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Legal pluralism, autonomy and ethno-cultural diversity management

I. Introduction

The need to respect the identity of distinct ethnic or religious communities within a State can lead to claims for some form of autonomy for these communities. At their core, these claims assert the need for the community to be able to regulate certain matters deemed integral to preserving their identity. While the underlying justification for these claims is usually formulated in terms of protecting the rights and interests of these communities,[1] additionally they may be justified in terms of preserving social and cultural diversity,[2] expanding cultural resources[3] and/or conflict prevention.[4] State recognition of these claims takes a myriad of forms. Yet, there is one important dimension to all these autonomy arrangements that is often overlooked. That is that these arrangements can lead to legal pluralism when the community chooses to regulate matters in accordance with its own religious or customary laws rather than State law. To date, there is limited discussion in the literature of the relationship between autonomy arrangements and legal pluralism or the broader implications of this relationship for managing ethno-cultural diversity within a State.[5] All too often, proposals for autonomy arrangements fail to make explicit their potential to generate legal pluralism or map out the implications to which this pluralism can give rise. This is unfortunate. Legal pluralism generates opportunities, risks and challenges for managing ethno-cultural diversity and there is a need to ensure that the form of legal pluralism that ensues is one that remains compatible with the original objectives of the grant of autonomy.

This chapter makes explicit the potential interplay between legal pluralism and autonomy arrangements and, in doing so, seeks to broaden the conceptual framework through which these arrangements are traditionally viewed. This can facilitate a more calibrated assessment of those autonomy arrangements that give rise to legal pluralism (hereinafter 'legal pluralist autonomy arrangements'). The emphasis in the present chapter is on legal rather than normative pluralism for several reasons. One is the considerable symbolism that attaches to how a community's value system is classified and whether the community's own perception of that system, as a legal rather than a normative one, is accepted.[6] Second, there are distinct implications that attach to legal, as opposed to normative, pluralism both for the community and the State.[7] In adopting this approach, the chapter seeks to deepen current understandings

of the possible consequences of autonomy arrangements and bring to light others that might not otherwise be readily apparent.

At a minimum, this approach can lead to a more nuanced analysis of the human rights implications of legal pluralist autonomy arrangements. This arises from differences in the treatment of the human rights dimensions to autonomy and legal pluralism in the literature and in practice. To the extent that autonomy is analysed from the perspective of international human rights law, it tends to be in very general terms within the broad framework of minority protection or the right to self-determination.[8] At most, reference is made to the need for autonomy arrangements to respect basic human rights[9] without further elaboration or sustained scrutiny. It points to the disconnect that can occur in the discussion of autonomy arrangements whereby the initial establishment of such arrangements may be justified in human rights terms but, thereafter, the operation of these arrangements attract limited comment in terms of their impact on human rights.

In comparison, the human rights dimension to legal pluralism attracts more detailed scrutiny not only in the literature[10] but in the practice of international bodies monitoring State compliance with international human rights obligations.[11] The latter is important for several reasons. It demonstrates in a tangible manner how a State's international obligations can operate as a constraint on the permissible contours of autonomy arrangements while occasionally also acting as a catalyst for their introduction.[12] Additionally, it provides insights into the challenges for the State in respecting a community's autonomy while simultaneously being required to ensure that the exercise of this autonomy remains consistent with these international obligations. These challenges are even more pronounced when international bodies call on the State to ensure that a community's religious or customary laws are reformed or abolished to attain this consistency.[13] At the very least, it can create dilemmas for the State, for example, in reconciling its role as a neutral arbiter in the exercise of freedom of religion[14] while acting as a driver for change in relation to the laws of a religious community.[15] It also has important implications for the community itself as it reveals one potential cost of autonomy in terms of the reform agenda it may be compelled to embrace.

Legal pluralist autonomy arrangements also raise practical questions that have implications not only for diversity *between* communities but also *within* communities. While autonomy arrangements invariably raise questions about defining the parameters of the group and identifying its legitimate representatives, legal pluralism adds a further layer to this as the

State can find itself being called on to determine who, within the community, can provide an authoritative interpretation of community laws. Casting the State in this role, however, can have inadvertent consequences not only in terms of the nature of its engagement with the community but also the attendant risk that in choosing who provides the authoritative interpretation of these laws, it can lead to the suppression of minority or dissenting voices within that community. In this way, it can reduce rather than preserve ethno-cultural diversity. The present chapter explores all these issues. In doing so, it seeks to contribute to the existing literature by exploring autonomy arrangements through the valuable and underused lens of legal pluralism and traversing two traditionally distinct bodies of academic literature.

The chapter begins with an overview of some preliminary issues, notably, the meaning and scope of legal pluralism, its underlying rationale(s) and potential implications (section II). By carefully delineating and clarifying these issues, this section can contribute to a more thorough going analysis of the relationship between legal pluralism, autonomy and ethno-cultural diversity. The chapter then proceeds (section III) to analyse an important dimension to this relationship which stems from the capacity of legal pluralism to engage the responsibility of the State under international human rights law ('IHRL'). This is important not only to ensure that States comply with their international obligations but also to ensure conceptual coherence in the design and operation of autonomy arrangements. This is true particularly of arrangements rooted in human rights considerations where a State seeks to address a community's grievances about their rights and identity through the grant of autonomy. Section III identifies the complex issues raised by the international human rights dimension to these arrangements for the State, the community and individuals, and how IHRL can determine the parameters of legal pluralist autonomy arrangements.

To avoid an overly abstract analysis, the chapter draws on the practice of members of the Association of Southeast Asian Nations (ASEAN), namely, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. As the region is characterised by a remarkable level of diversity, it provides a valuable body of experience that will have resonance not only within the region but also beyond it. Drawing on the experience of the ASEAN States, Section IV provides insights into the potential opportunities, risks and challenges associated with legal pluralist autonomy arrangements. The chapter concludes (Section V) with observations about the interplay between legal pluralism, autonomy and ethno-cultural diversity management.

II. Preliminary issues

As the focus of this chapter is on legal rather than normative pluralism, it is useful at the outset to define what it means. Legal pluralism has generated considerable academic debate,[16] but for present purposes it refers to the co-existence of more than one legal or 'law like' normative system within the same geographical and temporal space. Of course, this presupposes that the relevant normative systems can be classified as 'law' or 'law like.' If not, it may be more correct to refer to normative rather than legal pluralism. While much has been written about the concept of law,[17] the definitional problems that have ensued have led some scholars, including in the field of legal pluralism, to abandon the concept altogether.[18] This is unfortunate especially in the context of developing a framework for ethno-cultural diversity management where language and symbolism carry considerable weight. To exclude a community's own perception of whether their religious or customary law is 'law' on the basis that this perception is deemed irrelevant by certain pure theories of law would be unduly restrictive. Eschewing pure theories of law, this chapter adopts a pragmatic approach to the definition of law often endorsed by international lawyers.[19] Here, norms are deemed to be legal norms if they are viewed consistently in this manner by the principal addressees of these norms and by third-party decision-makers. While objections may be raised to such an approach on the basis that it risks collapsing the distinction between law and other normative orders,[20] it has some merit in the present context as one that will have resonance not only within the communities concerned but also in State practice. In this regard, one cannot overlook the tendency for States to classify religious and customary laws as 'law' rather than as non-legal normative principles.[21]

The second issue that arises concerns the form that legal pluralism may take. Here, there is no set template. Moulded by the conditions prevailing in a given State, the relationship between that State and the ethno-cultural communities within it can take a myriad of forms that are mirrored in a multiplicity of autonomy arrangements and ensuing forms of legal pluralism. Nevertheless, it is possible to delineate various types of legal pluralism and this delineation can help make explicit their potential implications for managing ethno-cultural diversity. At a minimum, one must distinguish between *de jure* and *de facto* legal pluralism. The former occurs where the State formally recognises the religious or customary laws of the community whereas the latter occurs where those laws exist without any explicit endorsement by the State. Where the State grants autonomy to a community to regulate certain matters in

accordance with its own laws, this invariably brings into existence some form of *de jure* legal pluralism as these laws will operate in parallel to State laws. This has considerable practical significance as it will engage the *direct* responsibility of the State for any human rights harm caused by the operation of these laws (see, section III). This will necessitate a more extensive level of oversight of the operation of autonomy arrangements than would be the case with *de facto* legal pluralism.[22] The State will need to ensure that these arrangements remain consistent with its international human rights obligations. It means that the State will need to remain actively engaged with the community even in relation to the regulation of what that community regards as its exclusive internal affairs.

Beyond this, variations can exist in relation to the scope of legal pluralism and whether it extends to civil and/or criminal matters. Legal pluralism usually enables a community to determine personal status matters such as marriage, divorce or child custody in accordance with its own religious or customary laws. Additionally, the community may be able to determine criminal liability (eg., for apostasy, blasphemy, same sex relations) and occasionally impose punishments (eg., corporal punishment, limb amputations, stoning) in accordance with these laws. As these laws invariably embody traditional views of gender relations and punishments for transgressing community norms, they can depart from international human rights standards and perpetuate human rights harm. This harm is well documented[23] especially in relation to rights to equality and non-discrimination on grounds of gender, religious belief and sexual orientation as well rights to physical integrity and protection against torture, inhuman and degrading punishment. The fact that all States are bound by some international human rights obligations[24] means they must engage with the community to address any human rights harm that ensues from the recognition of that community's laws. The nature and form of that engagement will undoubtedly have implications for relations between the State and the community. While a State will always be responsible for human rights harm caused by whatever autonomy arrangement it establishes, the argument here is that this will be heightened when autonomy entails legal pluralism given the distinct human rights issues typically raised by religious and customary laws. It follows that there is a need to make explicit the legal pluralism dimension to these autonomy arrangements so that their potential consequences can be addressed by all concerned.

A further consideration is the status of a community's laws within the State legal system. This is not purely a question of legal semantics but can raise profound issues for the State and the community.[25] Essentially, the question arises at what point does the grant of autonomy to

a community to regulate certain matters in accordance with its own laws transform those laws into State law? For example, an Act of Parliament may stipulate that personal status matters for a community will be regulated in accordance with the religious law of that community. The explicit recognition of these laws by Parliament would suggest that they may be classified as a form of State law. In other instances, the position may not be so clear cut.[26] The need to analyse the situation cannot be avoided, however, due to the symbolic and practical consequences that attach to the status of a community's laws within a State legal system. An Act of Parliament, for example, may stipulate that ancestral lands will be delimited in accordance with the customary laws of indigenous peoples. In these circumstances, customary law may be regarded as a form of State law but this classification will not sit easily with an indigenous people's own perception of these laws as an expression of their right to self-determination rather than any sovereign right on the part of the State. It demonstrates the need to make explicit the *concurrent* classification of these laws as both State and non-State (customary) law. Aside from its potential symbolic value, this concurrent classification also serves as a reminder that even when religious or customary laws are recognised within a State legal system, they will continue to operate within the parallel non-State (religious or customary) legal system. This is important because religious and customary laws are often regarded as 'living laws' yet it can be difficult for State legal systems to capture this dynamism due, for example, to the doctrine of binding precedent applied by State courts. Over time, this can result in variations in the interpretation and application of the law within the State and non-State legal systems. For the State, this can create bifurcation of the law. For those to whom the laws are addressed, it can create uncertainty as to their rights and obligations within the different legal systems and potentially impede access to justice. For the community concerned, the very use of its religious or customary law within the State legal system can bring with it the risk of 'distortion and ossification'[27] with possible implications for the development of this law and its on-going relevance within the community. More generally, this interplay between State, religious and customary law can affect the perceived legitimacy of these different forms of law and the extent to which they are accepted by the population as well as distinct ethnic and religious communities within it.

It is not surprising that States often adopt measures to ensure some degree of consistency in the interpretation and application of religious and customary laws within the different justice systems. These measures include the appointment of experts in religious or customary law to

State courts when issues arise concerning the interpretation of these laws or permitting disputes to be determined by religious or customary courts. Both approaches raise issues from the perspective of ethno-cultural diversity management. The State will need to designate the accredited experts in religious or customary law from the community which can have implications for dissenting or minority voices within that community. Aside from this, one must consider the more foundational issue of the equal and non-discriminatory application of the law. A State cannot grant autonomy to a community to establish its own justice system and then disclaim any role in the operation of what can now be classified as a form of State law. The State must ensure the equal application of the law and guarantee that any variations in application can be objectively justified not only at the point of granting autonomy to the community but over time. In the present context, it means that there will be a need for on-going engagement between the State and the community; revealing one potential paradox of those autonomy arrangements that entail some form of legal pluralism.

Given the potential implications of legal pluralism, there is a need for a clear justificatory basis for its introduction. In many instances, legal pluralism exists as a residual legacy of colonialism without an explicit justificatory basis other than that it reflects the historical evolution of a particular State.[28] In other instances, it represents an attempt to ease inter-communal tensions and promote peace and security.[29] In these instances, the protection of the community's identity as a way of ensuring societal harmony is often advanced to justify the grant of autonomy and the recognition of the community's religious or customary laws.[30] On other occasions, international human rights law provides the justification or driver for legal pluralism. For example, the increasing acceptance of a right to self-determination for indigenous peoples may explain the growing acceptance of autonomous legal systems based on customary law within ancestral lands.[31] Here, recognition of autonomous legal systems can be regarded as a practical working out of one aspect of the right to self-determination of indigenous peoples[32] albeit one subject always to the requirement that these legal systems themselves respect human rights.[33] Ultimately, States are not precluded from recognising a community's own laws and establishing a legal pluralist autonomy arrangement, but there will be constraints on its ability to do so as is apparent from the discussion that follows.

II. International human rights law and the permissible contours of autonomy arrangements

An international human rights dimension to legal pluralist autonomy arrangements may not be immediately apparent. After all, the communities in question are non-State entities and it

is generally accepted that international human rights law is essentially a State-centred system of law.[34] The concept of State responsibility, however, establishes the route through which international human rights law can impact non-State entities including ethnic and religious communities. There are numerous ways in which State responsibility can be engaged,[35] but, for present purposes, it is sufficient to note that when a State grants autonomy to a community to regulate certain matters in accordance with its own religious or customary laws, the State will be deemed to be directly responsible for any human rights harm caused by these laws.[36]

There are numerous ways in which States can seek to limit the impact of international human rights law on the community and its laws.[37] One is to enter a reservation to a human rights treaty to the effect that a treaty provision(s) will be applied only to the extent that it does not conflict with religious or customary laws. This is not uncommon although the viability of this strategy depends on whether the reservation is a valid one in the sense of being compatible with the object and purpose of the treaty. The international response to the reservations entered by Brunei, Singapore and Malaysia to the Convention on the Elimination of All Forms of Discrimination Against Women is instructive. [38] It shows that these reservations are usually contested and largely ineffective in preventing international oversight of human rights harm caused by the operation of a community's religious or customary laws.

A second strategy is for the State to accept that it is bound by an international obligation but to deny that there is any human rights violation based on one of two arguments. The first is that there is no interference with the human right as the individual has waived the exercise of this right by submitting voluntarily to the jurisdiction of the community's own laws. Where there is no choice of forum, which is the case in several ASEAN States,[39] there is no question of a waiver arising as the individual is compelled to submit to the jurisdiction of religious courts. The second argument is that even though there is a restriction on a human right, it can be justified as it is prescribed by law, pursues a legitimate objective, is necessary to achieve that objective, and is not discriminatory. In determining when a restriction is justified, States invariably are allowed a certain margin of appreciation, at least at the regional level. It demonstrates that there is some flexibility in IHRL which can be used to accommodate the rights and interests of different communities including through legal pluralist autonomy arrangements.

Notwithstanding this flexibility, these arrangements need to satisfy certain requirements. This is evident from the present author's analysis[40] of the practice of UN human rights bodies.[41] There are various components to this practice, each of which acquires particular significance for legal pluralist autonomy arrangements and the management of ethno-cultural diversity. The first is that some religious and customary laws, such as laws permitting polygamy or child marriages, are regarded as incompatible with international human rights law. Where they exist, States are required to abolish them[42] and refrain from recognising any discriminatory customary or religious laws.[43] Some States have already taken action to do so[44] although clearly this can impact on relations with the community especially where the latter is resolutely opposed to the abolition of these laws.

A second component is that most religious and customary laws are regarded as having the capacity to develop in line with IHRL.[45] Attempts to portray religious or customary law as incapable of reform are consistently challenged by UN bodies.[46] This sets the ground for the third component which is that States are required to harmonize all laws, including religious and customary laws, with their international human rights obligations.[47] States are called upon to 'take steps' to ensure that customary and religious laws are interpreted and applied in ways that are compatible with fundamental human rights.[48] Where religious and customary courts exist, States are asked to regulate them to ensure they comply with international human rights law.[49] Specifically, States have been called on to ensure that the procedures adopted by these courts are 'brought into line with statutory courts,' and that a choice of court must exist.[50] The latter is particularly important. It ensures that persons belonging to the community are not compelled to submit to the jurisdiction of religious or customary courts for the protection of their rights and interests but can choose to access State courts. This ensures respect for individual autonomy. It also minimizes the risk of generating or reinforcing centrifugal tendencies when individuals feel compelled to look to their own community for the protection of their rights and interests rather than to the State.[51] More generally, enabling persons belonging to an ethnic or religious community to resort to State law rather than religious or customary law ensures that 'exit routes' are available to them should they wish to leave that community.[52]

All these recommendations have important implications, especially when the State adheres to a policy of non-intervention in the personal laws of a community unless it has the latter's consent. One UN body, for example, expressed concerns that such a policy 'perpetuates … discrimination against women' and called on the State to work with the communities to

review and reform their personal laws.[53] Of course, a State may choose to ignore these recommendations, and many do. However, there has been a sharp rise in ratifications of UN human rights treaties recently[54] and heightened scrutiny of compliance with these treaty obligations by the relevant treaty bodies and through the UN Human Rights Council's Universal Periodic Review.[55] At the very least, it suggests there will be increasing pressure on States to ensure that any recognition of a community's religious or customary laws is consistent with international obligations even if this entails a departure from traditional non-interventionist policies. It demonstrates that this human rights dimension to legal pluralism can provide an impetus for greater engagement between the State and the community and in ways that might not be readily apparent from the original grant of autonomy.

In terms of the nature and character of this enhanced level of engagement, UN practice provides some general pointers. Where IHRL requires reform of religious or customary laws, the UN bodies accept that law reform is predicated on the support of the population.[56] States are given the role of generating support for law reform through 'partnerships and collaboration with religious and community leaders, lawyers and judges, civil society organizations and … ngos.'[57] They are expected to 'proactively initiate and encourage debate within the relevant communities on … human rights'[58] and engage with religious and traditional authorities in a 'frank' 'public' and 'constructive dialogue' about how customary and religious laws can be rendered compatible with human rights.[59] While the emphasis is very much on constructive engagement, the very need for the State to initiate discussions about law reform and to conduct a 'frank' dialogue carries with it certain risks for relations between the State and the community that cannot be underestimated. As for the law reform process itself, a fully inclusive process is envisaged. Specifically, the UN bodies envisage the effective participation of traditional and religious leaders, civil society representatives and all relevant stakeholders.[60] Beyond this, the modalities are left to the State and community concerned to develop religious and customary law provided they do so in a manner that is consistent with international human rights law. This can accommodate variations on the ground, demonstrating that compliance with international human rights standards does not require homogeneity or standardisation. This may help to deflect criticism of law reform and possible appeals to cultural relativism. Further, by encouraging an inclusive and participatory process of reforming religious and customary laws, it can help to ensure that these laws retain their relevance and support among all sections of the communities to which they apply. It should also ensure that claims advanced in the name of culture or religion are rigorously

tested thereby minimizing the risk of restricting the rights of persons belonging to the community based on protecting out-dated aspects of that community's identity. More generally, by ensuring that these laws are compliant with international human rights standards, it can help address one of the enduring concerns raised by the protection of ethnic, linguistic or religious groups, namely, that the rights and interests of the group will take precedence over those of its individual members.[61] Also of salience in the present context is that where intra-State tensions arise from grievances concerning the protection of human rights (individual, minority, peoples' rights), this broad conceptual framework can go some way to ensuring that autonomy arrangements designed to address these grievances remain faithful to and continually aligned with their underlying justificatory basis.

It follows that whenever autonomy arrangements give rise to legal pluralism one must factor in the resulting human rights dimension as a failure to do so can result in these arrangements having unintended consequences. At the very least, it will avoid generating expectations as to the degree of autonomy that legally the State may not be able to grant. Admittedly, much will depend on a State's willingness to comply with its international obligations. However, one cannot ignore the fact that States are subject to increasing levels of international scrutiny and pressure to comply with these obligations even if this does not always yield tangible results especially in the short term. State practice shows that it can bring about change, even if only modest change, over the medium to long term.

Against this backdrop, one must probe the potential impact of this human rights dimension for the community and its members, the State and ethno-cultural diversity management more generally. For members of the community, it can help guarantee their autonomy in respect of membership of that community, afford protection to the multifaceted nature of their identity,[62] and protect those whose daily lives are impacted by the operation of religious or customary laws.[63] For the community, it can act both as a catalyst for and a constraint on legal pluralist autonomy arrangements. It establishes the permissible boundaries of these arrangements and, in doing, can compel a greater level of engagement between the community and the State than might have been anticipated by either party in order to ensure compliance with these boundaries. For the State, this dimension to legal pluralism brings with it opportunities and risks. It can help ensure that the rights and interests of members of the community as well as the community itself are protected and, in doing so, go some way to preventing their marginalisation and alienation. At the same time, one cannot ignore the

potential for tension and conflict where the State seeks to co-opt community leaders in reforming religious or customary laws and these leaders are opposed to such reform.

More generally, this human rights dimension can reduce ethno-cultural diversity by requiring the abolition or reform of certain religious and customary laws. The question arises as to how one should view this apparent lessening of diversity. Much will depend on the underlying justificatory bases for protecting ethno-cultural diversity. Where its justification is rooted in human rights considerations, such as non-discrimination and respect for identity, any reduction in ethno-cultural diversity caused by IHRL will be defensible in principle and conceptually coherent. Where the justification for protecting ethno-cultural diversity is rooted in other considerations, such as responding to domestic political constituencies, the impact of IHRL may be regarded as less defensible, especially by those concerned. Here, one may encounter appeals to cultural relativism to justify departures from global human rights standards. It is questionable, however, whether such appeals will be entirely successful given the consensus that exists, at least at the level of general principle, as to the universality, interdependence and indivisibility of human rights.[64]

IV: Opportunities, risks and challenges associated with autonomy arrangements in ASEAN States

The present section builds on the preceding analysis by exploring some of the key issues in the specific context of Southeast Asia. It begins with a brief overview of the religious diversity that characterises the region and the arrangements that exist to accommodate this diversity. Attention focuses on those arrangements that accord some recognition to religious law, whether it is part of a territorial or non-territorial autonomy arrangement and irrespective of whether the law reflects the religious beliefs of the majority population or minorities within it. All these arrangements result in some form of legal pluralism. As such, they provide useful insights into the opportunities, risks and challenges associated with legal pluralist autonomy arrangements for ethno-cultural diversity management.

Within ASEAN States, Buddhists comprise the largest religious community in Thailand,[65] Cambodia,[66] Myanmar,[67] Laos[68]and Singapore,[69] Muslims comprise the largest religious community in Brunei,[70] Indonesia[71] and Malaysia,[72] and Roman Catholics the largest in the Philippines.[73] Each State also contains several distinct religious communities,[74] with a further

layer of diversity existing on matters of doctrine within some of these communities.[75] Aside from religious diversity, there is considerable diversity in the constitutional arrangements on religion.[76] Notwithstanding this diversity, most ASEAN States afford some recognition to religious law.[77] The religious law recognised in Brunei, Malaysia, Indonesia and Cambodia reflects the religious beliefs of the majority of the population, while Thailand, Singapore and the Philippines afford some recognition to the religious laws of minorities, with Myanmar granting some recognition to the religious laws of numerous religious communities.[78] State recognition of religious law can be attributed to the history of the State,[79] past colonial experience,[80] the maintenance of societal harmony[81] and/or the resolution of inter-communal conflict.[82] Yet, one cannot ignore the significance of identity as a common, underlying factor. Religion is an important identity marker in many ASEAN States and the rise of identity politics in the region can be regarded both as a driver and a product of State recognition of religious law and the ensuing legal pluralist autonomy arrangements.

Against this backdrop, one can identify several dominant trends. The first is that recognition of religious law tends to be limited to personal status matters such as marriage, divorce, inheritance and child custody.[83] In several States, religious law extends to crimes and, occasionally, commercial transactions.[84] Concerns have been raised by UN human rights bodies, third States and civil society about the human rights impacts of some of these laws. These concerns tend to focus on the impact of these laws on the right to non-discrimination of women, members of the LGBTQ community, religious minorities, and children, religious freedom and the prohibition on torture, inhuman and degrading punishments.[85] As such, it provides tangible evidence of the range of human rights impacts that legal pluralist autonomy arrangements can perpetrate and the need to factor these impacts into discussions about the introduction or review of such arrangements. There is also a need to consider the wider societal implications. All too often the regulation of personal status matters is deemed to fall within the 'private sphere' and, incorrectly, attracts less scrutiny on that basis. Yet, as Myanmar's Race and Religion Laws illustrate, the regulation of marriage, divorce and child custody can have wider societal implications. The adoption of these laws was driven by Buddhist nationalists (including the Ma Ba Tha movement) keen to limit Muslim population growth and prevent the conversion of Buddhist women following their marriage to non-Buddhists and the loss of children of these marriages to the Buddhist faith. It provides a graphic illustration of how the regulation of personal status matters can be deployed to

maintain a religious community 'intact' from perceived competition from other religions, with far-reaching implications for rights protection and ethno-cultural diversity.

The second trend is that in almost all cases there is no choice of forum as religious courts have exclusive jurisdiction over specified matters.[86] This compels members of the religious community to submit to the jurisdiction of its courts including, in Malaysia, where they are seeking permission to renounce their faith and leave the community.[87] This clearly has implications for individual rights including the right to change one's religion and non-discrimination. More generally, it means that individuals must seek justice from religious courts in matters of vital importance to their everyday lives. They must turn to their own community institutions for protection of these rights and interests rather than to the State. Ultimately, the exclusive jurisdiction of these courts can serve to reinforce the control of the community over its members and potentially fuel centrifugal tendencies.

What then are the potential benefits, if any, of these autonomy arrangements? As previously noted, if a State grants autonomy to a community to regulate matters in line with its own religious law, it will engage the *direct* responsibility of the State for any human rights harm perpetrated by this law. Hence, IHRL has the potential to leverage changes to religious law. In comparison, where religious law exists *de facto* within the State, the potential to leverage change is much weaker as the State will not be directly responsible for human rights harm perpetrated by this law.[88] It suggests a need to think through the implications of the recognition or non-recognition of religious law in responding to autonomy claims. This is not to endorse a wholesale adoption of religious law. As the practice of ASEAN States shows, there are significant costs associated with State recognition of religious law and any legal pluralist autonomy arrangement will need to be carefully constructed to minimise these risks.

There are some modest benefits associated with the recognition of religious law through various autonomy arrangements in Southeast Asia. At the very least, it has led to greater international scrutiny of the human rights impact of these laws and prompted a series of recommendations by UN bodies on how to bring them into line with global human rights standards. These recommendations have met with a mixed response from the ASEAN States. Some recommendations relate to religious laws that are deemed to be incompatible with human rights. One example are religious laws permitting child marriages. Here, the UN

bodies recommend increasing the age of marriage and Singapore has complied with this recommendation, bringing one aspect of religious law into line with the requirements of IHRL.[89] Other recommendations relate to raising awareness about human rights and capacity building. There has been some willingness to comply with these recommendations. Indonesia, for example, has undertaken capacity building initiatives and gender sensitive training with a view to eliminating discrimination against women[90] while Malaysia has conducted awareness training programmes on gender equality and children's rights.[91] A third category of recommendations call on ASEAN States to undertake a systematic review of existing laws, including religious laws, to make sure they are rights compliant, to undertake a study on comparative jurisprudence on how it may be possible to ensure compliance and to harmonise religious and civil law. There are some examples of State compliance with these recommendations. Singapore, for example, has made a study of comparative jurisprudence in relation to gender and Islamic family law,[92] and has used its Presidential Council for Religious Harmony to review Sharia law in line with human rights.[93] While the willingness of States to accept some of these recommendations is a positive development, it is subject to important caveats. This is evident in the case of Singapore which resists any attempt to advance human rights if it is perceived to threaten societal harmony.[94]

While ASEAN State practice demonstrates some modest benefits arising from the recognition of religious law, it also demonstrates some of the challenges associated with it. Reform of religious law is often predicated on there being a plurality of views about matters of doctrine within the community that can facilitate the evolution of religious law in line with global human rights standards. One challenge is how to cultivate this pluralism when a dominant group within a community wants to eliminate it and obtains the support of the State in doing so. Restrictions on intra-religious pluralism exist in several ASEAN States such as Brunei,[95] Myanmar,[96] Malaysia[97] and Indonesia[98] where non-dominant sects such as the Ahmadiyya may be labelled 'deviant,' denied membership of the religious community, prosecuted for their particular religious beliefs or have their right to manifest their religion restricted.[99] Increasing restrictions on intra-religious pluralism through apostasy laws, defamation of religion laws and similar measures[100] only serve to silence minorities within the religious community and impede the level of intra-community debate needed to bring about a genuine reconciliation of religious law and international human rights law and the promotion of ethno-cultural and religious diversity within society.

A further challenge is that there can be considerable popular support for religious laws notwithstanding the potential human rights harm they may perpetrate. This is borne out by the position in Singapore and Brunei.[101] In these circumstances, UN bodies call on States to act as a driver for change to ensure the compatibility of these laws with global human rights standards.[102] However, as Singapore has stated on several occasions, it will not advocate for reform of religious law where to do so would risk societal harmony. Even if a State is initially willing to do so, this can change over time. In the past, the Philippines has been willing to 'review and *initiate*' revision of discriminatory provisions in the Code of Muslim Personal Laws.[103] It remains to be seen whether it will continue to adopt such an approach following the recent adoption of the Bangsamoro Basic Law. Much will depend on the available political "space" for it to do so in negotiations with the Moro Islamic Liberation Front and whether conflict resolution will prevail over protecting human rights especially of women and members of marginalised groups.

Even if a State is willing to undertake the role of agent for change, there are some difficulties in doing so as a matter of principle. How can a State act as an agent for change while simultaneously respecting the autonomy of religious communities especially in matters of doctrine? The need to respect the autonomy of religious communities as a way of guaranteeing the religious freedom of its members is well-established in IHRL.[104] However, these difficulties are not insurmountable. One can always appeal to the concurrent classification of religious law as a form of State law to ensure that the State cannot evade its international obligations by invoking the provisions of what is effectively its own domestic law.[105] While this may be the position in principle, the position in practice may be very different. Arguments about religious freedom and religious autonomy will invariably be raised, in all likelihood with some success, to block any attempt by the State to act as a driver for change and resist any attempts to challenge the dominant views within a religious community.

An additional challenge relates to the need for on-going and effective oversight of the interpretation and application of religious law. The State must remain vigilant to ensure that religious law is not only compliant with human rights when it is first recognised but remains so over time and in the light of changing circumstances on the ground.[106] It must also be alert to the risk posed by the rise of fundamentalist groups advocating restrictive interpretations of religious law which would violate human rights[107] and the possibility of

these groups hijacking existing structures of religious law to impose these interpretations more generally. Hence, it is important to consider whether the State can ensure effective oversight of the operation of autonomous religious systems. The experience of Indonesia is instructive in this regard. Decentralisation has led to the adoption of religious laws by decentralised entities notwithstanding the clear prohibition on them doing so[108] yet the sheer volume of these laws prevents meaningful oversight by the State.[109] It demonstrates the high level of commitment, in resources as well as political will, which will be required to ensure the effective oversight of any system of autonomy that generates legal pluralism.

The discussion so far has focussed on the specific human rights implications associated with legal pluralist autonomy arrangements. It also identified some of their broader societal implications. A core feature of the autonomy arrangements examined in the present section is that they allow for the regulation of certain matters based on one's religious affiliation. This has the potential to have far-reaching implications especially when one factors in the rise in identity politics and the interplay between religion, national identity and/or nationalist tendencies in the ASEAN States.[110] Against this backdrop, one has to consider the possibility that State recognition of religious law will serve to heighten the significance of religious identity, generate or reinforce inter- and intra-communal tensions, impede the development of civic citizenship and encourage ethno-nationalism. Ultimately, one needs to undertake a rigorous cost/benefit analysis prior to adopting legal pluralist autonomy arrangements given their potential implications for human rights, ethno-cultural diversity between and within communities, and maintaining peace and security.

V. Conclusion

This chapter has analysed legal pluralism not as a novel standalone mechanism to manage ethno-cultural diversity but as an integral element of many autonomy arrangements that currently exist to protect the identity of distinct ethnic or religious communities within a State. Whenever autonomy arrangements allow a community to regulate matters in accordance with its own religious or customary laws, they invariably give rise to some form of legal pluralism as the community's own laws will be permitted to operate in parallel to the State's laws. This potential dimension to autonomy arrangements has attracted little attention to date. This is unfortunate. Where the grant of autonomy generates legal pluralism, it needs to be made explicit and the potential implications clearly explained. The present chapter has

analysed these arrangements through the lens of legal pluralism with a view to contributing to a deeper understanding of the issues associated with the grant of autonomy and identifying others that might not otherwise be readily apparent. Drawing on State practice in Southeast Asia, it identified several opportunities but also important risks and challenges associated with using these autonomy arrangements as a means of managing ethno-cultural diversity. This State practice demonstrates the need to analyse carefully any autonomy arrangement that involves the recognition of a community's religious or customary law. By flagging up the potential implications of these arrangements for the rights of members of the community and non-members, relations between the State and the community, inter- and intra-communal diversity, the chapter maps out a series of considerations for assessing the value of such arrangements from the perspective of ethno-cultural diversity management, rights protection and the maintenance of peace and security.

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[1] See, eg, Varady (1997: 39); Mullerson (1993: 109); Capotorti (1979: 98); Hannum and Lillich (1980: 883-885).
[2] See, eg, Falk (1988: 23); Sohn (1981: 270-271).
[3] See, eg, Falk (1988: 17, 23).
[4] See, eg, de Nova (1965: 275-290); Mullerson (1994: 76-77).
[5] There are exceptions. See, eg, Capotorti (1979: paras 379-385, 596); Macioce (2016: 1).
[6] See, eg, *Report of the Working Group established in accordance with Commission on Human Rights Resolution 1995/32 of 3 March 1995* (1996)(hereinafter, "1996 Report").
[7] See further, Sections III and IV.
[8] See, eg, Wright (1999: 605); Hannum (1991).
[9] See, eg, 1996 Report, para 232.
[10] While much of the literature explores legal pluralism from an anthropological or socio-legal perspective, there is an increasing focus on the human rights dimension. For an overview of the relevant literature, see, eg, Tamanaha (2008); Twining (2009-2020); Von Benda-Beckmann (2006). On the human rights dimension, see, eg,, International Council on Human Rights Policy (2009) (hereinafter "ICHRP: 2009"); Quane (2013); Calaguas, Drost, and Fluet (2007); Mashhour (2005).
[11] For a detailed discussion, see, Quane (2013).
[12] See, *United Nations Declaration on the Rights of Indigenous Peoples* 2007, UN Doc A/61/L.67. Art 34 provides that Indigenous Peoples 'have the right to promote, develop and maintain their … juridical systems or customs, in accordance with international human rights standards.'
[13] See further, Section III.
[14] See, eg, *Supreme Holy Council of the Muslim Community v Bulgaria* (2005) 41 EHRR 3.
[15] See further, text accompanying n 57 and authorities cited therein.
[16] See, eg, Griffiths (1986); Tamanaha (2008: 390-400); Von Benda-Beckmann (2006).
[17] For a brief overview of the philosophical, anthropological and theoretical debates about what is law, see, Michaels (2014).
[18] See, eg, Tamanaha (2008: 391-396). See also, the discussion in Griffiths (1986: 14-38); von Benda-Beckmann (2006: 12-17).
[19] See, eg, Brownlie (1981: 1-2); Malanczuk (1997: 6-7).
[20] See, Kelsen's critique of Ehrlich's theory in Kelsen (1945).
[21] See, eg, Malaysia and Singapore's reservations to CEDAW where reference is made to religious 'law' or 'laws': available at <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec>.
[22] Where a State recognises religious law that causes human rights harm, the State will have violated the obligation "to respect" human rights rather than failing to discharge the *more indeterminate positive obligation* "to protect" rights against interference by non-State entities including religious communities. According to the

European Court of Human Rights in *Appleby v United Kingdom* (2003) 37 EHRR 38, para 40, in "determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual … The scope of this obligation will inevitably vary, having regard to the diversity of situations obtaining in Contracting States and the choices which must be made in terms of priorities and resources. Nor must such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities".

[23] See, eg, Farran (2006: 94-100, 101); ICHRP (2009: 27-39, 73-86); Calaguas (2007).

[24] For example, the prohibition on torture exists as a principle of customary international law that binds all States.

[25] See further, Quane (2019).

[26] *Ibid,* 110-119.

[27] See, eg, Bond (2008: 401, 402); Tamanaha (2008: 380, 384); Kamau (2009:138).

[28] See, eg, Farran (2006).

[29] See, eg, Holbrook (2009-2010).

[30] See, eg, Singapore where the government justified legislation respecting the freedom of minorities in the practice of their personal and religious laws on the basis that it is necessary to 'maintain the delicate balance in a multi-racial and multi-religious society', Human Rights Resource Centre (2015: 420).

[31] See, eg, *Report of the UN Expert Mechanism on the Rights of Indigenous Peoples, Summary of responses from the questionnaire seeking the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples*, 16 August 2012, UN Doc A/HRC/21/54, paras 13, 15-23.

[32] See, eg, Indigenous Issues: Working Group established in accordance with Commission on Human Rights resolution 1995/32, *Chairperson's summary of proposals*, 20 December 2005, UN Doc E/CN.4/2005/WG.15/CRP.7, Art 33.

[33] See, eg, 1996 Report, para 232.

[34] All the core UN human rights treaties impose obligations only on States with the exception of the UN Convention on the Rights of Persons with Disabilities.

[35] See, International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Arts 4-11, available at http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

[36] A good illustration is *Sandra Lovelace v. Canada, Communication No. R.6/24* (1981), UN Doc Supp No 40 (A/36/40) at 166, available at http://hrlibrary.umn.edu/undocs/session36/6-24.

[37] For a more detailed discussion, see Quane (2013).

[38] For example, 22 States objected to Brunei's reservation.

[39] Brunei (Syariah Courts Act, Ch. 184 (2000), Revised ed.), Indonesia (Religious Judicature Act 1989), Malaysia (Constitution of Malaysia, Ninth Schedule, List II – State List (1957)), and Singapore (Administration of Muslim Law Act, Ch. 3 (1966) Revised ed. 2998) grant exclusive jurisdiction over specified matters to religious courts. There is some choice of forum in the Philippines (although the Code of Muslim Personal Laws 1977 grants exclusive jurisdiction to Sharia courts on several issues) and there appears to be in Thailand (see, Act On Application Of Islamic Law In The Provinces Of Pattani, Narathiwat, Yala And Satun, BE 2489 (1946) and Myanmar (eg., the Monogamy Law 2015) but it is not explicitly stated.

[40] See further, Quane (2013).

[41] They comprise the bodies within the UN Human Rights Treaty Body System ("UNHRTBS")and the UN Charter-based System. The UNHRTBS is concerned with the implementation of the core UN human rights treaties and each treaty has a Treaty Monitoring Body (TMB) that monitors State compliance with it. These treaties are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities. The UN Charter-based System is derived from the UN Charter and includes the work of the UN Human Rights Council and the system of Special Procedures. See further, http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.

[42] See, eg, CEDAW Committee recommendations to Myanmar and Singapore: UN Docs CEDAW/C/MMR/C0/3 (2008); CEDAW/C/SGP/CO/4 (2011).

[43] See, eg, the recommendation of the Independent Expert on Minorities to Greece: UN Doc A/HRC/10/11/ADD.3 (2009).

[44] See, eg, the introduction of a minimum age of marriage in Singapore.
[45] See, eg, CEDAW Committee recommendations to Singapore: UN Doc CEDAW/C/SGP/CO/4 (2011). There is also considerable support for this position in the academic literature. See, eg, Hoekema (2005: 12, 14); ICHRP Report (2009: 2).
[46] See, eg, CEDAW Committee recommendations to Israel: UN Doc CEDAW/C/ISR/CO/3 (2005).
[47] See, eg, CEDAW recommendations to Chad: UN Doc CEDAW/C/TCD/CO/1-4 (2011).
[48] See, eg, the recommendation of the Committee on Economic, Social and Cultural Rights (CESCR) to Israel: UN Doc E/C.12/1/ADD.90 (2003), the recommendation of the Committee on the Rights of the Child (CRC) to Libya: CRC/C/15/ADD.209 (2003), the recommendation of the Human Rights Committee (HRC) to Gambia: UN Doc CCPR/CO/75/GMB (2004), and the recommendation of Committee on the Elimination of Racial Discrimination (CERD) to South Africa: UN Doc CERD/C/ZAF/CO/3 (2006).
[49] See, eg, the recommendation of the Independent Expert on Minorities to Ethiopia: UN Doc A/HRC/4/9/Add.3 (2007), the HRC recommendation to Botswana: UN Doc CCPR/C/BWA/CO/1 (2008), and CERD recommendation to Mozambique: UN Doc A/62/18 (2007).
[50] See, eg, CEDAW recommendations to Singapore: UN Doc CEDAW/C/SGP/CO/4 (2011).
[51] See, eg, Capotorti (1979: 35); Thornberry (1989: 880-881).
[52] See, eg, Shachar (2001).
[53] See, eg, CEDAW recommendations to India: UN Docs A/55/38(SUPP)(2000) paras 60-61; CEDAW/C/IND/CO/3 (2007).
[54] See, Pillay (2012).
[55] On this process, see further https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.
[56] See, eg, CEDAW recommendations to Morocco: UN Doc A/52/38/Rev.1(SUPP) (1997) para 71.
[57] See, CEDAW recommendations to Syria: UN Doc CEDAW/C/SYR/CO/1 (2007). See also, its recommendations to Malaysia; Myanmar: UN Docs CEDAW/C/MYS/CO/2 (2006); CEDAW/C/MMR/CO/3 (2008).
[58] See, eg, CEDAW recommendations to India: UN Doc CEDAW/C/IND/CO/3 (2007) para 11.
[59] See, eg, CEDAW recommendations to Mauritius: UN Doc CEDAW/C/MAR/CO/5 (2006), and the recommendation of the Special Rapporteur against Women to Ghana: UN Doc A/HRC/7/6/Add.3 (2008).
[60] See, eg, CEDAW's recommendations to Singapore: UN Doc CEDAW/C/SGP/CO/4 (2011).
[61] See, eg, Poulter (1994: 461).
[62] For example, to ensure that a woman does not have to forgo her right to equality to ensure respect for her religious identity nor to forgo her right to religious freedom to ensure respect for gender equality.
[63] See, eg, ICHRP (2009).
[64] See, *Vienna Declaration and Program of Action,* adopted by the World Conference on Human Rights in Vienna on 25 June 1993, available at https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx.
[65] In 2010, the religious composition of its population was 93.6% Buddhist, 4.9% Muslim, 1.2% Christian, 0.2% Others: see, HRRC (2015: 483).
[66] In 2014, the religious composition of its population was 96% Buddhist, 3.5% Muslim, 0.5% Bahai, Jewish, Vietnamese Cao Dai and Christian: *ibid*, 101.
[67] In 2014, the religious composition of its population was 89% Buddhist, 4% Christian, 4% Muslim, 1% Animist, 2% Other: *ibid,* 321.
[68] In 2005, the religious composition of its population was 66.8% Buddhist, 30.9% Other (Animist), 1.5% Christian, 0.03% Muslim, 0.02% Bahai: *ibid,* 197.
[69] In 2015, the religious composition of its population was 42.5% Buddhist, 14.6% Christian, 14.9% Muslim, 8.5% Taoism, 14% Hindu, and the remainder from other faiths: see, *National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Singapore*, 28 October 2015, UN Doc A/HRC/WG.6/24/SGP/1, para. 3.
[70] In 2011, the religious composition of its population was 78.8% Muslims, 8.7% Christians, 7.8% Buddhists and 4.7% Other: see, HRRC (2015: 56).
[71] In 2014, the religious composition of its population was 87.18% Muslim, 9.87% Christian, 1.69% Hindus, 0.72% Buddhists, 0.05% Confucian, and 0.13% Other: *ibid*, 139.
[72] In 2010, the religious composition of its population was 61.3% Muslim, 19.8% Buddhist, 9.2% Christian, 6.3% Hindu, 1.3% Confucianism and other traditional Chinese religions, 1% unknown, 0.7% no religion, 0.4% Other religion: *ibid, 2*35.
[73] In 2010, the religious composition of its population was 80.6% Roman Catholic, 5.65% Islam, 2.7% Evangelicals, 2.4% Iglesia ni Cristo, 1.7% Protestant and Non-Catholic Churches, 1% Iglesia Filipina Independiente, 0.7% Seventh Day Adventist, 0.7% Bible Baptist Church, 0.5% United Church of Christ in the Philippines, 0.4% Jehovah's Witness, 0.08% None, 4.2% Others/Non-reported: *ibid*, 363. In the remaining

ASEAN State, Viet Nam, the religious composition of its population in 2009 was 81.69% non-religious, 7.93% Buddhism, 6.62% Roman Catholic, 1.67% Hoa Hao, 1.01% Cao Dai, 0.22% Others: *ibid,* 525.
[74] See, ns. 65-73.
[75] In Thailand, eg, there are two sects of Buddhism, Theravada and Majayana while in Cambodia, Muslims follow four branches of Islam: the Shafi'i branch, the Salafi (Wahhabi) branch, the Iman-San branch and the Kadiani branch: HRRC (2015: 485, 105).
[76] See the discussion of these constitutional arrangements in Dr. Jaclyn L. Neo, Synthesis Report, HRRC (2015).
[77] Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, and Thailand: *ibid,* 57-68, 141, 387-9, 327, 342-3, 420, 499, 265, 277-9.
[78] *Ibid,* 342-3.
[79] See, eg., Myanmar, *ibid,* 327, 342.
[80] See, eg, Brunei, Indonesia, *ibid,* 57, 141.
[81] See, eg, Report of the Working Group on the Universal Periodic Review: Singapore, 15 April 2016, UN Doc A/HRC/32/17, paras 11, 7.
[82] See, eg, Thailand, HRRC (2015:499).
[83] See, n 39.
[84] See, eg, Brunei's Sharia Penal Code Order and the Philippines Act Providing for the Bangsamoro Autonomous Region of Mindanao 2017.
[85] See, eg, Compilation on Brunei Darussalam: Report of the Office of the United Nations High Commissioner for Human Rights, 1 March 2019, UN Doc A/HRC/WG.6/33/BRN/2, paras 19, 21, 18; Compilation on Indonesia: Report of the Office of the United Nations High Commissioner for Human Rights, 17 February 2017, UN Doc A/HRC/WG.6/27/IDN/2, paras 17, 56; Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1, 3 September 2018, UN Doc A/HRC/WG.6/31/MYS/2, paras 37, 39, 70, 8, 74, 31; Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: Philippines, 31 March 2008, UN Doc A/HRC/WG.6/1/PHL/2, para 3; Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1: Singapore, 6 November 2015, UN Doc A/HRC/WG.6/24/SGP/3, paras 36, 37, 33, 48, 50, 63.
[86] See, n 39.
[87] See, https://www.thestar.com.my/news/nation/2018/02/27/federal-court-dismisses-conversion-appeals-case-to-be-heard-in-civil-court#ouGprhsjJ3KmBb3e.99 (accessed 18/11/2019).
[88] For an explanation, see n 22 above.
[89] See, UN Doc. CEDAW/C/SGP/CO/4 Rev.1 (2012).
[90] Report of the Working Group on the Universal Periodic Review: Singapore, 11 July 2011, UN Doc A/HRC/18/11, para 95.7.
[91] National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Malaysia, 6 August 2013, UN Doc A/HRC/WG.6/17/MYS/1, para 78.
[92] Report of the Working Group on the Universal Periodic Review: Singapore, 11 July 2011, UN Doc A/HRC/18/11, para 48.
[93] On the evolving interpretation and application of Sharia law: see, National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Singapore, 28 October 2015, UN Doc A/HRC/WG.6/24/SGP/1, paras. 55, 56, 66.
[94] See, Report of the Working Group on Universal Periodic Review: Singapore, 11 July 2011, UN Doc A/HRC/18/11, paras 7-14.
[95] See, HRRC (2015: 62, 66-68). For example, the Penal Code prohibits any questioning of the Hadith that are considered as 'authentic.'
[96] See, *ibid,* 322, 336-7, in relation to new Buddhist sects that are not recognised by the State or the Buddhist Sangha
[97] Report of the Working Group on the Universal Periodic Review: Malaysia, 4 December 2013, UN Doc A/HRC/25/10, paras 66, 75.
[98] See, HRRC (2015:150-151, 172).
[99] See also, Viet Nam, where participation in the independent factions of Cao Dai, Hoa Hao, and Buddhism is actively discouraged or banned: *ibid,* 541-2.
[100] *Ibid*.
[101] *Ibid,*79, 90.
[102] See, eg, CEDAW recommendations to Malaysia, Myanmar: UN Docs CEDAW/C/MYS/CO/2 (2006); CEDAW/C/MMR/CO/3 (2008).

[103] National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Philippines, 7 March 2008, UN Doc A/HRC/WG.6/1/PHL/1, para 154 (emphasis added).
[104] See, further, Quane (2003).
[105] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), Art. 3.
[106] There is some recognition of this by the ASEAN States. See, eg, Report of the Working Group on Universal Periodic Review: Indonesia, 14 May 2008, UN Doc A/HRC/8/23, para 10.
[107] See, eg, the position in Indonesia.
[108] The exception is Aceh which has a special status and which can adopt laws concerning religion: see, HRRC (2015: 170).
[109] *Ibid,* 162, 169, 163.
[110] See, eg, in relation to Myanmar, Singapore, Malaysia, the Philippines, Thailand, Brunei, Indonesia and Viet Nam: *ibid.*, 348-352, 470, 75, 542-3, 548, 502-3, 290.

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