



RESTRICTING DIVERSITY:

Mapping Legislation on Freedom of Religion or Belief in Southeast Asia



ASEAN PARLIAMENTARIANS
FOR HUMAN RIGHTS



International Panel of
Parliamentarians
for Freedom of Religion
or Belief





ASEAN PARLIAMENTARIANS FOR HUMAN RIGHTS

ASEAN Parliamentarians for Human Rights (APHR) is a regional network of current and former parliamentarians who use their unique positions to advance human rights and democracy in Southeast Asia. We seek to help create a region where people can express themselves without fear, live free from all forms of discrimination and violence, and where development takes place with human rights at the forefront.

Our members use their mandate to advocate for human rights inside and outside of parliaments, regionally and globally. They work closely with civil society, conduct fact-finding missions, and publish recommendations and opinions on important issues affecting the region.

APHR was born out of the recognition that human rights issues in Southeast Asia are interconnected, and from the desire of progressive legislators to work together across borders to promote and protect human rights.



**International Panel of
Parliamentarians
for Freedom of Religion
or Belief**

The International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB) is a global network of former and sitting parliamentarians, acting in their individual capacity to promote and advance freedom of religion or belief for everyone, everywhere. We connect, equip and support parliamentarians with capacity-building events, advocacy, research, and network-building. We anchor our work in Article 18 of the UN Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR). To know more about us, please visit www.ippforb.com.

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Cover page: Laos - Myanmar - Timor Leste - Singapore

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LIST OF ACRONYMS

AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMLA	Administration of Muslim Law Act (Singapore)
APHR	ASEAN Parliamentarians for Human Rights
ASEAN	Association of Southeast Asian Nations
BARMM	(Transitional Authority of the) Bangsamoro Autonomous Region of Muslim Mindanao
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRA	Committee for Religious Affairs (Vietnam)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
FFM	Fact-Finding Mission, mandated by the UN (Myanmar)
FPI	Front Pembela Islam (Islamic Defenders Front)
FoRB	Freedom of Religion or Belief
HTI	Hizbut Tahrir Indonesia
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IPPFoRB	International Panel of Parliamentarians for Freedom of Religion or Belief
IPRA	Indigenous Peoples Rights Act (The Philippines)
ISIS	Islamic State of Iraq and Syria
KUHP	<i>Kitab Undang-Undang Hukum Pidana</i> or Penal Code (Indonesia)

LIST OF ACRONYMS continued

Lao PDR	Lao People's Democratic Republic
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersexual and Queer
LBR	Law on Belief and Religion (Vietnam)
MRHA	Maintenance of Religious Harmony Act (Singapore)
MIB	Melayu Islam Beraja (Brunei Darussalam)
MILF	Moro Islamic Liberation Front
NLD	National League for Democracy (Myanmar)
OHCHR	UN Office of the High Commissioner for Human Rights
PCMR	Presidential Council for Minority Rights (Singapore)
SPC	Syariah Penal Code (Brunei)
UN	United Nations
UDHR	Universal Declaration on Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
USCIRF	United States Commission on International Religious Freedom



Thai Buddhist Supreme Patriarch Somdej Phra Maha Muneewong and Pope Francis attend a meeting at Wat Ratchabophit in Bangkok, Thailand, 21 November 2019. EPA-EFE/CIRO FUSCO

EXECUTIVE SUMMARY

This report provides a mapping of the laws and regulations regarding the right to freedom of religion or belief (FoRB) in the countries of Southeast Asia. It hopes to provide lawmakers with the information needed to address and respond to the key legal issues regarding religion or belief in each country.

However, not every problem can be solved by changes in law, and shifts in culture and practice need also to take place to create the necessary lasting changes to realize the right of all to FoRB.

The report begins with a discussion of the strategic importance of FoRB in Southeast Asia, a region characterized by its size, diversity, and complexity, and the role of legislators in protecting this fundamental right. It continues by analyzing the international legal framework governing FoRB.

Country chapters are presented in alphabetical order. Each country chapter follows the same structure: a review of the country's religious demography and general religious background; a presentation of its constitutional framework relating to FoRB; an analysis of the problematic laws governing FoRB; and recommendations for Parliamentarians on how to address these deficiencies and bring the country's laws in line with the right to FoRB.

To conclude, the report offers a discussion on ways forward for parliamentarians in the region to help achieve prosperous and tolerant societies in which the right to FoRB is respected and protected for all.

General recommendations for Parliamentarians in Southeast Asia:



Ensure that the right to FoRB is fully protected in all relevant laws and regulations, and, where necessary, revise or revoke laws to bring them into line with international human rights law and standards.



Create avenues for consultation about all relevant laws and regulations with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB.



Ensure that all religious and belief communities are afforded the **same protection under the law and without discrimination.**



Establish or join a cross-party group/caucus on FoRB in your parliament in order to initiate and consolidate efforts to bring laws in line with international human rights law, and to advocate for FoRB.



Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight.



Hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB.



Become a State Party to the nine international human rights treaties.



Consider **joining the Southeast Asia Parliamentarians for FoRB (SEAPFORB).**¹

METHODOLOGY

The method used to collect data for this report was based on a combination of research techniques involving desk research, document analysis, and interviews with stakeholders. The desk research involved open-source searches of public websites and media reports. Researchers also examined documents and reports from governments, U.N. bodies and experts, and civil society organizations.

Researchers conducted a total of 15 interviews for this report, with 13 men and two women from a range of professions, such as legislators, academics, and civil society activists from each country in the region. Each interviewee was familiar with issues related to FoRB in their respective country. The interviews were used to triangulate data and information derived from the desk research and document analysis.

A note on terminology: the term “Shari’a” is also spelled “Syariah” by various governments in Southeast Asia. Both terms have the same meaning. The report will use the spelling used by the government in question.

¹ For more information about SEAPFORB, visit: <https://www.forb-asia.org/>.

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APHR sincerely thanks all interviewees for taking the time to share their valuable information. APHR would like to extend its special thanks to Jacob Bogart, who conducted the research and drafted the report. This research and report were made possible thanks to the support of The International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB). We hope that the report findings and recommendations will be useful for Southeast Asian MPs and relevant parties to enable further protection of the right to FoRB in the region.



Aerial view of cathedral church and Istiqlal mosque under blue sky at Jakarta, Indonesia. Creativa Images via Canva

INTRODUCTION

The strategic importance of FoRB

Southeast Asia is a diverse region home to more than 600 million people whose cultures and values are influenced by a rich tapestry of customs and traditions woven through centuries of history. As part of this landscape, religions and beliefs in the region contribute significantly to its diversity and complexity.

Southeast Asia includes two of the most religiously diverse countries in the world (Singapore and Vietnam) and two of the least diverse (Cambodia and Timor-Leste). Its most populous country, Indonesia, houses the largest Muslim population in the world; and of the region's eleven countries, Christianity, Islam, or Buddhism are the dominant religions in nine.²

Despite these realities, some generalizations are possible: Southeast Asia is split between a mainland that is largely Buddhist and a maritime region (excluding the Philippines) that is largely Muslim.³ Around 40% of the region's population as a whole is Sunni Muslim, with roughly 30% Buddhist, and 20% Christian.⁴

The role of religion in the constitution of each country in the region reflects the diversity of beliefs held therein. Both the Lao People's Democratic Republic (PDR) and Vietnam are communist states, and along with Singapore and The Philippines, are officially secular in nature. Thailand, Cambodia, and Myanmar each enshrine the special role of Buddhism in their constitutions. Similarly, Brunei

² See Pew Research Center, "Table: Religious Diversity Index Scores by Country," 4 April 2014. Accessed 1 June 2022: <https://www.pewforum.org/2014/04/04/religious-diversity-index-scores-by-country/>.

³ Matthew Kosuta, "Postcolonial Religious Conflict in Southeast Asia," in *Contemporary Postcolonial Asia*, Volume 22:1 (Spring 2017), p. 24.

⁴ Pew Research Center, "Table: Religious Diversity".

and Malaysia establish Islam as either the state's religion or ideology, while Indonesia's social and political situation is heavily influenced by Islamic values and traditions as the religion of the majority of its people.

The United States' State Department annually reviews the status of religious freedom in every country in the world, and designates any government that has engaged in or tolerated "*particularly severe violations of religious freedom*" as a Country of Particular Concern (CPC). Particularly severe violations of religious freedom include: torture; prolonged detention without charges; forced disappearance; or other flagrant denial of life, liberty, or security of persons.⁵ Myanmar and Vietnam are the two countries from Southeast Asia listed as Countries of Particular Concern.

While religion has played an integral role in shaping many of the cultures and customs of the countries in Southeast Asia, its instrumentalization has also caused social disruption, clashes of communities, and violence. In the Philippines, Thailand, and Myanmar, government forces have attempted to subordinate or expel minority Muslim populations, leading to clashes, violence, and in the case of Myanmar, crimes against humanity, and possibly genocide, against the Rohingya.⁶

Many governments in the region also resort to repressive laws to exert control over the practice of religion or belief, prosecute religious minorities, and restrict peoples' right to FoRB.

In Singapore, the Government prosecuted a Christian couple for proselytizing under a rarely-used sedition law,⁷ and in Indonesia, prosecutors have used a blasphemy law to target Muslims who allegedly defamed Islam online.⁸ Various state laws in Malaysia criminalize acts of apostasy with penalties of fines and in some cases prison sentences. In a landmark case, the Malaysian Federal Court refused to allow a formerly Muslim woman to remove the word "Islam" from her identity card despite having converted to Christianity.⁹ And in Vietnam, the Government maintains a list of "official" religious organizations that are permitted to operate with restrictions in the country, while disallowing from operating and persecuting all other religious groups.

Realizing the right to FoRB of all people is not only a legal obligation for governments in Southeast Asia, it also contributes to social harmony, peace and prosperity. Indeed, in a study of the impact of religion on peace, the Institute for Peace and Economics found that countries with greater religious freedoms are generally more peaceful.¹⁰ The presence of peace in a country facilitates economic development, stability, and social cohesion.

Therefore, policymakers and leaders in ASEAN need to understand the right to FoRB and take steps to ensure its full realization for the benefit of their people. Doing so will not only strengthen peace and promote a culture of human rights and diversity, it will also contribute to good governance, development, and the rule of law.

⁵ See U.S. State Department, *Countries of Particular Concern, Special Watch List Countries, Entities of Particular Concern*. Accessed 1 June 2022, <https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern/>.

⁶ Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/CRP.2, 17 September 2018. Accessed 1 June 2022, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf.

⁷ *Public Prosecutor v Ong Kian Cheong and Another* [2009] SGDC 163; See also *Christian Today*, "Singapore evangelists found guilty in first sedition trial," 2 June 2009. Accessed 1 June 2022, <https://www.christiantoday.com/article/singapore.evangelists.found.guilty.in.first.sedition.trial/23492.htm>.

⁸ For a breakdown of cases, see Amnesty International, *Prosecuting Beliefs: Indonesia's Blasphemy Laws*, November 2014, p. 13. Accessed 1 June 2022, https://www.amnestyusa.org/files/_index-_asa_210182014.pdf.

⁹ See Becket: Religious Liberty for All, "Becket's Legal Opinion in *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan*," 1 January 2005. Accessed 1 June 2022, <https://www.becketlaw.org/case/malaysia-state-imposed-religious-identities/>.

¹⁰ Institute for Economics and Peace, *Five Key Questions Answered on the Link between Peace and Religion*, June 2015. Accessed 1 June 2022, <https://www.economicsandpeace.org/wp-content/uploads/2015/06/Peace-and-Religion-Report.pdf>.

The role of legislators in protecting and promoting FoRB

Legislators, as representatives of the people, have a mandate to realize the human rights of everyone. As such, legislators play a central role in respecting, protecting, and fulfilling human rights: they draft and pass laws, ratify treaties, approve budgets, and conduct oversight of the other branches of government, among other responsibilities.

The lawmaking function of legislators bears significantly on the right to FoRB, however it is not the only force that shapes the practice of such right. Indeed, the marker of a religiously tolerant society includes both the informal social and cultural norms that relate to behaviors of citizens as well as the formal laws that guarantee basic rights and fundamental freedoms.¹¹

While legislators should play a role in shaping the informal cultural and social norms of religious tolerance, they are mandated to draft and pass legislation that respects, protects, and fulfills the right to FoRB.

Yet, many laws that inhibit, restrict, and repress religious freedoms remain on the books and are implemented throughout Southeast Asia. **As a consequence, this report seeks to provide lawmakers with the information they need to use their mandate to bring the legal framework relating to FoRB of each country in the region in line with human rights laws and standards.**

To that end, the report offers an overview of the international legal framework relating to the right to FoRB, an analysis of problematic legislations throughout the region using this framework as a reference, and recommendations on how to bring the national legislation of each Southeast Asian country in line with the right to FoRB.

Legislators in Southeast Asia should use their unique legislative mandate to pass and amend laws to remove restrictions on, and support the flourishing of, FoRB. Doing so will not only fulfill their obligation as duty bearers under human rights law, it will also create a legacy for their role in creating a better and more prosperous society.

International legal framework

The right to freedom of thought, conscience, religion, or belief is enshrined in numerous international treaties, declarations, and resolutions, most notably the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR).¹² Other international instruments also protect this right, as well.¹³

Under international human rights law, governments are obligated to respect, protect, and fulfill the rights guaranteed under human rights treaties to which they are a party. Although only seven out of 11 governments in Southeast Asia have ratified the ICCPR (Brunei, Myanmar, Malaysia, and Singapore have not done so), the core features of the right to freedom of thought, conscience, religion, or belief is recognized as binding on all nations under customary international law.¹⁴

¹¹ Ibid., p. 17.

¹² Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810, Art. 18; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, Art. 18.

¹³ The International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Rights of the Child (CRC); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention Relating to the Status of Refugees (the Refugee Convention).

¹⁴ Brunei, Myanmar, Malaysia, and Singapore have not ratified the ICCPR. See U.N. Treaty Body Database. Accessed 1 June 2022, https://tbinetnet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx. See also, International Commission of Jurists, *A Primer on International Human Rights Law and Standards on the Right to Freedom of Thought, Conscience, Religion or Belief*, January 2019, p. 7, fn. 20 [hereinafter “ICJ Primer”]. Accessed 1 June 2022, <https://www.icj.org/wp-content/uploads/2020/10/Universal-Primer-FoE-religion-belief-Advocacy-Analysis-brief-2020-ENG.pdf>.

Furthermore, while the governments of Southeast Asia vary in their treaty ratifications, as members of ASEAN they adopted the ASEAN Human Rights Declaration (AHRD) in 2013, which affirmed 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.”*¹⁵

Additionally, ASEAN’s governments were Member States of the U.N. General Assembly in 1981 when it adopted by consensus the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.¹⁶ While not binding, this Declaration is considered to reflect a common understanding on the right to FoRB guaranteed by Article 18 of the ICCPR.¹⁷

The right to freedom of thought, conscience, religion, or belief

The content of the right to freedom of thought, conscience, religion or belief is *“far-reaching and profound ... encompassing freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.”*¹⁸

This right protects *“theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.”*¹⁹ The freedom to have or adopt a religion necessarily includes the right to choose, renounce, or change a religion or belief for another or to adopt atheistic views.²⁰

The Human Rights Committee – a U.N. body of experts that monitors the implementation of the ICCPR and offers authoritative guidance on the treaty’s interpretation – distinguishes the right to freedom of thought and conscience, religion or belief from the right to freedom to manifest religion or belief.²¹



The right to freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts that States are bound to respect, protect, and fulfill, including the freedom to:

- Worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- Make, acquire, use and display religious symbols;
- Engage in ceremonial acts and customs;
- Observe holidays and days of rest;
- Train, appoint, elect, or designate by succession appropriate leaders;
- Establish seminaries or religious schools;
- Prepare and distribute religious texts or publications; and
- Ensure the religious and moral education of children are in conformity with the convictions of the child’s parents or legal guardians.²²

¹⁵ See Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, adopted February 2013, op. para. 3, p. 14. Accessed 1 June 2022, https://asean.org/wp-content/uploads/2021/01/6_AHRD_Booklet.pdf. The Vienna Declaration and Programme of Action is a human rights declaration adopted by consensus at the World Conference on Human Rights on 25 June 1993 in Vienna, Austria, that broadly affirmed the principle that “All human rights are universal, indivisible and interdependent and interrelated.” The Vienna Declaration and Programme of Action, 25 June 1993, U.N. Doc. A/CONF.157/23, para. 5.

¹⁶ U.N. General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, U.N. Doc A/Res/36/55.

¹⁷ See ICJ Primer, p. 7.

¹⁸ U.N. Human Rights Committee, General Comment 22, para. 1. The Human Rights Committee notes that the right to freedom of religion contains within it the right to freedom of belief. For the purposes of this report, the right shall be referred to as the right to freedom of thought, conscience, religion or belief.

¹⁹ U.N. Human Rights Committee, General Comment 22, para. 2.

²⁰ U.N. Human Rights Committee, General Comment 22, para. 5.

²¹ U.N. Human Rights Committee, General Comment 22, para. 4.

²² See U.N. Human Rights Committee, General Comment 22, para. 4.

The right to freedom of thought, conscience, religion or belief also encompasses the right to proselytize (i.e. the practice of sharing or spreading a belief to others with the goal of converting them to one's belief system).²³

Permissible restrictions

Governments are not permitted to restrict the right to freedom of thought, conscience or the freedom to hold, or adopt, a religion or belief of one's choice at any time and under any circumstance. These freedoms are protected unconditionally.²⁴ This area of protected belief is referred to as the *forum internum* due to the private nature of an individual's beliefs.

However, Article 18(3) of the ICCPR does permit restrictions on the freedom to manifest religion or belief – either individually or in community with others, and in public or private – if some conditions are met:

- Governments are only permitted to restrict the right in order to achieve the aims listed in Article 18(3) of the ICCPR: public safety, order, health, or morals or the fundamental rights and freedoms of others.²⁵ Governments are not permitted to restrict the right for any other reason.²⁶
- Governments must demonstrate the necessity of the proposed restriction and that it is proportionate to one of the listed aims they seek to achieve.²⁷
- Restrictions must never be applied or invoked in a manner that impairs the essence of the right.

In order to determine whether a restriction of FoRB is lawful, legislators should ask the following questions:



Is the restriction prescribed by law?



Is the restriction necessary, directly related to, and proportionate to protect any of the following: public safety, order, health, or morals or the fundamental rights and freedoms of others?



Does the restriction impair the essence of the right to manifest religion or belief?

Any restriction that fails to satisfy any part of these questions is considered contrary to human rights law. Throughout this report, this test will be used to review restrictions on FoRB in determining whether or not they conform to human rights law.

²³ The 1981 Declaration affirms the right to “write, issue and disseminate relevant publications in these areas,” and to “teach a religion or belief in places suitable for these purposes.” Arts. 6(d), 6(e). See also, Special Rapporteur Abelfattah Amor, Country Mission Report, Greece, para. 12, (“proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration.”)

²⁴ U.N. Human Rights Committee, General Comment 22, para. 3.

²⁵ U.N. Human Rights Committee, General Comment 22, para. 8.

²⁶ ICCPR, Art. 18(3).

²⁷ U.N. Human Rights Committee, General Comment 22, para. 8.

The prohibition on discrimination

Undergirding the prohibition on discriminatory restrictions is the general obligation found in human rights law to not discriminate, including on the basis of religious belief.²⁸ The prohibition on discrimination requires States to not engage in discrimination against individuals or groups due to their religion or belief, and to take steps to prevent discrimination by non-state actors.²⁹

For example, Article 20(2) of the Covenant requires States to prohibit by law “any advocacy of ... religious hatred that constitutes incitement to discrimination.”³⁰

All persons must be equal before the law, as guaranteed by Article 26 of the ICCPR, regardless of religion or belief.

Other international instruments similarly prohibit discrimination on religious grounds, including the International Convention on the Elimination of All Forms of Racial Discrimination,³¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),³² the Convention on the Rights of the Child (CRC),³³ and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.³⁴

Finally, governments are permitted to adopt State religions under international law. However, in doing so they must ensure that non-adherents of that religion do not suffer discrimination or “any impairment of the enjoyment of any of the rights under the Covenant.”³⁵ Furthermore, the adoption of a State religion cannot be used as a justification to favor one group over another, such as “measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths.”³⁶

²⁸ See, for example, ICCPR, Art. 2(1, 2); U.N. Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para. 7. The 1981 Declaration similarly provides a definition of prohibited discrimination: “For the purposes of the present Declaration, the expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.” Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art. 2(2).

²⁹ “No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.” Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art. 2(1).

³⁰ ICCPR, Art. 20(2).

³¹ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted 21 December 1965, G.A. Res. 2106 (XX), U.N. Doc. A/6014, Art. 5(d)(vii).

³² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, Art. 2(2).

³³ Convention on the Rights of the Child (CRC), adopted 20 November 1989, G.A. Res. 44/25, U.N. Doc. A/44/49, Art. 2(1). The CRC also protects the rights of children to freedom of thought, conscience and religion in multiple respects: Art. 14, Art. 20(3), Art. 30.

³⁴ U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted 18 December 1992, G.A. Res. 47/135, U.N. Doc. ST/HR/1/Rev.6(Vol.I/Part I).

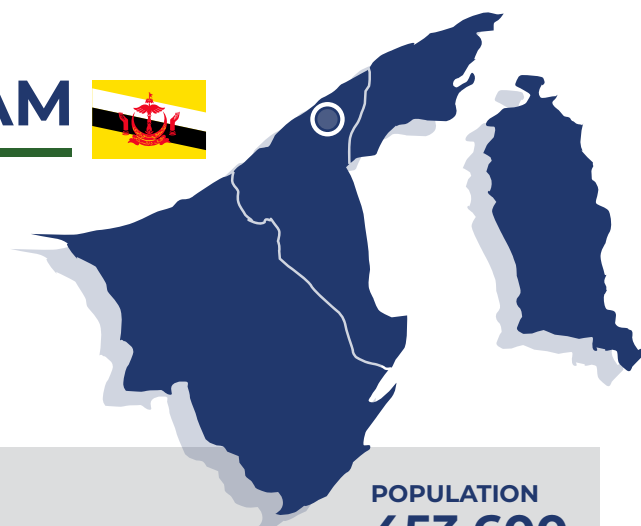
³⁵ U.N. Human Rights Committee, General Comment 22, para. 9.

³⁶ Ibid.



Two Muslim devotees prepare for the afternoon prayer at Sultan Omar Ali Saifuddien Mosque in Bandar Seri Begawan, Brunei, 31 March 2019. EPA-EFE/STR BRUNEI OUT

BRUNEI DARUSSALAM



Brunei Darussalam is a small country located in the northern part of the island of Borneo, bordering the South China Sea and Malaysia. In 2020, the population was 453,600 and comprised a Malay ethnic majority (65.8%), Chinese (10.2%), and others (24%).³⁷ In terms of religious demography, Brunei's 2016 census gave the following percentages: Muslims, 80.9%; Christians, 7.1%; Buddhist, 7.1%; others (incl. indigenous beliefs), 5%.³⁸

The government is an absolute monarchy or sultanate, where the king, Sultan and Prime Minister Sir Hassanal Bolkiah, is both the chief of state and the head of government.³⁹ There are no national elections as the monarchy is hereditary. Members of the Legislative Council are appointed

POPULATION
453,600

ETHNICITY

Malay ethnic majority	65.8%
Chinese	10.2%
Others	24%

RELIGION

Muslims	80.9%
Christians	7.1%
Buddhist	7.1%
Others	5%

³⁷ Department of Statistics, Ministry of Finance and Economy of Brunei Darussalam, *Brunei Darussalam Statistical Yearbook 2020*, 2021, p. 9. Accessed 1 June 2022, https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/BDSYB/BDSYB_2020/BDSYB%202020%20Final.pdf. See also Asia Centre, *Country Briefing on Freedom of Religion or Belief in the Universal Periodic Review Process - Brunei Darussalam*, p. 2. The "others" includes a small fraction of indigenous peoples, and foreign-born workers, primarily from Indonesia, Malaysia, the Philippines, and other South Asian countries. Government statistics find that approximately half of these temporary and permanent residents are Muslim, more than one-quarter Christian, and 15% Buddhist. U.S. State Department, *2020 International Religious Freedom Report: Brunei*, 12 May 2021, pp. 2–3. Accessed 1 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/brunei/>.

³⁸ *Brunei Darussalam Statistical Yearbook 2020*, p. 182.

³⁹ Brunei Constitution.

by the Sultan, indirectly elected, and ex-officio members who perform a purely consultative role in recommending and approving legislation and budgets.⁴⁰ Judges are also appointed by the Sultan.⁴¹

On its day of independence on 1 January 1984, the Government proclaimed its official national philosophy as *Melayu Islam Beraja* (MIB), or Malay Islamic Monarchy, which it defines as: “a system that encompasses strong Malay cultural influences, stressing the importance of Islam in daily life and governance, and respect for the monarchy as represented by His Majesty the Sultan.”⁴²

Brunei imposes harsh restrictions on FoRB, with Muslims forced to adhere to strict rules based on the government’s interpretation of Islam, while non-Muslims are discriminated against and unable to practice their religious beliefs freely.⁴³ According to reports, the government permits Shafi’i Muslims and members of non-Muslim religious minorities to practice their faiths but continues its official ban on religious groups it considers “deviant,” such as Ahmadi Islam, the Baha’i Faith, and Jehovah’s Witnesses.⁴⁴ The government has periodically warned the population about the preaching of non-Shafi’i versions of Islam, including both “liberal” practices and those associated with jihadism, Wahhabism, or Salafism.⁴⁵

Constitutional Framework

While the Constitution of Brunei establishes “the Islam Religion” as the official religion of the country, it also provides “that all other religions may be practised in peace and harmony by the persons professing them.”⁴⁶ Although this language ostensibly protects the right to FoRB for people in Brunei, a host of discriminatory laws and policies belie this protection.

Brunei has acceded to the following treaties: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the CRC and its two optional protocols.⁴⁷

Problematic Laws

Syariah Penal Code (2013)

On 3 April, 2019, the Brunei’s Syariah Penal Code (SPC) (2013) went into effect.⁴⁸ Many of the penal code’s provisions are in violation of Brunei’s obligations under international human rights law regarding FoRB.⁴⁹

⁴⁰ Brunei Constitution, Second Schedule, Art. 1 (composition and membership of the legislative council). See U.S. State Department, *Human Rights Report: Brunei Darussalam*, 2020, 2021, p. 1. Accessed 1 June 2022, <https://www.state.gov/wp-content/uploads/2021/03/BRUNEI-2020-HUMAN-RIGHTS-REPORT.pdf>.

⁴¹ Brunei Constitution, Arts. 8–11 (appointment of judges);); Syariah Courts Act, Chapter 184, S 37/98, 2011 (revised edition).

⁴² U.S. State Department, 2020 *International Religious Freedom Report: Brunei*, p. 4. See Brunei Constitution, Art. 42(e) (prohibiting the introduction of “any Bill, motion, petition or business that may have the effect of lowering or adversely affect[ing] directly or indirectly the standing or prominence of the National Philosophy of Melayu Islam Beraja (known in English as Malay Islamic Monarchy).”

⁴³ Kasthuri Patto, “ASEAN Summit Should Draw Attention to Brunei’s Appalling Human Rights Record,” *The Diplomat*, 29 October 2021. Accessed 1 June 2022, <https://thediplomat.com/2021/10/asean-summit-should-draw-attention-to-bruneis-appalling-human-rights-record/>.

⁴⁴ U.S. State Department, 2020 *International Religious Freedom Report: Brunei*, p. 5.

⁴⁵ *Ibid.*

⁴⁶ Constitution, Part II: Religion and Adat Istiadat, Art. 3(1). Other translations of the Constitution say “Muslim religion.” The Shafi’i school of Sunni Islam is the specific type of Islam practiced by the state.

⁴⁷ U.N. Treaty Body Database, *Brunei Darussalam*. Accessed 1 June 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN.

⁴⁸ Syariah Penal Code Order, 2013, No. S 69, 22 October 2013.

First, the code imposes criminal sanctions for acts protected by FoRB, including:

- Propagating any religion other than Islam to Muslims or persons with no religion (article 209);
- Persuading Muslims to change religions, or to leave or dislike Islam (article 210);
- Persuading a non-believer of Islam to become a believer of a religion other than Islam or to dislike Islam (article 211);
- Exposing Muslim children to other religions (article 212);
- Printing, disseminating, importing, broadcasting, or distributing publications “*contrary to Hukum Syara*”, meaning contrary to the order of Syariah (articles 213, 214, 215).

The penal code also punishes any attempts, or assistance offered, to the conducts mentioned above.

Second, the penal code also prohibits Muslims from worshipping any person, place, nature or any object, thing or animal, which is contrary to *Hukum Syara* (article 216); using words reserved for Islam to express any “*fact, belief, idea, concept, act, activity, [or] matter*” related to other religions (article 217); or neglecting or opposing Islamic religious authorities (article 230). Muslims in Brunei are also prohibited from renouncing Islam under the SPC (article 112). Finally, the Constitution reserves high-level appointments in the Government exclusively for ethnic Malays of the “*Islamic religion*.”⁵⁰

Each of the provisions outlined above violates Brunei’s obligations under human rights law to respect FoRB. First, governments are not permitted, under any circumstance, to restrict the right of individuals to choose, renounce, or change religions. Additionally, many of these restrictions seek to prevent individuals from proselytizing in print and in person, a right that is considered inherent to FoRB. The measures are also inherently discriminatory, overly broad (i.e. not necessary), and in pursuit of illegitimate aims.

Finally, many of the provisions discriminate against non-Muslim religious believers and non-believers, restricting their ability to manifest their beliefs, import or publish religious teachings, worship in community with others, or use religious symbols. These restrictions are flagrant violations not only of the right to FoRB but also the right to freedom of expression.

⁴⁹ The penal code has many provisions that violate human rights law beyond the right to FoRB. Detailed analysis of these provisions can be found in Human Rights Watch, “Brunei’s Pernicious New Penal Code,” 22 May 2019. Accessed 1 June 2022, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code> See also FORUM-ASIA, “Joint Open Letter: Urgent concern about the 2013 Syariah Penal Code of Brunei Darussalam,” 10 April 2019. Accessed online 1 June 2022, <https://www.forum-asia.org/?p=28644>

⁵⁰ Brunei Constitution, Arts. 4, 85(1). Article 4 stipulates “*the appointment of Ministers and Deputy Ministers shall be made from among the Malay race professing the Islamic Religion, save where His Majesty the Sultan and Yang Di-Pertuan otherwise decides.*” In Article 85A(1) on “*Appointment to Specific Offices,*” it also states that “*No person shall be appointed to any office specified in the Third Schedule unless he is a citizen of Brunei Darussalam of the Malay race professing the Islamic Religion.*” The Third Schedule here refers to the following positions: Auditor General, Clerk to the Privy Council, Clerk to the Legislative Council, Chief Syarie Judge, Mufti Kerajaan, Attorney General, Chairman of the Public Service Commission, Yang Di-Pertua Adat Istiadat (Local Customs), Speaker of the Legislative Council and Secretary to the Council of Ministers. Regarding the “*Interpretation Tribunal,*” Article 86(7) also states that “*one member who shall be a person from any country who professes the Islamic Religion.*”



Recommendations to the Legislative Council of Brunei

- Immediately amend the Syariah Penal Code and ensure that all penal law provisions are consistent with international human rights law;
- Pass legislation that allows members of all religious groups to practice their beliefs freely, and allow members of other religious minorities to import scriptures, proselytize, establish new places of worship, and instruct their believers, in line with the right to FoRB; and
- Take necessary steps to ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the ICCPR; and other core UN human rights treaties.

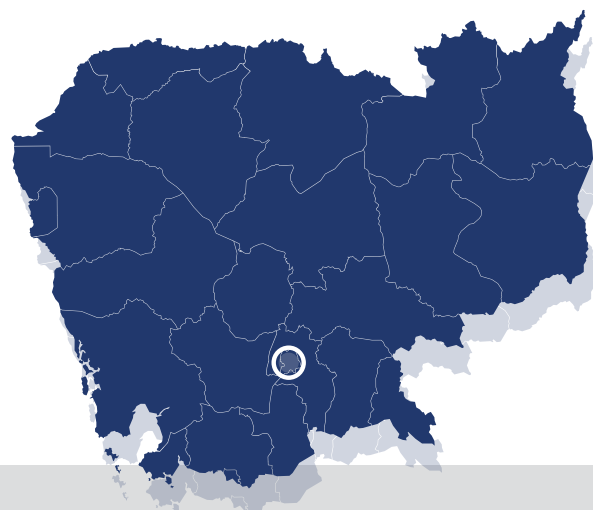


A woman prays next to Buddha pictures during Meak Bochea celebrations at a pagoda in Phnom Penh, Cambodia, 28 January 2021.
EPA-EFE/MAK REMISSA

CAMBODIA

The Kingdom of Cambodia is a parliamentary constitutional monarchy in which over 97% of a population of 15.2 million speak Khmer as their mother tongue, 0.4% have Vietnamese as their mother tongue, 0.05% speak Chinese, 0.2 Lao, and 2.3% speak minority languages as their mother tongue (including those belonging to the predominantly Muslim Cham ethnic group and the inhabitants of forest and hill areas).⁵¹ According to official data, the breakdown of religious belief in Cambodia is roughly as follows: Buddhist, 96.9%; Muslim, 1.9%; Christian, 0.5%; and “others”, 0.6%.⁵²

The Chief of State is King Norodom Sihamoni, while the Prime Minister is Hun Sen, who has been in power since 1985. The Parliament of Cambodia consists of a National Assembly with 125 representatives directly elected, and a Senate with 62 Senators, mostly elected by members



POPULATION
15.2 million

LANGUAGE

Khmer	97%
Vietnamese	0.4%
Chinese	0.05%
Lao	0.05%
Minority languages	2.3%

RELIGION

Buddhist	96.9%
Muslim	1.9%
Christian	0.5%
Others	0.6%

⁵¹ National Institute of Statistics, *Cambodia Inter-Censal Population Survey 2013*, November 2013, p. 26. Accessed 1 June 2022, <https://cambodia.unfpa.org/en/publications/cambodia-inter-censal-population-survey-2013>.

⁵² Ibid., p. 24.

of parliament.⁵³ However, the Cambodian Supreme Court dissolved the country's main opposition party - the Cambodia National Rescue Party (CNRP) - for allegedly attempting to overthrow the government in 2017. In the elections that took place the following year, Hun Sen's Cambodian People's Party (CPP) won all 125 seats in Parliament.⁵⁴

The Ministry of Cults and Religions actively promotes Buddhism in Cambodia. According to its National Strategic Development Plan for 2019 to 2023, the Ministry will “strengthen and expand Buddhism education at all levels, publish and disseminate the Buddhism bibles and strengthen the execution of Buddhism rules [sic]” in addition to supporting and promoting “the rights and freedom [sic] in other religions to contribute to the social development.”⁵⁵

The Muslim population of Cambodia is predominantly ethnically Cham, although not all Cham are Muslim. The Cambodian Government officially designates the Cham as “Khmer Islam,” and estimates that Muslims are around 1.9% of the population, however, some NGOs put that estimate higher, at 4–5%⁵⁶. Of this population, nearly 90% are believers of Sunni Islam and subscribe to the Shafi'i school of Islamic law, while the remaining Muslims practice Wahhabist, Salafist, and Ahmadi traditions⁵⁷.

In practice, Cambodia appears to generally respect FoRB. The Pew Research Center gave Cambodia a score of 0.33 in its review of how Cambodia's laws affect religious freedoms, signifying that “national laws and policies provide for religious freedom, and the national Government generally respects religious freedom in practice; but there are some instances (e.g., in certain localities) where religious freedom is not respected in practice.”⁵⁸

Constitutional Framework

Article 43, Cambodian Constitution

Although the Constitution states that Buddhism is the “religion of the State” and provides state support for Buddhist education, it also ensures that “Freedom of religion or 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.”⁵⁹

The Constitution also requires the Kingdom of Cambodia to “recognize and respect human rights as stipulated in the UN Charter, the UDHR, the covenants and conventions related to human rights, women's and children's rights.”⁶⁰ All Cambodian citizens enjoy equal rights under the Constitution, regardless of religious belief.⁶¹

⁵³ See Prak Chan Thul, “Cambodia's ruling party sweeps Senate election after crackdown,” Reuters, 28 February 2018. Accessed 1 June 2022, <https://www.reuters.com/article/us-cambodia-election-idUSKCNIG902M>.

⁵⁴ See Hannah Beech, “Cambodia Re-Elects Its Leader, a Result Predetermined by One,” *The New York Times*, 29 July 2018. Accessed 1 June 2022, <https://www.nytimes.com/2018/07/29/world/asia/cambodia-election-hun-sen.html>

⁵⁵ Cambodia's National Strategic Development Plan, 2019–2023, p. 131, para. 4.35.

⁵⁶ See Minority Rights Group International, *Country Profile: Cambodia*. Accessed 1 June 2022, <https://minorityrights.org/country/cambodia/>.

⁵⁷ U.S. State Department, *2020 Report on International Religious Freedom: Cambodia*, 13 May 2021. Accessed 1 June 2022, <https://kh.usembassy.gov/2020-report-on-international-religious-freedom-cambodia/>.

⁵⁸ Pew Research Center, *Global Uptick in Government Restrictions on Religion in 2016*, Appendix E: Results by Country, 21 June 2018. Accessed 1 June 2022, <https://assets.pewresearch.org/wp-content/uploads/sites/11/2018/06/19152142/Appendix-E-FULL.pdf>.

⁵⁹ Constitution of Cambodia, Art. 43. The Constitution also clarifies that this freedom is guaranteed for Khmer citizens “of either sex.” Article 68 affirms that the State will “disseminate and develop the Pali schools and the Buddhist Institute.”

⁶⁰ Constitution of Cambodia, Art. 31.

⁶¹ Ibid.

Cambodia is a State Party to the core international treaties, including the ICCPR and ICESCR, among others.⁶²

Cambodia's criminal law does not directly protect the practice of religion in general, although it does criminalize discrimination based on a "*person's belonging to or not belonging to a specified religion.*" Instead, the criminal law contains provisions relating to the practice of Buddhism. For example, the 2011 Criminal Code prohibits and penalizes acts that constitute "*infringement on State religion,*" which lists offences against Buddhism, such as the "*unauthorized wearing of Buddhist robes,*" the "*theft of Buddhist sacred object,*" and "*damaging Buddhist religious premises or sacred objects.*"⁶³

Other laws similarly protect, or do not harm, religious freedoms: there are no laws defining or penalizing atheism, non-religion, blasphemy, deviant behavior or heresy.⁶⁴ Additionally, while building places of worship and offices of prayer require approval and must meet certain regulations, "*there are no documented cases in which the directive was used to bar a church or mosque from constructing a new facility.*"⁶⁵

Problematic Laws

Directive on Controlling External Religions, Ministry for Cults and Religions (2003)

The Ministry for Cults and Religions issued in 2003, and reissued in 2007, a Directive on Controlling External Religions, which banned "*non-Buddhist groups from proselytizing publicly,*" stipulating further that non-Buddhist literature may be distributed only inside religious institutions.⁶⁶ The Directive also prohibited offering money or materials to convince someone to convert.⁶⁷

The right to FoRB necessarily includes the right to proselytize.⁶⁸ While governments may restrict the manner in which individuals and communities manifest religion or belief in teaching, practice, worship, or observance, such restrictions must be non-discriminatory and necessary to achieve a legitimate aim. The Directive on Controlling External Religions is inherently discriminatory, overly broad, and in pursuit of an illegitimate aim. For these reasons, the Directive contravenes human rights law.

While not tied directly to any law, there have been reported cases of attacks on monks. Due to their involvement in social and political activism, "*Some monks have been targeted by the government,*

⁶² See U.N. Treaty Body Database: Cambodia. Accessed 1 June 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=29&Lang=EN.

⁶³ Cambodian Criminal Code, Chapter 5: Offenses against State Religion: Article 508–515; Arts. 265–273.

⁶⁴ Human Rights Resource Centre, *Keeping the Faith, A Study on Freedom of Thought Conscience, and Religion in ASEAN*, November 2015, p. 112. Accessed 1 June 2022, <http://hrrca.org/wp-content/uploads/2015/09/03.-FOR-Cambodia.pdf>.

⁶⁵ U.S. State Department, *2013 Report on International Religious Freedom: Cambodia*, 28 July 2014. Accessed 1 June 2022, <https://2009-2017.state.gov/j/drl/rls/irf/2013/eap/222121.htm>.

⁶⁶ Ministry for Cults and Religions, Directive on Controlling External Religions, 2003. See Emily Lodish and Yun Samean, "Gov't Moves To Limit Activities of Christian Groups," *The Cambodia Daily*, 17 July 2007. Accessed 1 June 2022, <https://english.cambodiadaily.com/news/govt-moves-to-limit-activities-of-christian-groups-61265>

⁶⁷ Institute on Religion and Public Policy, *Report: Religious Freedom in the Cambodia*, 29 September 2014. Accessed 1 June 2022, [https://www.justice.gov/sites/default/files/eoir/legacy/2014/09/29/Cambodia percent20Immigration percent20Report.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/09/29/Cambodia%20Immigration%20Report.pdf).

⁶⁸ The 1981 Declaration affirms the right to "write, issue and disseminate relevant publications in these areas," and to "teach a religion or belief in places suitable for these purposes." Arts. 6(d), 6(e). See also, Special Rapporteur Abelfattah Amor, Country Mission Report, Greece, para. 12, ("proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration.")

while others are in exile,” said Mr. Sreang Heng, president of PEN Cambodia.⁶⁹ In at least one case, a government unit was found to have directed a smear campaign against an activist monk “who had spent decades fighting for the human rights of Cambodians.”⁷⁰

Refugee law

Cambodian law does not recognize refugees, despite the country being a State Party to the Convention relating to the Status of Refugees. As a result, the Government of Cambodia refused to allow the UN refugee agency (UNHCR) to permanently accept a group of Christian Montagnards from Vietnam who went to Cambodia to claim refugee status.⁷¹ According to the U.S. State Department, “of the original estimated 200 Christian Montagnards who had fled Vietnam and were in Cambodia in 2017, 12 remained in the country;” the adults were denied the right to work and the children were not permitted to attend school.⁷²



Recommendations to the Parliament of Cambodia

- Amend the Directive on Controlling External Religions. While doing so, ensure that stakeholders from relevant communities are consulted and included;
- Ensure that all religious and belief communities are afforded the same protection under the law, and without discrimination;
- Create avenues for consultation about all relevant laws and regulations with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB;
- Support the ratification of the Refugee Convention and its optional protocol; and
- Pass a bill granting refugee status to the remaining Christian Montagnards in Cambodia.

⁶⁹ APHR interview with Mr. Sreang Heng.

⁷⁰ Hannah Beech and Sun Narin, “Threatened by Facebook Disinformation, a Monk Flees Cambodia.” *The New York Times*, 23 August 2020. Accessed 1 June 2022, <https://www.nytimes.com/2020/08/23/world/asia/cambodia-facebook-disinformation.html> See also Freedom House, *Freedom on the Net 2020: Cambodia*. Accessed 1 June 2022 <https://freedomhouse.org/country/cambodia/freedom-net/2020>.

⁷¹ 2020 Report on International Religious Freedom: Cambodia.

⁷² Ibid.

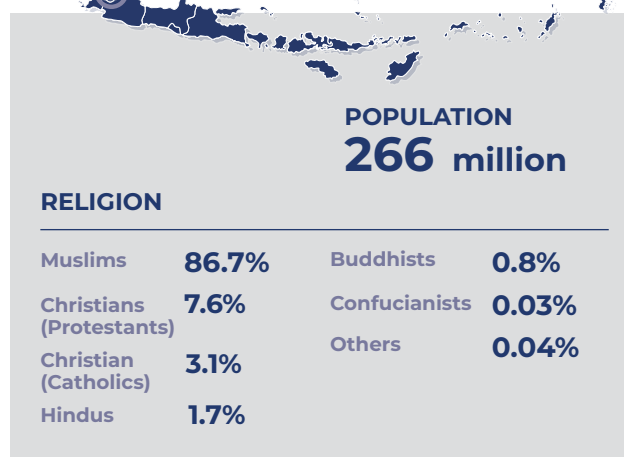


Muslim perform Eid al-Fitr prayer in Baiturrahman Grand Mosque marking the end of the holy fasting month of Ramadan in Banda Aceh, Indonesia, 13 May 2021. EPA-EFE/HOTLI SIMANJUNTAK

INDONESIA



The Republic of Indonesia is the largest country in Southeast Asia and has been known to be a tolerant, pluralistic society with numerous ethno-linguistic groups across its vast archipelago of more than 17,000 islands. Indonesia is also the most populous Muslim country in the world, with roughly 231 million Muslims from a total of 266 million people. The religious demographics are as follows: Muslims, 86.7%; Christians (Protestants), 7.6%; Christian (Catholics), 3.1%; Hindus, 1.7%; Buddhists, 0.8%; Confucianists, 0.03%; and Others, 0.04%.⁷³



Although the country has been known as an example of a Muslim majority country that has successfully democratized, Indonesia has faced religious conflicts both during the dictatorship of General Suharto and following the *reformasi* movement in 1998 that ousted him from power.⁷⁴

⁷³ Ministry of Religious Affairs of Indonesia, "Data on the Number of Religious Adherents 2021." Accessed 1 June 2022, <https://web.archive.org/web/20200903221250/https://data.kemenag.go.id/agamashboard/statistik/umat>.

⁷⁴ The *era reformasi* is the period following the end of former Indonesian dictator Soeharto's rule in 1998, in which liberal democracy began to take root in Indonesian politics, law, and society. For a discussion, see Tim Lindsey, "20 Years After Soeharto: Is Indonesia's 'Era Reformasi' Over?," Pursuit, 20 May 2018. Accessed 1 June 2022, <https://pursuit.unimelb.edu.au/articles/20-years-after-soeharto-is-indonesia-s-era-reformasi-over>.

Indonesia has faced what scholars have called the “conservative turn” ever since, as transnational Islamic movements have spread rapidly and significantly. These movements promote more sectarian interpretations of religion and push for greater implementation of Islamic laws, both at the national and local levels.⁷⁵

Indonesia has also seen the development of homegrown terrorist cells, such as Jamaah Islamiyah (Islamic Congregation) and Majelis Mujahidin, that are linked to international networks such as Al-Qaidah and Islamic State of Iraq and Syria (ISIS).⁷⁶ These groups have carried out bombings of embassies, cafes frequented by foreigners, churches, and other locales.⁷⁷

Over the past decade, relatively new conservative groups have come to influence national politics such as the Front Pembela Islam (FPI/Islamic Defenders Front) and the now-banned Hizbut Tahrir Indonesia (HTI), which sought to establish an Islamic caliphate in Indonesia.⁷⁸ Reflective of the conservative turn, these movements have turned toward “minoritization” and discrimination against small, vulnerable and marginalized religious communities, such as the Ahmadiyah, Shi’a, Christian, and other minority groups.⁷⁹

These groups are also often victims of Indonesia’s restrictive laws. In particular, blasphemy laws are often used to discriminate against religious minorities.⁸⁰ Indeed, the chairman of Komnas HAM and the commissioner of the National Women’s Commission, confirmed that prosecutions under blasphemy laws targeted women, especially those from religious minorities.⁸¹ In addition, the Indonesia Legal Aid Foundation noted that in 2020 there were 67 cases of blasphemy, among them eight cases against children.⁸²

The U.S. Commission on International Religious Freedom established a Watch List of countries where the situation of religious freedom requires close monitoring due to the nature and extent of violations of religious freedom engaged in or tolerated by the governments.⁸³ The Commission included Indonesia on the Special Watch List in 2022.

The Ministry of Religious Affairs recently developed an initiative on “religious moderation” (*moderasi beragama*), which was officially included in Indonesia’s Mid-Term Development Plans of 2020 to 2024. The plan seeks to “strengthen religious moderation to cement tolerance, religious and social harmony.”⁸⁴

⁷⁵ For a discussion on the topic, see Martin van Bruinessen Introduction in *Contemporary Developments in Indonesian Islam: Explaining the “Conservative Turn”*, Singapore: ISEAS, 2013.

⁷⁶ Australian National Security, *Jemaah Islamiyah*, 9 April 2022. Accessed 1 June 2022, [https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations/jemaah-islamiyah-\(ji\)](https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations/jemaah-islamiyah-(ji)).

⁷⁷ Ibid.

⁷⁸ Ali Abdullah Wibisono, “Hizbut Tahrir in Indonesia: Riding the Wave of the Islamization Agenda,” Middle East Institute, 27 February 2018. Accessed 1 June 2022, <https://www.mei.edu/publications/hizbut-tahrir-indonesia-riding-wave-islamization-agenda>.

⁷⁹ Namira Puspadari, *The Increasing Intolerance towards Religious Minorities in Indonesia: Have the existing laws been protecting or marginalising them*, Master’s Thesis, Tilburg University, 2015. Accessed 1 June 2022, <http://arno.uvt.nl/show.cgi?fid=136589>.

⁸⁰ U.S. State Department, *Indonesia 2020 International Religious Freedom Report*, p. 9. Accessed 1 June 2020, <https://www.state.gov/wp-content/uploads/2021/05/240282-INDONESIA-2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

⁸¹ Ibid.

⁸² Indonesian Legal Aid Foundation alleged that the absence of a clear definition of blasphemy made law enforcement prone to be influenced by popular pressure. See Dhika Kusuma Winata, “Pemidanaan Kasus Penodaan Agama Kerap Gunakan UU ITE,” *Media Indonesia*, 4 July 2021. Accessed 1 June 2022, <https://mediaindonesia.com/politik-dan-hukum/416422/pemidanaan-kasus-penodaan-agama-kerap-gunakan-uu-ite>.

⁸³ United States Commission on International Religious Freedom (USCIRF), *2022 Annual Report*, April 2022, p. 52. Accessed 1 June 2022, https://www.uscifr.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf.

⁸⁴ See *The Jakarta Post*, “Indonesia’s religious harmony rising, Aceh and West Sumatra score lowest,” 12 December 2019. Accessed 1 June 2022, <https://www.thejakartapost.com/news/2019/12/12/indonesias-religious-harmony-rising-aceh-and-west-sumatra-score-lowest.html>.

Constitutional Framework

The Indonesian Constitution, established after the country's independence in 1945, contains several provisions that protect FoRB, while simultaneously proclaiming the State's commitment to monotheism.

For example, the preamble to the Constitution enshrines the state ideology, known as *Pancasila*, which encompasses “*the principles of belief in one God, justice, unity, democracy, and social justice*,”⁸⁵ while Article 28(E)(1) holds that “*Every person shall be free to choose and to practice the religion of his/her choice*.”⁸⁶

The Constitution contains other provisions that guarantee FoRB and the right to manifest religion or belief: Article 28(E)(2) protects the right of every person to “*the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience*,” while Article 29(2) requires the State to guarantee to “*all persons the freedom of worship, each according to his/her own religion or belief*.”⁸⁷ Article 29(1) reiterates the Preamble's commitment to *Pancasila*, holding that “*The State shall be based upon the belief in the One and Only God*.”⁸⁸

While the Constitution explicitly aligns itself with the Islamic faith, the Ministry of Religious Affairs (MoRA) officially recognizes six religions: Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism.⁸⁹

However, under Article 28(J)(2) of the Constitution, as amended in 2000 and reflected in Law No. 39/1999 on Human Rights, freedom of expression, thought, conscience, and religion can be limited by restrictions established by law for such purposes as “*morality, religious values, security and public order in a democratic society*.”⁹⁰ As Article 18 of the ICCPR does not include “*religious values*” as a permissible justification for a restriction on the exercise of FoRB, Article 28(J)(2) of the Indonesian Constitution contravenes Indonesia's human rights obligations.

Problematic Laws

There are several laws, decrees, and regulations that govern the practice of religion or belief in Indonesia that contravene international human rights law, including those related to blasphemy, proselytism, and the construction of houses of worship.

Indonesia's blasphemy laws are inconsistent with human rights law and standards. Law No. 1/PNPS/1965 on the Prevention of the Misuse of Religious Abuse and/or Blasphemy (referred to as the Blasphemy Law) prohibits forms of expression and activities that are “*in deviation of the basic teachings*” of a “*certain religion embraced by the people of Indonesia*.”⁹¹ The law serves as the basis for Section 156a of the Indonesian Penal Code (*Kitab Undang-Undang Pidana Hukum (KUHP)*), which prohibits, and punishes with a maximum sentence of five years' imprisonment, deliberate public statements or activities that insult or defame any of the six officially recognized religions or have the intent of preventing an individual from adhering to an official religion.⁹²

⁸⁵ Indonesian Constitution. (1945); see U.S. State Department, *Indonesia 2020 International Religious Freedom Report*, p. 4.

⁸⁶ Indonesian Constitution. Art. 28(E)(1).

⁸⁷ Indonesian Constitution. Arts. 28(E)(1), 28(E)(2), 29(2). 28 were inserted during the second Constitutional amendment in 2000.

⁸⁸ Indonesian Constitution, Art. 29(1).

⁸⁹ The Government recognizes Sunni Islam as the official version of Islam of local Muslims, although the constitution does not require this.

⁹⁰ Indonesian Constitution. Arts. 28(J)(2). Law No. 39/1999 on Human Rights.

⁹¹ Law No. 1/PNPS/1965.

⁹² The language in the Penal Code first appeared in Presidential Decree No. 1/PNPS/1965, signed by President Sukarno in 1965 and passed into law under President Suharto in 1969; see *Indonesia 2020 International Religious Freedom Report*, p. 4. Also Amnesty International, *Prosecuting beliefs: Indonesia's blasphemy laws*, p. 12.

Indonesian officials have also used Law No. 11/2008 on Electronic Information and Transaction (UU Informasi dan Transaksi Elektronik or ITE Law), to prosecute individuals accused of blasphemy in other contexts. For example, officials have used Article 28(2) and Article 27(3) to prosecute individuals who have been accused of defaming or insulting a religion online.⁹³

In September 2019, a parliamentary task force finalized a Draft Penal Code that contains several provisions that, if adopted, would violate the right to FoRB. In particular, Articles 304 to 309 of the Draft Penal Code expand PNPS Law 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy in Religion, and criminalize blasphemy, the disturbing of religious ceremonies, making noise near a place of worship, and public insult of a cleric.

Religions or beliefs are not protected against blasphemy, insults or defamation under international human rights law. On the contrary, international human rights law makes it clear that criminalizing individuals for blasphemy, insult or defamation of religions or beliefs violates the right to freedom of expression.

Two ministerial decisions from the late 1970s ban general forms of proselytizing to individuals who already have another religion while a decree from 2008 bans all proselytizing by members of the Ahmadiyah sect of Islam.⁹⁴ Violations of the Ahmadi proselytizing ban carry a maximum five-year prison sentence on charges of blasphemy.⁹⁵

These laws contravene Indonesia's obligations to respect, protect, and fulfill the right to FoRB. First, FoRB protects the right of people – either individually or in community – to adopt, hold, and manifest interpretations of religions that are not in alignment with accepted orthodoxy, as well as the right to not be induced or coerced to give up those views. Indeed, the Human Rights Committee has written that the “*freedom from coercion to have or to adopt a religion or belief . . . cannot be restricted.*”⁹⁶ Furthermore, the act of sharing (proselytizing) an unorthodox view with others is protected under the Covenant. Therefore, laws that restrict a person's ability to choose a belief or share it with others contravene Article 18 of the ICCPR.

The National Commission on Violence Against Women (Komnas Perempuan) also noted that in 2016 there were 421 regional regulations based on religion and belief that were discriminatory and violated the fundamental rights of women.⁹⁷ These bylaws restrict women's activities, regulate their clothing, and set curfews for them. Some even prohibit transwomen from working at salons.⁹⁸

Finally, the Ministers of Religious Affairs and Home Affairs issued the Revised Joint Ministerial Decree on Construction of Houses of Worship, which stipulates that the construction of houses of worship must have local community agreement, a requirement that makes it difficult for religious minorities to construct or open houses of worship in areas where another religion is in the majority.⁹⁹

⁹³ For a breakdown of cases, see Amnesty International, *Prosecuting Beliefs: Indonesia's Blasphemy Laws*, p. 13.

⁹⁴ Guidelines for the Propagation of Religion (Ministerial Decision No. 70/1978); Regulating Missionary and Foreign Aid to Religious Organizations (No. 1/1979); A Warning and Order to the followers, members, and/or leading members of the Indonesian Ahmadiyah Jama'at (JAI) and to the General Public (No. 3/2008).

⁹⁵ See *Indonesia 2020 International Religious Freedom Report*, p. 5.

⁹⁶ Human Rights Committee, *General Comment 22*, para. 8.

⁹⁷ See Indonesian National Commission on Violence against Women (Komnas Perempuan), *National Human Rights Institution Independent Report Regarding the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Indonesia, 2012 – 2016*, 30 December 2016. Accessed 1 June 2022, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IDN/INT_CEDAW_IFN_IDN_26445_E.pdf.

⁹⁸ See Human Rights Watch, “Indonesia Police Arrests Transgender Women: Raids conducted under discriminatory religious laws,” 30 January 2018. Accessed 1 June 2022, <https://www.hrw.org/news/2018/01/30/indonesian-police-arrest-transgender-women>.

⁹⁹ Revised Joint Ministerial Decrees on Construction of Houses of Worship. (2006).

This restriction is at odds with Indonesia's obligations under the ICCPR. Indeed, as the Human Rights Committee has written, "*the freedom to manifest religion or belief in worship ... extends to ... the building of places of worship.*"¹⁰⁰



Recommendations to The House of Representatives

- Amend or repeal Section 156a of the Indonesian Penal Code (KUHP), Law No. 1/PNPS/1965 on the Prevention of the Misuse of Religious Abuse and/or Blasphemy and Law No.11/2008, or ITE Law, in order to bring them in line with international human rights law, including by decriminalizing the act of blasphemy;
- Amend and repeal Articles 304 - 309 and 483 in Chapter 7 relating to "Criminal Acts against Religion and Religious Life" in the Draft Penal Code;
- Engage the Ministry of Religious Affairs on laws and regulations, notably on repealing the Joint Ministerial Decree on construction of Houses of Worship;
- Engage the Ministry of Home Affairs on repealing the hundreds of discriminatory local by-laws;
- Strengthen initiatives with local parliaments and local governments to promote FoRB in collaboration with civil society and religious or belief communities;
- Create avenues for consultation about all relevant laws and regulations, including those mentioned above and the Draft Penal Code, with religious or belief community leaders and representatives, National Human Rights Institutions, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Ensure that all religious and belief communities are afforded the same protection under the law, and without discrimination;

¹⁰⁰ Human Rights Committee, General Comment 22, para. 4.

- Use your position in parliament to ask the government to report on its implementation of the moderation plan;
- Establish, activate or join a cross-party group/caucus on FoRB in your parliament in order to initiate and consolidate efforts to bring laws in line with international human rights law and to advocate for FoRB;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight; and
- Hold interfaith discussions involving MPs, religious and community leaders, national human rights institutions, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB.

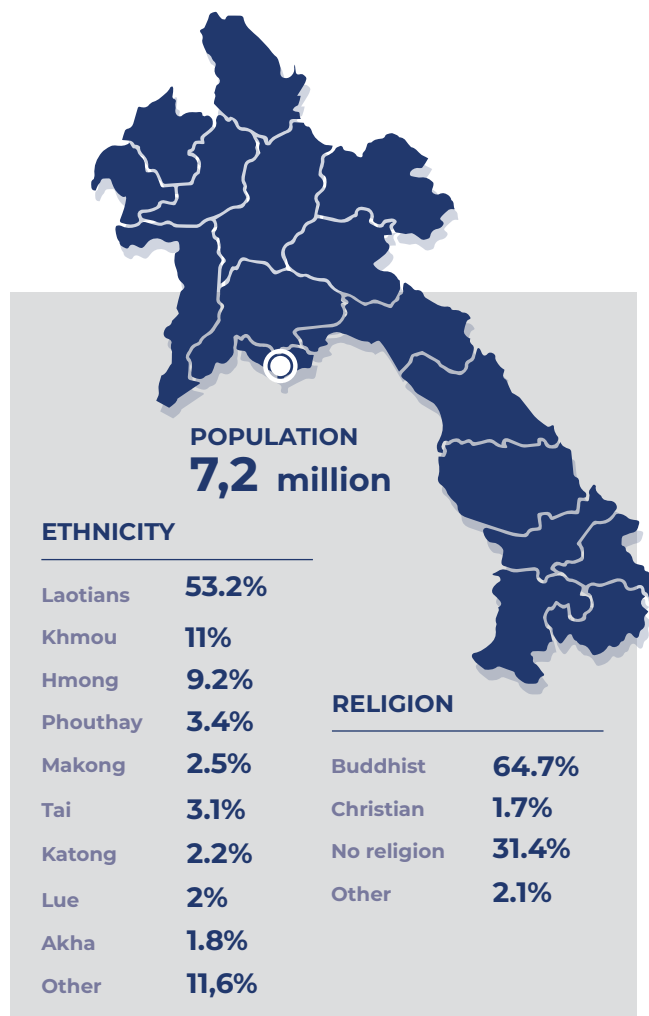


Buddhist monks stand under the rain in Wat Sensoukharam prior to collecting alms from the citizens in Luang Prabang, Laos, 07 July 2009. EPA/OLIVIER MATTHYS

LAO PDR

Lao People's Democratic Republic (PDR), or Laos, is an authoritarian, single-party communist state in which elections are held for members of the unicameral National Assembly from candidate lists provided by the Lao People's Revolutionary Party; other political parties are proscribed.¹⁰¹

Lao's population is estimated at 7.2 million, comprising 49 ethnic groups and classified into four ethno-linguistic groups, namely Lao-Tai, Mon-Khmer, Hmong-Mien and Sino-Tibetan, according to the Laos government. According to the 2015 Census ethnic Laotians make up 53.2% of the population, with Khmou (11%), Hmong (9.2%), Phouthay (3.4%), Tai (3.1%), Makong (2.5%), Katong (2.2%), Lue (2%), Akha (1.8%), and other (11.6%) comprising the remainder.¹⁰² Some of these groups, such as the Hmong, have suffered discrimination and persecution at the hands of the state for decades.



¹⁰¹ See Mu Sochua, "Lao's Pointless Election", *The Diplomat*, 19 February 2021. Accessed 2 June 2022, <https://thediplomat.com/2021/02/laos-pointless-election/>.

¹⁰² See Lao Statistics Bureau, *Results of Population and Housing Census 2015*, 21 October 2016, p. 37. Accessed 2 June 2022, https://lao.unfpa.org/sites/default/files/pub-pdf/PHC-ENG-FNAL-WEB_0.pdf.

The government officially promotes state atheism and previously had a fractious relationship with all faith communities, including the majority Buddhist community.¹⁰³ However, today the state officially recognizes Buddhism, in addition to Christianity, Islam, and the Baha'i Faith.¹⁰⁴ The religious demography of Laos is as follows: Buddhist, 64.7%; Christian, 1.7%; no religion, 31.4%; other/not stated, 2.1%.¹⁰⁵

Constitutional Framework

Laos' Constitution protects in part the right to FoRB: Article 43 ensures that "*Lao citizens have the right and freedom to believe or not to believe in religions which are not contrary to the laws,*" while Article 9 mandates the State to respect and protect "*all lawful activities of Buddhists and of followers of other religions.*"¹⁰⁶ The Constitution also prohibits "*all acts creating division between religions and classes of people*"¹⁰⁷

The Constitution also forbids religious discrimination under Article 35: "*Lao citizens are all equal before the law irrespective of their gender, social status, education, beliefs and ethnic group.*"¹⁰⁸

This framework does not suffice to protect the right to FoRB under human rights law. The ICCPR does not permit restrictions on the freedom to have or to adopt a religion or belief, and specific religions cannot be designated as "*contrary to the laws*".

Furthermore, the right to FoRB is held by everyone, regardless of citizenship status, and the right to manifest one's religion or belief may only be subject to specific limitations listed in Article 18.3 of the ICCPR and described in detail above.

Finally, states may not use overly broad and vague language to prohibit certain conducts, such as "*acts creating division between religions and classes of people.*" Such language lacks sufficient clarity to pass muster under the ICCPR.

Problematic Laws

Reservation to Article 18 of the ICCPR

Lao PDR has ratified a number of key international human rights treaties, including the ICCPR.¹⁰⁹ However, the Government issued a reservation to Article 18. It reads, in full:

¹⁰³ See United States Commission on International Religious Freedom (USCIRF), *Factsheet: Laos' Decree 315*, September 2021, p. 2. Accessed 2 June 2022, <https://www.uscifr.gov/sites/default/files/2021-09/2021%20Laos%20Factsheet.pdf>.

¹⁰⁴ U.S. State Department, *2020 International Religious Freedom Report: Laos*, 12 May 2021, p. 3. Accessed 2 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/laos/>.

¹⁰⁵ See *Results of Population and Housing Census 2015*, p. 37.

¹⁰⁶ Laos Constitution, arts. 9, 43.

¹⁰⁷ Laos Constitution, Art. 9.

¹⁰⁸ Laos Constitution, Art. 35.

¹⁰⁹ U.N. Treaty Body Database: Laos. Accessed 2 June 2022, https://treaties.un.org/ilc/texts/instruments/english/other/15_TreatyBodyExternal/Treaty.aspx?CountryID=94&Lang=EN.

The Government of the Lao People's Democratic Republic declares that Article 18 of the Covenant shall not be construed as authorizing or encouraging any activities, including economic means, by anyone which directly or indirectly, coerce or compel an individual to believe or not to believe in a religion or to convert his or her religion or belief. The Government of the Lao People's Democratic Republic considers that all acts creating division and discrimination among ethnic groups and among religions are incompatible with Article 18 of the Covenant.¹¹⁰

The former Special Rapporteur on FoRB criticized this reservation, writing that it lowered the “threshold for limitations on the freedom to manifest one’s religion or belief ... by seeking to outlaw ‘all acts creating division among religions.’”¹¹¹ Such ambiguous language lacks clarity and “could be abused by the State to prohibit religious activities that are protected under international law, such as the teaching and dissemination of religious beliefs or proselytism in general.”¹¹² This fear is particularly acute for religious minorities, who may be accused of creating division for not participating in the majority religion or spreading their faith.

Decree 315 (2016)

The Government of Lao PDR promulgated Decree 315 in August 2016 in response to criticism it had received over Decree Number 92 on Management and Protection of Religious Activities, a previous decree which governed religious affairs.¹¹³ Several aspects of Decree 315 are incompatible with human rights law and standards.

First, religious groups must register with the Ministry of Home Affairs each year, and provide a range of documents demonstrating their areas of operation, leadership structure, and planned activities for approval, among other burdensome requirements.

Second, nearly all aspects of religious practice must be approved by officials at the provincial, district, and/or central Ministry of Home Affairs office levels. Examples of acts that require approval include: congregating, holding religious services, travel for religious officials, building houses of worship, modifying existing structures, and establishing new congregations in villages where none existed.¹¹⁴ The Ministry may order a religious group to cease any activity that it deems threatening to national stability, peace, and social order, causes serious damage to the environment, or affects national solidarity or unity among tribes and religions.¹¹⁵

These broad powers and restrictions contravene the human rights requirements of necessity, proportionality, and legality. If the Government of Laos seeks to impose a limitation on the freedom to manifest a religion or belief, it should first demonstrate the necessity of that restriction, and only take such measures that are proportionate to legitimate purposes expressly permitted under Article 18(3) of the ICCPR (such as public safety, order, health, or morals or the fundamental rights

¹¹⁰ See United Nations Treaty Collection, *International Covenant on Civil and Political Rights*. Accessed 2 June 2022, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND.

¹¹¹ United Nations, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Mission to the Lao People's Democratic Republic*, U.N. Doc. A/HRC/13/40/Add.4 pp. 13–14. Accessed 2 June 2002, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A_HRC.13.40.Add.4_enAEV.pdf.

¹¹² *Ibid.*

¹¹³ See International Panel of Parliamentarians for Freedom of Religion or Belief and Asia Centre, *Country Briefing on Freedom of Religion or Belief in the Universal Periodic Review Process – Laos PDR*, 2015.

¹¹⁴ *Ibid.*, p. 4.

¹¹⁵ *Ibid.*, p. 4.

and freedoms of others.) Additionally, restrictions must never be applied or invoked in a manner that impairs the essence of the right. The Ministry of Home Affairs' broad ability to regulate and control the freedom of religious groups to manifest their beliefs is at odds with the purpose, texts and tests of Article 18 of the Covenant.

Third, Articles 25 and 26 of the Decree prohibit “*seducing*” citizens to believe in a religion or belief and “*making use of religion to seek benefit for self*.”¹¹⁶ The right to FoRB necessarily includes the right to proselytize, and the overly broad phrasing of “*seeking benefit for self*” fails to meet the Covenant’s requirement that restrictions are proportionate, necessary, and tied to a legitimate aim.¹¹⁷

In practice, the implementation of the Decree leads to FoRB restrictions. For example, according to Freedom House’s Freedom in the World report, “*there have been multiple cases in recent years of Christians being briefly detained or sentenced to jail for unauthorized religious activities or being pressured by authorities to renounce their faith*.”¹¹⁸ The report continues:

A ban on public proselytizing is generally enforced, and authorities make efforts to monitor the importation of religious materials. In October 2020, reports revealed that four Lao Christians had been jailed for several months for planning Christian funeral rites. That same month, a group of Lao Christians were evicted from their homes and moved into a forest because they would not renounce Christianity.

Christian Solidarity Worldwide also noted that “*social hostilities and weak rule of law at the local level*” also undermine the right to FoRB¹¹⁹ with, for instance, reports of “*local authorities, especially in isolated villages, arresting and detaining followers of minority religious groups, particularly Christians associated with the Lao Evangelical Church (LEC)*.”¹²⁰

For example, “*Some religious leaders stated authorities sometimes detained Christians traveling without permission to attend religious events outside their regular locales*.”¹²¹ Furthermore, the cumbersome bureaucracy of Decree 315 delayed the construction of churches, leading some religious groups to worship at home. According to the U.S. State Department, one Christian group “*attributed the large number of [unlawful] house churches to the difficulties of obtaining enough land to meet the requirements of Decree 315*.”¹²²

¹¹⁶ Christian Solidarity Worldwide, *Lao People’s Democratic Republic: Submission to the 35th session of the Universal Periodic Review*, January 2020, para. 13. Accessed 2 June 2022, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7278&file=EnglishTranslation#:~:text=Decree%20315%20instructs%20religious%20adherents,character%20of%20the%20nation>.

¹¹⁷ The 1981 Declaration affirms the right to “write, issue and disseminate relevant publications in these areas,” and to “teach a religion or belief in places suitable for these purposes.” Arts. 6(d), 6(e). See also, Special Rapporteur Abelfattah Amor, Country Mission Report, Greece, para. 12, (“proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration.”)

¹¹⁸ Freedom House, *Freedom in the World Report 2021: Laos*. Accessed 2 June 2022, <https://freedomhouse.org/country/laos/freedom-world/2021#PR>.

¹¹⁹ Christian Solidarity Worldwide, *Lao People’s Democratic Republic: Submission to the 35th session of the Universal Periodic Review*,.

¹²⁰ 2020 International Religious Freedom Report: Laos, p. 6.

¹²¹ *Ibid.* p. 9..

¹²² *Ibid.* p. 10.



Recommendations to the National Assembly of Laos

- Amend Decree 315 to bring it into line with international human rights law and standards, in particular by easing the process for religious groups to register their places of worship and proselytize, and allowing new religious groups to obtain official recognition;
- Repeal the reservation to Article 18 of the ICCPR by passing a law to that effect and informing the UN Secretary-General;
- Encourage the Government to create programs with sufficient funding to improve and enhance understanding of FoRB amongst government officials, including in remote areas of the country;
- Improve legal protections for religious minorities by passing anti-discrimination laws; and
- Provide avenues for feedback about all relevant laws and regulations, and actively and impartially consider comments and criticism put forward by civil society and the international community.



Muslims perform the Eid al-Fitr prayers to celebrate the end of Ramadan, at the Federal Territory Mosque, in Kuala Lumpur, Malaysia, 05 June 2019. EPA-EFE/FAZRY ISMAIL

MALAYSIA

Malaysia is a multicultural, multilingual and multi-religious country home to 32.7 million people and dozens of ethnic groups and religions. According to the latest census, conducted in 2020, the current religious demography of Malaysia is as follows: Muslims, 63.5%; Buddhists, 18.7%; Christians, 9.1%; Hindus, 6.1%; others, 0.9%; and no religion/unknown, 1.8%.¹²³ Almost all Muslims practice Sunni Islam of the Shafi'i school, and most Muslims are ethnic Malay, defined in the Federal Constitution as “a person who professes the religion of Islam, habitually speaks the Malay language (and) conforms to Malay custom.”¹²⁴



POPULATION
32.7 million

RELIGION

Muslims	63.5%
Buddhist	18.7%
Christian	9.1%
Hindu	6.1%
Others	0.9%
No religion or unknown	1.8%

Despite its economic success, Malaysia has been engulfed in complex social tensions among its citizens largely due to highly contentious ethno-religious relations. The complexity stems to a large extent from Article 153 of the Federal Constitution, which requires the constitutional monarch of Malaysia to “safeguard the special position of the Malays” and non-Malay indigenous groups of Sabah and Sarawak, and “the legitimate interests of other communities,” such as the Chinese, Indian and other minority communities.¹²⁵

¹²³ Department of Statistics of Malaysia, “Launching of report on the key findings, Population and Housing Census of Malaysia 2020”, 14 February 2022. Accessed 2 June 2022, https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=117&bul_id=akliVWdla2g3Y2VubTVSMkxmYXplUT09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09.

¹²⁴ Constitution of Malaysia, Art. 160.

¹²⁵ Constitution of Malaysia, Art. 153(1).

Known as the *Bumiputeras* (Sons of the Soil), the Malay and indigenous groups benefit from quotas that reserve them positions for “scholarships, educational or training privileges, positions in the civil service, special facilities, and permits or licences for trade or business activities.”¹²⁶ Such a disparity can be seen in Malaysia’s budget: Malaysia’s 2020 budget allocated “RM8.5 billion [USD1.93 billion] for support programmes designated for the country’s ethnic groups, of which 94.5% was slated for Bumiputeras and 5.5% to others” while the 2022 budget increased that percentage to 94.8%.¹²⁷ This allocation of funds does not reflect demographics. According to the latest census, conducted in 2020, the Bumiputeras comprised 69.6% of the country’s citizenry, while the rest were ethnic Chinese, 22.6%; Indians, 6.8%; and others, 1.0%.¹²⁸

The U.S. Commission on International Religious Freedom established a Watch List of countries where religious freedom conditions require close monitoring due to the nature and extent of violations of religious freedom engaged in or tolerated by the governments.¹²⁹ The Commission included Malaysia on the Special Watch List in 2022.

Constitutional Framework

The Federal Constitution of Malaysia enshrines Islam as the “religion of the Federation” but clarifies that “other religions may be practised in peace and harmony in any part of the Federation.”¹³⁰

Under Article 11 of the Constitution, “Every person has the right to profess and practice his religion and to propagate it” while “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.”¹³¹

The Constitution clarifies that the right to FoRB enshrined in Article 11 does not “authorise any act contrary to any general law relating to public order, public health or morality.”¹³²

While Islam and Muslims hold a special position under Malaysian law, Article 8 of the Constitution also guarantees the right of all persons to be equal before the law and prohibits “discrimination against citizens on the ground only of religion.”¹³³ The Constitution also clarifies that “Every religious group has the right to establish and maintain institutions for the education of children in its own religion.”¹³⁴

As Islam is the “religion of the Federation,” the Constitution makes specific allowance for both the State and Federal Government to support Islamic institutions and the instruction of the religion of Islam.¹³⁵

¹²⁶ See Malay Mail, “Bumiputera: Are you one? Or can you ‘become’ one in Malaysia?,” 26 July 2017. Accessed 2 June 2022, <https://www.malaymail.com/news/malaysia/2017/07/26/bumiputera-are-you-one-or-can-you-become-one-in-malaysia/1429005>.

¹²⁷ See Lee Hwok-Aun, “Bumiputeras vs ‘the Others’ in Malaysia’s 2022 Budget: Moral Outrage is Not Enough,” *Fulcrum*, 18 November 2021. Accessed 2 June 2022, <https://fulcrum.sg/bumiputeras-vs-the-others-in-malysias-2022-budget-moral-outrage-is-not-enough/>.

¹²⁸ Department of Statistics of Malaysia, “Current Population Estimates,” 15 July 2020. Accessed 2 June 2022, https://www.dosm.gov.my/v1/index.php?r=column/cthemebByCat&cat=155&bul_id=OVByWjg5YkQ3MWFZRTN5bDJiaEVhZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09#:~:text=Out%20of%20the%2029.7%20million,remained%20at%201.0%20per%20cent.

¹²⁹ See United States Commission on International Religious Freedom (USCIRF), *2022 Annual Report*, April 2022, p. 58. Accessed 2 June 2022, https://www.uscifr.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf.

¹³⁰ Constitution of Malaysia, Art. 3(1).

¹³¹ Constitution of Malaysia, arts. 11(1, 3).

¹³² Constitution of Malaysia, art. 11(5).

¹³³ Constitution of Malaysia, art. 8(1, 2).

¹³⁴ Constitution of Malaysia, art. 12(2).

¹³⁵ Constitution of Malaysia, art. 12(2).

One of the limitations of Malaysia's Constitutional framework is that protections for FoRB do not explicitly include the freedom to have or adopt a religion or belief of one's choice, or the freedom to manifest one's religion or belief in "*worship, observance, practice and teaching*," both of which are core components of the right to FoRB under Article 18 of the ICCPR.¹³⁶

The Constitution allows state-level legislatures in Malaysia to legislate on offences against the precepts of Islam, giving rise to a dual legal system in much of the country, where civil and criminal courts exist in parallel to Shari'a courts. This has at times caused jurisdictional tensions, with civil and Shari'a courts sometimes issuing conflicting rulings on similar issues, particularly in family law-related matters.¹³⁷

The Constitution identifies Sultans as the "*Heads of Islam*" in Malaysia. The 2020 US International Freedom of Religion or Belief report explains the structure in detail:

Sultans are present in nine of the country's 13 states; in the remaining four states and the Federal Territories, the highest Islamic authority is the King, selected to a five-year term from among the nine sultans in an established rotation order. Islamic law is administered by each state. The office of mufti exists in every state to advise the sultan in all matters of Islamic law. Sultans oversee sharia courts and appoint judges based on the recommendation of the respective state Islamic religious departments and councils who manage the operations of the courts. In states with no sultan and in the Federal Territories, the King assumes responsibility for this process.¹³⁸

Malaysia is not a State Party to the ICCPR or the ICESCR.¹³⁹

Problematic Laws

Various laws prohibiting proselytism

Malaysia's Constitution, Shari'a law, and various state laws do not adequately protect the right to proselytize. First, while the Constitution protects the right of every person to "*profess and practise*" their religion, Article 11(4) limits this right if the religion is not Islam, holding that states and certain federal territories may "*control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam*."¹⁴⁰

Second, both the Syariah Criminal Offences (Federal Territories) Act 1997 and various state laws prohibit propagating any religion or belief other than Islam among Muslim people. Under Syariah Criminal Offences, anyone found guilty of this offence is liable for "*a fine not exceeding three thousand ringgit [USD 723] or to imprisonment for a term not exceeding two years or to both*."¹⁴¹ State laws similarly prohibit such propagation with varying specifications.¹⁴²

¹³⁶ Constitution of Malaysia, art. 11.

¹³⁷ International Commission of Jurists (ICJ), Challenges to Freedom of Religion or Belief in Malaysia A Briefing Paper, March 2019, p. 20. Accessed 2 June 2022, <https://www.icj.org/wp-content/uploads/2019/03/Malaysia-Freedom-of-religion-brief-Advocacy-Analysis-brief-2019-ENG.pdf>.

¹³⁸ U.S. State Department, 2020 International Religious Freedom Report: Malaysia, 12 May 2021, p. 3. Accessed 2 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/malaysia/>.

¹³⁹ However, Malaysia is a State Party to CEDAW, CRPD, and CRC. See U.N. Treaty Body Database: Malaysia. Accessed 2 June 2022.

¹⁴⁰ Constitution of Malaysia, art. 11(4).

¹⁴¹ Syariah Criminal Offences (Federal Territories) Act 1997, Section 5: Propagation of religious doctrines.

¹⁴² See International Commission of Jurists, Challenges to Freedom of Religion or Belief in Malaysia: A Briefing Paper, pp. 25–26.

As noted above, the right to FoRB necessarily includes the right to proselytize.¹⁴³ While governments may restrict the manner in which individuals and communities manifest religion or belief in teaching, practice, worship, or observance, such restrictions must be non-discriminatory and necessary to achieve a legitimate aim. The measures outlined above are inherently discriminatory, overly broad, and in pursuit of an illegitimate aim. For these reasons, they contravene human rights law.

Various laws prohibiting apostasy

The issue of religious conversion is also highly contentious. While it is a relatively straightforward process to convert into Islam (colloquially dubbed “masuk Melayu” or “entering the Malay race”), the Malaysian government and the Islamic religious authorities put obstacles to those wanting to convert out of Islam. According to Maria Chin Abdullah, a Member of Parliament, “There are Islamic laws that will punish anyone changing their religion.”¹⁴⁴

For example, various state laws in Malaysia criminalize acts of apostasy with penalties of fines and, in some cases, prison sentences.¹⁴⁵ The definitions of apostasy vary between the criminal codes of different states. However, in general apostasy laws criminalize any Muslim person who declares him or herself a non-Muslim. While it is technically possible to renounce Islamic faith under various state laws, such renunciation often requires requesting a declaration from a Syariah High Court and the declarant must undergo counselling sessions.¹⁴⁶ In a landmark case, the Malaysian Federal Court in 2007 dismissed the Muslim woman Lina Joy’s petition to have the word “Islam” removed from her identity card, after she had converted to Christianity.

Apostasy laws in various Malaysian states contravene the right to FoRB because they attempt to prevent Muslims from changing their religion. As noted above, human rights law guarantees the right of everyone to “freedom of thought, conscience and religion,” which necessarily includes the “freedom to change his [or her] religion or belief.”¹⁴⁷

Because of the private, internal nature of choosing a religion or belief, governments are not permitted to restrict the freedom to have or adopt a religion or belief of one’s choice at any time and under any circumstance; these freedoms are to be protected unconditionally.¹⁴⁸ The state laws criminalizing apostasy in Malaysia contravene this fundamental freedom and are therefore incompatible with human rights law.

¹⁴³ The 1981 Declaration affirms the right to “write, issue and disseminate relevant publications in these areas,” and to “teach a religion or belief in places suitable for these purposes.” Arts. 6(d), 6(e). See also, Special Rapporteur Abelfattah Amor, Country Mission Report, Greece, para. 12, (“proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration.”).

¹⁴⁴ Interview with Hon. Mdm. Maria Chin Abdullah, an independent Member of Parliament, 2 October 2020.

¹⁴⁵ For a detailed discussion of various apostasy laws, see International Commission of Jurists, *Challenges to Freedom of Religion or Belief in Malaysia: A Briefing Paper*, pp. 22–25.

¹⁴⁶ Lina Joy is an adopted Malay girl by a Chinese family who wanted to officially convert to Christianity, but the Federal Court of Malaysia refused to accept her conversion, thus rendering her civil marriage with a Christian man invalid in the eyes of the state. Other cases have involved people who passed away, but had supposedly and secretly converted from Islam to other religions without informing the family. In such cases, the religious authorities were adamant about their Islamic identity. For more information, see Becket: Religious Liberty for All, *Becket’s Legal Opinion in Lina Joy v. Majlis Agama Islam Wilayah Persekutuan*, 1 January 2005. Accessed 2 June 2022, <https://www.becketlaw.org/case/malaysia-state-imposed-religious-identity>.

¹⁴⁷ ICCPR, Art. 18.

¹⁴⁸ U.N. Human Rights Committee, *General Comment 22*, para. 3.



Recommendations to the Parliament of Malaysia

- Amend the Constitution to ensure the right of everyone to have or adopt freely a religion or belief of one's choice, and the freedom to manifest one's religion or belief in worship, observance, practice and teaching with others;
- Repeal Federal and State laws banning proselytism and apostasy;
- Adopt federal anti-discrimination legislation that protects the rights of all religious groups to practice their religion or belief without interference by the state, including the right to change religion or give up a religion without prior approval;
- Create avenues for consultation about all relevant laws and regulations with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Ensure that all religious and belief communities are afforded the same protection under the law and without discrimination;
- Establish or join a cross-party group/caucus on FoRB in parliament in order to initiate and consolidate efforts to bring laws in line with international human rights law, and to advocate for FoRB;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight;
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB; and
- Ratify the core international human rights treaties, including the ICCPR and ICESCR.



Rohingya Muslim men pray inside a mosque at Thet Kel Pyin village near Sittwe, in Rakhine State, western Myanmar, 03 November 2015. EPA/NYUNT WIN

MYANMAR



Myanmar is a large, ethnically and religiously diverse society of over 52 million people. The country has been plagued by ethnic conflicts ever since its independence in 1948, and ethnicity in Myanmar is so fraught that the ethnic composition of the country's population according to the latest census, carried out in 2014, has never been publicly released. The official list of 135 “national races” subsumed under eight “major races” (the Bamar majority and seven others, each also naming a separate state: Kachin, Kayin, Kayah, Chin, Mon, Rakhine and Shan) is in itself controversial, and many among the minorities object to it.

POPULATION
52 million

RELIGION

Buddhist	89.8%
Christian	6.3%
Muslim	4.3%
Animist	0.8%
Hindu	0.5%
Other	0.2%
None	0.1%



Also, the estimated 1.1 million Rohingya Muslims who were living in Rakhine, Western Myanmar, at the time of the 2014 census were not surveyed, as they are not recognized as a “national race”.¹⁴⁹

¹⁴⁹ U.S. State Department, 2020 Report on International Religious Freedom: Burma, 12 May 2021, p. 3. Accessed 2 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/burma/> See also Fortify Rights, “Tools of Genocide”: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar, 3 September 2019, p. 31 (“Although the Rohingya identify as Rohingya, comprised almost two percent of Myanmar’s total population prior to the 2017 attacks and forced deportations, and materials dating back to the 17th century reference a Muslim population calling itself “Rooinga” in what is now Rakhine State, the government refuses to recognize the Rohingya as an ethnic minority or a “national race.” The government in Myanmar insists that Rohingya are “Bengali” interlopers or descendants of agricultural workers imported by British colonial powers and that they do not belong in Myanmar.”). Accessed 2 June 2022, <https://www.fortifyrights.org/mya-bgd-rep-2019-09-03/> For a discussion on other ways in which the census was flawed, see International Crisis Group, *Counting the Costs: Myanmar’s Problematic Census*, 15 May 2014. Accessed 2 June 2022, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/counting-costs-myanmar-s-problematic-census>.

The majority of Myanmar's population practice Theravada Buddhism. However, there is a sizable number of people who practice other religions, mostly from the ethnic minorities. For example, the Karen, Chin, Karenni, Naga, and Kachin ethnicities have significant Christian communities, and there are large numbers of Muslims in a variety of ethnic communities.

According to the 2014 census, the religious breakdown is as follows: Buddhist, 89.8%; Christian, 6.3%; Muslim, 2.3% (not counting 1,090,000 non-enumerated population in Rakhine, the overwhelmingly Muslim Rohingya living at that time in the state; if included, the total Muslim population in the country would be around 4.3%, and percentages for other religions would vary accordingly); Animist, 0.8%; Hindu, 0.5%; other, 0.2%; and none, 0.1%.¹⁵⁰

Myanmar has a long history of persecution against religious minorities.¹⁵¹ Indeed, the relations between the State, the military, and Buddhism are complex. For example, Myanmar's governments and military have historically been controlled by ethnic Bamar Buddhists, and the military has long promoted Buddhist nationalist organizations, such as the Buddha Dhamma Parahita Foundation (formerly Ma Ba Tha).¹⁵²

The Myanmar Military, known as the *Tatmadaw*, throughout its rule pursued a policy known as "Burmanization," which sought to "create a unified nation under the ethnic Bamar and Buddhist majority" suppressing the expression of linguistic, religious and other cultural differences.¹⁵³ This included prescribing the teaching in schools to only be in Burmese.

The Rohingya Muslims, in particular, have faced discrimination and restrictions for decades, with recent years seeing unprecedented levels of violence perpetrated against them.¹⁵⁴ In 2016 and 2017, "the Myanmar Army, police, and civilian perpetrators committed massacres, mass rape, and mass arson attacks against Rohingya men, women, and children in the three townships of northern Rakhine State, forcing nearly 800,000 Rohingya into Bangladesh, where more than one million Rohingya remain confined to ill-equipped refugee camps."¹⁵⁵ Following these attacks, a U.N.-appointed fact-finding mission determined that "senior generals of the Myanmar military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes."¹⁵⁶

The Rohingya are not the only ethnic and religious minority against whom the Myanmar Military has inflicted violence. Since the late 40s the Myanmar military has waged war against various ethnic armed organizations across the country's ethnic states and regions, including the Chin, Kachin, and

¹⁵⁰ Ministry of Labour, Immigration and Population of Myanmar, *The 2014 Myanmar Population and Housing Census. The Union Report: Religion. Volume 2-C*, July 2016. Accessed 2 June 2022, https://myanmar.unfpa.org/sites/default/files/pub-pdf/UNION_2C_Religion_EN.pdf.

¹⁵¹ Marzuki Darusman, a member of the UN Fact-Finding Mission, explained in his statement to the Human Rights Council that "State policies and practices implemented over decades" have steadily marginalized and "othered" the Rohingya – "resulting in a State-sanctioned and institutionalised system of oppression affecting the lives of Rohingya from birth to death." See United Nations Office of the High Commissioner for Human Rights, "Statement by Mr. Marzuki Darusman, Chairperson of the United Nations Independent International Fact-Finding Mission on Myanmar, at the Security Council," 24 October 2018. Accessed 2 June 2022, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23778&LangID=E>.

¹⁵² See International Crisis Group, *Buddhism and State Power in Myanmar*, 5 September 2017. Accessed 2 June 2022, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/290-buddhism-and-state-power-myanmar>.

¹⁵³ See Yatana Yamahata, "The Entrenched Tatmadaw: Explaining the Dominant Elite in Myanmar's Political Landscape," *Tea Circle Oxford*, 13 May 2020. Accessed 2 June 2022, <https://teacircleoxford.com/politics/the-entrenched-tatmadaw-explaining-the-dominant-elite-in-myanmars-political-landscape/>.

¹⁵⁴ In 2012, state-sanctioned and coordinated mob attacks against Rohingya Muslims in Rakhine State led the government to confine more than 128,000 Rohingya in 24 internment camps in five townships, where they still face harsh restrictions on their fundamental rights and freedoms. See Human Rights Watch, *All You Can Do is Pray*, April 2013. Accessed 2 June 2022, https://www.hrw.org/reports/burma0413_FullForWeb.pdf See also Human Rights Watch, *The Government Could Have Stopped This*, 31 July 2012. Accessed 2 June 2022, <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan>.

¹⁵⁵ Fortify Rights, "Tools of Genocide," p. 32.

¹⁵⁶ Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/CRP.2, September 17, 2018. Accessed 2 June 2022, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf.

Rakhine, amongst others.¹⁵⁷ The origins of these conflicts are multiple, including “grievances over lack of autonomy and perceptions that the state was not honouring promises of equality and autonomy for ethnic minorities and tolerance for religions other than Buddhism.”¹⁵⁸

The Myanmar government has also engaged in egregious discrimination against these religious groups, both during the military dictatorship and with the nominally civilian government between 2011 and 2021, imposing restrictions on “building Christian religious sites, [with] incidents of intimidation and violence against Christians, the forced relocation and destruction of Christian cemeteries, violent attacks on places of worship, and an ongoing campaign of coerced conversion to Buddhism, particularly in Chin and Naga areas.”¹⁵⁹ In Kachin State, the military routinely occupies churches, summons entire congregations for interrogation, and has desecrated and destroyed churches in the past.¹⁶⁰

On 1 February 2021, the Myanmar military attempted a coup d’état in which it seized control of the government and deposed the civilian leaders. In the months since, the military has ramped up its persecution of members of religious minorities opposing its rule, including Christians and Muslims living in the country, with cases of hate speech and violence against religious groups on the rise.¹⁶¹

The United States’ State Department annually designates any government that has engaged in or tolerated “particularly severe violations of religious freedom” as a Country of Particular Concern (CPC). Myanmar is listed as a Country of Particular Concern.

Constitutional Framework

Article 34 of the Constitution of Myanmar¹⁶² stipulates that “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.”

Elaborating on permissible restrictions, Article 360(b) clarifies that the “freedom of religious practice shall not debar the Union from enacting law[s] for the purpose of public welfare and reform.” At the same time, Article 363 of the Constitution empowers the government to “assist and protect the religions it recognizes to its utmost.”

As noted above, the Constitution recognizes the “special position” of Buddhism in Myanmar, while Article 362 recognizes “Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution.”

The Constitution contains a number of anti-discrimination provisions. First, Article 347 holds that the Government shall “guarantee any person to enjoy equal rights before the law and shall equally

¹⁵⁷ See Christina Fink, *Living Silence in Burma: Surviving under Military Rule* Zed Books, London, 2001.

¹⁵⁸ See International Crisis Group, *Identity Crisis: Ethnicity and Conflict in Myanmar*, 28 August 2020. Accessed 2 June 2022, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/312-identity-crisis-ethnicity-and-conflict-myanmar>

¹⁵⁹ U.S. Commission on International Religious Freedom, *Hidden Plight: Christian Minorities in Burma*, December 2016, p. 4. Accessed 2 June 2022, <https://www.uscifr.gov/sites/default/files/Hidden%20Plight.%20Christian%20Minorities%20in%20Burma.pdf>.

¹⁶⁰ *Ibid.*

¹⁶¹ Nu Nu Lusan and Emily Fishbein, “A living hell: Churches, clergy targeted by Myanmar military,” *Al Jazeera English*, 14 October 2021. Accessed 2 June 2022, <https://www.aljazeera.com/news/2021/10/14/a-living-hell-churches-suffer-in-myanmar-military-attacks>; See also ASEAN Parliamentarians for Human Rights, “Myanmar: UN Secretary-General Must Act Regarding Increasing Repression of Religious Minorities,” 20 October 2021. Accessed 2 June 2022, <https://aseanmp.org/2021/10/20/myanmar-un-secretary-general-must-act-regarding-increasing-repression-of-religious/>.

¹⁶² *Myanmar Constitution*, 2008.

provide legal protection” while Article 348 prohibits the Government from discriminating on the basis of religion, among others.¹⁶³ Finally, the Constitution also provides that “Every citizen shall enjoy the right of equality, the right of liberty and the right of justice.”¹⁶⁴

Despite the rise of extremist Buddhist rhetoric in Myanmar, the Constitution explicitly forbids such kind of speeches. Article 364 holds in full: “The abuse of religion for political purposes is forbidden. Moreover, any act, which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity.’

The Constitution also prevents candidates for the House of Representatives (Pyithu Hluttaw) who are sponsored by “religious organizations of a foreign country” (121(g)) or are members of “an organization who abets the act of inciting, giving speech, conversing or issuing declaration to vote or not to vote based on religion for political purpose” (121(h)).

While the Constitution provides a number of protections that are laudable, in nearly every case they are limited to citizens of Myanmar. Such a distinction goes against human rights law and standards, but it is strikingly problematic in the Myanmar context due to the discriminatory 1982 Citizenship Law, which has been used to render stateless hundreds of thousands of Rohingya and other minorities.¹⁶⁵

Specifically, the 1982 Citizenship Law introduced a hierarchy of three citizenship classes in which persons belonging to one of the 135 “national races” (as noted above) are considered full citizens and persons not belonging to this category receive one of two qualified and insecure forms of citizenship (“associate citizen” or “naturalized citizen”).¹⁶⁶ Human rights law includes distinctions between citizens and non-citizens for certain rights (such as political rights), however, no such distinction exists for the right to FoRB. Indeed, both the UDHR and ICCPR guarantee this right to everyone, regardless of citizenship status.

Furthermore, the Constitution of Myanmar includes significant limitations on FoRB, often on vague and impermissible grounds. Section 34, for example, provides for the right to FoRB of every “citizen” but subjects this to “public order, morality or health and to the other provisions of this Constitution.” Section 360(b) then expressly states that the freedom of religious practice shall not prevent the State from “enacting law [sic] for the purpose of public welfare and reform.”

The UN Human Rights Committee has noted that no restrictions on FoRB are permitted on grounds not specified in Article 18.3, even if they would be allowed as restrictions to other rights protected in the Covenant.¹⁶⁷ Article 18 of the ICCPR does not include “public welfare and reform” as a permissible justification for a restriction on the exercise of FoRB. The other limitations, while potentially permissible, must be applied on a case-by-case basis and pass the tests of necessity, legality, and proportionality.

Myanmar has not ratified the ICCPR, but is a State Party to the following human rights treaties: CEDAW, CESC, CRC and its two optional protocols, and CRPD.

¹⁶³ These include: race, birth, religion, official position, status, culture, sex and wealth.

¹⁶⁴ Myanmar Constitution, Article 21(a).

¹⁶⁵ See Fortify Rights, *Tools of Genocide*.

¹⁶⁶ Interview with Kyaw Win, Burma Human Rights Network, 18 February 2022. For a full discussion of these categories, see Fortify Rights, *Tools of Genocide*, p. 37.

Problematic Laws

Penal Code

Several provisions of Myanmar's Penal Code relate to offences against religion. In practice, however, they are used to criminalize criticism of Buddhism. Together, they are known as “blasphemy laws.” They include: Section 295(a), which criminalizes “outraging the religious feelings” of any class of people by insulting their religious beliefs with “deliberate or malicious intent”; and Section 298, which criminalizes deliberately “wounding the religious feelings of any person.”

Both sections of the Penal Code are incompatible with human rights law and standards. First, both sections seek to protect the religious feelings of people by limiting what other people can say and do. Human rights law permits governments to limit freedom of expression in certain respects. For example, in the case of advocacy of hatred that constitutes incitement to discrimination, hostility or violence on religious grounds. However, “wounding religious feelings” is not one of the legitimate grounds upon which to do so.¹⁶⁸ Without tying these offences to a permissible restriction under human rights law, both sections contravene Myanmar's legal obligations.

The Myanmar Government has prosecuted a number of individuals using these problematic provisions. The International Commission of Jurists (ICJ) provides a helpful summary of one such case:

“Htin Linn Oo, a writer and information officer for the National League for Democracy, was charged under sections 295(a) and 298 of the Penal Code in December 2014. These charges followed a speech Htin Linn Oo had given at a literary event in October 2014, in which he had expressed criticism of members of the clergy (the Sangha) referencing Buddhism as a basis to discriminate against other religions. In June 2015, he was convicted and sentenced to two-and-a-half years in prison with hard labour.”¹⁶⁹

“Race and Religion” laws

Between May and August 2015, four bills that had the support of the extremist group Ma Ba Tha became law that sought to “safeguard nationality and religion.” While the laws do not name the Rohingya, the U.N. Fact-Finding Mission noted that “given [the] rhetoric in the lead-up to their adoption, the laws clearly had a discriminatory intent against the Rohingya.”¹⁷⁰

The four laws include provisions that are deeply discriminatory on religious and gender grounds, forcing people to seek government approval to convert to a different religion or adopt a new religion and imposing a series of discriminatory obligations on non-Buddhist men who marry Buddhist

¹⁶⁷ ICCPR, Art. 18(3).

¹⁶⁸ International Commission of Jurists, *Challenges to Freedom of Religion or Belief in Myanmar: A Briefing Paper*, October 2019, p. 21. Accessed 2 June 2022, <https://www.icj.org/wp-content/uploads/2019/10/Myanmar-Freedom-of-religion-brief-Advocacy-Analysis-brief-2019-ENG.pdf>.

¹⁶⁹ Ibid, p. 22.

¹⁷⁰ Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 17 September 2018, p. 142. Accessed 2 June 2022, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf.

women, in addition to other highly problematic provisions.¹⁷¹ Such restrictions on the freedom to have or adopt a religion or belief of one's choice is a flagrant violation of FoRB.



Recommendations to the National Unity Government of the Republic of the Union of Myanmar¹⁷²

- Announce the repeal of the 1982 Citizenship Law and the four “Race and Religion” laws;
- Ensure that all religious and belief communities are afforded the same protection under the law and without discrimination and work to ensure the full citizenship rights of Rohingya citizens of Myanmar, with a view towards ensuring their inclusive participation in Myanmar affairs;
- Engage stakeholders, including members of the Committee Representing Pyidaungsu Hluttaw (CRPH, a body of former MPs), NUG, religious leaders and members of civil society organizations from ethnic and religious minority communities, in a series of discussions on human rights and FoRB in Myanmar;
- Work towards international accountability for the military to be held responsible for the international crimes it is committing towards all people in Myanmar, including the Rohingya and other ethnic and religious minorities;
- Engage stakeholders and legal experts on amendments to key problematic laws, including the 1982 Citizenship Law, the four Race and Religion laws, and the Penal Code's blasphemy provisions; and
- Provide training on human rights and FoRB to members of parliament and the NUG, civil society and religious leaders.

¹⁷¹ For a full discussion of the laws and their incompatibility with human rights law and standards, see Amnesty International & International Commission of Jurists, “Myanmar: Parliament must reject discriminatory ‘race and religion’ laws,” 3 March 2015. Accessed 2 June 2022, <https://www.amnesty.org/en/documents/asa16/1107/2015/en/>.

¹⁷² The National Unity Government (NUG) is the shadow government of Myanmar established after the illegal coup d'état of February 2021. Formed by ousted members of parliament (mainly from the previous ruling party, the National League for Democracy), ethnic leaders, and representatives of civil society, the NUG counts with wide support among the country's population and may be deemed the legitimate government of Myanmar, rather than the State Administration Council (the military junta established after the coup).



Recommendations to the Myanmar Military

- Devolve power to the civilian authorities;
- Immediately end all violations of international humanitarian and human rights law, and ensure that all civilians are protected, including ethnic and religious minorities;
- Immediately and unconditionally release all those currently arbitrarily detained;
- Allow parliament to resume, and elected MPs to fulfil their mandate without impediment; and
- Immediately allow unimpeded access to all humanitarian aid and health support, including in conflict-affected areas.

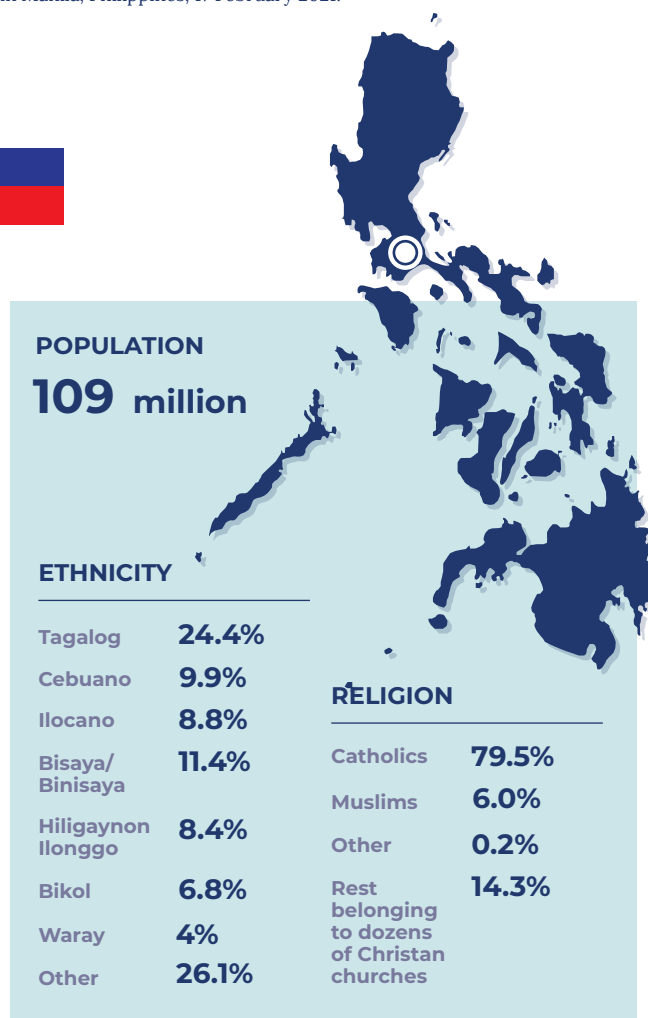


People pray at a holy mass to mark Ash Wednesday at the Baclaran Church in Manila, Philippines, 17 February 2021.
EPA-EFE/MARK R. CRISTINO

THE PHILIPPINES



The Philippines is an archipelagic nation in the South China Sea. The people of the Philippines are ethnically and religiously diverse: its 109 million citizens comprise a variety of ethnicities, none of which is the majority of the population, unlike in other Southeast Asian countries. The percentages by ethnicity are roughly as follows: Tagalog (24.4%), Cebuano (9.9%), Ilocano (8.8%), Bisaya/Binisaya (11.4%), Hiligaynon Ilonggo (8.4%), Bikol (6.8%), Waray 4%), other local ethnicities (26.1%) and the rest being not stated or “foreign ethnicities.”¹⁷³ The Philippines is an expressly secular country that retains a strong connection to Catholicism. The religious breakdown in 2015 was as follows: Catholics, 79.5%; Muslims, 6.0%; other religious affiliations, 0.2%; and the rest 14.3% belonging to dozens of Christian churches.



¹⁷³ This data is taken from the 2010 census, and pertains to the “household population” of 92 million. See Philippine Statistics Authority, 2019 *Philippine Statistical Yearbook*, October 2019, p. -22. Accessed 2 June 2022, https://psa.gov.ph/sites/default/files/2019-PSY_1003.pdf.

For many decades, conflict between the central government and separatist armed groups has plagued the southern island of Mindanao, where pockets of marginalized Muslim communities are often caught in the crossfire. In recent years the militant group Abu Sayyaf has become increasingly radicalized and has sworn fealty to Al-Qaidah and ISIS.¹⁷⁴ The conflict recently peaked during a five-month siege of Marawi in 2017, which saw the total destruction of the city.

However, after the ratification of the Bangsamoro Organic Law in 2018, conflict and tension have significantly been reduced, with the previously separatist group called the Moro Islamic Liberation Front (MILF), now sitting in the Transitional Authority of the Bangsamoro Autonomous Region of Muslim Mindanao (BARM).

Constitutional Framework

The right to FoRB is enshrined and protected under Article 3 Section 5 of the 1987 Philippine Constitution. In full, it reads: “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.”¹⁷⁵

The Philippines Constitution also enshrines the principle of separation of Church and State in Article 2(6). In elucidating this principle, Article 6, Section 29(2) prohibits the appropriation of public funds to religious institutions and Article 9, Section 3(1) permits religious instruction in public schools only with the express written approval by the parents or guardians of the child.

In addition, the Philippines passed the 2017 Anti-Discrimination Law which “addresses the longstanding problem of the lack of definition and penalty for unjustly discrimination on the basis of ethnicity, race, religion or belief, sex, gender, sexual orientation, gender identity, gender expression, civil status, medical condition, or any other status.”¹⁷⁶

The Constitution also protects the rights of indigenous peoples. Article 12, Section 5 provides that “the State ... shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.” Article 14, stipulates in Section 17 that “the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.”

The religious beliefs and practices of indigenous peoples are further protected in the Indigenous Peoples Rights Act (IPRA) 1997. Section 33 stipulates that indigenous peoples shall have: “the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains.”

¹⁷⁴ See Center for International Security and Cooperation, Stanford University, *Mapping Militant Organizations: Abu Sayyaf Group*. Stanford University, February 2022. Accessed 2 June 2022, <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/abu-sayyaf-group>
See also International Crisis Group, *Tracking Conflict Worldwide*, April 2022. Accessed 2 June 2022, <https://www.crisisgroup.org/crisiswatch/print?page=1&location%5B0%5D=46&t=CrisisWatch+Database+Filter>.

¹⁷⁵ Constitution of the Philippines, 1987.

¹⁷⁶ “Act Prohibiting Discrimination on the Basis of Ethnicity, Race, Religion or Belief, Sex, Gender, Sexual Orientation, Gender Identity, Gender Expression, Civil Status and HIV Status, and Providing Penalties therefore”. Accessed 2 June 2022, <http://legacy.senate.gov.ph/lisdata/2691023124!pdf>.

In this regard, Section 4(a) of the Act notes indigenous peoples' spiritual and cultural connections to their land, while Section 32 guarantees their right to restitution for "spiritual property" taken without their consent.

Despite these constitutional and statutory protections, there have been cases of companies desecrating sacred, ancestral lands. One such case occurred in 1994 when a Canadian mining company began exploiting natural resources in Mount Canatuan, a sacred site located within the ancestral domain lands of the Subanon people, without first obtaining their consent.¹⁷⁷ After years of advocacy, the mining company eventually "*acknowledged that Mount Canatuan was a sacred site and admitted that they were wrong for desecrating it. They also admitted to their other misdeeds and agreed to pay the fines as stipulated by the Gukom.*"¹⁷⁸

The Philippines is a State Party to every human rights treaty, except the Convention for the Protection of All Persons from Enforced Disappearance.¹⁷⁹

Problematic Laws

Penal Code

The Penal Code contains provisions pertaining to religion. Article 132 makes it an offense for any public officer or employee to "*prevent or disturb the ceremonies or manifestations of any religion.*" Article 133 similarly makes it an offense for anyone to "*perform acts notoriously offensive to the feelings of the faithful*" in a place devoted to worship. Both provisions are overly broad and not directly tied to protecting an enumerated aim under the ICCPR. In this respect, both provisions fail to satisfy the Philippine's legal obligations under international law.

Decree No. 1083 (the Code of Muslim Personal Laws)

Due to the large number of Muslim Filipinos, the Government promulgated Presidential Decree No. 1083 (the Code of Muslim Personal Laws) in 1977 "*to ordain and promulgate a code recognizing the system of Filipino Muslim laws, codifying Muslim personal laws, and providing for its administration and for other purposes.*"¹⁸⁰ Decree No. 1083 established Shari'a courts in five special judicial districts, which are all located in the south of the country.¹⁸¹ Shari'a courts may only hear cases relating to personal laws affecting the family relations and property of Muslims; Shari'a law does not apply in criminal cases.¹⁸²

Under Article 16 of Decree No. 1083, "*any Muslim male at least fifteen years of age and any Muslim female of the age of puberty or upwards*" can marry with the permission of their male guardian.¹⁸³

¹⁷⁷ John Ahni Schertow, "Canadian Mining Firm Admits Wrongdoings To Subanon People," *Intercontinental Cry*, 25 May 2011. Accessed 1 June 2022, <https://intercontinentalcry.org/canadian-mining-firm-admits-wrongdoings-to-subanon-people/>. The case was also the subject of urgent communications from the Committee on the Elimination of Racial Discrimination to the government of the Philippines, in which the Committee urged the Philippines to "consult with all concerned parties in order to address the issues over Mount Canatuan in a manner that respects customary laws and practices of the Subanon people." See "Letter from Anwar Kemal to H.E. Mme Erlinda F. Basilio," 27 August 2010. Accessed 2 June 2022, <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Philippines27082010.pdf>.

¹⁷⁸ John Ahni Schertow, "Canadian Mining Firm Admits Wrongdoings To Subanon People."

¹⁷⁹ U.N. Treaty Body Database: *The Philippines*. Accessed 2 June 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN.

¹⁸⁰ Presidential Decree No. 1083 (the Code of Muslim Personal Laws), 1977.

¹⁸¹ Presidential Decree No. 1083.

¹⁸² U.S. State Department, *Philippines 2020 Report on International Religious Freedom*, 12 May 2021, p. 4. Accessed 2 June 2022, <https://www.state.gov/wp-content/uploads/2021/05/240282-PHILIPPINES-2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

¹⁸³ The code clarifies that "A female is presumed to have attained puberty upon reaching the age of fifteen." However, a female who reaches puberty at an age lower than 15 may marry.

In January 2022, President Duterte signed into law an Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof.¹⁸⁴ The Philippines ranks 12th in the world in terms of the absolute number of child marriages at 726,000, and one in six Filipino girls get married before they turn 18, while 2% are married before the age of 15.¹⁸⁵

While data collection on rates of child marriage in Muslim communities is difficult, members of those communities have vocally defended the practice as part of their culture.¹⁸⁶

The practice of child marriage is prohibited under international law, and its historical practice among religious groups in the Philippines constitutes discrimination on the basis of religion against those children. The Philippines has signed and ratified several international instruments that prohibit child marriage, including CEDAW and the CRC.



Recommendations to the Congress of the Philippines

- Amend Articles 132 and 133 of the Penal Code to bring them in line with international human rights standards by making the restrictions more precise and directly tied to one of the legitimate aims provided in the ICCPR;
- Create avenues for consultation about all relevant laws and regulations with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Ensure that all religious and belief communities are afforded the same protection under the law and without discrimination;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight;
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB;
- Engage Bangsamoro Transitional Authority's stakeholders and religious leaders in Mindanao on human rights and FoRB. In particular, engage civil society actors, community and faith leaders, and the public in Bangsamoro and other localities where child marriage was practiced to raise awareness of the prohibition on child marriage; and
- Use your position as an MP to call on companies that have violated indigenous people's rights to provide redress.

¹⁸⁴ Rep. Edcel C. Lagman, "Child marriage will soon be a relic," *The Manila Times*, 4 November 2021. Accessed 2 June 2022, <https://www.manilatimes.net/2021/11/04/opinion/columns/child-marriage-will-soon-be-a-relic/1820848>.

¹⁸⁵ UNICEF, *Child Marriage and Teenage Pregnancy: Key Issues in East Asia and the Pacific*, 2017. Accessed 2 June 2022, <https://www.unicef.org/eap/media/3926/file>.

¹⁸⁶ Geoffrey Maitem, "Philippine Muslim Leaders Urge Repeal of New Law Criminalizing Child Marriage," *Benar News*, 7 January 2022. Accessed 2 June 2022, <https://www.benarnews.org/english/news/philippine/child-marriage-01072022135850.html>.

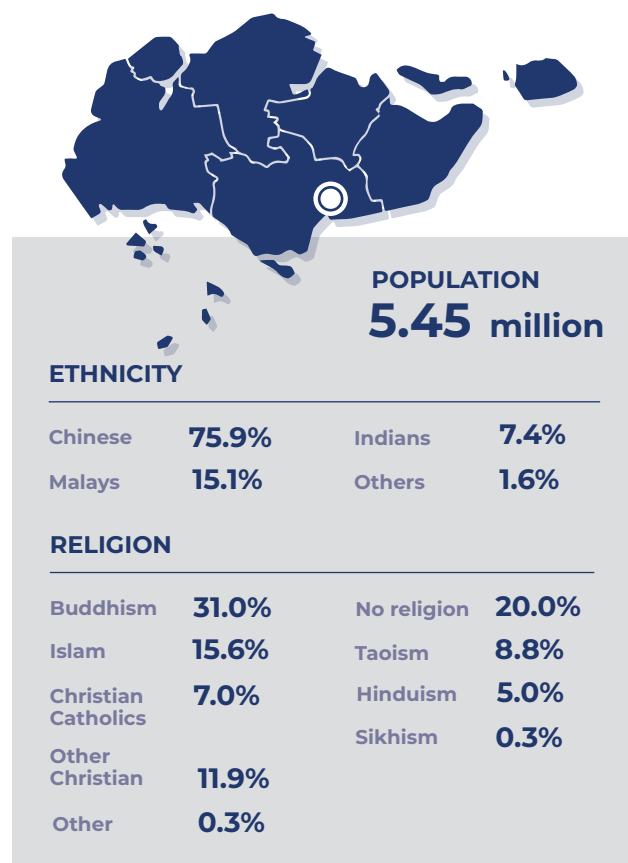


A girl walks past figurines depicting the Taoist deity Tua Pek Kong whilst holding joss sticks on the eve of the Lunar New Year at the Loyang Tua Pek Kong Temple in Singapore, 04 February 2019. EPA-EFE/WALLACE WOON

SINGAPORE

Singapore is a city-state island in Southeast Asia with a total population of 5.45 million, of whom 3.9 million are citizens and permanent residents, while 1.47 million are “non-residents” (mostly temporary workers).¹⁸⁷ The country is a parliamentary republic that is multicultural, multilingual and multi-religious with ethnically Chinese people making up 75.9% of the total number of citizens, Malays amounting to 15.1% of the citizenry, Indians 7.4%, and others 1.6% (2020 est.).¹⁸⁸

In a 2014 report, the Pew Research Center named Singapore the most religiously diverse country in the world.¹⁸⁹ According to the latest census, conducted in 2020, the religious background of the resident population aged 15 years and older



¹⁸⁷ See National Population and Talent Division, *Population in Brief* 2021, July 2021 p. 5. Accessed 2 June 2022, <https://www.population.gov.sg/files/media-centre/publications/population-in-brief-2021.pdf>.

¹⁸⁸ Ibid. p. 21. The census conducted in 2020, which gave a larger population, gave the following percentages for “resident population” (including both citizens and permanent residents): Chinese, 74%; Malays, 13.5%; Indians, 9.0%; and others, 3.2 %. See Department of Statistics, Ministry of Trade & Industry, Republic of Singapore, *Census of Population 2020 Statistical Release 1: Demographic Characteristics, Education, Language and Religion*, 2020, p. ix. Accessed 2 June 2022, <https://www.singstat.gov.sg/-/media/files/publications/cop2020/sr1/cop2020sr1.ashx>

¹⁸⁹ Pew Research Center, *Global Religious Diversity*, 2014, p. 4.

(totalling 3,459,093 people) is as follows: No religion, 20.0%; Buddhism, 31.0%; Taoism (including Chinese traditional beliefs), 8.8%; Islam, 15.6%; Hinduism, 5.0%; Sikhism, 0.3%; Christian Catholics, 7.0%; other Christian denominations, 11.9%; and other religions, 0.3%.¹⁹⁰

Singapore's constitution contains strong protections for FoRB, but the nation-state ranked among the top 10 countries in the world in terms of government restrictions on religion, according to the Pew Research Center.¹⁹¹

Constitutional Framework

Unlike several Southeast Asian countries that have a state religion or explicitly recognize a preference for their majority religion, Singapore is an overtly secular state without a stated preference for any religion. Indeed, Singapore practices a separation of Church and State that not only prohibits political parties to be based on religion but also requires religious leaders who want to participate in politics to “*remove their religious garb*.”¹⁹²

The Singapore Constitution protects the right to FoRB, notably including non-citizens and their religions. For example, Article 15(1) guarantees the right of “every person” to “*profess and practice his religion and to propagate it*.” Article 15(2) even empowers individuals to ensure that their taxes are not used “*for the purposes of a religion other than his own*,” while Article 16(3) ensures that “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.”

The Constitution also frames the right to FoRB in terms of the rights of religious groups. Article 15(3) lists those rights:

- To manage its own religious affairs;
- To establish and maintain institutions for religious or charitable purposes; and
- To acquire and own property and hold and administer it in accordance with the law.

Article 16(1) of the Constitution stipulates that “*there shall be no discrimination against any citizen of Singapore on the grounds only of religion, race, descent or place of birth*.” This applies for the administration of education, tuition payments and financial aid from a “public authority.” Article 16(2) further guarantees “*the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion*.”

The Constitution enshrines the principle of equal protection by the law in Article 12(2), which prohibits discrimination on the basis of religion, holding that “there shall be no discrimination against citizens of Singapore on the ground only of religion ... in any law” or in the appointment to, or employment in, any office under a public authority. However, the Article creates an exception for

¹⁹⁰ See Department of Statistics, Ministry of Trade & Industry, Republic of Singapore, *Census of Population 2020 Statistical Release 1: Demographic Characteristics, Education, Language and Religion*, 2020, p. 202. Accessed 2 June 2022, <https://www.singstat.gov.sg/-/media/files/publications/cop2020/sr1/cop2020sr1.ashx>.

¹⁹¹ Pew Research Center, *A Closer Look at How Religious Restrictions Have Risen Around the World*, 15 July 2019, p. 85. Accessed 2 June 2022, <https://www.pewresearch.org/religion/2019/07/15/a-closer-look-at-how-religious-restrictions-have-risen-around-the-world/>.

¹⁹² See Mohammad Alami Musa, “Enhancing Singapore’s secularism,” *The Straits Times*, 4 February 2016. Accessed 2 June 2022, <https://www.straitstimes.com/opinion/enhancing-singapores-secularism>.

religious groups, stipulating that the Article does not invalidate or prohibit provisions that restrict eligibility for religious positions, such as priesthood, to members of that religion.

Singapore has not ratified many of the core international human rights treaties, including the ICCPR, albeit it has ratified CEDAW (with reservations), CRC and CRPD.¹⁹³

Apart from constitutional protections for FoRB, Singapore has other laws aimed at realizing the right to FoRB. First, the Administration of Muslim Law Act (AMLA), originally enacted in 1966, became a “*proven model*” to facilitate the affairs of Malay Muslims, who are considered “*the indigenous people of Singapore*.”¹⁹⁴ Among others, it created a council to advise on matters relating to Islam in Singapore and the creation of Syariah Courts.¹⁹⁵ However, this law and the courts have been criticized for gender-biased interpretation that has been detrimental to Muslim women due to, for example, regulations about inheritance rights and division of assets in a divorce, as well as regulations on polygamy.¹⁹⁶

Singapore also established the Presidential Council for Religious Harmony, whose members are appointed on the advice of the Presidential Council for Minority Rights (PCMR). The role of the council is as follows:

- Examine all legislation to ensure that they are not disadvantageous to any racial or religious community;
- Consider matters affecting any racial or religious community referred by Parliament or the Government; and
- Advise the President on nominations to: Presidential Council for Religious Harmony, Malay Community Committee and Indian and Other Minorities Communities Committee.¹⁹⁷

Problematic Laws

The Sedition Act

The 1948 Sedition Act, revised in 2013, punishes acts that reflect a “*sedition tendency*,” defined as a tendency to, among others, “*promote feelings of ill-will and hostility between different races or classes of the population of Singapore*.”¹⁹⁸ Seditious acts under the Act include both speech and written materials and may result in sentences of up to five years imprisonment, a fine of \$5,000, or both.¹⁹⁹

¹⁹³ U.N. Treaty Body Database: Singapore. Accessed 2 June 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=157&Lang=EN.

¹⁹⁴ APHR interview with Hon. Mr. Mohamed Irshad, nominated Member of Parliament, November 3, 2020.

¹⁹⁵ Administration of Muslim Law Act (AMLA), 1966.

¹⁹⁶ Association of Women for Action and Research (AWARE), “Administration of Muslim Law Act (AMLA): AWARE’s submissions to the government consultation,” 13 April 2017. Accessed 2 June 2022, <https://www.aware.org.sg/2017/04/administration-of-muslim-law-act-aml-a-awares-submissions-to-the-government-consultation/>.

¹⁹⁷ Office of the President of the Republic of Singapore, “Presidential Council for Minority Rights: Appointing a Member of the Council,” 16 July 2021. Accessed 2 June 2022, <https://www.istana.gov.sg/Presidents-Office/Other-Presidential-Councils>.

¹⁹⁸ Office of the President of the Republic of Singapore, “Presidential Council for Minority Rights: Appointing a Member of the Council,” 16 July 2021. Accessed 2 June 2022, <https://www.istana.gov.sg/Presidents-Office/Other-Presidential-Councils>.

¹⁹⁹ The Sedition Act, 1948, Section 3(1)(e). The other tendencies include: (a) to bring into hatred or contempt or to excite disaffection against the Government; (b) to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore; (d) to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore.

¹⁹⁹ Section 4(1).

While the Sedition Act does not explicitly mention religion, the characteristics of Singapore society, in which ethnicity and religion are so strongly intertwined, imply that words that may be interpreted as promoting ill-will towards a religion may also be interpreted to promote hostility between racial groups, which is prohibited by the Act. One such case occurred in 2009 in Singapore's first sedition trial, where a District Court found a Christian couple guilty of sedition for mailing evangelist tracts to members of the public, some of whom found the content of the tracts offensive.²⁰⁰ The District Court sentenced the couple to eight weeks in prison.

The right to manifest religion or belief includes the right to “write, issue and disseminate relevant publications,” which are protected forms of proselytization.²⁰¹ While governments may restrict the manner in which individuals and communities manifest religion or belief in teaching, practice, worship, or observance, such restrictions must be non-discriminatory and necessary to achieve a legitimate aim. The Sedition Act is overly broad, impermissibly vague, and in pursuit of an illegitimate aim. For these reasons, the Act contravenes human rights law.

The Maintenance of Religious Harmony Act

The Maintenance of Religious Harmony Act (MRHA) 1990 permitted the Minister of Home Affairs to make a “restraining order against” any “religious leader of any religious group or religious” if the Minister believes the person is causing feelings of enmity or hostility between different religious groups, promoting political causes, carrying out subversive activities, or encouraging disaffection against the Government under the guise of practicing religion.²⁰² A person put under a restraining order under this law loses various rights, including the right to address the members of any religious group on any subject “as may be specified in the order without the prior permission of the Minister.”²⁰³ Persons found guilty of violating the restraining order are liable for a fine not exceeding SGD 10,000 (USD 7,180), a prison sentence of two years, or both.²⁰⁴ In its 30 year history, the Government has never issued a restraining order under the MRHA.

The Singapore Parliament amended the MRHA in 2019 in order to deal with new threats arising from the ubiquity of the Internet.²⁰⁵ The amended Act expands the criteria under which the Minister may issue a restraining order to include preventing “foreign influence” of religious groups, which may “undermine religious tolerance between different religious groups in Singapore” and “present a threat to the public peace and public order in Singapore.”²⁰⁶ It does so by requiring key leadership roles in religious organizations to be filled by citizens or permanent residents and that they disclose foreign donations of 10,000 Singapore dollars (USD 7,600) or more, and declare any affiliation to foreign groups that are in a position to exert influence.

²⁰⁰ Public Prosecutor v Ong Kian Cheong and Another [2009] SGDC 163; See also *Christian Today*, “Singapore evangelists found guilty in first sedition trial,” 2 June 2009. Accessed 2 June 2022, <https://www.christiantoday.com/article/singapore.evangelists.found.guilty.in.first.sedition.trial/23492.htm>.

²⁰¹ The 1981 Declaration, Article 6(d). See also, Special Rapporteur Abelfattah Amor, Country Mission Report, Greece, para. 12, (“proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration.”)

²⁰² The Maintenance of Religious Harmony Act (1990), Section 8. See also 2020 International Religious Freedom Report: Singapore, p. Section 8(2)(a).

²⁰⁴ Section 16. The fee increases to 20,000 and the prison sentence to three years in cases of second-time offenders.

²⁰⁵ U.S. State Department, 2020 International Religious Freedom Report: Singapore, 12 May 2021, p.4. Accessed 2 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/singapore/>.

²⁰⁶ Maintenance of Religious Harmony (Amendment) Act 2019.

The amended MRHA also consolidates offenses that were previously found in the Penal Code, which criminalized acts relating to religion, including acts that: “Urge force or violence on the basis of religion, or against a religious group or its members;” “Incite feelings of enmity, hatred, ill-will or hostility against a religious group;” or “Insult the religion or wound the religious feelings of another person.”²⁰⁷

The MRHA is in tension with human rights law and standards in several ways. First, the Act could have a chilling effect on legitimate forms of religious expression, such as proselytization and other public manifestations of religious beliefs, due to the Act’s vague and broad parameters of prohibited conduct. Second, the MRHA could be used to quash dissent or criticism of the Government under the pretext of preserving religious harmony. Indeed, the lack of clarity regarding the meaning of “encouraging disaffection against the government under the guise of practicing religion,” for example, leaves the Act vulnerable to arbitrary enforcement.



Recommendations to the Parliament of Singapore

- Amend the Sedition Act to remove the crime of promoting “*feelings of ill-will and hostility between different races or classes of the population of Singapore*” and to explicitly permit proselytization;
- Amend the Administration of Muslim Law Act to improve protections for Muslim women in the administration of inheritance, marriage and divorce, and polygamy, and remove Singapore’s reservations to CEDAW;
- Amend the MRHA to make it compliant with international law by, among other changes, explicitly allowing public manifestations of religious beliefs;
- Create avenues for consultation about all relevant laws and regulations, including the amendment process of those mentioned above, with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Ensure that all religious and belief communities are afforded the same protection under the law and without discrimination;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight;
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB; and
- Become a State Party to the nine international human rights treaties

²⁰⁷ Singapore Penal Code, Article 298; MRHA, Section 17.

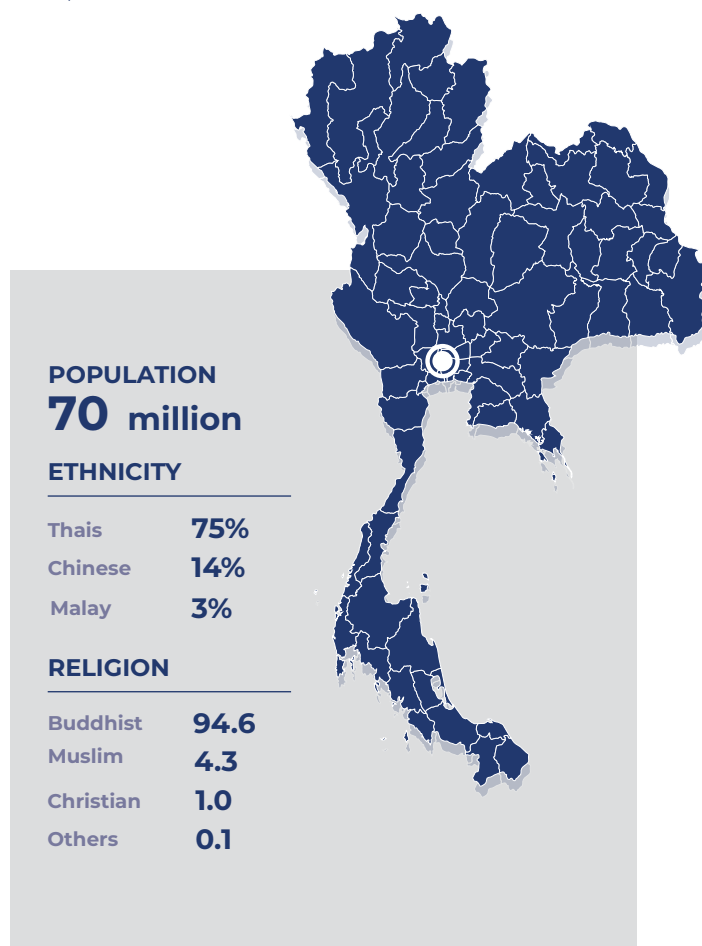


Thai Buddhist monks light candles before walking around the temple to mark Makha Bucha day at Wat Benchamabophit Dusitvanaram, also known as the Marble Temple in Bangkok, Thailand, 16 February 2022. EPA-EFE/NARONG SANGNAK

THAILAND

Thailand is a constitutional monarchy of nearly 70 million people, with 2,877,144 migrant workers, most of them from neighbouring countries such as Myanmar, Cambodia and Laos.²⁰⁸ The Thai Government does not gather data on ethnicity, however, the World Directory of Minorities and Indigenous Peoples estimates that Thailand has 13 million Thai Isan/Thai Lao; 9.5 million people of Chinese descent; 1.5 million Malay Muslims; 1.4 million Khmer; over 900,000 highland indigenous people; and roughly 10,000 people from indigenous sea nomad groups.²⁰⁹ Another study concludes that the population consists of ethnic Thais (75%); Chinese (14%); and Malay (3%).²¹⁰

The religious demography of Thailand is as follows: Buddhist, 94.6%; Muslim, 4.3%;



²⁰⁸ See figures provided by the Thai Ministry of Labour in Australian Aid, *Triangle in ASEAN Briefing Note*, July–September 2019 Accessed 2 June 2022, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_614383.pdf.

²⁰⁹ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Thailand*, June 2019. Accessed 2 June 2022, <https://minorityrights.org/country/thailand/>.

²¹⁰ U.S. State Department, *Thailand 2020 International Religious Freedom Report*, 12 May 2021, p. 2. Accessed 2 June 2022, <https://www.state.gov/wp-content/uploads/2021/05/240282-thailand-2020-international-religious-freedom-report.pdf>

Christian, 1.0%; others, 0.1% (including Hindus, Confucionists, Sikhs and “no religion”).²¹¹

Islam is the dominant religion in three of the four southernmost provinces (Narathiwat, Yala, and Pattani) on the Malaysian border, commonly referred to as the Deep South. The majority of Muslims in the Deep South are ethnically Malay, however elsewhere in Thailand the Muslim population also includes descendants of people from China, Cambodia, South Asia, Indonesia, and ethnic Thai as well.²¹² Statistics provided by the Religious Affairs Department (RAD) of the Ministry of Culture indicate that 99% of Muslims are Sunni.²¹³

Successive governments have sought to quash a conflict between the Thai security forces and a separatist insurgency in the Deep South that was reignited in 2004 and has killed more than 7,000 people ever since, of whom an estimated 90% are ethnic Thai or Malay civilians.²¹⁴ The ongoing conflict stems in part from the military presence in the deep South and Bangkok’s refusal to cede autonomy to the region.

Constitutional Framework

There are a number of provisions that relate to FoRB in the 2017 Constitution. Section 31, for example, holds that “A person shall enjoy full liberty to profess a religion, and shall enjoy the liberty to observe or perform rites according to [one’s] own religion, provided that it shall not be prejudicial to the duties of Thai people, be harmful to the security of the State, and be contrary to the public order or good morals of people.”²¹⁵

Thailand is a State Party to the ICCPR and while most of Section 31’s formulation of restrictions on FoRB are in keeping with Article 18(3)’s permissible restrictions, the phrase “be harmful to the security of the state” seems to conflate “public safety” with “security of the State.”

In addition, the phrase “be prejudicial to the duties of Thai people” does not appear to be a legitimate restriction under Art. 18(3) of the ICCPR. While that Article does permit restrictions in order to protect “the fundamental rights and freedoms of others,” duties are distinct from fundamental rights and freedoms. As such, such restrictions likely violate Thailand’s obligations under human rights law.

The Constitution explicitly favors the Buddhist religion. Section 67, for example, calls for the State to “promote and support education and dissemination of dharmic principles of Theravada Buddhism,” and “establish measures and mechanisms to prevent Buddhism from being undermined in any form,” as well as “encourage Buddhists to participate in implementing such measures or mechanisms.”²¹⁶ Section 7 establishes the King as a “Buddhist and Upholder of religions,” while Section 50 places the following duties on people in Thailand: “to uphold the Nation, religions, the King, and the democratic regime of government with the King as Head of the State.”

²¹¹ See National Statistical Office of Thailand, Population by religion, sex and area, 2015. Accessed 2 June 2022, <http://web.nso.go.th/en/survey/popchan/data/2015-2016-Statistical%20tables%20PDF.pdf>.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ See Deep South Watch, *Summary of Incidents in Southern Thailand*, October 2021. Accessed 2 June 2022, <https://deepsouthwatch.org/en/node/12815>.

²¹⁵ Constitution of the Kingdom of Thailand.

²¹⁶ Ibid. p. 20.

Problematic Laws

A military special order issued on 22 August 2016,²¹⁷ still in effect today, guarantees the state's promotion and protection of “*all recognized religions*” in the country, but mandates that all state agencies monitor the “*right teaching*” of all religions to ensure they are not “*distorted to upset social harmony*.”²¹⁸

Defaming or insulting Buddhism and Buddhist clergy is specifically prohibited by Thailand's Penal Code. Under Section 206 of the Penal Code, violators may face between two and seven year's imprisonment, fines from 2,000 to 14,000 Baht (USD 60 to 415), or both.²¹⁹ The penal code also prohibits in Section 207 the disturbance of religious places or services, punishing it with imprisonment not exceeding one year, a fine up to 2,000 baht (USD 60), or both.²²⁰

Both the special order and provisions of the Penal Code are incompatible with human rights law and standards. First, both sections seek to protect the religious feelings of people by limiting what other people can say and do. Human rights law permits governments to limit freedom of expression in certain respects, for example, in the case of hate speech that constitutes incitement to discrimination, hostility or violence on religious grounds. However, “*wounding religious feelings*” is not one of the legitimate grounds upon which to do so.

The 1928 Sangha Act forbids the ordination of women as Buddhist nuns in Thailand. Known as *bhikkhunis*, nuns often travel to Sri Lanka to be ordained. In 2015, the National Human Rights Commission recommended the government to amend the law. However, in the years since, the Sangha Supreme Council continued to prohibit women from becoming nuns. Of the approximately 239,000 Buddhist clerics in the country, only between 250 and 300 are women.²²¹

While the Constitution guarantees equal protection of the law and prohibits discrimination based on gender or religion, there are exceptions for cases involving “*compliance with religious principles*.” As a result, *bhikkhunis* are excluded from gender equality protection by the government, which neither formally opposes nor supports female ordination. Without any formal recognition, female-led monasteries are ineligible for the benefits offered to officially registered Buddhist temples, such as tax exemptions, free medical care, and social welfare programs.

Islamic Family and Inheritance Law also contain unfavorable provisions for Muslim women in Thailand by neglecting equal rights during divorce processes in court. Moreover, the Sharia Courts lack a system by which they can monitor alimony payments from divorced husbands to their former wives, which limits the ability of the courts to ensure the implementation of its decisions.²²² Women are also not allowed to be Dato Yuthitham (Muslim Judge) because only men can occupy that position.²²³

²¹⁷ In 2014, the Thai military junta forced the democratically elected Prime Minister to resign from power in a bloodless coup d'état. The military formed the National Council for Peace and Order (NCPO) led by former military General Prayuth Chan-ocha, to run the country from 2014 until 2019. During these years, orders from the government were martial in nature.

²¹⁸ See U.S. State Department, *Thailand 2018 International Religious Freedom Report*, May 2019. Accessed 2 June 2022, <https://www.state.gov/wp-content/uploads/2019/05/thailand-2018-international-religious-freedom-report.pdf>. Many of the special orders issued by General Prayuth were revoked by Prayuth himself when he became Prime Minister after the elections held in 2019, but not this one, and the Constitution which came into effect at that time recognized as valid all orders issued by the NCPO as valid unless explicitly repealed.

²¹⁹ Thai Criminal Code, Section 206.

²²⁰ Ibid, Section 207.

²²¹ See Isobel Van Hagen, “Thailand's Bhikkhunis Want Recognition and Respect,” *Atlas Obscura*, 17 December 2020. Accessed 2 June 2022, <https://www.atlasobscura.com/articles/thailand-female-buddhist-monks>.

²²² United Nations Committee on Elimination of all Forms of Discrimination Against Women (CEDAW), *Joint CEDAW Shadow Report on Situation of the Rights of Malay Muslim Women In Southern Thailand*, July 2017, Submitted by the Patani Working Group For Monitoring of International Mechanisms, Thailand. Accessed 2 June 2022, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/THA/INT_CEDAW_NGO_THA_27699_E.pdf.

²²³ Ibid.

The principle of non-discrimination is a cornerstone of human rights law. Enshrined in Article 2 and Article 3 of the ICCPR, as well as CEDAW, States Parties to the ICCPR are obligated to ensure that, both in law and in practice, women receive equal protection of the law.



Recommendations to the National Assembly of Thailand

- Repeal the 22 August 2016 Special Order and end all monitoring of religious activities in Thailand;
- Decriminalize defamation, including of religions, and repeal Sections 206 and 207 of the Penal Code;
- Amend the 1928 Sangha Act to allow Buddhist women to become ordained as nuns;
- Create avenues for consultation about all relevant laws and regulations with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Use your position in parliament to call for an independent investigation into all allegations of human rights abuses in the Deep South;
- Ensure that all religious and belief communities are afforded the same protection under the law, and without discrimination;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight; and
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB.



East Timorese Catholic worshippers receive black soot marks on their foreheads as they observe Ash Wednesday at a Catholic church in Dili, Timor Leste, 06 March 2019. EPA-EFE/ANTONIO DASIPARU

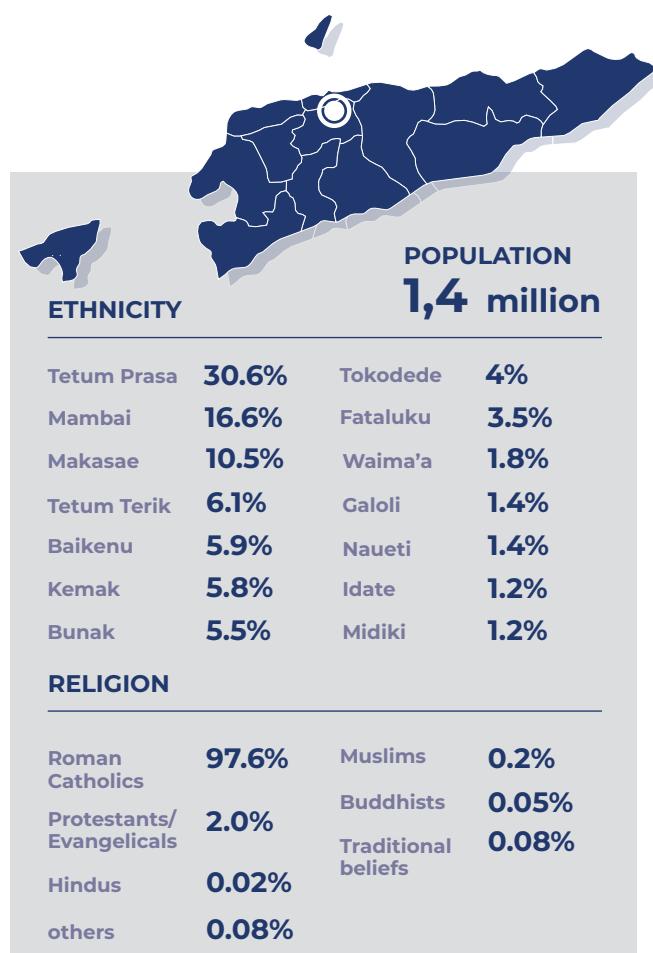
TIMOR LESTE



Timor Leste is the youngest nation in the Southeast Asian region, gaining independence from Indonesia after a referendum in 1999. Although not part of ASEAN, Timor Leste carries an Observer status at the Association, whose Member States have agreed in principle to accept Timor Leste as a new member in the future.²²⁴

Timor Leste has a population of 1.4 million, which comprises the following ethnic groups: Tetum Prasa (30.6%), Mambai (16.6%), Makasae (10.5%), Tetum Terik (6.1%), Baikenu (5.9%), Kemak (5.8%), Bunak (5.5%), Tokodede (4%), Fataluku (3.5%), Waima'a (1.8%), Galoli (1.4%), Naueti (1.4%), Idate (1.2%), Midiki (1.2%), and others.²²⁵

Due to 400 years of colonization by the Portuguese, the country is overwhelmingly



²²⁴ "The former Portuguese colony has been an ASEAN observer since 2002 but is still struggling to meet the strict criteria of the grouping including trade liberalisation requirements, diplomats and analysts have said." ASEAN Secretariat, "East Timor Needs Five Years to Join ASEAN: PM," 27 July 2006. Accessed 2 June 2022, <https://web.archive.org/web/20070609190633/http://www.aseansec.org/afp/154.htm>.

²²⁵ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Timor-Leste*, May 2020. Accessed 2 June 2022, <https://minorityrights.org/country/timor-leste/>. For complete data, see General Directorate of Statistics of Timor-Leste, *2015 Census Publications*. Accessed 2 June 2022, <https://www.statistics.gov.tl/category/publications/census-publications/2015-census-publications/>.

Roman Catholic. According to the latest census, conducted in 2015, the religious demography of Timor Leste is as follows: Roman Catholics, 97.6%; Protestants/Evangelicals, 2.0%; Muslims, 0.2%; Buddhists, 0.05%; Hindus, 0.02%; traditional beliefs, 0.08%; and “others”, 0.08%”²²⁶

Constitutional Framework

Timor Leste’s 2002 Constitution contains several provisions protecting the right to FoRB. Article 45 guarantees *“the freedom of conscience, religion and worship and the religious denominations that are separated from the State”* to all, as well as the right to not be discriminated against due to religious belief, the right to be a conscientious objector, and the freedom to teach one’s religion.”²²⁷

The Constitution also respects the right of religious organizations to govern their own affairs. Article 12(1) of the Constitution, for example, *“recognizes and respects the different religious denominations that are free in their organization and in the exercise of their own activities, with due observance of the Constitution and the law.”* Meanwhile Article 12(2) notes that *“[t]he State promotes the cooperation with the different religious denominations that contribute to the well-being of the people of East Timor.”*

Article 16 of the Constitution states that *“all citizens are equal before the law”* and that *“no one will be discriminated against”* on any grounds, including religion. Furthermore, Article 23 stipulates that *“fundamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights.”*

While the Timor Leste constitution does not establish a state religion, it does recognize the unique role and importance of the Catholic Church in Timor Leste as a consequence of its involvement and support in the country’s struggle for liberation. The preamble of the constitution notes that *“the Catholic Church in East Timor has always been able to take on the suffering of all the People with dignity, placing itself on their side in the defence of their most fundamental rights.”*

In explaining this relationship, the U.S. State Department notes that a concordat exists between the government and the Holy See, which *“establishes a legal framework for cooperation, grants the Catholic Church autonomy in establishing and running schools, provides tax benefits, safeguards the Church’s historical and cultural heritage, and acknowledges the right of its foreign missionaries to serve in the country.”*²²⁸ In 2020, the government allocated five million dollars to the Catholic Episcopal Conference of Timor-Leste for distribution among the country’s three Catholic dioceses, generating tensions between the Catholic Church and non-Catholic religious groups.²²⁹

²²⁶ See General Directorate of Statistics of Timor-Leste, 2015 *Census Publications*.

²²⁷ Constitution of Timor Leste (2002), art. 45(1–4).

²²⁸ According to Britannica, a *concordat* is “a pact concluded between the ecclesiastical authority and the secular authority on matters of mutual concern; most especially a pact between the Pope, as head of the Roman Catholic Church, and a temporal head of state for the regulation of ecclesiastical affairs in the territory of the latter. Matters often dealt with in concordats include: the rights and liberties of the church; the creation and suppression of dioceses and parishes; the appointment of bishops, pastors, and military chaplains, sometimes with provision for their support; ecclesiastical immunities (e.g., exemption from military service); church property; questions relating to marriage; and religious education.” Accessed 2 June 2022, <https://www.britannica.com/topic/concordat>.

²²⁹ U.S. State Department, 2020 *Report on International Religious Freedom: Timor-Leste*, 12 May 2021, p. 4. Accessed 2 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/timor-leste/>.

There have also been reports of discrimination and intimidation against non-Catholic religious groups. Obtaining marriage certificates, for instance, has been much more difficult for non-Catholics than Catholics in East Timor, while there were reports of someone hurling rocks at non-Catholic Christians at a church service.²³⁰

Abel Piras da Silva, a Timorese Member of Parliament and Chair of the Infrastructure Committee, commented on these incidents:

“Freedom of religion or belief is a fundamental right for human beings. We are a homogenous society, mostly Catholics ... Because we have a predominant religion, when we see new religions introduced into the country, especially the Christian branches from Brazil, there is some resistance from the Church, but not from the institutional level, but the grassroots.”²³¹

Some of the Christian denominations that Da Silva referred to include the Jehovah’s Witnesses and 7th Day Adventists. Da Silva continued:

“We, as a country, still need to embrace diversity. That needs time, efforts and campaigns of the religious leaders and the communities in the rural areas ... Because Timor Leste has been a Catholic country for so long and the majority of people are Catholics, some of us are not familiar with the idea of diversity. So the challenge is to promote the idea of religious diversity in rural areas.”²³²

Timor Leste is a State Party to seven of the core international human rights treaties, including the ICCPR.²³³

The laws regarding the right to FoRB in Timor Leste are in line with international human rights standards. It appears from reports that the violations of the right to FoRB occur sporadically, and not as a result of the consistent enforcement of existing laws.

²³⁰ Ibid.

²³¹ APhR interview with Hon. Mr. Abel Piras Da Silva, 19 October 2020

²³² Ibid.

²³³ U.N. Treaty Body Database: Timor Leste. Accessed 2 June 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=en.



Recommendations to the National Parliament of Timor Leste

- Ensure that the right to FoRB is fully protected in all relevant laws and regulations, and, where necessary, revise or revoke legislation to bring it into line with international human rights law and standards;
- Ensure that all religious and belief communities are afforded the same protection under the law and without discrimination;
- Engage and hold training for stakeholders, including MPs, and religious and community leaders on the subjects of religious diversity, pluralism, and FoRB;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight; and
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB;



Buddhist nuns pray at a ceremony opening a new pagoda outside Hanoi, Friday 10 October, 2003.
EPA PHOTO/ JULIAN ABRAM WAINWRIGHT

VIETNAM

The Socialist Republic of Vietnam is a single-party communist state with a population of 96 million people comprising 54 officially recognized ethnic communities, the majority of which are Kinh (Viet) (85.3%), Tay (1.9%), Thai (1.9%), Muong (1.5%), Mong (1.4%), Khmer (1.4%), Nung (1.1%), and Dao. (0.9%), according to the latest census, conducted in 2019.²³⁴

The Government of Vietnam's statistics regarding religious adherence only take into account religious organizations officially recognized by the government, leaving many adherents to some folk religions invisible in official statistics. Additionally, according to observers, *"many religious adherents choose not to make their religious affiliation public for fear of adverse consequences, resulting in substantial discrepancies among various estimates."*²³⁵

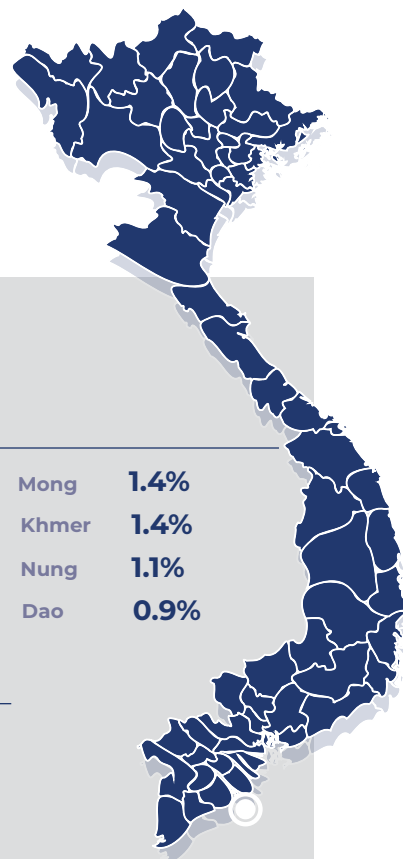
POPULATION 96 million

ETHNICITY

Kinh (Viet)	85.3%	Mong	1.4%
Tay	1.9%	Khmer	1.4%
Thai	1.9%	Nung	1.1%
Muong	1.5%	Dao	0.9%

RELIGION

No religion	86.3%
Catholics	6.1%
Buddhists	4.8%
Hoa Hao	1.0%
Protestant	1.0%
Cao Dai	0.6%
Muslims	0.1%



²³⁴ General Statistics Office of Vietnam, *Completed results of the 2019 Viet Nam population and housing census*, 2020, p. 43. Accessed 2 June 2022, <https://www.gso.gov.vn/wp-content/uploads/2019/12/Ket-qua-toan-bo-Tong-dieu-tra-dan-so-va-nha-o-2019.pdf>.

²³⁵ U.S. State Department, *2020 International Religious Freedom Report: Vietnam*, 12 May 2021, p. 3. Accessed 2 June 2022, <https://www.state.gov/reports/2020-report-on-international-religious-freedom/vietnam/>.

The official governmental religious breakdown according to the latest census is as follows: No religion, 86.3%; Catholics, 6.1%; Buddhists, 4.8%; Hoa Hao, 1.0%; Protestants, 1.0%; Cao Dai, 0.6%; ; and Muslims, 0.1%, with the rest belonging to an assortment of traditional religions.²³⁶ In Vietnam, the State categorizes religions into those that are sanctioned and recognized by the State and those that are not. The government officially recognizes 39 religious organizations²³⁷ and has granted operating licenses to four other religious organizations,²³⁸ which, altogether, accounts for over 25 million religious followers from 16 different religions.²³⁹

This control over religious activities by the government has forced many Vietnamese to avoid participating in their religion if it is not officially sanctioned, for fears of persecution. In one instance, Vietnam consolidated all Buddhist organizations into the government-sanctioned Vietnam Buddhist Sangha in 1981 and required all Buddhist monks to join, which effectively banned all other Buddhist groups, including the Unified Buddhist Church of Vietnam, which remains banned to this day.²⁴⁰

“Thang D. Nguyen, CEO and President of Boat People SOS, explained: “The problem of religious communities in Vietnam is not about the dichotomy between majority and minority. It is more like between the state sanctioned and the non-state-sanctioned religions.”²⁴¹

One academic at Vietnam National University explained: “Vietnamese authorities do not know how to distinguish between teaching religion and missionary work. Any teaching about knowledge concerning religion, even Buddhism, is undermined.”²⁴² Cases like the demolition in 2016 of the Lien Tri Temple – a century-old pagoda located in the Thu Thiem District of Ho Chi Minh City – illustrate the government’s distaste for independent religious groups.²⁴³

Another notorious instance of religious persecution is the persecution of religious freedom advocates as in the case of Nguyen Cac Truyen who has been harassed by the Vietnamese authorities for his advocacy on human rights and religious freedom.²⁴⁴

As a lawyer, Mr. Nguyen used to provide pro-bono legal assistance to families of political prisoners, victims of land grabbing and persecuted religious communities in Southern Vietnam. He was arrested on 30 July 2017, and later sentenced, along with five other human rights activists, to 11 years’ imprisonment and three years of house arrest under Article 79 of the 1999 Penal Code for “carrying out activities aimed at overthrowing the people’s administration.” He remains in prison.

The United States’ State Department annually designates any government that has engaged in or tolerated “particularly severe violations of religious freedom” as a Country of Particular Concern. Vietnam is listed as a Country of Particular Concern for 2022.

²³⁶ General Statistics Office, *Completed results of the 2019 Viet Nam population and housing census*, p. 221.

²³⁷ They are: Buddhism, Islam, the Baha’i Faith, Catholicism, Protestantism, Church of Jesus Christ, Hoa Hao Buddhism, Cao Dai, Buu Son Ky Huong, Tinh Do Cu Si Phat Hoi, Tu An Hieu Nghia, Phat Duong Nam Tong Minh Su Dao, Minh Ly Dao Tam Tong Mieu, Cham Brahmanism, Hieu Nghia Ta Lon Buddhism, and the Seventh-day Adventist Church.

²³⁸ The Assemblies of God, Ta Lon Dutiful and Loyal Buddhism, Vietnam Full Gospel Church, and Vietnam United Gospel Outreach Church have “registrations for religious operation” but are not recognized as official organizations. See U.S. State Department, 2020 *International Religious Freedom Report: Vietnam*, p. 5.

²³⁹ United States Commission on International Religious Freedom (USCIRF), *Annual Report 2022: Vietnam*, April 2022. Accessed 2 June 2022, <https://www.uscifr.gov/sites/default/files/2022-04/2022%20Vietnam.pdf>.

²⁴⁰ Ibid.

²⁴¹ APHR interview with Thang D. Nguyen.

²⁴² APHR written interview with Professor Dr. Nguyen D. Quanghung of the Vietnam National University, November 2020.

²⁴³ See Democratic Voice of Vietnam, *Reports of FoRB Violations*, Accessed 2 June 2022, <https://dvov.org/reports-of-forb-violations/>.

²⁴⁴ United States Commission on International Religious Freedom (USCIRF), *Profile: Nguyen Bac Truyen*, Accessed 2 June 2022, <https://www.uscifr.gov/religious-prisoners-conscience/current-rpocs/nguyen-bac-truyen>.

Vietnam has ratified a number of international human rights treaties, including the ICCPR.²⁴⁵

Constitutional Framework

Article 24 of Vietnam's Constitution, adopted in 2014, enshrines the principle of FoRB. It holds that *"Everyone has the right to freedom of belief and religion, and has the right to follow any religion or to follow no religion. All religions are equal before the law."* The article also obligates the State to respect and protect *"the freedom of belief and of religion,"* and prohibits anyone from infringing *"on the freedom of belief and religion or to take advantage of belief and religion to violate the laws."*

The National Assembly is entrusted, under Article 70, with deciding state policies on ethnicities and religion.

Problematic Laws

The Law on Belief and Religion

Vietnam's National Assembly passed the Law on Belief and Religion (LBR) in 2016; it entered into force on 1 January 2018.²⁴⁶ The LBR clarifies the contours of this right, holding that people who hold beliefs have the right to express their beliefs, practice their religion at home and in places of worship, to participate in various kinds of religious activities, to serve in religious rituals and celebrations, and to engage in religious studies.

The LBR also obligates the government to ensure that the law recognizes the right to conduct religious activities and to maintain and develop good cultural and ethical values of religions and beliefs. Finally, the LBR also holds that all religions are equal before the law.

Various human rights organizations have already written extensively about the law and its limitations. Here are the most salient problems with the law:

While the LBR reiterates the Vietnamese citizens' right to FoRB, it also places impermissible limits on the exercise of those beliefs. For example, the LBR states that individuals may not use the right of belief and religious freedom to undermine peace, national independence, and unification; incite violence or propagate wars; proselytize in contravention of the state's laws and policies; divide people, nationalities, or religions; cause public disorder; infringe upon the life, health, dignity, honor or property of others; impede the exercise of civic rights and performance of civic obligations; or conduct *"superstitious activities"* or otherwise violate the law.²⁴⁷

Such limitations are at odds with the spirit and text of Article 18 of the ICCPR, which does not include such broad restrictions as legitimate restrictions. Furthermore, proselytization is permitted under Article 18 and restrictions on spreading religious beliefs must meet the tests outlined in Article 18(3).

²⁴⁵ U.N. Treaty Body Database: Vietnam. Accessed 2 June 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN.

²⁴⁶ Law on Belief and Religion (2016); see also, United States Commission on International Religious Freedom, *Country Update: An Assessment of Vietnam's Law on Belief and Religion*, November 2019. Accessed 2 June 2022, https://www.uscifr.gov/sites/default/files/2019%20Vietnam%20Country%20Update_2.pdf.

²⁴⁷ U.S. State Department, 2020 *International Religious Freedom Report*: Vietnam, p. 4.

To be legally recognized in Vietnam, religious organizations must apply for registration. The application is not a mere formality; it requires religious organizations to have operated for five years before applying for registration, to submit applications to the local Committee for Religious Affairs (CRA), and to provide extensive information about their activities to the authorities. The UN Special Rapporteur on FoRB has stated unequivocally that registration “*should not be compulsory*” and “*should not be a precondition for practicing one’s religion, but only for the acquisition of a legal personality and related benefits.*”

The law specifies that a wide variety of religious activities require advance approval or registration from authorities at the central and/or local levels. These activities include “*belief activities*” (defined as traditional communal practices of ancestor, hero or folk worship); “*belief festivals*” held for the first time; the establishment, division, or merger of religious affiliates; the ordination, appointment, or assignment of religious administrators (or clergy with administrative authority); establishment of a religious training facility; conducting religious training classes; holding major religious congresses; organizing religious events, preaching or evangelizing outside of approved locations; traveling abroad to conduct religious activities or training; and joining a foreign religious organization.

Law on Military Service

Article 30 of the Law on Military Service stipulates the country’s military conscription, which is universal and mandatory for males between 18 and 25 years of age, although there are exceptions. None of the exceptions are related to religious belief.

Such an obligation goes against human rights law, which requires governments to provide alternatives to military service for individuals who genuinely hold religious or other beliefs that forbid the performance of military service. Indeed, the Special Rapporteur on the Freedom of Religion or Belief has written that “*conscientious objectors ... who refuse to serve in the army due to their religious beliefs, [should] be offered an alternative civilian service which is compatible with the reasons for conscientious objection.*”²⁴⁸

²⁴⁸ U.N. Human Rights Council, *Report of the Special Rapporteur on FoRB, Asma Jahangir*, U.N. Doc. A/HRC/10/8/Add.4, 12 January 2009, para. 68.



Recommendations to the National Assembly of Vietnam

- Repeal or substantially amend the LBR to bring it in line with human rights law and standards, in particular by:
 - Removing all restrictions that do not comply with the permissible restrictions listed in Article 18(3) of the ICCPR;
 - Removing the registration requirements for religious organizations; and
 - Removing the advance approval requirement for religious activities.
- In amending the Law on Belief and Religion, create avenues for consultation about all relevant laws and regulations with religious or belief community leaders and representatives, legal experts and civil society, as well as the UN Special Rapporteur on FoRB;
- Demand that the authorities immediately and unconditionally drop all charges against Nguyen Bac Truyen and release him;
- Ensure that all religious and belief communities are afforded the same protection under the law and without discrimination;
- Integrate the right to FoRB in parliamentary processes, including lawmaking, budgeting and oversight; and
- Engage and hold interfaith discussions involving MPs, religious and community leaders, civil society organizations, and other relevant stakeholders on the subjects of religious diversity and FoRB;

CONCLUSIONS AND WAYS FORWARD

This report has sought to map the laws and regulations governing the practice of religion or belief in the countries of Southeast Asia. Given the situation of FoRB in Southeast Asia, it is evident that much work needs to be done to promote and advance this fundamental freedom.

While Southeast Asia is a diverse region, several themes have emerged in this report. First, while many of the constitutions of Southeast Asian countries formally guarantee FoRB, in practice the laws related to this right contain ambiguities and restrictions that do not conform with international standards.

A cross-cutting issue is the array of justifications used for restrictions of FoRB across Southeast Asia, such as “*public order*,” “*national security*,” and/or ethnic-religious “*harmony*.” These justifications have been used, for example, to curb the freedom of religious minorities including the Ahmadiyah, Shia, Jehovah’s Witnesses, 7th Day Adventist and others. While some of the named justifications are permissible under human rights law, they must also be proportionate and necessary to accomplish the listed aim, which has to be legitimate. Throughout the region, governments have used these justifications as pretexts for broad and largely unnecessary restrictions that exceeded permissible restrictions under human rights law.

A similar problem found throughout Southeast Asia is the use of laws banning proselytization. Such misguided attempts to “*protect*” local religions by prohibiting the spread of other religious convictions flies in the face of international human rights law and the right to manifest beliefs in public.

Contradictions are also found in laws relating to gender equality, where formal equality exists on paper and under the law but inequality prevails in practice, such as in the case of Buddhist nuns in Thailand.

Finally, the use of the law to criminalize religious defamation or blasphemy is a common occurrence in the region. This is particularly true in countries with a “*state religion*” or a dominant religious group. Such laws flagrantly violate international human rights law and are often used to criminalize certain religious groups that are critical to the state, government or the religious establishment of the majority.

The full guarantee of the right to FoRB remains elusive in many of the countries of Southeast Asia. To fully guarantee it, bringing the legislation in line with FoRB is one crucial element, and one in which parliamentarians can play a crucial role. Doing so will require the building of coalitions and alliances among parliamentarians, civil society actors, academics, opinion leaders and religious leaders who support FoRB in each of their respective countries. Building off of these networks, legislators must repeal or amend laws that violate FoRB, to bring them in line with international human rights law and standards, and pass new laws where necessary.

ANNEX

Annex:

List of Problematic Laws on FoRB

No.	Country	Problematic Laws
1	Brunei Darussalam	Syariah Penal Code (2013): Articles 112, 209-217, 230
2	Cambodia	Directive on Controlling External Religions, Ministry for Cults and Religions (2003)
		Refugee law
3	Indonesia	No. 1/PNPS/1965 on the Prevention of the Misuse of Religious Abuse and/or Blasphemy
		Penal Code Section 156a
		Article 2 and Chapter 7 relating to “Criminal Acts against Religion and Religious Life” in the Draft Penal Code
		Law No. 11/2008 on Electronic Information and Transaction
		Revised Joint Ministerial Decrees on Construction of Houses of Worship
4	Lao PDR	Prime Minister’s Decree 315 (2016)
		Reservation to Article 18 of the ICCPR
		Syariah Criminal Offences (Federal Territories) Act 1997, Section 5: Propagation of religious doctrines.
5	Malaysia	Various state laws prohibiting proselytism
		Various state laws prohibiting apostasy
6	Myanmar	1982 Citizenship Law
		Penal Code, Section 295(a), 298
		“Race and Religion” laws
7	Philippines	Penal Code, Article 132 and 133
8	Singapore	The Sedition Act
		The Maintenance of Religious Harmony Act
		The Administration of Muslim Law Act

No.	Country	Problematic Laws
9	Thailand	Penal Code, Section 206 and 207
		The 22 August 2016 Military Special Order
		The 1928 Sangha Act
		The Islamic Family and Inheritance Law
10	Vietnam	The Law on Belief and Religion
		The Law on Military Service

RESTRICTING DIVERSITY

Mapping Legislation on Freedom of Religion or Belief in Southeast Asia

Southeast Asia is a diverse region home to more than 600 million people whose cultures and values are influenced by a rich tapestry of customs and traditions woven through centuries of history. As part of this landscape, religions and beliefs in the region contribute significantly to its diversity and complexity.

Yet, while religion has played an integral role in shaping many of the cultures and customs of the countries in Southeast Asia, its instrumentalization has also caused social disruption, clashes of communities, and violence. Also, many governments in the region have resorted to repressive laws to exert control over the practice of religion or belief, prosecute religious minorities, and restrict peoples' right to freedom of religion or belief (FoRB).

This report provides a mapping of the laws and regulations regarding FoRB in the countries of Southeast Asia. It hopes to provide lawmakers with the information needed to address and respond to the key legal issues regarding religion or belief in each country. Legislators in Southeast Asia should use their unique legislative mandate to pass and amend laws to remove restrictions on, and support the flourishing of, FoRB. Doing so will not only fulfill their obligation as duty bearers under human rights law, it will also create a legacy for their role in creating a better and more prosperous society.