offspring. Discrimination and harmful practices to the health of women also are also applied in religious communities for reasons of devout traditions. In addition, practices of forcible whipping, forced apostasy and even murders target women specifically in religion and belief intolerance cases; similar things also happen to women of minority beliefs or religious groups.

<sup>117</sup> OHCHR, *Interim report of the SR on FRB*, 17 July 2009, A/64/159, paragraph 68

Such practices, inter alia, are as a result of the decision making process in religious communities that habitually dominated by men and the women are excluded from it. Dialogue process in the community habitually does not provide many opportunities for women to have their say.<sup>118</sup>

#### **Box 4.32**

##### **Children and Freedom of Religion and Belief**

###### **Convention on the Rights of the Child**

**Article 14 (1):** "States Parties shall respect the right of the child to freedom of thought, conscience and religion."

**Article 14 (2):** "States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child [...] (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own".

**Article 30:** "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 practise his or her own religion, or to use his or her own language."

###### **1981 Declaration of the General Assembly**

###### **Article 5 (3)**

*The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.*

###### **Article 5 (5)**

*Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.*

<sup>118</sup> OHCHR, *Interim report of the Report of the SR on FoRB*, A/64/159, paragraph 60 – 62

**Box 4.32**

**Women and the Guarantee of Freedom of Religion or Belief**

**ICCPR**

**Article 5 (1):** “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

**Article 18 (3):** “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

**CEDAW**

**Article 2:** “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.”

**Article 3:** “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

**ICESCR Article 2 (2):** “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

**1981 Declaration of the General Assembly Article 8**

“Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the UDHR and the Covenants”.

**Commission on Human Rights resolution 2005/40 paragraph 5 (b) and 14**

“In which the Commission on Human Rights invites the Special Rapporteur to address situations of violence and discrimination that affect many women as a result of religion or belief.

“The Commission on Human Rights, “Stresses the need for the Special Rapporteur to continue to apply a gender perspective, inter alia through the identification of gender specific abuses, in the reporting process, including in information collection and in recommendations”.

**Human Rights Council resolution 6/37**

**Para. 9:** “Urges States [...] (c) To ensure that appropriate measures are taken in order to adequately and effectively guarantee the freedom of religion or belief of women [...]”;

**Para. 11:** “Invites all actors to address in the context of that dialogue, inter alia, the following issues within the framework of international human rights: [...] (b) The situations of violence and discrimination that affect many women as well as individuals from other vulnerable groups in the name of religion or belief or due to cultural and traditional practices”

**Para. 12:** “Emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, at all levels and with a broader participation including of women, to promote greater tolerance, respect and mutual understanding”

**Para 18:** “Decides therefore to extend the mandate of the Special Rapporteur on freedom of religion or belief for a further period of three years and, in this context, invites the Special Rapporteur: [...] (d) To continue to apply a gender perspective, inter alia, through the identification of gender-specific abuses, in the reporting process, including in information collection and in recommendations”.

**Box 4.33**

**The State, Freedom of Religion/Belief and Women**

The Special Rapporteur has recommended enacting legislation to eliminate discriminatory or harmful practices and repealing laws that infringe the rights of women. With regard to female genital mutilation, for example, States should penalize those performing such harmful practices and provide assistance in securing alternative sources of income for practitioners, for example as birth attendants.

In terms of preventive domestic measures, States should be encouraged to develop legal literacy and training strategies at all levels of society, with the aim of altering discriminatory cultural norms and attitudes. In this context, dialogue between the authorities and religious leaders and other members of society, including medical practitioners, political leaders, education authorities and the media, is an important prevention measure.

State should take effective and necessary steps to ensure enjoyment by women of their rights to equality before the law and equal protection of the law. States should adopt appropriate measures to provide criminal law protection for women against violence stemming from traditional cultural practices that pose a threat to their health and lives.

With a view to achieving lasting improvements, action to eliminate violence against women should not only target the effects of the phenomenon but also its root causes. In addition, States should strengthen monitoring mechanisms, official bodies and civil society institutions which play a role in the protection and promotion of women’s rights, in the light of harmful cultural practices. States should also be encouraged to withdraw reservations on religious grounds which may adversely affect or restrict international legal instruments concerning the protection of the status of women, in particular the Convention on the Elimination of All Forms of Discrimination against Women.<sup>119</sup>

<sup>119</sup> OHCHR, *Interim report of the SR FRB A/65/207* (29 July 2010), access from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/470/47/PDF/N1047047.pdf?OpenElement> (accessed on February 24, 2014)

### c. Refugees, Asylum Seekers and Migrant Groups

Article 4 of the 1951 Convention on Refugee Status insists that every state shall respect the freedom of any refugees/asylum seekers to practice the teachings of their religion and the freedom to provide religious education to children. In fact, the principle of non-*refoulement* (i.e. prohibition of returning refugees/ asylum seekers to their country of origin) applies when refugees are threatened because of the religion they profess.

In addition, resolution 65/211 of the UN General Assembly recognizes the vulnerable conditions endured by a number of groups, including asylum seekers, refugees and internally displaced persons (IDPs), with respect to their ability to exercise the right to freedom of religion and belief.

In context of migrant workers and their families, the International Convention on the Protection of Migrant Workers and the Members of Their Family (CMW) has established that every migrant worker and members of his family shall have the right to freedom of thought, conscience and religion. This right shall include freedom to profess or to adopt a religion or belief of his choice and freedom – either individually or in community with others and in public or private – to manifest their religion or belief in worship, observance, practice and teaching (Article 12 (1)).

Furthermore, it asserts, that migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice. Limitations on this right may be subject only to such limitations as are prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Lastly, the Convention also emphasizes the obligation of States Parties to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>120</sup>

#### Box 4.34 Refugee and Freedom of Religion or Belief

##### Convention relating to the Status of Refugees

**Article 4:** “The Contracting State shall accord to refugees within their territories treatment at least as favorable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.”

**Article 33:** “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

##### General Assembly resolution 65/211 para. 8

“Recognizes with concern the situation of persons in vulnerable situations, including [...] refugees, asylum-seekers and internally displaced persons [...], as regards their ability to freely exercise their right to freedom of religion or belief”

In practice, migrant groups are susceptible to discrimination of religion or belief in many countries, among other things as a consequence of prejudice against their social standing. Durban Declaration explains that the vulnerability occurs because of differences of language, custom and culture, and as well as economic and social difficulties that they had to cope with. More specifically, discrimination against right of children of migrant groups to education, purposely in the context of

<sup>120</sup> See *International Convention on the protection of migrant workers and the members of his family*; Article 12, paragraph (1) to (4). Adopted by General Assembly resolution 45/158 of 18 December 1990. Access from <http://www2.ohchr.org/english/bodies/cmw/cmw.htm> (accessed on February 24, 2014)

the promotion of freedom of religion and belief, inhibits their ability for their integration and evolving capacities.

Hence, the Special Rapporteur on FoRB has confirmed that all the people within a State, not merely limited to its citizens, have a right to freedom of religion and belief, including the manifestation of the religion or belief in worship, observance, practice and teaching. In reality, migrant groups often cope with difficulties to perform their religion and belief, such as pertaining to places of worship, to perform religious rituals openly or to engage in proselytization activities.<sup>121</sup>

**Box 4.35 Migrant Workers and FoRB**

**Convention on the Protection of All Migrant Workers**

**Article 12 (1):** “Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.”

**Article 12 (2):** “Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.”

**Article 12 (4):** “States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

problem on the aspect of their numbers, namely:

*First*, a minority is indicated in numerical comparison with the rest of the population. Otherwise, a group can be said to be a minority when their numbers are significantly smaller than the rest of the population. *Second*, minority presupposes a position that is not dominant in context of a country. In other words, the minority group is not in control, both economically and politically. *Third*, that the distinction of minority is based on, at least, one of three aspects, namely the ethnic, religion and language. *Fourth*, there is a sense of solidarity among one another and they share collective desire to preserve religion, language, tradition, culture and concern to achieve full equality before the law amongst the external population.<sup>122</sup>

Declaration on *the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* in 1992 confirmed that every State 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.<sup>123</sup>

**Box 4.36 Minority Rights on Freedom of Religion and Belief**

**ICCPR Article 27**

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their

**d. Minority Groups**

There are four important things that must be considered in the concept of minorities, in addition to simply put

<sup>121</sup> OHCHR, *Interim report of the SR on FoRB*, A/64/159... paragraph 70

<sup>122</sup> Hikmat Budiman, ed., *Hak Minoritas: Etnos, Demas dan Batas-batas Multikulturalisme* (Minority Rights), (Jakarta: Interseksi Foundation, 2010), 11 – 12; compare it with Minority Rights, “Who Are Minority”, accessed from <http://www.minorityrights.org/566/who-are-minorities/who-are-minorities.html> (accessed on February 24, 2014)

<sup>123</sup> UNGA, *Resolution 47/135 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, UN Doc., A/RES/47/135, (1992). Adopted in New York by UN General Assembly on 18 December 1992. Article I. Can be accessed at <http://www.un.org/documents/ga/res/47/a47r135.htm> (accessed on February 24, 2014)

own language.”

**CRC Article 30**

“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 practise his or her own religion, or to use his or her own language.”

**General Assembly Declaration 47/135 Article 1 (1) and Article 2 (1)**

“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.”

“Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”

this case are the efforts to apply affirmative action so as to minority groups can derive benefit from society as the majority.<sup>124</sup> Nearly all international instruments uphold the commitment to provide protection to the minorities.<sup>125</sup>

In context of freedom of religion or belief, the Special Rapporteur on Freedom of Religion or Belief noted that minority religions and new religious movements frequently confront multiple forms of discrimination and intolerance, both in terms of State policy, legislation or practice. Problem arises with regard to the barriers in formal registration procedure and restrictions on the dissemination of materials and displaying of religious symbols.

Besides, a number of minority groups also befall to be victims of violence practices and rejection from non-State actors, and of threat against their existence as community.<sup>126</sup> Therefore, the principles of International Human Rights affirm that persons belonging to minorities have the

**Box 4.37 Rights of Minority Group**

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities confirms a series of right entitled to minority groups, i.e.:

- a) State protection for the existence and their national or ethnic, cultural, religious and linguistic identity;
- b) The right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public;
- c) Right to participate effectively in cultural, religious, social, economic and public life;
- d) The right to participate in decisions that affect them at the national and regional levels;
- e) Right to establish and maintain their own associations;
- f) Right to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities, both in the territory of their respective country or across frontiers of other States;
- g) The freedom to exercise their rights without discrimination, both individually and in community with other members of their groups.

Minorities have special rights that are different from most of population or other majority groups, so that they are able to maintain their distinct identity, characteristic and tradition. Including in

<sup>124</sup> OHCHR, *Fact Sheet No.18 (Rev.1), Minority Rights*

<sup>125</sup> SR on FoRB, *Rapporteur's Digest on Freedom of Religion and Belief*, 82.

<sup>126</sup> OHCHR, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir* .... Paragraph 43

right to profess and practice their own religion, in private and in public, freely and without interference or any form of discrimination, as well as the right to participate effectively in cultural, religious, social, economic and public life.

When the violation against members of religious minority groups is committed by non-State actor, the human rights obligations of the States also apply, namely ensuring the freedom of religion or belief to be implemented and bring the perpetrators of discriminatory or violent actions before the court or into legal proceeding.

The State should also take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except specific practice is a violation of national law and contrary to international standards. Conclusion of *Durban Review Conference* also confirms that the existence and national or ethnic identity, cultural, religious and linguistic minorities must be protected and that persons belonging to minorities should be treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind.

Adherences of minority religions are also vulnerable to violations of freedom of religion or belief and other acts of religious intolerance. The Special Rapporteur suggested that a certain religion may possibly be a minority in a part of the world and suffer; on the other hand it may perhaps be a religious majority population in another part of the globe. For that reason, government officials and civil servants need to be adequately trained in human rights standards and in this case special attention must be given on freedom of religion or belief.

In general, the States should take appropriate deeds in the field of education in order to encourage broader knowledge in

public domain on the history, traditions, language and culture of various minority religions existing in their respective territory. In addition, the public policy framework for pluralism and equality should ensure equal allocation of resources, including the frequency of broadcasts, public services, and commercial and public media; so mutually they represent many cultures, societies, and opinions in the society. While regarding the mainstreaming of minority religion, affirmative action is important to be accomplished in some areas in order to empower minorities and to raise awareness about their situation.<sup>127</sup>

**Box 4.38**

**Measures Taken by the State in Protecting the Minorities**

The State is obliged to protect and promote the rights of persons belonging to the minority group by taking measures:

- a) to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4 paragraph 2);
- b) to provide them with adequate opportunities to learn their mother tongue or to use their mother tongue (article 4 paragraph 3);
- c) to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory, and guarantee that members of minorities should have adequate opportunities to gain knowledge of the society as a whole (article 4 paragraph 4);
- d) to allow them to participate in the advancement and development of economy (article 4 paragraph 5);
- e) to regard the legitimate interests of persons belonging to minorities in developing national policies and programs as well as in the planning and implementation of programmes of cooperation and assistance (article 5);
- f) to cooperate with other Nations on questions relating the minorities, inter alia,

<sup>127</sup> OHCHR, *Interim report of the SR on FRB, Asma Jahangir A/64/159...* paragraph 29 - 31

exchanging information and experiences, in order to promote mutual understanding and confidence (article 6);

- g) to promote respect for the rights set forth in the Declaration (article 7);
- h) to fulfill the obligations and commitments of the States as specified under international treaties and agreements to which they are parties.<sup>128</sup>

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<sup>128</sup> UNGA, *Resolution 47/135 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.

## Chapter Five

# MECHANISM OVERVIEW ON FREEDOM OF RELIGION OR BELIEF

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## A. UN Treaty and Charter Based Mechanism

### 1. Treaty Based Mechanisms

Treaty Bodies mechanisms adopted by each committee are basically formed by each human rights convention that have been ratified by the states. The existence of this committee is to ensure that the human rights standards mentioned in conventions are adopted by States nationally, through observation of state progress in fulfilling international duties. Up to now, there have been at least 7 Committees that were built on the basis of conventions, namely:

- (1) The Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights.
- (2) The Committee on Economic, Social and Cultural Rights, which oversees the implementation of the International Covenant on Economic, Social and Cultural Rights.
- (3) The Committee on the Elimination of Racial Discrimination, which oversees the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.
- (4) The Committee on the Rights of the Child, which oversees the implementation of the Convention on the Rights of the Child.
- (5) The Committee on the Elimination of Discrimination against Women, which oversees the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.
- (6) The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, which oversees the implementation of the

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

- (7) The Committee on the Rights of Persons with Disabilities.

These mechanisms are also known as conventional mechanisms that function to oversee the implementation of international human rights treaties. Each committee consists of independent experts whose competency is recognized in the human rights field, even though at times there are also representations from the government. The CEDAW Committee holds a meeting in the United Nations Headquarters in New York, while the other six Committees are in the United Nations Office in Geneva, Switzerland, and sometimes the Human Rights Committee is also in New York for a Session in March.<sup>129</sup>

States that have ratified the conventions have duties and obligations to report steps and efforts taken in fulfilling their international duties on the rights contained in these conventions. These reports are then be discussed by the committees in meeting session (*examination session*) that result in a “Concluding Observation” containing recommendations for action to be undertaken by a party state in implementing the rights overseen in the conventions.

Every Convention has different rules as regards the reporting mechanism, such as an obligatory initial report 1 or 2 years after

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<sup>129</sup> OHCHR, *The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies*, (Factsheet No. 3D).

ratification followed by regular reports every 4 or 5 years.

**State Report:** each state party to international human rights conventions is obliged to deliver a report on the progress that has been made and the problems encountered in implementing conventions.

**Individual Complaints:** three of the international treaty mechanisms nowadays have individual complaint mechanism for violations that have occurred, namely: Optional Protocol ICCPR, CERD and CAT, with the requirement that a state does not make a reservation on the sections that can enable an individual to report.

**Inter-State Complaints:** these mechanisms enable a state to make a report on human rights violations that occurring other states under the treaty mechanisms, namely: ICCPR, CERD, CAT and CEDAW, also with the requirement that the state which has ratified does not make a reservation on these provisions.<sup>130</sup>

This report has several aims, namely:

- (a) To undertake a comprehensive overview towards the steps taken by a state to harmonize the law and policy that are closely related to the conventions regulations.
- (b) Monitor the progress of states in promoting human rights as emphasized in the conventions and human rights in general.
- (c) Identifying problems and approaching weaknesses in implementing the conventions.
- (d) Rating the future needs and more effective achievements in the implementation of the conventions.
- (e) Planning and building the right policies to achieve the aims of the conventions.

**Box 5.1 Composition of the Treaty Bodies Experts**

CERD: 18 members  
HRC: 18 members  
CESCR: 18 members  
CEDAW: 23 members  
CAT: 10 members  
CRC: 18 members  
CMW: 10 members  
Members are elected for four-year terms.  
Elections for half of the members are held every two years.

**Periodic Report under the Treaties**

Treaty	Initial Report	Periodic Report every
ICERD	1 year	2 years
ICESCR	2 years	5 years
ICCPR	1 year	4 years
CEDAW	1 year	4 years
CAT	1 year	4 years
CRC	2 years	5 years
ICRMW	1 year	5 years

<sup>130</sup> OHCHR, *Human Rights: A Basic Handbook for UN Staff*, (Geneva: OHCHR), 38

## Human Rights Committee and the ICCPR

The Human Rights Committee has a mandate to observe the implementation of the International Convention on Civil and Political Rights (ICCPR) becoming a very influential United Nations body, with 18 Committee Members chosen by State Parties. The Human Rights Committee was established by the Article 28 of the ICCPR.

The ICCPR is one of the main mechanisms in the accomplishment of the freedom of religion or belief around the world, particularly for the States that have ratified the convention. The Human Rights Committee has competency to accept and consider periodic reports, both from State Party's report and civil society's report, article by article in the Convention, as mandated in Article 40 of Convention. The Committee also has competency to receive inter State complaints, and under the Optional Protocol to receive individual petitions.

Article 18, Article 26 and 27 of the ICCPR has become the basis and the main principle for the freedom of religion and belief. The Human Rights Committee has also issued the General Comment No. 22 that explains Section 18 in the Convention. In this context, in the reporting mechanism and the examination of a member state, the Committee and its expertise in freedom of religion or belief will give recommendations (*concluding observations*) to be undertaken by a States Parties after reporting process and the regular Session. The implementation will be reviewed at the next Session of Committee.<sup>131</sup>

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<sup>131</sup> See, Rhona K.M. Smith, *Textbook on International Human Rights*, (New York: Oxford University Press, 2010), 66 – 69.

## 2. Charter Based Mechanism

### a. Human Rights Council

The United Nations Human Rights Council (UNHCR) was formed in 2006, replacing the position of the United Nations Human Rights Commission. The Council consists of 47 Member States from the governmental delegation. The members of the Human Rights Council were chosen through voting in the United Nations General Assembly.

The Human Rights Council holds meetings at least 3 times a year, overall total duration of 10 weeks. The Council can also hold special sessions when necessary. In meetings, the Human Rights Council also discusses human rights issues in certain states and specific issues in the field of human rights. This Council also adopts resolutions and decisions every year. Even though its members consist of governmental elements, the Human Rights Council is a fairly effective institution in enhancing the promotion and protection of human rights in the world. Information from civil society is also used extensively by the Human Rights Council to discuss or analyze violations.

To be able to access and get involved in the sessions of the Human Rights Council as an observer a non-governmental organization must first have *Consultative Status* from the United Nations Economic and Social Council. Each NGO with consultative status has several special rights in the programs held by the Human Rights Council. They can convey written statements to the Council for certain sessions, oral intervene during the substantive sessions of the Human Rights Council, participate in interactive dialogues in the special procedures or hold “parallel

events” related to the issues relevant to the work of the Human Rights Council.<sup>132</sup>

In term of Resolution 60/251, the functions of the Council are to:

- 1) Promote human rights education and learning as well as advisory services, technical assistance and capacity building, to be provided in consultation with and with the consent of Member State concerned.
- 2) Serve a forum for dialogue on thematic issues on all human rights.
- 3) Make recommendation to the General Assembly for the further development of international law in the field of human rights;
- 4) Promote the full implementation of human rights obligations undertaken by State and follow-up to the goals and commitment related to the promotion and protection of human rights emanating from United Nations conference and summits.
- 5) Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensure universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session.
- 6) Contribute, through dialogue and cooperation, toward the prevention of

human rights violations and responds promptly to human rights emergencies;

- 7) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner of Human Rights, as decided in its Resolution 48/141 1993.
- 8) Work in close cooperation in the field of human rights with Government, regional organizations, national human rights institutions and civil society.
- 9) Submit an annual report to the General Assembly.

#### **b. Universal Periodic Review (UPR)**

The UPR mechanisms were formed one year after the Human Rights Council. The United Nations General Assembly Resolution 60/521 declared that the Human Rights Council should undertake a UPR towards the obligations and commitments of States in implementing human rights. The mechanism reviews all of the United Nations Members State in a four-year period.<sup>133</sup> The review is based on three reports: one is from the state and two reports are from the Office of United Nation High Commissioner of Human Rights (OHCHR), namely information from the United Nations human rights bodies and a summary from stakeholder inputs (civil society, National Human Rights Commissions/NHRIs, academic institutions, and regional or international organizations).

The review for each State is done through an interactive dialogue of three hours in the UPR Working Group. After that, the Human Rights Council will open a plenary session adopting the review results, summaries, and recommendations. Besides all the United Nations member states, NHRIs and civil societies are also given a

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<sup>132</sup> OHCHR, *Promoting and Protecting Minority Rights: A Guide for Advocates*, (Geneva: UN and OHCHR, 2012), 21

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<sup>133</sup> OHCHR, *Working with the United Nations Human Rights Programme*, 80.

chance to deliver statement at the plenary meeting.

The evaluation in the UPR session is undertaken over four years (one round) and involves: 1) Information preparation that forms the basis of the review, such as reviewed governmental reports, compilation of information and summaries of stakeholder input that have been prepared by OHCHR; 2) consideration process and document adoption of review results by the Council in regular sessions, and; 3) the continuity of the UPR recommendation implementation. In this respect, the relevant parties, including non-governmental organizations, human rights defenders, academic institutions and research organizations can participate in the above process.<sup>134</sup>

In this respect, the freedom of religion or belief is one of the human rights issues included in the review process. A State does not only reports on the fulfillment and protection of rights, but also gets recommendations from the Human Rights Council on the implementation and fulfillment of a right. In practice, the issue of freedom of religion and belief is a significant concern from many States during their review.

### c. Special Procedures

Special Procedures were formed when the Human Rights Council was the Human Rights Commission under the Economic and Social Council. Through Resolution 60/1251 of the United Nations General Assembly, these Special Procedures were continued under the Human Rights Council. The Human Rights Council gives a mandate to a number of rapporteurs that consist of experts to investigate and observe the human rights situations, either based on the issues or regions (states), and make

<sup>134</sup> OHCHR, *Working with the United Nations Human Rights Programme*. Urban Justice, *Practical Guide to the United Nations' Universal Periodic Review (UPR)* (New York: Urban Justice, June 2010).

assessments about rights and susceptible groups.<sup>135</sup>

These experts have been chosen by the Council with the criteria of: having an expertise, having experience in the mandate field, being independent, impartial, having personal and objective integrity,<sup>136</sup> and being responsible for a human rights issues (*thematic mandates*) or a certain state (*country mandates*). These special procedures are the “eyes and ears” in evaluating human rights. The main function of these procedures is to gather and accept information about violations of certain rights and send “urgent appeals” to governments to clarify the accusations of these violations.

### Special Rapporteur on Freedom of Religion and Belief

The United Nations Human Rights Commission (now the Human Rights Council) has formed “A Special Rapporteur for Religious Intolerance” through Resolution 1986/20. In 2000, the Commission changed its name to “The Special Rapporteur on the Freedom of Religion or Belief” (SR FoRB) which was affirmed by the Economic and Social Council through Resolution 2000/261. In 2010, through Resolution 14/11, the United Nations Human Rights Council extended the mandate of this Special Rapporteur for every three year period. The main mandates of the Special Rapporteur were affirmed in the Resolution 6/37 of the Human Rights Council.<sup>137</sup>

#### 1) Work Method of the SR FoRB

<sup>135</sup> Rhona K.M. Smith, *Textbook on International Human Rights*, page 62: To know further about mandates and the reporters in these special procedures, please see, OHCHR, *Directory of Special Procedures Mandates of Holders* (Geneva: OHCHR, January 2013).

<sup>136</sup> Resolution 5/1 “*Institution-building of the United Nations Human Rights Council*”, Annex, paragraph 39.

<sup>137</sup> “*Special Rapporteur on freedom of religion or belief*”, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx>

In undertaking its mandate, the SR does several activities, namely:

- (1) Accepting complaints or reports, either from individuals or organizations, in connection with an alleged rights violation of the freedom of religion or belief in a member state.
- (2) Sending urgent appeals and a letter containing the allegations (of violation) to a state or the difficulty in implementing the freedom of religion and belief.
- (3) Undertaking fact finding mission by visiting certain states. Visiting mandate is one of the key activities of the Special Rapporteur, because through visitations, the Special Rapporteur gains a deep understanding about specific and practical conditions, gives constructive inputs, and reports to the United Nations General Assembly (Res. E/CN.4/2005/61, para. 14). During visitations, the Special Rapporteur holds several meetings with state institutions, representations from religious or belief groups, religious or belief associations, civil society organizations and non-governmental organizations.
- (4) Giving a periodic report to the United Nations Human Rights Council and the United Nations General Assembly in connection with the activities that have been undertaken, trends in freedom of religion or belief, and work methods.

## 2) Framework of the Mandate of the SR on FoRB

The main principle or instrument used by the Special Rapporteur in implementing its mandate is the “Declaration on the Elimination of All Forms of Intolerance and

Discrimination Based on Religion or Belief”. It is used to assess and evaluate state actions that are inconsistent with the Declaration. In addition, several international human rights instruments are also used, among other things, these include:

- (1) ICCPR, particularly Article 19 of the ICCPR and General Comment No. 22;
- (2) ICSECR, particularly Article 13;
- (3) CERD, particularly Article 5 (vii);
- (4) CRC, particularly Article 2.
- (5) CEDAW;
- (6) Prevention Convention and Punishment of the Crime of Genocide, particularly Section II;
- (7) Refugee Convention, particularly Article 4 and Article 33;
- (8) Convention on Protection of Migrants and Family Members, particularly Article 12.
- (9) Treaties related to humanitarian law, particularly the Four Geneva Conventions (12 August 1949) and Additional Protocols.

## 3) Scope of Mandate of the SR on FoRB

The UN SR on FoRB’s mandates has a specific scope, and covers:

- (1) Freedom to adopt, change or renounce a religion or belief;
- (2) Freedom from coercion;
- (3) The right to manifest one’s religion or belief;
- (4) Freedom to worship;
- (5) Places of worship;
- (6) Religious symbols;
- (7) Observance of holidays and days of rest;
- (8) Appointing clergy;
- (9) Teaching and disseminating materials (including missionary activity);
- (10) The right of parents to ensure the religious and moral education of their children;
- (11) Registration;

- (12) Communication with individuals and communities on religious matters at the national and international level;
- (13) Establishing and maintaining charitable and humanitarian institutions/soliciting and receiving funding;
- (14) Conscientious objection;
- (15) Discrimination on the basis of religion or belief/inter-religious discrimination/tolerance;
- (16) State religion;
- (17) Vulnerable groups: women, persons deprived of their liberty, refugees, children, minorities, migrant workers;
- (18) Intersection of freedom of religion or belief with other human rights:
  - (a) Freedom of expression including questions related to religious conflicts, religious intolerance and extremism;
  - (b) Right to life, right to liberty;
  - (c) Prohibition on torture and other cruel, inhuman or degrading treatment or punishment;
- (19) Cross cutting issues:
  - (a) Derogation;
  - (b) Limitation;
  - (c) Legislative issues;
  - (d) Defenders of freedom of religion or belief and non-governmental organizations.<sup>138</sup>

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<sup>138</sup>OHCHR, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*, Annex. E/CN.4/2006/5, 9 January 2006, 24 - 40

## B. Regional Mechanisms

### 1. European Region

Religion or belief based discrimination is continuously increasing in European society. The increasing diversity within society has caused Europe to face various religion issues. Groups of migrants and refugees or asylum seekers coming with various cultural and religious backgrounds have added to the diversity. This demands more serious and better handling to accommodate this diversity and to overcome religious discrimination.

Human rights issues in the Europe, particularly freedom of religion or belief, are dealt with by three major organizations in the region, namely: 1) Council of Europe with 47 Member Countries; 2) Organization of Security and Cooperation in Europe with 56 Member Countries; and 3) the European Union with 27 Member Countries. All three have different instruments and mechanisms, yet strengthen and complete one another.

Council of Europe is the oldest and most significant mechanism is the Council of Europe. Through its Statute, this Council is described as an organization that respects human rights in Member Countries, and was adopted by the European Convention on Human Rights in 1950. The Convention 1950 made up the European Human Rights court in 1959 and replaced the European Human Rights Commission in 1998 by Protocol 11.

The European Human Rights Court is comprised of judges who are independents and cannot be influenced by others. The Court takes complaints from individuals or states related to violations of the Convention 1950. In addition, the Court also takes complaints from one state towards another that is violating the Convention 1950. As a judiciary body, the European Human Rights Court has the

capability to rule on cases and its decisions are binding.

Furthermore, the Council of Europe also formed independent human rights institutions that substantially and normatively formulate and decide on human rights issues, namely: the European Committee of Social Rights, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the Advisory Committee on the Framework Convention for the Protection of National Minorities, and the European Commission against Racism and Intolerance. In addition, there is also the (European) Human Rights Commissioner, which is under the Council of Europe and is an independent body, with a mandate to advance awareness and respect towards human rights in Member Countries of the Council of Europe. The Commissioner handles the issues, visits the countries, and issues reports and recommendations.<sup>139</sup>

These mechanisms work based on the human rights instruments of the Council of Europe, particularly the Convention 1950, including the issue of freedom of religion and belief. In general, these mechanisms follow religious freedom principles which are stated in international human rights instruments and standards, especially the UDHR, UN Declarations and ICCPR.

Related to the guarantee of religious freedom, Article 9 of the European Convention on Human Rights (ECHR) 1950, strongly states:

*(1) 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*

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<sup>139</sup> OHCHR, *Background Paper: OHCHR activities related to Regional Human Rights Mechanisms*.

*public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

- (2) *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.*

In the same manner as the ICCPR, Article 9 of the European Convention on Human Rights protects freedom of religion and belief within the domain of *forum internum* and religion manifestation in practice (*forum externum*).<sup>140</sup>

Basing on Article 9 of the European Convention on Human Rights, the European Human Rights Court has issued a number of verdicts on rights violation complaints and they have become jurisdiction, both in reference to cases between individuals and individuals, individuals and the state, or cases between States.<sup>141</sup>

Two obligations of the state in the European mechanism are:

- (a) Negative obligation, which obligates the state not to interfere in individual or organizational rights to implement their religions and beliefs.
- (b) Positive obligation, which ensures implementation of Article 9, by guaranteeing protection through law, applying sanctions for violators, and preventing or providing restitution on all violation of rights.

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<sup>140</sup> Jim Murdoch, *Freedom of Thought, Conscience, and Religion: A Guide to the Implementation of Article 9 of the European Convention on Human Rights*, (Human Rights Handbook No. 9), (Belgium: Directorate General of Human Rights, Council of Europe, June 2007).

<sup>141</sup> Paul M. Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice*, (Cambridge: Cambridge University Press, 2005).

## European Union

Another mechanism which exists in Europe related to the protection of freedom of religion and belief in particular and human rights in general is within the European Union. The guarantee of freedom of religion and belief is stated in the European Union Charter. Article 21 guarantees basic freedom and prohibition of discrimination. The European Union also has The European Court of Justice and Human Rights.

The increase in practices of discrimination and intolerance in Europe has forced the European Union to issue an instrument prohibiting discrimination, aimed at promoting cooperation amongst European countries against the phenomena of racism, xenophobia and religious-based discrimination. To achieve this goal, a number of approaches and initiatives have been introduced within the European Union, particularly since the 1990s.

A number of documents issued within this period largely addressed discrimination based on racial and ethnic background, although religion discrimination was included and mentioned in them. Then, in 1997, the European Union adopted the Amsterdam Treaty which legally enforced against discrimination. This treaty gave authority to the European Community to take the right action against cases of discrimination of religion and belief, according with its competence.<sup>142</sup>

In 2013, during the meeting of the Foreign Affairs Ministry Council, on 24 June 2013, the European Union legitimated the "EU Guidelines on the promotion and protection of freedom of religion or belief".<sup>143</sup> This guideline determined to advance freedom of religion and belief in its

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<sup>142</sup> ENAR – Fact Sheet 34 – October 2007, 12

<sup>143</sup> Council of the European Union, "EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief". (Foreign Affairs Council Meeting, Luxembourg, 24 June 2013).

external policy, including the freedom for any citizen to practicing a religion or belief, based on the principals of equality, non-discrimination and universality. Through this external policy, the European Union intends to prevent and pay attention to rights violations (freedom of religion or belief) at all times, consistently and coherently.

This guideline explains the instruments and standards of freedom of religion and belief at the international level, and politically gives a clear line to European Union Member Bodies and Countries. The commitment to freedom of religion or belief should be also reflected in a number of contracts and interactions between European Union Countries and the third parties, including states, international organizations or civil society organizations.

This guideline also provides a practical guide for EU on how to prevent violations of freedom of religion and belief, to analyze the cases, and to effectively deal with occurring rights violations, in order to promote and protect the right of freedom of religion and belief within European Union or EU's external actions.

## 2. Organization of American States

In the American Convention on Human Rights of 1969, which became a human rights instrument under the Organization of American States (OAS), freedom of religion and belief is stated in Article 12. It states:

*(1) Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or*

*together with others, in public or in private.*

*(2) No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.*

*(3) Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.*

*(4) Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.*

Institutionally, America has two major human rights institutions, namely the Inter-America Human Rights Commission and the Inter-America Human Rights Court, which have strong influence in the development and protection of human rights in member countries.

Article 2 of the American Convention on Human Rights states that member states which have ratified the convention are obligated to guarantee freedom rights as stated in the convention. The Human Rights Commission has an essential role in monitoring if states obey Article 2. The Commission also issues annual reports which identify human rights problems in member countries.

When a country conducts a human rights violation that is guaranteed in the Convention, any individual, group, or non-government organization can issue an appeal to the Commission to review the state's actions. After receiving an appeal, the Commission undertakes an investigation, requests assistances from all parties to seek a peaceful solution, and issues recommendations to every party.



In the same manner as other regions, implementation of human rights norms in Africa, in particular freedom of religion and belief, is overseen by a Human Rights Commission, called The African Commission on Human and Peoples' Rights. The Commission has three main functions, namely:

- a) Protection of human and people's rights.
- b) Advancement of human and people's rights.
- c) Interpretation of ACHPR.

In addition, the practices of the human rights protection in Africa are also supported by a Human Rights Court which was established in 1998 and put into effect in 2004.<sup>148</sup>

The African Human Rights Commission has handled a number of cases related to freedom of religion and belief, as in harassment of Jehovah's witnesses and religious leaders, assassinations and death threats aimed at them and destruction of religious structures in violation of the right (*Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interfricaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaïre, Communications 25/89, 47/90, 56/91, 100/93*).

On the case of followers of the Rastafarian religion, who used marijuana in their rituals, the Commission decided that everyone's freedom to practice his or her religion or belief did not necessarily give the right to somebody to act according to that beliefs. While the right to hold religious belief should be absolute, the right to act on those beliefs should not be. As such the right to practice one's religion must yield to the interests of society in some circumstances. (*Garreth Anver Prince*

*vs. South Afrika, Communication 255/2002*).<sup>149</sup>

#### 4. OIC-IPHRC

A multilateral organisation that also has human rights standards is the Organisation of Islamic Cooperation, which was established in 1979 and adopted a human rights declaration in 1990, known as the Islamic Human Rights Declaration or the Cairo Declaration. Article 1 of the Cairo Declaration emphasizes the equality of all humans in regards to human dignity, without discrimination, including religious discrimination. It states:

*"All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity".*

Article 9 of the Declaration restates the obligation of states to guarantee diversity within society, which is a fundamental basis of Islam. Article 9 (2) states that everyone has the right to receive religious education and general education from a variety of educational institutions and Article 10 of the Declaration states, that:

*"Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism".*

<sup>148</sup>Rhona K. Smith, *Textbook on International Human Rights*, 140

<sup>149</sup>"The Right to Freedom of Expression and Religion", accessed at <http://www.humanrights.is>

The right to freedom of religion or belief of every individual is guaranteed explicitly in the Cairo Declaration, in Section 18, which states that: “*Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property*”.

In the context of intolerance, discrimination and violence based on religion or belief, the UN General Assembly Resolution 66/167 stresses the call made by the Secretary General of the Organization of the Islamic Cooperation (OIC) at the fifteenth session of the Human Rights Council upon all States to take the following actions to foster a domestic environment of religious tolerance, peace and respect:

- (a) Encouraging the creation of collaborative networks to build mutual understanding, promote dialogue and inspire constructive action towards shared policy goals and the pursuit of tangible outcomes, such as servicing projects in the fields of education, health, conflict prevention, employment, integration and media education;
- (b) Creating an appropriate mechanisms within governments to, inter alia, identify and address potential areas of tension between members of different religious communities, and assist with conflict prevention and mediation;
- (c) Encouraging the training of government officials in effective outreach strategies;
- (d) Encouraging the efforts of leaders to discuss within their communities the causes of discrimination, and develop strategies to counter those causes;
- (e) Speaking out against intolerance, including advocacy against religious hatred that constitutes incitement to discrimination, hostility or violence;

- (f) Adopting measures to criminalize the incitement to imminent violence based on religion or belief;
- (g) Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-raising;
- (h) Recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence.<sup>150</sup>

### Independent Permanent of Human Rights Commission

One important human rights mechanism in the OIC at the moment is an independent human rights body known as the Independent Permanent of Human Rights Commission (IPHRC) which was formed in June 2011 at the meeting of the Council of Foreign Ministers (CFM) in Kazakhstan. The IPHRC was established based on Statute No OIC/IPCHHR/ 2010/ DR.STATUTE, and 18 Commissioners from three regions, the Arab group, Asia and Africa groups, were selected.

IPHRC has several mandates and functions, including to:

- o Carry out consultative tasks for the Council and submit recommendations to it. It shall also carry out other tasks as may be assigned to it by the Summit or the Council.
- o Support the OIC’s position on human rights at the international level and

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<sup>150</sup>UNGA Res. A/RES/66/167 Paragraph 5

consolidate cooperation among the Member States in the area of human rights.

- Provide technical cooperation in the field of human rights and awareness-raising about these rights in Member States, and offer approving Member States consultancy on human rights issues.
- Promote and support the role of Member State accredited national institutions and civil society organizations active in the area of human rights in accordance with the OIC Charter and work procedures, in addition to enhancing cooperation between the Organization and other international and regional human rights organizations
- Conduct studies and research on priority human rights issues, including those issues referred to it by the Council, and coordinate efforts and information exchange with Member States' working groups on human rights issues in international fora.
- Cooperate with Member States, at their request, in the elaboration of human rights instruments. It may also submit recommendations on refinement of OIC human rights declarations and covenants as well as suggest ratification of human rights covenants and instruments within the OIC framework and in harmony with Islamic values and agreed international standards.<sup>151</sup>

In the latest process, namely during the Fourth Session of the IPHRC on 2 – 6 February 2014 in Jeddah, Saudi Arabia, under its permanent agenda item on “human rights situations and issues on the OIC agenda”, the IPHRC addressed the issue of combating Islamophobia and incitement to religious hatred and violence.

<sup>151</sup>Article 12 – 17 of IPHRC Statute.

For these activities, the IPHRC has formed the Working Group on Islamophobia and Muslim Minorities. The IPHRC Session also declared a Statement on Extremism and Violence in OIC Countries.

**Box 5.1 IPHRC Statement on Extremism and Violence in OIC Countries**

In view of the recent escalation of extremism and violence within the OIC region and the massive killings and atrocities taking place against the lives of innocent civilians, the Independent Permanent Human Rights Commission (IPHRC) deems it crucial to underline that Islam is a religion of compassion, peace, coexistence, moderation and respect to all fundamental human rights, including the right to life. Allah ordains in the Quran (*Sourat Al-Ma'eda*, Verse 32) that the killing of any innocent soul is equivalent to the killing of all of mankind”.

The IPHRC reiterates that no religion should be equated to violence, extremism or terrorism. At the same time, IPHRC recalls that sabotage, indiscriminate killings, torture, mutilation, arson etc., are contrary to Islamic teachings, values and principles. Extremists, in whatever name, who perpetrate crimes against innocent people in any situation, should be brought to justice, so as to ensure the rule of law and avoid impunity.

The IPHRC urges governments, institutions and civil society, including NGOs, to strengthen their efforts to educate and raise awareness for combating extremism and violence at all levels.<sup>152</sup>

<sup>152</sup>IPHRC Statement on Extremism and Violence in OIC Countries, Jeddah, 6 February 2014.

In the context of Islamophobia, the IPHRC recognized that while Islamophobia continues to spread in many parts of the world, a growing trend of religious extremism and violence is also being witnessed in a number of OIC countries due, *inter alia*, to poor socio-economic conditions as well as increasing misconceptions regarding the essence of Islamic teachings and values. In this regard, the IPHRC made a statement that: *“Reasserted Islam’s unequivocal message of peace and tolerance; rejected all forms of extremism and violence; insisted on the need to hold accountable the perpetrators of violence and hate speech as well as emphasized the importance of education, from the earliest stage, to address the issue at grass root level”*

The IPHRC also reaffirmed that denigration of religious symbols and personalities as well as other institutionalized/ non-institutionalized forms of discrimination based on one’s religion or belief continue to raise tensions, offend religious sentiments; fuel discrimination and extremism and impede the right to freedom of religion or belief of affected communities. Accordingly, it was stressed that the phenomenon of Islamophobia should be addressed in the broader context of the issue of discrimination, religious intolerance and incitement to hatred.

The IPHRC also stressed the importance of the Istanbul process on the implementation of HRC Resolution 16/18 and the need to continue its engagement through active participation in related events/meetings.<sup>153</sup> The IPHRC reiterated that one of the primary aims of the Istanbul Process was to shed light on the question of legitimate and required limitations on freedom of expression in accordance with the well recognized international law provisions.

In the context of tolerance, the IPHRC recognized the importance of identifying and creating synergies among mechanisms and initiatives in the area of promoting tolerance and combating advocacy of religious hatred

that constitutes incitement to discrimination, hostility or violence.<sup>154</sup>

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<sup>153</sup>See, Report of the United States on the First Meeting of Experts to Promote Implementation of United Nations Human Rights Council Resolution 16/18, December 2011. The report downloaded at <http://www.humanrights.gov/wp-content/uploads/2012/04/1618FirstMeetingReport.pdf>

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<sup>154</sup> Report of the Regular Session of the OIC Independent Permanent of Human Rights Commission (IPHRC), Jeddah, Saudi Arabia, 2 – 6 February 2014, document no: OIC/IPHRC-4/2014/REP.FINAL.

## Chapter Six

# INTEGRATING OF THE FREEDOM OF RELIGION OR BELIEF IN THE FRAMEWORK OF ASEAN HUMAN RIGHTS BODIES

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## A. Harmonization of rules and policies of ASEAN in ASEAN Member States

### 1. Ratification and Harmonization

Ratifying of international instrument on the guarantee of the freedom of religion or belief in ASEAN Member States has become one of the main measures of the seriousness in the enforcement of human rights. The guarantee and the protection on the freedom of religion or belief in the state could be monitored and be more measurable through the ratification, especially the International Convention on Civil and Political Rights as a main instrument on FoRB.

The next phase is harmonizing all regulations, policies, and legislations that they will be in accordance with the principles of the freedom of religion or belief in the international human rights instruments.

AICHR takes an important role in sounding and influencing the importance of each ASEAN Member State (AMS) to ratify the human rights instrument in the field of the freedom of religion or belief and encourage AMS implementing it in national law.

Issues	Key Activities for AICHR
The formation of regional instrument	<ol style="list-style-type: none"> <li>1. Establishing special convention on the freedom of religion or belief in the ASEAN.</li> <li>2. Encouraging AMS to ratify regional instrument convention.</li> <li>3. Establishing report mechanism and evaluating system for regional instrument.               <ol style="list-style-type: none"> <li>a. Mechanism for periodic report</li> <li>b. Special Rapporteurs (<i>Experts</i>) on the freedom of religion or belief in AICHR</li> </ol> </li> </ol>
Ratification international instrument	<ol style="list-style-type: none"> <li>1. Identifying the states that have or have not ratified the human rights instrument on the freedom of religion or belief periodically, especially ICCPR.</li> <li>2. Urging the states that have not ratified so that they will ratify the international human rights instrument on the FoRB, especially ICCPR.</li> <li>3. Convincing the AMS Leaders to ratify international human rights instrument on FoRB.</li> <li>4. Urging AMS that have ratified to make a regular report of the Convention, particularly ICCPR, to Committee.</li> </ol>
Synchronization and harmonization	<ol style="list-style-type: none"> <li>1. Monitoring various ASEAN policies and decisions as well as ASEAN Human Rights bodies so they are in compliance with the international human rights standard on the freedom of religion or belief.</li> <li>2. Assisting AMS to identify the states' regulations, policies and legislations that are not in accordance with the international and ASEAN human rights standard related to the freedom of religion or belief.</li> <li>3. Encouraging AMS to revise, abolish, and make regulation, policies, and laws that are in accordance with the principles of the freedom of religion or belief.</li> </ol>
Dispossession	By request of the AMS, assisting a member State to withdraw and eliminate the regulation, policies and legislations that are not in

	accordance with the freedom of religion or belief principles.
Legislation making	<ol style="list-style-type: none"> <li>1. Urging and assisting the formulation of regulations, policies, and legislations on the freedom of religion or belief in member States.</li> <li>2. Assisting to convince AMS on the importance of the guarantee and lawful protection of the freedom of religion or belief.</li> </ol>

## 2. Early Prevention and Early Warning

Various acts of violations, intolerances, and discriminations still happen in ASEAN Countries. Due to many factors, the state and the apparatus are often unable to control and prevent the violence and discrimination. AICHR will call and urges the AMS to make an early prevention

warning for the existence of intolerance, violence, and discrimination that is experienced by the holders of religion, belief, and minority. AICHR can help AMS to strengthen the state capacity in making an early prevention.

Issues	Key Activities for AICHR
Prevention	<ol style="list-style-type: none"> <li>1. Urging AMS to strengthen the state and law apparatus on the potential of intolerance, violence and discrimination before the existence of the regulations and laws that are in accordance with the international instrument.</li> <li>2. Collaboration in strengthening the capacity of knowledge, consciousness, and ability of the AMS to anticipate the existence of intolerance, violence, and discrimination.</li> <li>3. Assisting to explaining and convincing the AMS Leaders on the necessity of early anticipation and early prevention for the existence of intolerance, violence, and discrimination.</li> </ol>
Early warning	<ol style="list-style-type: none"> <li>1. Making a mechanism of <i>early warning system</i> regarding with the violation of the freedom of religion or belief, particularly those that lead to the existence of gross violation of human rights in ASEAN regions.</li> <li>2. Monitoring and evaluating ASEAN policies and rules, including also ASEAN Sectoral Bodies, so that they will be in accordance with the spirit of human rights instrument on the freedom of religion or belief.</li> <li>3. Issuing the recommendation or urgent appeal to the government of AMS when the indications of intolerance, violence and discrimination (which lead to gross violation of human rights) are found in certain states.</li> <li>4. Assisting the AMS to strengthen the capacity of state apparatus and government in the early warning related to intolerance, violence, and discrimination.</li> <li>5. In emergency situation, urging certain AMS to make regulation and transition policies (emergency) for the sake of anticipating the possibility of the existence of intolerance, violence and discrimination based on the domestic law.</li> </ol>

## 3. Violence

A state has an obligation to protect and fulfill of human rights to all citizens from violation or abuses. A state is also obliged to prevent violence, to do an investigation, and punish the violator,

individually or in groups. Violence and threat such as murder, force disappearances, attack, and sexual abuse, are the incidents often indicating the existence of violence.

Issues	Key Activities of AICHR
Violence	<ol style="list-style-type: none"> <li>1. Urging AMS and influential actors to prevent the potential and the development of the violence acts on the basis of religion or belief.</li> <li>2. Responding to violence cases on the basis of religion or belief, particularly the ones experienced by the minority.</li> <li>3. Supporting and building atmosphere for the effectiveness of the law enforcement to the violator at the AMS.</li> <li>4. Urging AMS to build infrastructure that enables the governmental effectiveness in law enforcement the law towards violators.</li> </ol>

## B. Integration of the Freedom of Religion or Belief in the Human Rights Building Program, Conflict Resolution and Humanitarian Acts in Member

### 1. Integration of Development Policies

Development is a part of the human rights undertaking. Development programs in each state should guarantee every person and group to get their rights to improve the level of life equally and fairly. Therefore, each state is obliged to guarantee each citizen can access to development, either in planning process or in the realization of programs.

It should be assured that the planning of the development may not be done in discriminative ways. There shall be no individual or groups that are prevented from getting the development access on

ground of their differences in religion or belief.

AICHR can play a strategic role to keep on sounding and giving input about the existence of injustice and discrimination towards individual and groups in AMS, especially in the context of development program. AICHR can also make a regular report on individual and groups, especially the minority groups, that cannot access the development program due to the reasons related with the freedom of religion or belief.

Issues	Key Activities for AICHR
Building Programs	<ol style="list-style-type: none"> <li>1. Actively sounding to the AMS about the necessity of the development planning that is fair and non-discrimination, including in the policies to access development programs.</li> <li>2. Monitoring individuals and groups who are potential to experience discrimination in the distribution of development programs during the process.</li> <li>3. Establishing the principles of development in the basis of human rights and avoiding discrimination towards individuals and groups, and inasmuch as the difference in religion and</li> </ol>

	belief with the majority of population.
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## 2. The Elimination of Discrimination and Intolerance

Each state has an obligation to protect religious or non-religious individuals and groups in its jurisdiction, direct or indirect discrimination. The protection is done through lawful guarantees, including through constitution to avoid the political interest of certain groups and discriminative from non-state actors. A state is obliged to protect religious or non-religious citizens from the possibility of the discrimination from a state or non-state

actors. In many cases, the difference in the religions and ideologies are used by state actors or non-state actors as a justification to discriminate certain groups, especially minorities.

AICHR shall condemn the discriminative treatment of AMS and particular actors in the jurisdiction of the state, especially the discrimination based on the freedom of religion or belief.

Issues	Key Activities
Elimination of discrimination	<ol style="list-style-type: none"> <li>1. Responding to the all form of discriminations based on the freedom of religion or belief in AMS.</li> <li>2. Identifying religious substances causing discrimination and campaigning for tolerance and peaceful tenets of religions.</li> <li>3. Monitoring discrimination cases in AMS.</li> <li>4. Cooperating with AMS to convince particular government that discriminates.</li> <li>5. Using its mandates and functions to eliminate the discrimination in the AMS.</li> </ol>

## 3. Humanitarian Acts

Based on the human rights perspectives, a state is obliged to guarantee and protect every citizen. Intolerance, discrimination and violence on the basis of religion and belief can bring an isolation

threat and the access shutting towards their life security. If necessary, AICHR should call upon the AMS to do humanitarian acts in order to assure the continuity and sustainability of victim's lives.

Issues	Key Activities for AICHR
Humanitarian	<ol style="list-style-type: none"> <li>1. Convincing ASEAN, including ASEAN Sectoral Bodies, and AMS to conduct humanitarian acts to assure the continuity and sustainability of individuals or groups that become the victims of intolerance, violence and discrimination.</li> <li>2. Ensuring that the victims get minimum access for the continuity of their lives, including opening the possibility of international humanitarian institutions to help them.</li> <li>3. Urging the AMS to give assurance for safety and facility for the undertaking of humanitarian acts for those who become the victims.</li> </ol>

#### 4. Conflict Resolution

Securing the citizen from all from threat was a part of a State's obligation to enforce of human rights. Returning the victims who were expelled from their residences is also a part of the human rights upholding. On the contrary, the acts of expulsion and isolation towards certain individuals or groups, especially minorities,

from their residence on ground of religion and belief are a violation to human rights.

A state is obliged to guarantee all citizens secure from all of threat or rejection from other citizens. Every citizen is entitled and free to live in their residence or region chosen.

Issues	Key Activities
Conflict resolution	<ol style="list-style-type: none"> <li>1. Calling upon AMS to assure and return each citizen to live peacefully for being in their origin environments. A state is obliged to bring the expelled or isolated citizens back to their origin environments to live peacefully.</li> <li>2. Calling the involvement of NGOs and civil society organizations that have the competence in the conflict resolution.</li> <li>3. Making program the capacity building for NGOs and civil society in resolve the conflict among population based on religion or belief.</li> <li>4. Cooperating with ASEAN Bodies on maintaining the latent conflict which the religion become the trigger.</li> </ol>

### C. ASEAN and AICHR Technical Cooperation Programs

#### 1. Technical Cooperation

Technical cooperation in the issue on the freedom of religion or belief can be done with a purpose of improving development and enhancement of the member state national capacity. Cooperation is also aimed to create the availability of infrastructure that can give a direct impact in the enhancement and protection of the freedom of religion or belief particularly, and human rights generally.

Cooperation is done by ASEAN or AICHR. This cooperation can also be done with other ASEAN Sectoral bodies. The aim is to maximize the function of AICHR in prioritizing the issue of the freedom of religion or belief in the ASEAN level and its sectoral bodies. Activities can be done by AICHR, ASEAN, and AMS jointly, on the initiation of ASEAN, AICHR, or AMS.

Issues	Key Activities for AICHR or ASEAN Bodies
The development of state apparatus' capacity in the field of the freedom of religion or belief by ASEAN or AICHR	<ol style="list-style-type: none"> <li>1. Undertaking practices with AMS in connection with the duties and roles of a State in upholding the freedom of religion or belief.</li> <li>2. Making a manual book for a member state's authorities in the field of protection and fulfillment of the freedom of religion or belief.</li> <li>3. Cooperating with AMS on formulating policies that protect and enhance the freedom of religion or belief in member states.</li> <li>4. Building infrastructures in the AMS for the protection and</li> </ol>

	<p>enhancement of the freedom of religion or belief.</p> <ol style="list-style-type: none"> <li>5. Cooperation in the inter-religions and inter-beliefs dialogues to improve respect, understanding and tolerance.</li> <li>6. Making a reference framework for a qualified education in the member states to improve tolerance.</li> <li>7. Giving consultation to member states in connection with the assurance of protection on the freedom of religion or belief.</li> <li>8. Assessing the freedom of religion or belief, particularly on the request of the related State. They are:             <ol style="list-style-type: none"> <li>a. Advising, accepting, and processing the request of assessment from the State;</li> <li>b. Assessing comprehensively towards the protection and the fulfillment of the freedom of religion or belief.</li> <li>c. Giving recommendations to a State in connection with further measures on enhancement and protection of the freedom of religion or belief.</li> </ol> </li> </ol>
<p>Cooperation amongst AICHR and ASEAN and Other Sectoral Bodies</p>	<ol style="list-style-type: none"> <li>1. Assessing and giving inputs towards ASEAN policies and the bodies in it for the sake of the compliance with the principles of the protection of the freedom of religion or belief.</li> <li>2. Assisting the ASEAN bodies to formulate policies based on the principles of the freedom of religion or belief.</li> <li>3. Cooperating with other human rights bodies in ASEAN to protect the freedom of religion or belief of the vulnerable groups such as women, children, and migrants. The cooperation includes:             <ol style="list-style-type: none"> <li>a. Making assessment guidance and monitoring the assurance of the freedom of religion or belief for susceptible groups.</li> <li>b. Assessing and monitoring the assurance of the freedom of religion or belief of the freedom of religion or belief of the susceptible groups periodically.</li> <li>c. Giving recommendations to the ASEAN Secretariat or other ASEAN bodies in connection with the problems of the freedom of religion or belief towards susceptible groups.</li> <li>d. Supporting the formulation of human rights policies to the ASEAN sectoral bodies in the fulfillment of the assurance for the freedom of religion or belief.</li> <li>e. Organizing practices for improvement of workers' capacity in ASEAN and all bodies by sector in the issue of the freedom of religion or belief and Human Rights generally.</li> <li>f. Providing consultation service and advice to ASEAN and sectoral bodies in the field of the freedom of religion or belief.</li> <li>g. Making a manual or guidance for ASEAN and sectoral bodies in the protection and enhancement of the freedom of religion or belief, including the integration efforts on the freedom of religion or belief in its policies.</li> </ol> </li> </ol>
<p>Cooperation Mechanism with AICHR and ASEAN</p>	<p>ASEAN AND AICHR make a cooperation mechanism with party states and civil society in the field of the freedom of religion or belief. Among others are by:</p>

	<ol style="list-style-type: none"> <li>1. Making a procedure for a cooperation request, either from Member State or ASEAN sectoral bodies in connection with the procedure of the cooperation framework construction with AICHR.</li> <li>2. Making a list of activities that can be put into a cooperation framework.</li> <li>3. Preparing and giving assistance based on the capacity owned by ASEAN or AICHR.</li> </ol>
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## 2. Variety of Technical Cooperation Activities: ASEAN, AICHR, and Member States

Issues	Key Activities
Cooperation framework with AICHR in the field of the freedom of religion or belief	<ol style="list-style-type: none"> <li>1. Making an evaluation mechanism and joint assessment on the implementation freedom of religion or belief in AMS.</li> <li>2. Making a guidance of human rights protection for state apparatus, government, and law upholders in AMS.</li> <li>3. Cooperating to assess the lawful framework for guarantee of the freedom of religion or belief in AMS.</li> </ol>
Cooperation in improving the capacity of upholders in handling cases of the freedom of religion or belief	<ol style="list-style-type: none"> <li>1. Giving advisory assistant to the law holders apparatus such as policemen, judges, attorneys, lawyers, etc. in the protection and enhancement of the freedom of religion or belief.</li> <li>2. Preparing references, materials, or practice guidance on the freedom of religion or belief for governmental apparatus and law holders.</li> <li>3. Making permanent procedures on the handling of the cases of the freedom of religion or belief for the law holder apparatus and susceptible groups.</li> <li>4. Creating a mechanism for the fair and impartial law upholding that the guarantee for the freedom of religion or belief will come into reality.</li> </ol>
Cooperation of civil society in a member state or regionally	<ol style="list-style-type: none"> <li>1. Conducting interactive and periodic dialogues on the protection and enhancement of the freedom of religion or belief in ASEAN.</li> <li>2. Making an observation and assessment guidance in undertaking the freedom of religion or belief in AMS.</li> <li>3. Encouraging civil society to assess and monitor the freedom of religion or belief in each country.</li> <li>4. Encouraging constructive dialogues and discussion inter-religions to increase tolerance and respect among people.</li> <li>5. Bridging the cooperation amongst civil society, NHRIs and States in the protection and enhancement of the freedom of religion or belief in member states.</li> </ol>
Improvement of the living standard of susceptible groups, including the minority of religion or belief	<ol style="list-style-type: none"> <li>1. Formulating the framework of affirmative policies for vulnerable groups of religion or belief that have long experienced discrimination.</li> <li>2. Establishing the scholarship programs, either domestic or abroad, to vulnerable groups.</li> </ol>

	3. Promoting and disseminating anti-discrimination and prohibition of intolerance in AMS.
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## D. Campaign and education on the freedom of religion or belief

The important aim of education in enhancing and protecting the freedom of religion or belief is the improvement of individuals' awareness to defend their fundamental rights and other's fundamental rights. The knowledge will be an encouragement tool for empowerment.

Education requires joint efforts from the educators and teachers in translating the language of the freedom of religion or belief to be knowledge, skill, and behavior.

Campaign activity in ASEAN aims to encourage the awareness of ASEAN society in respecting the freedom of religion or belief as well as lessening violation cases. This act shall be a collective movement of state, civil society, and private. Thus, the need for the fulfillment of the religion or belief becomes collective interest, which one among others is stated in the ASEAN Human Rights Declaration.

### 1. Regional Level

Issues	Key Activities
Education	<ol style="list-style-type: none"> <li>1. Formulating action plans and effective strategic formulas in the educational program and the campaign of the freedom of religion or belief in schools.</li> <li>2. Capacity building of ASEAN stakeholders, Representative of AICHRs, ASEAN secretariat in the issue of the freedom of religion or belief.</li> <li>3. Making a module on the freedom of religion or belief that can be used for specific targets such as government, religious organizations, students, university students, teachers, journalists, and so on.</li> <li>4. Giving scholarships and making an exchange program on the context of freedom of religion or belief.</li> <li>5. Encouraging or conducting a serial discussion on the freedom of religion in ASEAN in the Universities in AMS.</li> <li>6. Making a road show about the freedom of religion or belief.</li> </ol>
Campaign	<ol style="list-style-type: none"> <li>1. Providing basic information on the guarantee of the freedom of religion, including translating each other's national languages among AMS.</li> <li>2. Disseminating information on the work of ASEAN bodies in the field of the freedom of religion or belief, including their various publications, in English or national language of the member state.</li> <li>3. Conducting a workshop, seminar, or public discussion periodically on the freedom of religion.</li> <li>4. Making competitions that promote values and freedom guarantee in the regions.</li> <li>5. Conducting media briefing periodically or incidentally on the</li> </ol>

	<p>importance of freedom of religion or belief and how that can involve in the promotion agendas.</p> <p>6. Holding an exhibition promoting tolerance values and religious freedom guarantee in the region.</p>
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## 2. International Level

Issues	Key Activities
Education	<ol style="list-style-type: none"> <li>1. Making action plans to formulate effective strategies in the educational programs in campaigns on the freedom of religion or belief internationally.</li> <li>2. Making a practice module on the freedom of religion or belief that can be used for specific targets such as government, religious organizations, students, university students, teachers, journalists and so on internationally.</li> <li>3. Holding serial discussions on the religious freedom and belief.</li> </ol>
Campaign	<ol style="list-style-type: none"> <li>1. Giving basic information on the guarantee of religious freedom and belief, including the translation into the official language of the United Nations.</li> <li>2. Disseminate information about the work of ASEAN bodies for the issue of the freedom of religion or belief, including the various publications in English.</li> <li>3. Holding a workshop, seminar, or public discussion periodically in connection with religious freedom that is done directly or jointly with other international stakeholders.</li> <li>4. Making competitions that promotes values and freedom assurance regionally. The participants target is international communities.</li> <li>5. Making exhibitions to promote tolerance values and the guarantee of religious freedom internationally.</li> </ol>

## E. Monitoring the Freedom of Religion or Belief

The freedom monitoring shall be seen as a way to give information and understanding the situation of the related state concerning violation cases of the freedom of religion or belief. In the end, this work can be the ground to formulating solution steps.

Monitoring is a broad theme that describes cooperative work, verification activities, and indirect efforts to solve and analyze human rights problems. In monitoring, there are also activities collecting information related to certain

incidents, monitoring certain occasions such as general election, demonstration, including visitation to locations such as jails and asylums.

Monitoring that is done by AICHR or other ASEAN human rights bodies will be beneficial for public to access the institution's official data, besides reports and findings made by other parties. The result of the monitoring will also be a base for AICHR or ASEAN human rights bodies to conveying the recommendations to AMS.

### 3. AICHR Capacity Building

To increase the function and role in monitoring the freedom of religion or belief, AICHR wanted for Capacity Building programs. The monitoring results

could become a credible data for resolving the freedom of religion or belief challenges in ASEAN region.

Issues	Key Activities
Capacity Building	<ol style="list-style-type: none"> <li>1. Conducting series program for AICHR Representative or AICHR's assistant on monitoring and evaluation of freedom of religion or belief in each country and region.</li> <li>2. Conducting the capacity building programs for particular targets such as government representatives, NGO, campuses, religious organization, and so on, in field of freedom of religion or belief.</li> <li>3. Formulating the core team for monitoring cases and violations of freedom of religion or belief in ASEAN region and/or in AMS.</li> </ol>
Monitoring	<ol style="list-style-type: none"> <li>1. Monitoring the certain important cases in the ASEAN region periodically.</li> <li>2. Making a report on situations, progress, and challenges in undertaking religious freedom in the region.</li> </ol>
Tool Monitoring	<ol style="list-style-type: none"> <li>1. Making a module containing concepts and mechanisms for monitoring the freedom of religion or belief regionally.</li> <li>2. Providing monitoring software for the implementation of freedom of religion or belief.</li> </ol>

### 4. Cooperation with NGO, Civil Society or Other Stakeholders

NGO and other civil society groups have significant roles in upholding the human rights, nationally, regionally or internationally. This society can be the defenders for the victims of human rights violation, and critics of government policies or states that are presumed to violate or

ignore cases of human rights violations. Their roles have been recognized by the United Nations and ASEAN. AICHR needs to strengthen their capacity and cooperate with them, especially in the promoting and protecting of freedom of religion or belief.

Issues	Key Activities for AICHR
Cooperation with NGOs and other civil society groups	<ol style="list-style-type: none"> <li>1. Supporting and encouraging the NGOs and civil organizations that are involved in the advocacy of human rights, especially defender of victims of the freedom of religion or belief.</li> <li>2. Conducting capacity building program and promoting NGOs'/CSOs' roles in the human rights protection and defense for the victims of intolerance, violence, and discrimination on the basis of religion and belief.</li> <li>3. Making regular consultation with NGOs/CSOs which are advocate the victims of intolerance, violence, and</li> </ol>

	<p>discrimination;</p> <p>4. Making joint program on the promoting and respecting of human rights, especially freedom of religion or belief, including also religious groups, minorities and relevant stakeholders.</p>
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## 5. Protection for the Defenders of the Freedom of Religion or Belief

The human rights defenders play significant roles in promotion and protection of human rights. Unfortunately, their positions are often threatened. Threat often comes from human rights offenders,

state or government or non-state. AICHR is should strengthen the human rights defender especially who are advocating the freedom of religion or belief in AMS or in the region.

Issues	Key Activities for AICHR
Guarantee for human rights defenders	<ol style="list-style-type: none"> <li>1. Responding to every threat and human rights violation towards human rights defenders, by state or non state, in a normal situation or in a conflict and war.</li> <li>2. Condemning all of threats or violations against the defenders of the freedom of religion or belief.</li> <li>3. Protecting the defenders of the freedom of religion or belief when they are threatened from state or non-state actors.</li> <li>4. Urging AMS to take measures where the threat occurs for the human rights defenders.</li> <li>5. Encouraging the AMS to make effective protection mechanism for human rights defender.</li> </ol>

## F. Publication for the Freedom of Religion or Belief

One of the publications that can be used by AICHR in enhancing and protecting the freedom of religion or belief in ASEAN is by publishing *factsheet*. Factsheet document usually contains special issues that become centers of attentions and it can be produced by AICHR and other ASEAN human rights bodies. Factsheet publication can be aimed as an effort to give further and comprehensive understanding on special problems. Besides, factsheet can also be a medium for awareness increase and state understanding, ASEAN, NGO, and public society about the guarantee and protection of the freedom of religion or belief. This factsheet is disseminated freely and disseminated throughout the whole

regions of South East Asia. Issues contained in the *factsheet* include:

- The relationship amongst ASEAN and AICHR with member states (communication procedures);
- The relationship amongst ASEAN and AICHR with NGO and civil society (communication procedure);
- Public campaign on FoRB;
- Minority and freedom of religion or belief;
- Economic, social and cultural right and violation of FoRB.

Factsheet can be divided into three forms: practice manual series, study series of the freedom of religion or belief, and referential series. Practice manual series are

dedicated for professionals. They are in the forms of handbooks and manual to increase the awareness and understanding on the protection guarantee and enhancement of the freedom of religion or belief. This

publication can also be practical tools for organizations or professionals involved in the enhancement and protection of the freedom of religion or belief.

Issues	Key Activities for AICHR or ASEAN human rights bodies
Practice manual series	<ol style="list-style-type: none"> <li>1. Establishing a manual and handbook on the law enforcement (police officer) and the protection of freedom of religion or belief.</li> <li>2. Making a manual and handbook on the completion of cases on the freedom of religion or belief for judges and attorneys.</li> <li>3. Making a manual and handbook on the freedom of religion or belief for lawyers.</li> <li>4. Making a manual and advocating handbook for civil society.</li> <li>5. Manual and handbook on ASEAN Human Rights Mechanism related to the protection of the freedom of religion or belief.</li> </ol>
Study series on the freedom of religion or belief	<ol style="list-style-type: none"> <li>1. Study of the freedom of religion or belief and vulnerable groups in South East Asia.</li> <li>2. Study of the qualified education that supports the enhancement and protection of the freedom of religion or belief in ASEAN.</li> <li>3. Study of the handling of cases on the freedom of religion or belief by the law enforcement.</li> <li>4. Comprehensive study on discrimination and intolerance in ASEAN States.</li> </ol>
Referential series	<ol style="list-style-type: none"> <li>1. Reference for the guarantee of protection and enhancement on the freedom of religion or belief in Southeast Asia.</li> <li>2. Reference for judges on solving cases on the freedom of religion or belief in the judicial process.</li> <li>3. Reference for law enforcement on protection and promotion of the freedom of religion or belief.</li> <li>4. Reference for NGOs and civil society organizations in advocating the freedom of religion or belief.</li> <li>5. Reference for ASEAN stakeholders and Sectoral bodies on the promotion and protection of freedom of religion or belief.</li> <li>6. Reference for National Human Rights Commissions (NHRIs) on the protection and promotion of the freedom of religion or belief.</li> <li>7. Reference for schools or universities related to the enhancement and protection of the freedom of religion or belief in educational process.</li> </ol>

## G. Monitoring Tools: Index and Assessment

Monitoring tools on the freedom of religion or belief is meant to facilitate the AICHR Commissioners, ACWC or other parties that involved in the monitoring of human rights situation in a state, region, or specific area. AICHR can also hold capacity building for state apparatus, NGO, civil society groups and other partners in the field of monitoring the freedom of religion or belief.

The monitoring result can be used by AICHR as a modality to enhance the protection of freedom of religion or belief in AMS. At the same time, AICHR can encourage particular AMS to respond and solve the violation of rights.

The monitoring process is often uneasy. Not only because of the concern of a state of government, but also because of the emerging violation cases can bother individual interest, groups, and religion or belief that is held by the majority of certain states.

The difficulty to identify the violations can also be caused by a reason that not all states have given lawful protection explicitly. In the other words, there are still many regulations and laws that justify the practices of intolerance, discrimination, and violence towards certain groups or minorities.

### 1. Regional Index (ASEAN)

Issues in ASEAN	Element Detail	Yes	No
Is there a regional instrument that guarantees the freedom of religion and belief in the Internum forum?	1. Freedom to adopt, change or renounce a religion or belief		
	2. Freedom from coercion		
	3. The right to manifest one's religion or belief		
Is there a regional instrument that guarantees the freedom of religion and belief in the externum forum (manifestation of religion)?			
Are there limitations to adopt, change or renounce certain religion or belief?	1. Regional instrument/policies		
	2. Regional policies from ASEAN sectoral bodies		
Are there any restrictions on manifesting a religion or belief?	1. Regional instrument/policies		
	2. Regional policies from ASEAN sectoral bodies		
Are the limitations to the freedom of religion or belief done based on the standards and principles of International Human Rights?			
Are there steps to harmonize ASEAN policies and rules and legislations in the AMS?	1. Promoting ratification of international convention, especially relate to the protection on the freedom of religion and		

	belief.		
	2. Attempting to revise or withdraw the legislations that do not comply, protect and promote freedom of religion or belief.		
	3. Urging the dispossession of legislation or policy that is not in accordance with the principles of the freedom of religion and belief.		
	4. Encouraging the legislation or policies to protect the freedom of religion or belief.		
	5. Ensuring the local regulation compliance with the principles of the freedom of religion or belief.		
<b>PROMOTION AND CAMPAIGN</b>			
Are there any ASEAN programs or activities that lead to the mainstreaming of the freedom of religion or belief?			
Are there any special programs or activities to mainstreaming the freedom of religion or belief in the ASEAN Member States?			
Is there a mainstreaming program for the freedom of religion or belief emphasized in the ASEAN policies to Member State, including in the budget allocation?			
Is there specific guideline in connection with the mainstreaming of the freedom of religion or belief?	1. Guideline for workers / officials		
	2. Guideline for ASEAN sectoral bodies		
Is there a review or a comprehensive evaluation towards the freedom of religion or belief in internal ASEAN?			
Is there training or workshop in connection with the rights to the freedom of religion or belief?	1. Stakeholders that are in ASEAN and Sectoral Bodies		
	2. Stakeholders, including religious communities, universities, think tanks, etc, from AMS		
	3. Civil Society from AMS		
Is there an ASEAN study or a research about groups of religion or belief throughout ASEAN regions?			
Is there a systematic effort to invite Member States to enhance and protect religious freedom?	1. Dedicated to vast society in order to be more tolerant and more respectful		
	2. The enhancement through educational and curriculum system		
	3. Dialog inter-religions holders and leaders		
<b>PROTECTION MECHANISM</b>			
Is there any mechanism enhancement and protection in the region?	1. Monitoring mechanism on the protection and fulfillment of the freedom of religion or belief periodically		
	2. Assessment and promotion on the progressive enhancement and protection ( <i>best practices</i> )		

	3. ASEAN communication Guideline, ASEAN Sectoral Bodies and States on the enhancement and protection of the freedom of religion or belief		
	4. Complaint mechanism by individuals or groups related to the violation of the freedom of religion or belief		
	5. Putting the issues on the freedom of religion or belief in the ASEAN yearly report or sectoral bodies		
	6. Periodic dialogue or consultation on the enhancement and protection for the freedom of religion or belief by a State		
	7. Judicial court system on alleged violation of the freedom of religion of belief		
	8. A Special Rapporteur that collects information and make annual reports on the freedom of religion or belief in ASEAN		
	9. ASEAN mechanism procedures that respond when there is a violation on the freedom of religion or belief		
	10. Protection and enhancement discussion on the freedom of religion or belief in ASEAN Summit or AMM.		
	11. Financial support in connection with the enhancement and protection for the freedom of religion or belief in ASEAN		
<b>The existence of violence towards groups of religion or belief in ASEAN</b>	1. Are there a condemnation statements to the violation?		
	2. Delivering a diplomatic letter to request further explanation or clarification to the AMS in allegation of human rights violations?		
	3. Requesting the State in to solve the problem and process it lawfully?		
	4. Encouraging the state to make a lawful framework that guarantees the abolish all of violence on the basis of religions or beliefs?		
	5. Periodic report mechanism that is reported by the AMS?		
	6. Best Practices Study on the protection for freedom of religion or belief in the AMS?		
	7. Visit mission to certain AMS to ensure the existence of protection to the victims		
<b>Promoting enhancement and protection of forum internum (convert or leaving one's religion or belief)</b>	1. Are there efforts to encourage AMS to guarantee the forum internum?		
	2. Are there ASEAN policies on the		

	criminalization practice of coercion in AMS?		
	3. Are there the condemnations on the practice of coercions that happened in AMS?		
<b>Promoting enhancement and protection of forum externum (Manifestation of religion or belief)</b>	1. Encouraging the AMS to make a policy that protects religious manifestation		
	2. Ensuring that every religion or belief can be registered and has a lawful position		
	3. Ensuring the protection of holy places and worship places of religious groups		
	4. Ensuring that AMS apparatus and government respect worship places		
	5. Encouraging AMS apparatus and government to act upon the actors of vandalism and destruction of holy or worship places		
	6. Ensuring the quick process, cheap and transparent for worship places license		
	7. Condemnations on a policies that violates the right to manifesting a religion		
	8. Encouraging AMS to respect and protect conscientious objection		
<b>Discrimination Prohibition</b>			
Are there appeals or calls to a Member State to eliminate all practices of discrimination?			
Are there appeals or condemnations when discrimination happens?			
Are there efforts to ascertain a Constitution and legislation that does not discriminate?			
Are there technical help to harmonize the legislation?			
Are there special attentions the susceptible groups who are discriminated?	1. Women		
	2. Children		
	3. Migrant		
	4. Refugees		
	5. Minorities		
Are there cooperation's with international or other regional mechanisms to enhance the freedom of religion or belief in the Member State?			

## 2. Mandate and Function of Human Rights Bodies in ASEAN

AICHR	Yes	No
<b>AICHR'S PURPOSES</b>		
Are there any systematic efforts from AICHR to enhance and protect the freedom of religion or belief?		
Are there any internal policies from AICHR that ascertain the freedom of religion or belief to become		

a cross-cutting issue in undertaking its mandate?		
Are there regional cooperation that help a member State protect and enhance the freedom of religion or belief?		
Are there policies from AICHR that do not in connection with the principles of the freedom of religion or belief?		
<b>MANDATE AND FUNCTION</b>		
Are there special strategies for the enhancement and protection of the freedom of religion or belief in ASEAN?		
Are there ASEAN instruments related to the protection and enhancement of the freedom of religion or belief?		
Are there any efforts to increase the awareness and public understanding on the freedom of religion or belief?		
Are there any efforts to motivate Member States to undertake their obligation to the freedom of religion or belief?		
Are there any efforts to encourage the ICCPR ratification and the related instruments?		
Are there any efforts to promote the undertaking of the international human rights instrument in connection with the freedom of religion or belief?		
Are there any consultation services and technical assistants in the freedom of religion or belief issues to the AMS?		
Are there any dialogues and periodic consultations with other ASEAN bodies related to the freedom of religion or belief?		
Are there any consultations with national entities in connection with the freedom of religion or belief?		
Are there any efforts to get information from AMS related to the undertaking of the freedom of religion or belief?		
Are there any comprehensive approaches in connection with the protection and enhancement of the freedom of religion or belief?		
Are there special yearly reports that review the protection and fulfillment of the freedom of religion or belief in ASEAN?		
Has AMM ever given a special duty related to the protection of the freedom of religion or belief in ASEAN?		
<b>ACWC's Mandates</b>		
Is there a special mechanism for the protection of freedom of religion or belief for women and children?		
Are there any efforts to promote the undertaking of international instruments in connection with the freedom of religion or belief for children and women?		
Are there policies, programs and strategies for the enhancement and protection for the freedom of religion or belief for women and children?		
Public awareness increase and rights education on the freedom of religion or rights for children and women	1. In a dialogue or informal meeting	
	2. In an educational and curriculum institution	
Advocating women and children from the minority	1. Cooperation with ASEAN Member States to protect women and children from the	

of religion or belief	minority of religion or belief		
	2. Ensuring a State to give protection for children and women from the minority of religion or belief		
Are there any efforts in increasing the ability of authorities related to the freedom of religion or belief for women and children?			
Are there any efforts to encourage a state to put the problems of the freedom of religion or belief in the CRC or CEDAW report?			
Is there any encouraging program to undertake the recommendation of CRC and CEDAW in connection with the freedom of religion or belief?			
Is there data collection and analysis towards women and children data in connection with the freedom of religion or belief?			
Study and research about women and children	1. Study and research about the existence of women and children from the minority		
	2. Situation research on the freedom of religion or believe of women or children from the minority		
	3. Discriminative practical research towards children and women from the minority of religion or belief		
Are there periodic review for national legislation, regulations, policies, and practices in connection with women and children rights to the freedom of religion or belief?			
The best experience and practice for the protection of the freedom of religion or belief for women and children	1. Periodic dialogues and consultations with Member States		
	2. Study and research		
	3. Motivation to undertake the best practice		
Are there steps, mechanisms and strategies to eliminate violence towards women and children based on religions or beliefs?			
Is there a motivation to ratify ICCPR Convention or others related to the protection of freedom of religion or belief for women and children?			
Is there a participating motivation for children and women in their right dialogs on the freedom of religion or belief?			
Is there any advice or guidance that is given in connection with children and women's right on the freedom of religion or belief?			
Are there any special duties requested by AMM or Summit in connection with the protection and enhancement of children and women' right on the freedom of religion or belief?			

### 3. National Index

Issue in State	Derivative Issues	Yes	No
Are there any legislation rules and state policies that guarantee the freedom of religion and belief in the forum internum?	1. Freedom to adopt, change or renounce a religion or belief		
	2. Freedom from coercion		

	3. The right to manifest one's religion or belief		
<b>Are there any legislation rules and state policies that guarantee the freedom of religion and belief in the forum externum?</b>	1. Constitutions		
	2. Legislations/laws		
	3. Administrative policies		
	4. Local / District regulations		
<b>Are there any limitations to hold, convert and declare a certain religion or belief?</b>	1. Constitutions		
	2. Legislations/laws		
	3. Administrative policies		
	4. Local regulations		
	5. Other regulations		
	6. Practices		
<b>Is there any coercion to adopt, change and renounce a certain religion or belief?</b>	1. State actors		
	2. By Law		
	3. Non-state actors		
<b>Are there any limitations in manifesting a religion or belief?</b>	1. By Constitution		
	2. Legislation/ by law		
	3. Other regulations		
	4. State actors		
	5. Non-State actors		
<b>Are there any limitations to the freedom of religion or belief that are done based on the standards and principles of international Human Rights?</b>	1. By law/ legislation		
	2. In accordance with the requirements (public order, public interest, moral, fundamental freedom)		
	3. Does not discriminate certain groups that is guaranteed by the freedom of religion or belief		
<b>Are there any steps from a state to harmonize the legislation rules and the policies that are in accordance with the principles of the freedom of religion or belief?</b>	1. Ratification		
	2. Revising legislation		
	3. Withdrawing legislation / laws		
	4. Making of legislation or regulations		
<b>Are there any campaign strategies and education to promote the guarantee value of religious freedom?</b>	1. Education		
	2. Inter-religious dialogues		
	3. Toward state apparatus and authorities		
	4. Toward for the law enforcement		
	5. Publication		

	6. Campaigns in mass-media		
	7. Public and seminary discussions		
<b>Are all of religious groups, traditionally or new religious movements, recognized in the country</b>	1. Legally (registration)		
	2. Politically (existence)		
	3. Culturally (sociological)		

## BIBLIOGRAPHY

- “ASEAN Overview” at <http://www.aseansec.org>
- “ASEAN Vision 2020” at <http://www.asean.org/news/item/asean-vision-2020>
- “Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015,” at <http://www.asean.org/component/zoo/item/about-asean-overview-cebu-declaration-on-the-acceleration-of-the-establishment-of-an-asean-community-by-2015?Itemid=185>
- “Combating discrimination based on religion or belief”, OHCHR, [http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination\\_religious.aspx](http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination_religious.aspx)
- “Declaration of ASEAN Concord II (Bali Concord II),” at <http://www.asean.org/news/item/declaration-of-asean-concord-ii-bali-concord-ii>
- “Declaration on the ASEAN Economic Community Blueprint,” at <http://www.asean.org/news/item/declaration-on-the-asean-economic-community-blueprint>
- “Outcome Document of the Expert Meeting on Effective Alignment Among Human Rights Institution and Mechanism”, the Meeting conveyed by Indonesian Representative to AICHR and ACWC Non Paper, Jakarta 6 – 7 December 2010.
- “Special Rapporteur on freedom of religion or belief”, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx>
- “The ASEAN Declaration”, (Bangkok Declaration), Bangkok, 8 August 1967.
- “The Charter of ASEAN”.
- “The Right to Freedom of Expression and Religion”, accessed from <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightsconceptsideasandfora/substantivehumanrights/therighttofreedomofexpressionandreligion/>
- “The Right to Freedom of Expression and Religion”, <http://www.humanrights.is>
- “Who Are Minority”, Minority Rights, accessed from <http://www.minorityrights.org/566/who-are-minorities/who-are-minorities.html>
- African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)
- AICHR Guideline on the Operations, Adopted 12 March 2012

- American Bar Association Rule of Law Initiative, "Experts' Note on the ASEAN Human Rights Declaration," Washington, May 2012. <http://www.americanbar.org>
- ASEAN Secretariat, *ASEAN Political-Security Community Blueprint*. Jakarta: ASEAN Secretariat, 2009.
- ASEAN Secretariat, *ASEAN Socio-Cultural Community Blueprint*. Jakarta: Secretariat ASEAN, 2009
- Bielefeldt, Heiner, "Misperception of Freedom of Religion and Belief", in *Human Rights Quarterly*, Volume 35, Number 1, February 2013.
- BYU Management Society, "Corporate Social Responsibility and Religious Freedom", accessed <http://liberia.byums.org/ckfinder/userfiles/files/Website%20-%20CSR%20and%20Religious%20Freedom.pdf>
- Budiman, Hikmat, ed., *Hak Minoritas: Ethnos, Demos dan Batas-batas Multikulturalisme* (Minority Rights). Jakarta: Interseksi Foundation, 2010.
- Clarke, Gerard, "From ethnocide to Ethnodevelopment? Ethnic minorities and indigenous Peoples in South East Asia," *Third World Quarterly*, Vol. 22, No. 3 (Jun., 2001).
- Cohen, David, *Rule of Law for Human Rights in the ASEAN Region: A Baseline Study*. Depok: Human Right Resource Centre, 2011.
- Council of the European Union, "EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief". (Foreign Affairs Council Meeting. Luxembourg, 24 June 2013.
- Croissant, Aurel and Christoph Trinn, "Culture, Identity and Conflict in Asia and Southeast Asia," *ASIEN 110 (January 2009)*.
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), adopted in New York by UN General Assembly on 18 December 1992 (No: GA Resolution 47/135).
- ENAR – Fact Sheet 34 – October 2007.
- General Comment of the Human Rights Committee No. 18 (Nondiscrimination), Session thirty seven, 1989, U.N. Doc. HRI\GEN\1\Rev.1 at 26 (1994).
- General Comments of the United Nations Human Rights Committee No. 20.
- General Comments of UN Human Rights Committee No. 11, 19<sup>th</sup> session, 1983, U.N. Doc. HRI\GEN\1\Rev.1 at 12 (1994); General Comments UN Human Rights Committee No. 34 paragraphs 50 – 52.
- General Comment of the Human Rights Committee No. 5: Derogation of rights (Art. 4): 31/07/81. Adopted on Thirteenth session, 1981.
- General Comments of UN Human Rights Committee No. 34 (Article 19: Freedom of Opinion and Expression). 102<sup>nd</sup> session, Geneva, 11-29 July 2011, CCPR/C/GC/34
- Gomes, Evaldo Xavier, "The Implementation of Inter-American Norms on Freedom of Religion in the National Legislation of OAS Member States", in *BYU Law Review*, Volume 2009, Issue 3, Article 5.
- Grim, Brian J. and Roger Finke, "Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated

- Religious Economies?" in *American Sociological Review*, Vol. 72, No. 4 (Aug., 2007), 633-658.
- Hirschman, Charles, "Ethnic Diversity and Change in Southeast Asia", in Calvin Goldscheider, ed., *Population, Ethnicity and Nation Building*. USA: Westview Press, 1995.
- ILCR Team, *Menyebarkan Kebencian atas Dasar Agama adalah Kejahatan* (Dissemination of Hate Speech on the Basis of Religion is a Crime). Jakarta: ILRC, 2012.
- ILRC Team, *Law and Human Rights Guarantee for the Freedom of Religion*. Jakarta: ILRC, 2009.
- Interim report of the Special Rapporteur on freedom of religion or belief, 17 July 2009, A/64/159.
- Interim report of the Special Rapporteur on freedom of religion or belief, A/65/207, 29 July 2010.
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Convention on the protection of migrant workers and the members of their family
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Juliantara, Dadang (ed), *Jalan Kemanusiaan Panduan untuk Memperkuat Hak Asasi Manusia*. Yogyakarta: Laperia Pustaka Utama: 1999.
- Krishnaswami, Arcot, *Study of Discrimination in the Matter of Religious Rights and Practices*. New York: United Nations, 1960.
- Kymlicka, Will, *Multicultural Citizenship: A Liberal Theory of Minority*. Oxford: Clarendon Press, 1996.
- Lerner, Natan, "The Nature and Minimum Standard of Freedom of Religion and Belief", in *Brigham Young University Law Review*, LERN-FIN.DOC, 9/25/2000, h. 907.
- Lindholm, Tore and Cole Jr. Durham, ed., *Facilitating Freedom of Religion or Belief: A Deskbook*. USA: Koninklijke Brill NV and Martinus Nijhoff Publishers, 2004.
- Minority Rights Groups (MRG) Directory <http://www.minorityrights.org/directory> (accessed on 16 January 2014).
- Murdoch, Jim, *Freedom of Thought, Conscience, and Religion: A Guide to the Implementation of Article 9 of the European Convention on Human Rights*, (Human Rights Handbook No. 9). Belgium: Directorate General of Human Rights, Council of Europe, June 2007.
- OHCHR, *Background Paper: OHCHR activities related to Regional Human Rights Mechanisms*.
- OHCHR, *Directory of Special Procedures Mandates of Holders*. Geneva: OHCHR, January 2013.
- OHCHR, *Fact Sheet No.18 (Rev.1), Minority Rights*
- OHCHR, *Human Rights in the Administration of Justice: A Manual of Human Rights for Judges, Prosecutor and Lawyers*. Geneva: OHCHR and International Bar Association, 2003.

- OHCHR, *Human Rights: A Basic Handbook for UN Staff*. Geneva: OHCHR.
- OHCHR, *Promoting and Protecting Minority Rights: A Guide for Advocate*. Geneva: UN and OHCHR, 2012.
- OHCHR, *The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies*, (Factsheet No. 30).
- OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Hate Crime: A Practical Guide*, (Poland: OSCE ODIHR, 2009)
- OSCE-ODIHR, *Toledo Guiding Principle on Teaching About Religion and Belief in Public Schools: Prepared by the ODIHR Advisory Council of Experts on Freedom of Religion and Belief*, (Poland: Sungraf, 2007).
- Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, E/CN.4/2006/5, 9 January 2006.
- Report of the Special Rapporteur on freedom of religion or belief A/HRC/6/5, 20 July 2007
- Report of the Special Rapporteur on freedom of religion or belief (SR FoRB), Heiner Bielefeldt, A/HRC/19/60, 22 December 2011.
- Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, 15 December 2010, A/HRC/16/53.
- Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, A/HRC/4/21, 26 December 2006.
- Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/19/60, 22 December 2011.
- Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, A/HRC/13/40, 21 December 2009, Human Rights Council, Thirteenth session.
- Resolution A/Res/63/181, "Elimination of all forms of intolerance and of discrimination based on religion or belief" Resolution adopted by the General Assembly on 18 December 2008
- Resolution UN Human Right Commission 2005/40 on Elimination of all forms of intolerance and of discrimination based on religion or belief, adopted on 19 April 2005.
- Smith, Rhona K.M., *Textbook on International Human Rights*. UK: Oxford University Press, 2010.
- Special Rapporteur on FoRB, *Rapporteur's Digest on Freedom of Religion and Belief: Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications*.
- Taylor, Paul M., *Freedom of Religion: UN and European Human Rights Law and Practice*. Cambridge: Cambridge University Press, 2005.
- Terms of Reference of ASEAN Intergovernmental Commission on Human Rights," Jakarta, ASEAN Secretariat, October 2009.
- UN HRC Resolution 10/25 (27 March 2009) on Discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights

UNESCO, *Tolerance: the threshold of peace  
A teaching / learning guide for  
education for peace, human rights and  
democracy*, (France: UNESCO, 1994), p.  
20

UNGA, *Resolution Elimination of all forms  
of intolerance and of discrimination*

*based on religion or belief*,  
A/RES/63/181 Sixty-third session,  
distributed 16 March 2009

Urban Justice, *Practical Guide to the United  
Nations' Universal Periodic Review  
(UPR)*. New York: Urban Justice, June  
2010.