

ARTICLES

CULTURE, COURTS, AND CONSTITUTIONS: NEGOTIATING THE BALANCE ON GENDER EQUALITY

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ABSTRACT

In July 2023, opening the Human Rights Council debate on a resolution on religious hatred and bigotry in the wake of the burning of the Qur'an in Sweden, the United Nations High Commissioner for Human Rights, Volker Türk argued that "many societies are struggling with this weaponization of religious differences for political purposes."¹ The application of Article 20 of the International Covenant on Civil and Political Rights (ICCPR) and its prohibitions of hate speech is, ultimately, a matter for national law and courts to determine in a particular case. Türk stated, "[t]hey need to do so in a manner that is consistent with the guardrails that international human rights law provides."² This statement provides an impetus to examine national constitutions and court decisions in their interpretation of cultural practice and women's human rights.

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1. Volker Türk, High Comm'r of Hum. Rts., United Nations, Türk Calls on States to Combat "the Weaponization of Religious Differences for Political Purposes" (July 11, 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/07/turk-calls-states-combat-weaponization-religious-differences>.

2. *Id.*

But a more personal quest has filled my time on the Convention on the Elimination of Discrimination against Women (CEDAW) Committee, where I see that the tension between cultural practice and rights is the enduring women's human rights challenge and perhaps the most profoundly complex human rights challenge of our time. The CEDAW is the most heavily reserved treaty in the U.N. Human Rights system and this tension between rights and religion lies at the heart of these reservations.³

In many regions, an ongoing hermeneutical enterprise is looking closely at the alignment of religious practices and laws through the lenses of the human

3. *Shari'a* is the justification used in a majority of the reservations made by these countries, two, MENA countries are in the majority in using contradiction with *Shari'a* as one of their justifications, and three, beyond *Shari'a*, religion is the overarching main reason for a majority of these countries for providing reservations, where countries like Israel, India, and Singapore do not specify *Shari'a* but instead specify religion more generally in their justifications. Preliminarily, fifteen countries have provided reservations to provisions of the CEDAW Convention, particularly Articles 2 and 16 (Bahrain, Bangladesh, Egypt, India, Iraq, Israel, Kuwait, Libya, Malaysia, Maldives, Mauritania, Morocco, Saudi Arabia, Singapore, Syria). Of the eight countries that have made reservations to Article 2, five out of the eight have cited contradiction of Islamic *Shari'a* as the reason: Bahrain, Bangladesh, Egypt, Libya, and Morocco.

A small percentage have also noted contradiction with their own laws and constitution. Morocco, for example, declares a reservation to the Article insofar as it does not prejudice the "constitutional requirement that regulate the rules of succession to the throne," while others, like Singapore, have said the same. Two countries, Iraq and Singapore, do not mention *Shari'a* directly, however; Iraq merely states that they are providing a reservation to the Article, while Singapore mentions contradiction with their "religious" laws, not *Shari'a*. Thirteen out of fifteen countries have made reservations in some shape or form to parts of Article 16. Nine out of thirteen of these countries, an overwhelming majority, have justified their reservations to either specific paragraphs of Article 16 or the Article as a whole on the basis of *Shari'a*. Malaysia, Mauritania, and Singapore also cite contradiction with their national laws or Constitution, while the Maldives provides a reservation with no justification.

Interestingly, Israel, India, and Singapore provide different reasons than the other countries for their reservations. India cites their policy of non-interference in the personal affairs of any community without its consent, and notes that while it fully supports compulsory registration in marriages, "it is not practical in a vast country like India with its variety of customs, religions, and level of literacy." Similarly, Israel provides their reservation to Article 16 to the extent that the personal status laws binding on various religious communities in Israel do not conform with the Article's provisions. Singapore cites contradiction with their "religious laws," without specification. Beyond Articles 2 and 16, five out of fifteen countries have provided reservations to other provisions of CEDAW. India notes that it will abide by Article 5(a) in so far as it is in conformity with the country's policy of non-interference in personal affairs without consent, while Israel provides a reservation to 7(b) concerning the appointment of women to serve as judges of religious courts where prohibited by any religious group in the country. Malaysia expresses a reservation to Article 9(2) insofar as it is contrary to *Shari'a* or its Constitution, and interprets Article 11 to mean "discrimination on the basis of equality between men and women only." Lastly, Mauritania provides a reservation to 13(a) insofar as it is contrary to *Shari'a* and its Constitution, and Syria provides a reservation to 9(2), 15(4), and 29(1), without reason.

rights framework. At the same time, women are leading some of the most exciting social movements and are driving a quiet revolution to reclaim religious practice and culture in the image of men and women. These twin approaches are not the purpose of my inquiry. Rather, my purpose is to look at the deeply entrenched and globally pervasive tensions between culture and women's rights, as enshrined in constitutions and as interpreted by courts. In framing harmful cultural practice, I agree with Frances Raday, who posits that "the clash between culture and gender equality, is the static, resistant version. This version of culture . . . traditionalist culture . . . is the concern of international and constitutional human rights jurisprudence."⁴ I also subscribe to Raday's view that "[r]eligion is a part of culture in its wider sense. It might even be said that it is an integral part of culture." At the heart of this Article is the mapping of every country's constitutional provision on state religion, customary law, cultural norms, and freedom of expression. In terms of constitutions, we see that God is mentioned in 109 constitutions and the term "freedom of religion" or one of its variants appears in 184 constitutions. Forty-two countries explicitly declare a state religion, 148 countries encode customs, and eighty-seven states codify customary laws. Culture has the most intimate and powerful impact on women's lives. It is a site of struggle over power and control. It is often the locus of gendered power relations in the family. The cultural construction of gender determines the power relations in the family and the state. While the construction and definition of gender are deeply embedded in culture, rules about culture conceptually underlie other rules about women's employment and commerce, education, and women's public participation. The discourse around culture is supported by an invisible network of power exercised mainly by men in the public and private spheres. Culture can circumscribe a woman's right to travel outside the home; get a job or pursue a trade or profession without permission; sign a contract; register a business; be the "head of household" or "head of family"; open a bank account; choose where to live; have ownership over property; and inherit property, as well as affect husband obedience laws. Moreover, dowry, maher, polygamy, child marriage, virginity testing, female genital mutilation (FGM), menstruation, feeding practices, mandatory dress codes, and so much more are defined by culture. Given the complex nature of the debate on culture and women's rights, an analysis that examines the textual authority of constitutions and the jurisprudence in national case law provides insights into situations when rights may compete and gender equality hangs in the balance.

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4. Frances Raday, *Culture, Religion, and Gender*, 1 INT'L J. CONST. L. 663, 667 (2003).

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I. INTRODUCTION

One of the great challenges in human rights is the tension between cultural practices and gender equality. It has been argued that “no social group has suffered a greater violation of its human rights in the name of culture than women.”⁵

5. Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in *WOMEN'S RIGHTS, HUMAN RIGHTS* 167, 169 (Julie Peters & Andrea Wolper eds., 1995).

Freedom of religion or belief has been used as a justification for violations of the human rights of women and girls. Several scholars have examined new social justice movements where women are reclaiming religion and culture in a plural interpretation of texts which reveals that culture itself is internally contested and heterogeneous. Some others are engaged in the hermeneutical study of religious texts to envision them as context-specific and shape-changing. This Article uses a different exploratory lens. The Article examines how culture and religious practice are defined in constitutions and interpreted in courts in cases where culture has come into tension with gender equality. It also looks at representative court cases to explore judicial interpretation of culture. While the interpreters of constitutions are judges, the interlocutors of culture in certain constitutions are elders and chieftains. In the final analysis, it could be said that courts are just buildings, judges are just bureaucrats, and constitutions are just pieces of paper. However, constitutions and courts and their interlocutors can be cultural entrepreneurs in diversity of thought and belief and gender equality.

At the heart of this Article is the mapping of every country's constitutional provision on state religion, customary law, cultural norms in law, and freedom of expression. In terms of constitutions, we see that God is mentioned 109 times and the term "freedom of religion" or one of its variants appears in 184 constitutions. Forty-two countries explicitly declare a state religion. Of those countries, thirty encode customs into textual provisions, fourteen mention customary laws, and eighteen enshrine freedom of expression. Of the 154 countries that do not declare a state religion, 118 nonetheless encode customs, eighty-seven mention customary laws, and 109 enshrine freedom of expression. These findings can be visualized further in Figure One in Part III. The Appendix contains the full results of this mapping project.

Two cases are chosen as prisms to address the tensions between rights and culture: the story of Shilubana is a first-person account of a case that came before the South African Constitutional Court in 2003 challenging the male primogeniture laws in succession to a chieftainship.⁶ It offers the voice and insight of a woman leader during a time of great change in post-apartheid South Africa. The author had the opportunity to interview Hosi Shilubana, the chieftain of her tribe. Her story adds a layer of emotion and perspective to this narrative of law and customary reform and the historical accounts of that time. The second case is the recent case concerning the exclusion of menstruating women from the

6. *Shilubana and Others v. Nwamitwa* 2008 (9) BCLR 914 (CC) at 2 (S. Afr.).

Sabarimala Temple in Kerala, India.⁷ It provides a textured examination of cultural and institutional practices, the role of law and culture in social organizing, and insights into the complexity and fragmentation of social movements.

Following a constitutional mapping and analysis in Part III, I turn to the other theater of so-called clashes or collisions between women's rights and culture: the courts. In Part IV, I discuss the judicial enforcement of constitutional provisions that intersect with culture-to-fact patterns involving control of women's bodies or control of women's economic rights. At the end of both Parts III and IV, I synthesize these findings. What is sometimes considered a binary opposition between culture, customs, and women's rights examined through constitutions and judicial interpretation showcases a balancing exercise that attempts a context specificity that often elides the universal human rights project.

II. CULTURE, LAW, AND AUTHORITY

Although international human rights law affirms the right to religious freedom, this right is not absolute. International law hopes to transcend cultures and create a universalism that is context-specific but does not favor one culture over another. In fact, General Comment 28 of the Human Rights Committee posits that religion cannot be relied upon to justify discrimination against women.⁸ Advocacy networks too are blurring cultural distinctions and cross-cultural dialogue is taking place through courts and non-governmental organizations (NGOs).⁹ However, like religious doctrines, legal issues may also be viewed to have complicated plural lives subject to various interpretations.

In this part, I treat, in turn, the international sources that look at balancing women's rights and the right to religion.¹⁰ Part II examines how various constitutional provisions across states have achieved this effect, despite the variation therein. Achieving substantive gender justice requires an integrated approach engaging not just cultural diversity but

7. *Indian Young Lawyers Association v. The State of Kerala*, AIR 2018 SC 243 (India).

8. Rep. of the CCPR, CCPR General Comment No. 28: The Equality of Rights Between Men and Women, art. 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) [hereinafter *Equality of Men and Women*].

9. See generally Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399, 1428 (2003).

10. The bans on the cultural and religious expressions through dress and the European Court of Human Rights and the national courts' support of those restrictions on dress and penalties for dress code violations fall outside the ambit of this paper. See Heidi R. Gilchrist, 'Act Normal or Leave': When Law and Culture Collide, 26 COLUM. J. EUR. L. 54, 55 (2021).

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also understanding the sheer heterogeneity of constitutional approaches to culture and human rights.

A. Cultural Norms and Discrimination

Norms that discriminate against women are most often legitimated at the altar of culture, religion, and tradition. Experts have argued that “no social group has suffered a greater violation of its human rights in the name of culture than women.”¹¹

The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) guarantee the right to hold religious beliefs and practice a religion of their choosing. At the same time, international law permits states to impose limits on the practice of religion which “are necessary to protect . . . the fundamental rights and freedoms of others.”¹² Therefore, “restrictions may be imposed on religious law and practice if they are necessary to protect women’s human rights and fundamental freedoms”¹³

Similarly, the Convention on the Elimination of Discrimination against Women (CEDAW) Committee, when confronted with damaging cultural beliefs and practices, always reminds states parties of Article 5 of the CEDAW, often in combination with Article 2(f) of the CEDAW, and maintains that “cultural characteristics could not be allowed to undermine the principle of the universality of human rights, which remained inalienable and non-negotiable, nor to prevent the adoption of appropriate measures in favor of women.”¹⁴ The CEDAW Committee has also argued that in all countries, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.¹⁵

As earlier stated, in its General Comment 28, the Human Rights Committee determined that “Article 18 [guaranteeing freedom of

11. Rao, *supra* note 5.

12. International Convention on Civil and Political Rights art. 18, ¶ 3, Dec. 16, 1966, 999 U.N. T.S. 171 [hereinafter ICCPR]; *see* Equality of Men and Women, *supra* note 8 (“Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. . . . States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”).

13. Donald Sullivan, *Gender Equality and Religious Freedom*, 24 INT’L L. & POL. 795, 810 (1992).

14. Rep. of the Committee on the Elimination of Discrimination against Women, ¶ 64, U.N. Doc. A/52/38/Rev.1 (Aug. 12, 1997).

15. Rep. of the Div. of Advancement of Women, Dep’t. of Econ. and Soc. Affairs, General Recommendation No. 23: Political and Public Life, ¶ 8, U.N. Doc. A/52/38 (1997).

religion or belief] may not be relied upon to justify discrimination against women”¹⁶ The ICCPR cannot be used to sanction discrimination against any group or person and Article 18, in particular, may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience, and religion.

Former Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt has noted that “freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls.”¹⁷ In her report as Special Rapporteur, Farida Shaheed declared, “[i]t is essential to recall that international human rights norms provide a clear negative answer to the question of whether restrictions on the cultural rights of women . . . may be legitimately imposed under international law to preserve cultural diversity.”¹⁸ As Special Rapporteur, Shaheed further stressed that the “universal right to equality is unqualified in a way that the obligation to promote the right to manifest religion or belief, which can be subject to limitation where necessary to protect the rights of others, is not.”¹⁹ Moreover, Karima Bennouna, another Special Rapporteur on Freedom of Religion or Belief, argued that “[t]he most productive approaches indicate that achieving women’s equality is not a question of choosing between culture and rights, but of engaging both in an integrated way.”²⁰

B. *Textual Authority of the Human Rights Agenda*

Not only does the UDHR guarantee religion and religious liberties, but the UDHR recognizes the heterogeneity of religion.²¹ One of the architects of the UDHR, Lebanon’s Charles Malik, as chairman of the

16. Equality of Men and Women, *supra* note 8.

17. Human Rights Council, Gender-Based Violence and Discrimination in the Name of Religion or Belief, Rep. of the Special Rapporteur on Freedom of Religion or Belief on Its Forty-Third Session, ¶ 69, U.N. Doc. A/HRC/43/48 (Feb. 27, 2020).

18. Human Rights Council, Rep. of the Special Rapporteur in the Field of Cultural Rights on Its Sixty-Seventh Session, ¶ 56, U.N. Doc. A/67/287 (Aug. 10, 2022); *see also* Human Rights Council, Rep. of the Special Rapporteur on Cultural Rights on Its Thirty-First Session, ¶ 27, U.N. Doc. A/HRC/31/59 (Feb. 3, 2016) (“[Cultural rights] are not tantamount to cultural relativism. They are not an excuse for violations of other . . . rights They are firmly embedded in the universal human rights framework.”).

19. Human Rights Council, *supra* note 17, ¶ 69.

20. Karima Bennouna, *The International Obligation to Counter Gender Apartheid in Afghanistan*, 54 COLUM. HUM. RTS. L. REV. 1, 75 (2022); *cf.* Courtney Howland, *The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis Under the United Nations Charter*, 35 COLUM. J. TRANSNAT’L L. 271, 347–48 (1997).

21. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 18 (Dec. 10, 1948).

Third Committee who presented the final text of the UDHR to the General Assembly, stated, “[t]he Declaration is the composite product of all cultures and nations pooling their wisdom and insight. . . . The study of how each nation and culture brought in the fundamental values of its cherished tradition to the common concern is a fascinating task.”²²

As stated earlier, Article 18 of the ICCPR guarantees “the right to freedom of thought, conscience and religion” and protects individuals from coercion that would impair their freedom to have or adopt a religion or belief of their choice. Further, it limits manifesting one’s religion or beliefs to instances prescribed by law and when “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”²³ Moreover, Article 26 guarantees that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁴ It further expresses that “[e]veryone shall have the right to freedom of thought, conscience and religion . . . includ[ing] freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.”²⁵

The fundamental right to religion also includes the right to change one’s religion or belief. According to Article 18 of the ICCPR, “[n]o one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.”²⁶ The U.N. Human Rights Committee has also clarified that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. And the terms belief and religion are to be broadly construed.”²⁷ In practice, this means that one has a right not only to change one’s religion but also to critique one’s religion or beliefs.

Therefore, the fact that religion is recognized as a state religion or that it is established as official in the constitution shall not result in any impairment of the enjoyment of any of the rights under the ICCPR,

22. NIHAL JAYAWICKRAMA, *THE JUDICIAL APPLICATION OF HUMAN RIGHTS LAW: NATIONAL, REGIONAL AND INTERNATIONAL JURISPRUDENCE* 29 (Cambridge Univ. Press 2d ed. 2017).

23. ICCPR, *supra* note 12, art. 18.

24. *Id.* art. 26.

25. *Id.* art. 18.

26. *Id.*

27. Human Rights Committee, General Comment No. 22 art. 18, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (July 29, 1994).

including Article 18 on freedom of religion and Article 27 on rights of religious minorities, nor in any discrimination against adherents of other religions or non-believers.

This clarifies that everyone has the freedom—individually or collectively, publicly or privately—to practice and manifest a religion or belief. Inherent in this right is the freedom to be a non-believer or to hold no religious belief. Freedom of religion also does not mean freedom to discriminate. At the same time, the UDHR has designated equal rights as the highest priority: “[the] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”²⁸

Religious practices must be subject to limitations that “are prescribed by law and are necessary to protect public safety, order, health or morals, or other fundamental rights and freedom of others.”²⁹ This includes others’ fundamental rights to equality.

Apart from the core human rights treaties, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities protects equal human rights and holds the state responsible for ensuring that groups cannot discriminate in any way against any person on the basis of her/his group identity and taking action to secure each person’s equal treatment by and before the law.³⁰ The declaration then proceeds to discuss with clarity how actions related to the group identity must accord with international standards of treating all people equally.³¹

The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief also encompasses the freedom to practice one’s religion or belief in public or private, alone or with others, and to express one’s religion or belief through observance, worship, practice, and teaching.³² At the regional level, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, also known as the Maputo Protocol, provides insights into ways to distinguish harmful traditional practices from positive cultural practices. In Article 17, the Protocol guarantees

28. G.A. Res. 217 (III) A, Universal Declaration of Human Rights pmbl. (Dec. 10, 1948).

29. Human Rights Committee, General Comment No. 22 art. 18 (Freedom of Thought, Conscience or Religion), ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.10 at 2 (2000) [hereinafter General Comment No. 22].

30. G.A. Res. 47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities art. 4, ¶ 2 (Dec. 18, 1992).

31. *Id.*

32. See G.A. Res. 36/55, Declaration on The Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief art. 1 (Nov. 25, 1981).

the “Right to Positive Cultural Context.” Paragraph 1 states that “[w]omen shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.”³³ Most importantly, it calls for the representation and participation of women in the dynamic formulation of culture. It calls upon state parties to “take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.”³⁴ The term “formulation” can be interpreted to redefine the protean nature of culture as a dynamic process.³⁵

In the arena of soft law, Article 5 of the 2001 Universal Declaration on Cultural Diversity from the U.N. Educational Scientific and Cultural Organization (UNESCO) states that “cultural rights are an integral part of human rights . . . and [that] all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices.”³⁶ Similarly, Article 5 affirms that the right to cultural practices is “subject to respect for human rights and fundamental freedoms.”³⁷ Moreover, Article 4 of the 2001 UNESCO Declaration on Cultural Diversity states that “[n]o one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”³⁸

These international declarations and conventions articulate a broad range of cultural rights—for example, the right to cultural participation; the right to enjoy the arts; conservation, development, and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious, or linguistic minorities; freedom of assembly and association; the right to

33. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa art. 17(1), July 11, 2003, 3268 U.N.T.S.

34. *Id.* art. 17(2)

35. The term “formulation” attempts to understand a dynamic interpretation of religious texts. An example of this is how in 2017, a group of religious leaders from around the world, representing various faiths, convened to issue a declaration affirming their deep conviction that our respective religions and beliefs share a common commitment to upholding the dignity and the equal worth of all human beings. The goal was to promote constructive engagement on the understanding of religious texts, ensure non-discrimination and gender equality, stand up for the rights of all persons belonging to minorities, and monitor interpretations, determinations, or other religious views that manifestly conflict with universal human rights standards and norms. See *Overview: #Faith4Rights Toolkit*, OHCHR, <https://www.ohchr.org/en/faith-for-rights/faith4rights-toolkit/overview> (last visited Nov. 17, 2023).

36. U.N. General Conference of the United Nations Educational, Scientific and Cultural Organization, UNESCO Universal Declaration on Cultural Diversity art.5 (Nov. 2, 2001).

37. *Id.*

38. *Id.*

education; freedom of thought, conscience, or religion; freedom of opinion and expression; and the principle of non-discrimination. At the same time, these documents consistently state that the right to culture is not unrestricted.³⁹ In other words, international human rights declarations and protocols assert that culture cannot be used to justify discrimination, for “to violate or deny human rights [on the basis of culture] is an abuse of the right to culture.”⁴⁰

In the next two sections, I explore glimpses of an emancipatory potential of religion and its relationship to the rule of law. This is done mainly through a thumbnail sketch of Noah Feldman’s work on the *Shari’a* Law in Section II.C. In Section II.D, I examine the role of cultural interlocutors and ask who speaks in the name of culture. Here, an examination of the text would show that a major percentage of cultural interlocutors are male, rendering the formal interpretation of culture in the male voice. This analysis may be complicated by the way in which women speak for culture in the subaltern sphere.

C. *Theocracy and Religious Law*

Scholars such as Madhavi Sunder have argued for a new enlightenment theory which rests on the emancipatory power of religion.⁴¹ In his sweeping history of Islamic culture and customs depicting its genesis and the promise it can hold for the rule of law, constitutional scholar Noah Feldman, in the *Fall and Rise of the Islamic State*, too re-conceptualizes *Shari’a* as an Islamic rule of law and revitalizes respect to Islamic constitutionalism.⁴² Feldman claims that a modern Islamic state could provide political and legal justice to today’s Muslims, but only if new institutions emerge that restore this constitutional balance of power.⁴³

Rather than dismissing *Shari’a* as a backward-looking theocracy, he argues that classical Islamic legal and political institutions were organized in a constitutional construct that functioned as a separation of powers between the rulers and the scholars, albeit religious scholars who could hold the unfettered authority of rulers in check.⁴⁴ However,

39. Equality of Men and Women, *supra* note 8, ¶ 5.

40. Diana Ayton-Shenker, United Nations Background Note: The Challenge of Human Rights and Cultural Diversity, ST/DPI/1627 (Mar. 1995).

41. See generally Sunder, *supra* note 9.

42. See generally NOAH FELDMAN, *THE FALL AND RISE OF THE ISLAMIC STATE* (2008). See also Noah Feldman, *Why Shariah?*, N.Y. TIMES (Mar. 16, 2008), <https://www.nytimes.com/2008/03/16/magazine/16Shariah-t.html> (Feldman makes clear that *Shari’a* constitutes “an Islamic version of what the West considers its most prized principle of political justice—the rule of law.”).

43. See FELDMAN, *supra* note 42, at 149 (2008).

44. *Id.* at 92, 106–07.

Feldman fails to critically examine *Shari'a*'s promise for women's rights and how culture, constitutions, and courts must balance not just the rule of law but the human rights of women.

Harvard Scholar Asifa Quaraishi writes that to argue that *Shari'a* could constitute the rule of law for Muslims is dangerous as it falls into the trap of cultural relativism that somehow Muslims have different standards of justice including unequal rights for women.⁴⁵ In fact, those proponents of the *Shari'a* Law may risk further reinforcing and canonizing gender inequality in the law.⁴⁶ She argues,

But I have concerns about Feldman's vision for what these new institutions might look like. Islamists looking to develop new institutions with "their own original and distinctive way of giving real life to the ideals of Islamic law," as he suggests, might create an "Islamically oriented legislature, infused with the spirit of a democratized *Shari'a*" or "a court exercising Islamic judicial review to shape and influence laws passed in its shadow."⁴⁷ That is, Feldman imagines that a *Shari'a*-enacting legislature or a *Shari'a*-checking court could fill the void previously occupied by the classical *fiqh* scholars as a counterbalance to a dominant executive power.⁴⁸

At the same time, Feldman also offers a path of modernist interpretation of the *Shari'a* which offers guidance as to the interpretation of all religious laws. He argues that *Shari'a* is not a closed corpus and continues to expand to other modes of extension, commentary, and interpretation that include *Ijtihad*, or intellectual undertaking, and *Ijmaa*, or consensus. Feldman's contention that not all religious laws are fixed corpora, but rather contain interpretive possibilities to develop their principles in line with contemporary equality norms, is instructive. In the next section, I look at whether a modernist interpretation of religion or customary laws can in fact situate these customary laws as a dynamic and living system of laws, rather than a set of moribund laws that are inimical to women's human rights.

45. Asifa Quraishi, *Taking Shari'a Seriously*, 26 CONST. COMMENT. 297, 300 (2010) (reviewing NOAH FELDMAN, *THE FALL AND RISE OF THE ISLAMIC STATE* (2008)).

46. *Id.*

47. *Id.* at 306.

48. *Id.*

D. *Who Speaks for Culture: Cultural Interlocutors and Community Chiefs*

Cultural traditions often define and shape inequalities in property rights, custody, reproductive rights, guardianship, marriage, and divorce. Religion, in other words, has been used both as a shield and a weapon against unequal laws and practices.

The idea of an opposition between women's human rights and cultural rights often fails to consider who in a culture has the power to speak and who does not.⁴⁹ Customary laws continue to be deeply entrenched in many constitutions across the world. Currently, religious and traditional leadership are structured in varied ways. Most of them function as a bridge between religion, culture, tradition, and the legal system of the country. They are either part of the judicial system of the country or operate within a *sui generis* system of traditional institutions—a council of chiefs or even a corporation.⁵⁰ In certain other systems, they coexist within the formal governance systems and participate in the administration of the territory.

Through the mapping of the constitutions, we see that traditional leaders/chiefs are mostly found Africa. They are viewed as the guardians and enforcers of traditional customs and practices. For instance, Article 143 of the Togo Constitution recognizes the traditional chiefdom as the guardian of use and customs.⁵¹ Burkina Faso has embedded the role of traditional leaders within its Preamble, thereby providing a broad yet constitutionally significant role for traditional leaders. The relevant portion of the Preamble reads as follows, “[recognizing] the customary and traditional leadership as [a] moral authority[,] depository of the customs and of the traditions in our society.”⁵² In Côte d’Ivoire, the “traditional chiefs” occupy a similar position and are made “responsible for the valuing of habits and customs; the promotion of the ideals of peace, development and social cohesion.”⁵³

49. See *infra* notes 78–85 and accompanying text.

50. See, e.g., CONST. OF ZAMBIA (Rev. 2016) art. 166 (“The institution of chieftaincy—a. is a corporation sole with perpetual succession and capacity to sue and be sued; and b. has capacity to hold property in trust for its subjects.”).

51. See, e.g., TOGO CONST. (Rev. 2007) art. 143 (“The Togolese State recognizes the traditional chiefdom, guardian of use and customs. The designation and the enthronement of the traditional chief obeys the use and customs of the locality.”).

52. BURK. FASO CONST. (Rev. 2015) pmbl.

53. See CÔTE D’IVOIRE CONST. (2016) art. 175 (“Traditional chieftaincy is represented by the National House of Kings and Traditional Chiefs. The National House of Kings and Traditional Chiefs is the Institution regrouping all the Traditional Kings and Chiefs of Côte d’Ivoire. It is notably responsible for: the valuing of habits and customs; the promotion of the ideals of peace, development and social cohesion.”).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

In South Africa,⁵⁴ Uganda,⁵⁵ Zimbabwe,⁵⁶ Zambia,⁵⁷ Swaziland,⁵⁸ and Vanuatu,⁵⁹ traditional leaders or the chiefs operate through an independent council, institutions, or corporations. In South Africa,⁶⁰ Uganda,⁶¹ and Zimbabwe,⁶² such authorities are subject to checks and

54. The South African Constitution discusses the traditional role of leaders stating that,

The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs. The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law—national or provincial legislation may provide for the establishment of houses of traditional leaders; and national legislation may establish a council of traditional leaders.

S. AFR. CONST., 1996 ch. 12, art. 211–12.

55. *See* UGANDA CONST. (Rev. 2017) art. 246 (“Institution of traditional or cultural leaders: Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.”).

56. *See* ZIM. CONST. (Rev. 2017) art. 282–83, 286 (“Functions of traditional leaders: Traditional leaders have the following functions within their areas of jurisdiction—to promote and uphold cultural values of their communities and, in particular, to promote sound family values; to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines; . . . Appointment and removal of traditional leaders: An Act of Parliament must provide for the following, in accordance with the prevailing culture, customs, traditions and practices of the communities concerned; . . . Functions of National Council and provincial assemblies of Chiefs: The National Council of Chiefs and, within its province, a provincial assembly of Chiefs have the following functions—to protect, promote and develop Zimbabwe’s culture and traditions; . . .”).

57. *See* CONST. OF ZAMBIA (Rev. 2016) art. 165 (“The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply. Parliament shall not enact legislation which—confers on a person or authority the right to recognise or withdraw the recognition of a chief; or derogates from the honour and dignity of the institution of chieftaincy.”).

58. *See* SWAZ. CONST. (2005) art. 233 (discussing the role of chiefs in the country); *see also id.* at Chapter XVIII. Misc. art. 251 (“There shall be a Council of Chiefs which shall be composed of twelve Chiefs drawn from the four regions of the Kingdom appointed by the iNgunyama on a rotational basis.”).

59. *See* VANUATU CONST. (Rev. 2013) ch. 5, art. 30 (“The Malvatumauri Council of Chiefs has a general competence to discuss all matters relating to land, custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages. The Council must be consulted on any question, particularly any question relating to land, tradition and custom, in connection with any bill before Parliament.”).

60. S. AFR. CONST., 1996.

61. UGANDA CONST. (Rev. 2017).

62. ZIM. CONST. (Rev. 2017) art. 281.

balances. In Uganda, these powers are broadly subject to the provisions of the Constitution,⁶³ whereas in South Africa they are subject to “applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.”⁶⁴ In Zimbabwe, the “traditional leader” is bound by the principles of equality and fairness.⁶⁵ They are not allowed to act in a partisan manner, further the interests of any political party, or violate the fundamental rights and freedoms of any person.⁶⁶ “[T]he President on the recommendation of the provincial assembly of Chiefs through the National Council of Chiefs and the Minister responsible for traditional leaders” holds the power to appoint, suspend, or remove these traditional leaders.⁶⁷

In Malawi⁶⁸ and Nicaragua,⁶⁹ the traditional leaders have a role in administering justice. Malawi has independent traditional or local courts and Nicaragua requires the participation of traditional leaders to improve access to justice and provide alternative modes of dispute

63. See UGANDA CONST. (Rev. 2017) art. 246 (“Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.”).

64. S. AFR. CONST., 1996.

65. ZIM. CONST. (Rev. 2017) art. 281 (stating that the traditional leader is bound to “treat all persons within their areas equally and fairly.”).

66. *Id.*

67. *Id.*

68. MALAWI CONST. (Rev. 2017) art. 110(3) (“Parliament may make provision for traditional or local courts presided over by lay persons or chiefs: Provided that the jurisdiction of such courts shall be limited exclusively to civil cases at customary law and such minor common law and statutory offences as prescribed by an Act of Parliament.”).

69. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [Cn.] tit. VIII, ch. V, art. 160, Jan. 9, 1987 (“The administration of justice guarantees the principle of legality; it protects and safeguards human rights and guarantees access to justice through the application of the law in cases and proceedings falling within its jurisdiction. The administration of justice recognizes the citizens’ participation through the traditional leaders of the original tribes of the Caribbean Coast and the Judicial Facilitators in the whole country as alternative means of access to justice and dispute resolution in conformity with the law.”).

resolution. In Micronesia,⁷⁰ Niger,⁷¹ Nigeria,⁷² and Palau,⁷³ the functions of the traditional leaders are embedded within the formal system of governance, often functioning as the intermediaries between local governance and enforcing local customs.⁷⁴

The challenge posed by these cultural interlocutors is that they are capable of reinforcing conservative norms that can aggravate existing inequalities and divisions based on caste, class, gender, ethnicity, etc.⁷⁵ While there is criticism of the modes of functioning of these tribal leaders/chiefs, it is important to capitalize on their rootedness in the community to enhance access to justice.⁷⁶ What is crucial to these structures is a mechanism to ensure checks and balances to their powers that perpetuate systematic prejudices, such as gender stereotyping, and act as a barrier to an egalitarian society.⁷⁷ Moreover, women must constitute an equal percentage of any such structure.

70. See MICR. CONST. (Rev. 1990) art. V, § 1 (“Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.”).

71. See NIGER CONST. (Rev. 2017) art. 167 (“The State recognizes the traditional leadership [chefferie] as the depositary of customary authority. As such, it participates in the administration of the territory of the Republic in the conditions determined by the law. The traditional leadership is held to a strict obligation of neutrality and reserve. It is protected against any abuse of power tending to divert it from the role conferred on it by the law.”).

72. See CONSTITUTION OF NIGERIA (1999) ch. I, § 7 (“The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils. The person authorised by law to prescribe the area over which a local government council may exercise authority shall define such area as clearly as practicable; and ensure, to the extent to which it may be reasonably justifiable that in defining such area regard is paid to the common interest of the community in the area; traditional association of the community; and administrative convenience.”).

73. See PALAU CONST. (Rev. 1992) art. V, § 1 (“The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government.”).

74. LAUREN HONIG, TRADITIONAL LEADERS AND DEVELOPMENT IN AFRICA 4 (Oxford Rsch. Encyclopedia of Pol., 2019), <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-821>.

75. *Id.* at 10.

76. UNITED NATIONS POPULATION FUND, WOMEN, FAITH AND HUMAN RIGHTS 25 (2016) [hereinafter WOMEN, FAITH].

77. *Cf. id.* at 30 (“Conflicting interests between nations and peoples in rich and poor countries, systematic prejudices such as patriarchy, and ongoing struggles for egalitarian societies charge the atmosphere around such discussion with a general air of distrust. Against the

Currently, many of these religious/traditional institutions are driven by men.⁷⁸ This means that the lived realities of women are very often not accurately reflected or even taken into consideration at the decision-making tables. This provides a fertile ground for patriarchal practices and gender-based violence⁷⁹ being legitimized by the formal judicial or governance systems.⁸⁰ Since women do not occupy formal positions as traditional or religious leaders, their voices are rarely heard.⁸¹ Even when they are present, their role is to talk about their “victimhood” rather than being “norm shapers.”⁸² This is because the women leaders are legitimized neither by the faith’s leadership nor by the secular women’s movement.⁸³ There is a need for gender parity in traditional/community leadership.⁸⁴ The question arises, can courts and tribunals call for redistributive justice, where women can be represented as cultural interlocutors within the countries wherein such traditional systems of governance exist? Doing so would not only create a more representative group of cultural interlocutors, but it would also strengthen the modern governance systems of those countries by enforcing egalitarian practices while also securing participatory governance.⁸⁵

A case in point is the historic *Shilubana* case. The dispute was over the principle of male primogeniture, the right to succeed as chief to the Valoyi community in Limpopo, South Africa. Shilubana could not succeed to the position after her father’s death because of her gender.

backdrop of critique against the religious (conservative) right’s agenda at almost all UN-related meetings, there is a legitimate fear that a more tentative discussion on the relation between human rights and human dignity could strengthen those who aim at limiting the universality of human rights for women, children, and lesbian, gay, bisexual and transgender (LGBT) people.”).

78. *Id.* at 33; see Obediah Dodoi, *Traditional Leadership Systems and Gender Recognition: Zimbabwe*, 1 INT’L J. GENDER & WOMEN’S STUD. 1, 29–44 (2013).

79. Dodoi, *supra* note 78.

80. *Cf.* WOMEN, FAITH, *supra* note 76, at 33 (“In many ways governance structures in faith communities are not that different from other male dominated power structures. The added challenge generated in religious power structures is that they often give legitimacy to positions that confuse theology and cultural traditions, particularly where issues concerning women’s empowerment and gender are involved.”).

81. *Id.*

82. *Id.* at 33–34

83. *Id.* at 34.

84. In 1997, the Ndebele tribe in Matabeleland South, Zimbabwe, witnessed a significant shift as they embraced their first female chief, Sinqobile Mabhena. Despite initial resistance, Mabhena’s appointment challenged traditional norms and paved the way for subsequent female leaders like Ndube. This narrative reflects a gradual but significant evolution towards gender inclusivity and recognition of women’s leadership within Zimbabwean tribal communities.

85. Dodoi, *supra* note 78, at 29–44.

The Constitutional Court decided that the very same communities that observe customary law must also be responsible for developing customary law and that communal decisions must be respected in accordance with Section 211 of the Constitution. The Court also acknowledged that past practices should not be interpreted as being irrelevant in today's society, since such practices and traditions may still be of considerable importance in customary law, but should be considered together with other important factors.

The author was able to interview Hosi Shilubana, the appellant in the Shilubana case. Her journey is the journey of South Africa's post-apartheid constitutional justice movement. Her story is recreated below as shared in the interview.

The current *Hosi* or chieftain was born into the royal family of Nwamitwa. According to the practice of primogeniture law, women could not ascend to the throne. In her words, "[t]he practice of the primogeniture law impacted not only me as a person, but it impacted many other women, all of them who had faced gender discrimination."⁸⁶ Her mother was the principal wife of the *Hosi*, the King, her father. In her words, "[t]he traditional leaders were expected to marry many wives, some traditional heads had fifty wives. My father had four wives. I was the only child of my mother, the second wife had four girls, the third wife had so many abortions and no child, and the fourth wife was a divorcee."⁸⁷

It was after Hosi Shilubana's training as a teacher that she realized that when it came to her salary, she would face discrimination on multiple grounds based on her identity as a black married woman. As she framed it, "[w]hen it came to salary, my salary was a female salary. Women were triply disadvantaged or oppressed. For me, I was 1. a woman; 2. an African woman; and 3. a married woman."⁸⁸ This early experience of discrimination encouraged her to join women's organizations to fight gender discrimination.

Thereafter, she went on to marry into the Royal Shilubana family and raised three girls, and a boy who tragically died in a car accident. During the height of the movement to end apartheid, she served as one of the negotiators of the South African Constitution. She vividly recounted that pulse-quickenning era of national transformation: "It helped me to understand the democratic dispensation of South Africa.

86. Zoom interview with the Honorable Hosi Tinyiko Lwandlamuni Phillia Nwamitwa-Shilubana (Mar. 23, 2024) [hereinafter Hosi Interview].

87. *Id.*

88. *Id.*

We women in the constitutional drafting committee ensured that we have these rights enshrined in the Constitution, especially the 'equality clause.'"⁸⁹

She went on to lead the historic post-apartheid parliament as one of the first women to be a member of the parliament. She recalls that,

Unlike now there weren't many women then. But we were armed with the equality clause. We were not going to be discriminated against anymore. President Madiba, President Motlanthe and President Jacob Zuma were all part of the parliament then. When I was in the parliament, it was the time when the interim constitution [(the first democratic constitution)] was passed.⁹⁰

While she was in the parliament, a Commission was established in 1997 to look into the disputes of traditional leaders.⁹¹ When the Valoyi Tribal Authority (the Royal council back in the village) came to know about the Commission, they decided to write to the Commission expressing their worries about the weakened system of democracy in South Africa where a rightful heir to the throne, a woman, had been discriminated by the apartheid system as well as the traditional customs.⁹² The Royal Council of her tribe then got a chance to present its case before the Commission. In her narration of the history, she highlighted the customary primogeniture laws that disallowed succession to chieftain to a woman.⁹³

My uncle Richard Nwamitwa was on the throne as I could not succeed to the throne due to the customary laws. He was supposed to be the acting king but the question was acting for whom? Our tradition dictates that no one tribe can have more than one leader. Culture did not allow it. My father's brother could just not succeed while I was alive as the rule was that "[o]ne womb could not produce two heirs to the throne." When my father died, the then-commissioner called for a community meeting of royal members, to decide who is now to take over. My uncle organized his own friends and took them to the

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

native commissioner, an executive from the traditional commissioner of leadership.⁹⁴

The Council recommended that the rightful heir [Hosi Shilubana] must take over. In 1968, they still had to follow the tradition, but my uncle broke the tradition, saying that even though one womb cannot produce two heirs, he is the rightful heir. However, according to the resolution of the Council of the traditional authority [(there were six of them)], I could take over. I was the rightful heir.⁹⁵

With the decision of the Council, the community then decided to set November 28, 2002, as the date for her inauguration/installation as the chief. Shilubana came back home from Cape Town and all arrangements were in place for a big feast for the traditional inauguration and her friends from the parliament had made plans to attend this historic ceremony. However, a day before her inauguration, she received an interdiction by the court asking her to halt all proceedings for her installation as the chief. She recalled,

The Premier and the community decided to set a date for my inauguration to install me officially. My uncle's son decided to interdict my inauguration ceremony. Some of my colleagues from parliament had flown from Cape Town to my place to celebrate the inauguration of the first woman traditional leader. That is when the court order arrived to stop my inauguration. The ceremony was thus stopped by law.⁹⁶

That marked the beginning of Shilubana's fight for justice in court. She recounts this journey with the clear-eyed discernment of someone who had her eye on changing history:

I went to the Court to challenge my uncle's son's interdiction. I fortunately had the support of the entire community. The case first went before the High Court in 2004. I also had the support of the women parliamentarians, like Mama Winnie Mandela, and Mama Tembo. They wanted to support the first Royal

94. *Id.*

95. *Id.*

96. *Id.*

woman leader. I was really frustrated by the whole situation but they said, "Don't be discouraged, let us go to the court and then see what happens." At that point in time there was this system of providing oral evidence. The Respondents to the interdict to my inauguration were myself, one traditional authority, the Premier of Northern Province, and the Minister of Traditional Affairs. He is the one who signed my appointment. So, he had to defend as well. The gender commission also went to the High Court as friends of the court. After the oral evidence, then came the day the case had to be heard. The person who was interpreting my testimony did not know my language very well, as the hearings were conducted in Pretoria. The senior counsel said that this translation is incorrect. I asked the judge who was a "white South African" if I could speak on behalf of myself because the translator was not saying what I was trying to say. Then the judge asked me questions, and I answered. But there was one question that changed the game. He asked me "Since when did you discover that women had equal rights in this country?" I said, "My Lord, since the end of the apartheid regime." He was so annoyed when I spoke about the apartheid. My counsel warned me that this was going to be used against me.⁹⁷

During the time of this ongoing court case, my uncle's son also organized and mobilized the male chiefs to come and support him in the Court. Their evidence stated that according to our tradition and culture, a woman is like a live chicken that can be sold and given. They gave very silly examples like a woman in our culture does not put on trousers, it is only worn by men. They do not sit on the chair; they sit on the floor. The women are not supposed to eat chicken or meat. A woman has no worth in the family; they are essentially second-class citizens. They presented this to the judge saying that a woman being a tribal leader is against the custom or tradition. I already knew that the judgment was going to be against me due to the apartheid comment that I gave and the witness statement given by the male chiefs. As expected, the judgment said that the uncle's son was the rightful Hosi as the tradition does not let a woman take over. The apprehension was, what if she gets

97. *Id.*

married to another royal ethnic group? The judgment was, therefore, pronounced against me.⁹⁸

Strengthening her resolve, Hosi Shilubana pressed on with the support of her colleagues in parliament: a pantheon of women leaders, Ma Winne (Nelson Mandela's wife), and Ma Tambo (the wife of the president of the African National Congress). The case then became a rallying point for the South African women's movement:

My women colleagues from the Parliament said we need to appeal this case. It then went to the Supreme Court of Appeal. I had the full support of many women and 80% of the four buses that went to the Court to support me were ordinary women. Some men were also there to support me. The National Gender Commission appointed by the Resource Center of South Africa also supported my case. The Appeal Court decision held that we must go back to the community and get a new resolution saying they want to appoint me as the traditional leader.⁹⁹

Then we approached the Constitutional Court of South Africa to lay out our challenges before the Court. What is interesting is that another amicus curiae, the National Movement of Rural Women [(NMRW)] joined us in court to give me more power. The Gender Commission, Counsel appointed by the Premier and NMRW, this strong group of three were standing against my nephew to defend me. Advocate IAM Semanya was the lead counsel.¹⁰⁰

Six buses of support for Hosi Shilubana went to the apex Court in 2007. The matter was decided on June 4, 2008. On the first day, the case was not heard as the people who accompanied her demanded to be inside the Court. Hosi Shilubana narrated the lively courtroom scene:

The people who came to support me sat down on the floor in the Court as the space was not enough. They had two demands 1. They must be allowed inside the Court; and 2. They wanted

98. *Id.*

99. *Id.*

100. *Id.*

the proceedings to be interpreted in their own language. The Court responded to these demands by stating 1. you can't sit on the floor; and 2. You couldn't interpret in the apex Court. So, we had to go back to another bench. The Court was overcrowded while listening to the merits of the cases. On the third attempt, the counsel representing my nephew had resigned. A new counsel came to represent my nephew. We had a very powerful defence comprising of the Gender Commission and the state counsel. A fourth friend of the Court, the Congress of Traditional Leaders of South Africa [(CONTRALESA)] also joined. Representing all the male counsels of South Africa who came in to say that we cannot give the position to a woman. My defence counsel argued, "According to our culture and tradition, a brother cannot be appointed as a Hosi or traditional leader." Then the lawyer said, we will go to the next brother, and what if he dies, then we go to the third brother. It was like a joke. What happens when there are no brothers? They had no answer to that one. But my nephew's lawyer raised a problem stating that we cannot allow her to take over because there will be a problem with succession. The Court then asked, "You said the tradition is this, what is the tradition that dictates, when the Hosi dies before giving the throne to the heir? Tell us if you know." The Court held that South Africa is at a transitional stage and deferred to the democratic dispensation. They held that the traditional council has the right to change the laws and no law is static.¹⁰¹

The *Shilubana* story features many things: overturning a gender discriminatory law, the application of the gender-equal clauses that Shilubana herself had drafted, mobilizing a new women's movement in a post-apartheid era, and the story of a struggle demonstrating that "Customs cannot override the constitutional guarantees. Traditional authorities have the right to make changes. After [her] case, more than six women have been appointed to the throne quoting [the] case (other tribes in South Africa like Tongas, Zulus etc.). This case had a ripple effect."¹⁰²

At the end of this story of struggle is her sense of how her own narrative changed history but more importantly how it will go on to influence a historical consciousness that will profoundly influence the way

101. *Id.*

102. *Id.*

we look at women's leadership at every level of decision-making. As she ended triumphantly: "I am still on the throne as Hosi Nwamitwa II."¹⁰³

Nannerl Keohane, the former President of both Wellesley College and Duke University, in her book on leadership, echoes the male pronoun when explaining Nelson Mandela's respect and regard for the South African chieftainship. She writes, "Mandela had great respect for the chief of his tribal group, called the regent in recognition of his role in the government of South Africa Yet the "seemingly untempered power" wielded by the regent was grounded in views expressed in meetings of the adult male members of the tribe at the Great Place, the regent's headquarters."¹⁰⁴

The *Shilubana* case opened the door for the appointment of women chiefs. However, it is still important to examine further the challenges these women overcame in their ascendancy to the traditional chieftaincy positions as a result of the *Shilubana* judgment. The judgment emphasized the importance of respecting decisions made by traditional authorities if they are in line with the spirit of South Africa's Bill of Rights. The lawyers in this case further emphasized that customary law is a flexible, living system of law, which develops over time to meet the changing needs of the community. Although the case challenged the immutability of customs, it still leaves open the question as to the role of customary law vis-à-vis the Constitution and how much power a woman chief may wield in changing cultures that are inherently male dominated. The role of traditional and religious leaders was further examined by the CEDAW Committee, in the South African Case of the CEDAW Inquiry concerning South Africa conducted under Article 8 of the Optional Protocol to the Convention.¹⁰⁵

103. *Id.*

104. NANNERL KEOHANE, THINKING ABOUT LEADERSHIP 159 (2010).

105. The committee in its views notes that "[t]raditional leaders are not adequately sensitized to deal with victims of domestic violence." As an example, the committee cited that traditional leaders often justify *ukuthwala* (consensual elopement of a bride) and other harmful practices as consensual cultural practices. While the Committee recommended that traditional leaders and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities engage in awareness-raising programs for rural communities, it is also important to look at more structural changes such as equal representation among the traditional leadership. U.N. Comm. on the Elimination of Discrimination against Women [CEDAW], Rep. on Inquiry Concerning South Africa under Article 8 of the Optional Protocol to the Convention, U.N. Doc. CEDAW/C/ZAF/OIR/1 (Nov. 17, 2021).

III. HOW DO CONSTITUTIONS DEFINE RELIGION AND CULTURE?

The questions above connect to the way in which a constitution frames the relationship between the state, customary (and/or religious) law systems, and gender equality in defining the status of women and girls. Different constitutions take disparate approaches to reconcile the tension between culture, religion, and gender. There is some accommodation between the state-based or “formal” system, and a range of customary or religious systems of various groups within the state.

Constitutions serve as the supreme law of the land, influencing how rights are defined and protected. In addressing various issues, constitution-makers either expressly spell out particular issues or give decision-makers the ability to tailor certain issues in what Rosalind Dixon coins “constitutional deferral.”¹⁰⁶ The decision on whether or not to defer can often come down to whether the drafters intended for “ordinary political decision makers” to draft certain legal questions, and this decision to defer non-constitutionalizes specific issues.¹⁰⁷ In countries where state religions are recognized, the intersection of constitutional law, religious norms, and women’s rights presents unique challenges to gender-based discrimination and violence. This discussion examines various constitutional frameworks, focusing on their impact on women’s rights in the context of state religions.

Specifically, I will examine constitutional guarantees on freedom of religion and customary laws guaranteed in constitutions and how international human rights treaties are enshrined in constitutions. According to Article 31 of the Vienna Convention on the Law of Treaties (1969), a treaty is required to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁰⁸

A justiciable bill of rights is an integral part of the national constitution in each of these countries and culture can be interpreted in line with the human rights treaties including the CEDAW.¹⁰⁹

Asli Bali and Hannah Lerner discuss the connections between religious conflict and constitutional design, specifically when liberal constitution paradigms create “new beginnings” away from certain

106. Rosalind Dixon, *Constitutional Design Deferred*, in *COMPARATIVE CONSTITUTION MAKING* 165, 165 (David Landau & Hanna Lerner eds., 2019).

107. *Id.* at 167.

108. Vienna Convention on the Law of Treaties art. 31, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

109. These findings are summarized in Figure One below.

traditions.¹¹⁰ There is increased tension when there is inter- and intra-religious tension foregrounding the constitutional drafting, and Bali and Lerner argue that authors can address this tension in three different ways.¹¹¹ First, they can create institutional designs that target “special groups’ rights” with the implementation of power-sharing mechanisms.¹¹² Secondly, drafters can implement incrementalist constitutional strategies that intentionally avoid language discussing certain issues.¹¹³ Lastly, drafters may grapple with legal pluralism by according “special status” to certain groups of people.¹¹⁴ These three different approaches are key to understanding the essence of constitutions.

In understanding the quintessence of constitutional frameworks, this part examines the complex relationship between state religions, cultural norms, and gender equality principles in constitutional frameworks globally. It first provides an overview of how constitutions recognize and accommodate state religions, observing key differences in rhetorical strategies used by majority-Muslim, majority-Christian, and other countries. Next, it analyzes cultural exemptions made for personal laws and traditional practices, which often directly undermine commitments to women’s rights. The examination then shifts to how constitutions incorporate religious values or cultural obligations related to areas like family and marriage. Finally, a summation analyzes overarching tensions evident in these frameworks between principles of autonomy, legal pluralism, and preventing subordination of disadvantaged groups.

110. Asli U. Bali & Hanna Lerner, *Religion and Constitution Making in Comparative Perspective*, in *COMPARATIVE CONSTITUTION MAKING* 258, 259 (David Landau & Hanna Lerner eds., 2019).

111. *Id.* at 267–68.

112. *Id.* at 268.

113. *Id.* at 270.

114. *Id.* at 274.

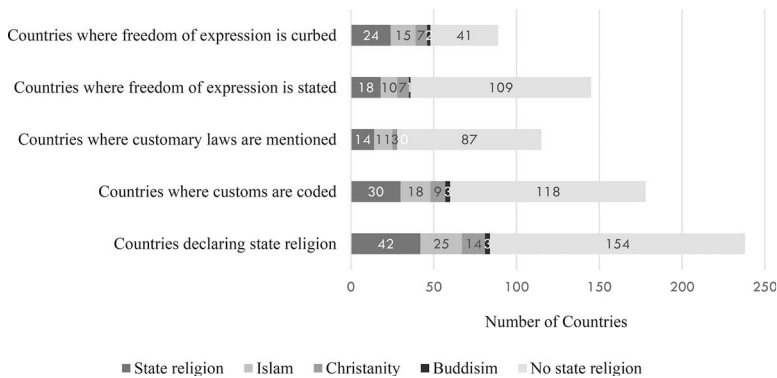


Figure One: Patterns Between Cultures and Constitutions

A. State Religions in Constitutions

Even though nearly all constitutions prohibit unfair discrimination, some constitutions explicitly provide that religious and customary laws take precedence over constitutions regarding family matters. In defending the primacy of religious or customary laws, some argue on the basis of religious freedoms. Customary and religious laws exist in eight percent of countries, including seventeen percent in sub-Saharan Africa, thirteen percent in East Asia and the Pacific, ten percent in the Middle East and North Africa, and twelve percent in South Asia.¹¹⁵

Several constitutions around the world recognize and protect the right to culture. A few examples of constitutions that enshrine the right to culture include South Africa,¹¹⁶ Bolivia,¹¹⁷ Canada,¹¹⁸

115. See Appendix.

116. Section 31 of the Constitution of the Republic of South Africa provides, “[t]he right to cultural, religious, and linguistic communities to enjoy their culture, practice their religion, and use their language” S. AFR. CONST., 1996, § 30. The Constitution also requires that the state “respect, protect, promote, and fulfill these rights.” *Id.* § 7.

117. Article 30 of the Constitution of the Plurinational State of Bolivia provides. “[i]n the framework of the unity of the State, and in accordance with this Constitution, the nations and rural native indigenous peoples enjoy the following rights: To be free[;] To their cultural identity, religious belief, spiritualities, practices and customs, and their own world view.” BOL. CONST. (2009) ch. IV, art. 30.

118. Section 27 of the Canadian Charter of Rights and Freedoms provides, “[t]his Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.).

India,¹¹⁹ and Australia.¹²⁰ In this section, I will look at how certain constitutions try to reconcile a potential confrontation between culture or religion and the right to equality.

While customs themselves cannot be essentialized, nor are they uniformly discriminatory, I take the view of Frances Raday, who argues that “the clash between culture and gender equality, is the static, resistant version. This version of culture . . . traditionalist culture . . . is the concern of international and constitutional human rights jurisprudence.”¹²¹ I also subscribe to Raday’s view that “[r]eligion is a part of culture in its wider sense. It might even be said that it is an integral part of culture”¹²² Raday further argues,

Many of the practices, defended in the name of culture, that impinge on human rights are gender specific; they preserve patriarchy at the expense of women’s rights. Such practices include: a preference for sons, leading to female infanticide; female genital mutilation (FGM); sale of daughters in marriage, including giving them in forced marriage as child brides; paying to acquire husbands for daughters through the dowry system; patriarchal marriage arrangements, allowing the husband control over land, finances, freedom of movement; husband’s right to obedience and power to discipline or commit acts of violence against his wife, including marital rape; family honor killings by the shamed father or brothers of a girl who has been sexually violated, whether with consent or by rape; witch-hunting; compulsory restrictive dress codes; customary division of food, which produces female malnutrition; and restriction of women to the roles of housewives or mothers, without a balanced view of women as autonomous and productive members of civil society.¹²³

119. Article 29 of the Constitution of India guarantees the protection of the interests of cultural, religious, and linguistic minorities. It ensures that they have the right to conserve their distinct language, script, or culture. India Const. art. 29, cl. 1, 1949.

120. Section 51(xxvi) of the Constitution of Australia provides the Australian government with the power to make laws with respect to “the people of any race, for whom it is deemed necessary to make special laws.” *Australian Constitution* s 51. Furthermore, Section 116 of the Australian Constitution guarantees the freedom of religion, thereby protecting cultural practices associated with religious beliefs. *Id.* s 116.

121. Frances Raday, *Culture, Religion, and Gender*, 1 INT’L J. CONST. L. 663, 667 (2003).

122. *Id.*

123. *Id.* at 670.

In this kind of case, the constitution formally recognizes the jurisdiction of the customary and/or religious system so that it coexists side by side with the formal legal system. This may give rise to parallel legal systems that might come in conflict with respect to gender equality creating a dualist system of constitutional guarantees of human rights and customary or religious laws in tension with human rights.

There are other ways to reconcile the tension. For example, in Kenya, the Constitution recognizes traditional dispute resolution mechanisms in Article 159(3), however, they must be consistent with the Bill of Rights and the Constitution and must be reconciled with justice or morality. In other words, according to the Constitution, they cannot “(a) contravene the Bill of Rights; (b) [be] repugnant to justice or morality or results in outcomes that are repugnant to justice or morality; or (c) [be] inconsistent with the Constitution or any written law.”¹²⁴

How, then, can one synthesize the findings that I present in the Appendix to this Article on the interplay between religion and state constitutions? I proceed with the following observations. First, several majority-Muslim countries take a relatively explicit approach to stating and endorsing a national religion. There are obvious examples, such as Iran, which declares itself an Islamic republic in its constitution.¹²⁵ Then, there are those countries that declare Islam as a state religion while still providing for freedom of religious expression and conscience—for example, Tunisia.¹²⁶

Second, notably, several majority-Christian countries refer not to a state religion but to persuasive moral authority emanating from Christian principles or inspirations. Constitutions that enshrine state religions other than Islam tend to frame their state religions in different terms than Muslim countries do. Take, for example, Hungary, which alludes to Christianity as playing a role in “preserving nationhood” and defining the country’s “religious traditions,” even though technically Hungary provides for separation of church and state.¹²⁷ Ireland takes a similar approach on separation, even though its Constitution states in its preamble, “[h]umbly acknowledging all our obligations to our Divine Lord, Jesus Christ”¹²⁸ Still, other states

124. CONSTITUTION art. 159(3) (2010) (Kenya).

125. ISLAHAT VA TAQYRATI VA TATMIMAH QANUNI ASSASSI [AMENDMENT TO THE CONSTITUTION] 1368 [1989] (Iran).

126. TUNIS CONST. (2014) art. 74.

127. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY] 2016, art. 7.

128. CONSTITUTION OF IRELAND 1937 pmbl.

more explicitly embrace a state religion, similar to many Muslim countries—for example, the Zambian Constitution declares in its preamble that the republic is a Christian nation, even though freedom of religion is guaranteed.¹²⁹ These examples are distinct from Tunisia, which *declares* the religion of the state *while also* providing for religious freedom. There are non-Christian examples of this, too—see, e.g., Sri Lanka, which “give[s] to Buddhism the foremost place” and declares that it is the state’s *duty* to “protect and foster the Buddha Sasana, while assuring to all religions the rights granted.”¹³⁰

Third, states that *do* declare a state religion tend to refer to certain scriptural and doctrinal sources of law to guide the construction of not just general positive law but also customary law. It is most useful to discuss Muslim countries here and the rhetoric on *Shari’a* in their constitutions—as well as how these countries define figures of religious *authority* in their constitutions. For example, in Malaysia, Islam is the religion of the Federation, yet other religions are allowed, and the head of state is also the lead religious figure, reflecting the intertwining of religion and state authority.¹³¹ Similarly, Pakistan’s Constitution also recognizes Islam as the state religion, balancing this with freedom of religion and expression.¹³² However, blasphemy laws and the emphasis on Islamic values can have implications for women’s rights and freedoms.¹³³ As another example, the UAE¹³⁴ and Saudi Arabia¹³⁵ emphasize the family’s role in society, grounded in moral-religious principles. Saudi Arabia’s Basic Law attempts to balance Islamic *Shari’a* with principles of

129. CONST. OF ZAMBIA (Rev. 2016) pmb. (“Declare the Republic a Christian Nation while upholding a person’s right to freedom of conscience, belief or religion.”).

130. SRI LANKA CONST. (Rev. 2015) ch. 2, § 9.

131. MALAY. CONST. (Rev. 2007) § 3.

132. PAKISTAN CONST. art. 2 (invoking the prophet’s teachings); *Id.* pmb. (emphasizing “[W]hereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust[,]” but also emphasizing that the values of “democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.”).

133. *See infra* Section I.D.

134. U.A.E. CONST. (Rev. 2009) art. 15 (“The family shall be the basis of society. Its support shall be religion, ethics and patriotism. The law shall guarantee its existence and shall safeguard it and protect it from corruption.”).

135. SAUDI ARABIA CONST. (Rev. 2013) art. 9 (“The family is the nucleus of Saudi society. Its members shall be brought up imbued with the Islamic Creed which calls for obedience to God, His Messenger and those of the nation who are charged with authority; for the respect and enforcement of law and order; and for love of the motherland and taking pride in its glorious history.”).

justice and equality.¹³⁶ However, these frameworks can sometimes lead to limitations on women's rights, particularly in areas like marriage, family life, and personal autonomy.

But even states that enshrine secularism can reach contradictory conclusions on customary law and culture. For example, India's secular Constitution contrasts with personal laws based on religion, creating a symbolic battlefield for women's rights.¹³⁷ By contrast, Bangladesh recognizes Islam as the state religion but ensures equal status for other religions, aiming to balance religious plurality with women's rights.¹³⁸ Bhutan's Constitution acknowledges Buddhism as a spiritual heritage, separate from politics, but intertwined with cultural identity.¹³⁹ In sum, the relationship between state religions, constitutions, and women's rights requires significant inquiry due to the substantial variance of treatment across different cultural and religious contexts. While some countries have made notable progress in aligning religious and customary practices with constitutional rights, others continue to face challenges.

B. Customary Laws and Culture in Constitutions

National constitutions frequently reconcile customary legal practices encoding cultural norms with principles of gender equality and non-discrimination that are enshrined in U.N. human rights treaties. Several constitutions directly recognize discriminatory aspects of customary laws concerning issues like marriage, divorce, property, and inheritance. How constitutions approach these tensions holds critical implications for women's rights and substantive equality. In my documentation of the cultural norms and customary laws in constitutions, I was able to establish certain common conclusions.

136. *See id.* arts. 8 ("The system of government in the Kingdom of Saudi Arabia is established on the foundation of justice, "Shoura" and equality in compliance with the Islamic Shari'ah (the revealed law of Islam.), 26 ("The State shall protect human rights in accordance with Islamic Shari'ah."), 48 ("Courts shall apply the provisions of Islamic Shari'ah to cases brought before them, according to the teachings of the Holy Qur'an and the Prophet's Sunnah as well as other regulations issued by the Head of State in strict conformity with the Holy Qur'an and the Prophet's Sunnah."), 81 ("The implementation of this law shall not violate the treaties and agreements the Kingdom has signed with other countries or with international organizations and institutions.").

137. India Const. Seventh Schedule, List III – Concurrent List art. 5.

138. BANGL. CONST. (Rev. 2014) art. 2A.

139. BHUTAN CONST. (2008) art. 3.

1. General Themes

First, exemptions for culture loom large in many constitutional provisions on rights. That is, various constitutions caveat the promotion of fundamental rights, including women's rights, with protection for significant cultural practices in the country. For instance, the Constitution of South Sudan upholds gender equality in property ownership and inheritance under Article 16 but also legitimizes ethnic communities' "customs and cultures" in Article 33.¹⁴⁰ Similarly, the Constitution of Botswana prohibits discrimination in Section 15 but exempts personal customary laws on family matters like adoption and burial.¹⁴¹ However, Botswana's courts have asserted that constitutional rights to equality trump these customary law exceptions.¹⁴² In the abstract—as in, without considering judicial enforcement of these provisions (*infra*, Part IV)—constitutional language like these examples seems to carve out an unnamed list of cultural practices from serious judicial scrutiny.

Second, many countries that commit to religious freedom in their constitutions also draw on religious traditions to promote certain cultural norms. Syria's Constitution notes that "personal status of religious communities shall be protected and respected" while rhetorically committing to promoting equality and protection from discrimination as fundamental rights.¹⁴³ But the Constitution also calls on the state to "encourage marriage" and "protect maternity and childhood."¹⁴⁴ Similarly, constitutions in countries like Pakistan also subordinate rights like free speech to potential restrictions for contravening Islamic injunctions.¹⁴⁵ Some multiethnic constitutions recognize customary and religious diversity but assert the primacy of rights protections. For instance, Bhutan's Constitution acknowledges Buddhism's centrality as the spiritual heritage but mandates the separation of religion and politics under Article 3.¹⁴⁶ Bangladesh establishes Islam as the state religion while ensuring equal rights and status for other faiths.¹⁴⁷

Third, constitutions vary in their treatment of tensions between customary laws and women's rights—from directly permitting discriminatory

140. REPUBLIC OF SOUTH SUDAN TRANSITIONAL CONST. (Rev. 2013) arts. 16, 33.

141. BOTS. CONST. (Rev. 2016) art. 15.

142. See Muna Ndula, *African Customary Law, Customs, and Women's Rights*, 18 IND. J. OF GLOBAL L. STUD. 87, 111 (2011).

143. SYRIA CONST. (2012) arts. 3, 33(3).

144. *Id.* art. 20(2).

145. PAKISTAN CONST. arts. 19, 61.

146. BHUTAN CONST. (2008) art. 3.

147. BANGL. CONST. (Rev. 2014) art. 2A.

practices to attempting to fashion conduits for religious or cultural diversity within a rights framework. However, beyond judicial constraints on customary laws, achieving gender justice requires challenging their underlying patriarchal premises. Constitutions codifying plural legal systems should interpret faith and custom dynamically, consistent with modern equality principles rather than static orthodoxies. In fact, many states are revising their laws in line with binding human rights treaties and in accordance with best practices in similarly situated states. Genuine transformation of socio-legal structures targeting women's rights would require a substantial reformation of either many constitutional texts and/or a stricter judicial construction of customary laws.

2. Protection of Women Against Harmful Traditions

Furthermore, some countries include constitutional provisions mandating that women and minorities be protected from harmful traditional practices. Article 7 of Eritrea's Constitution holds that "[a]ny act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited."¹⁴⁸ This language expressly names women as a protected class, prohibiting traditions that limit their rights. Article 24 of Malawi's Constitution lays out similar protections, holding that "[a]ny law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women."¹⁴⁹ In line with Dixon's theories, Malawi presents an undeferential approach and instead uses explicit language that protects women from discrimination. Not only does this provision expressly prohibit discrimination, but it also proposes recourse in stating that the government will invalidate these laws. While less stringent than the former examples, Sudan states in its Constitution that "the state works to combat harmful customs and traditions that reduce the dignity and status of women."¹⁵⁰ Despite not offering recourse like Malawi, this provision ensures that the state will actively work towards limiting discriminatory traditions. Sudan's provision exemplifies a more differential approach, using abstract language that does not propose explicit recourse measures. This allows for specialized political forums to consider these issues carefully.

Moreover, protection from harmful religious practices does not only exhibit language protecting women, but the general populace as well.

148. ERI. CONST. (1997) art. 7.

149. MALAWI CONST. (Rev. 2017) art. 2.

150. SUDAN CONST. (2019) art. 49.

For example, Article 37 of Kyrgyzstan's Constitution states that supported customs and traditions "must not infringe upon human rights and freedoms,"¹⁵¹ while Iraq prohibits tribal traditions from infringing upon human rights.¹⁵² In Ghana's Constitution, Article 26(2) makes it clear that all citizens are protected from traditions infringing upon their individual rights.¹⁵³ As written, "[a]ll customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited."¹⁵⁴ Suffice it to say, this language does not explicitly include diction protecting women and minorities from harmful traditions, yet it does serve the same effect in creating a generalized protection against harmful traditions and customs. Switzerland's Constitution, however, includes gendered language but does not explicitly reference specific traditions and practices—provisioning that "no person may force another person to cover their face on the grounds of their sex."¹⁵⁵ This is another example of religious constitutional deference as it does not refer to specific religious practices or traditions.

The introduction of protective provisions provides a way for countries to balance competing interests and ensure that women's rights are properly upheld. In other words, the language from the above examples both promotes the essence of cultural traditions and practices, while also ensuring that women are protected under the law.

3. Cultural Practices Across All Religious Divides

The traditional and cultural practices discussed in this article are not limited to one religion but instead cross religious divides, inclusive of Hinduism, Christianity, Buddhism, Islam, and other religious sects. Tonga's Constitution holds that "[t]here shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land."¹⁵⁶ This law essentially mandates religious equality, ensuring that the religious practices of one

151. *See* KYRG. CONST. (Rev. 2016) art. 37(1) ("In the Kyrgyz Republic, folk customs and traditions which do not infringe upon human rights and freedoms shall be supported by the State.").

152. *See* Article 45, Section 2, *Dustūr Jumh. ūrīyat al-'Irāq* [The Constitution of the Republic of Iraq] of 2005 ("The State shall prohibit the tribal traditions that are in contradiction with human rights.").

153. GHANA CONST. (Rev. 1996) art. 26(2).

154. *Id.*

155. CONSTITUTION FÉDÉRALE [CONSTITUTION] Apr. 18, 1999, RO 101, art. 10a (Switz.).

156. TONGA CONST. (Rev. 2013) cl. 4.

group are not promoted over another. Uzbekistan's Constitution contains a similar provision, ensuring "[a] respectful attitude toward the languages, customs, and traditions of all nationalities and ethnic groups living on its territory, and the creation of the conditions for their development."¹⁵⁷ This language exemplifies an institutional design targeting "special classes" of people.¹⁵⁸ Despite only legislating attitudes, the language promotes religious equality under the law.

Moreover, there are some countries that expressly protect religious minorities from traditions that infringe upon human rights. Poland is one example. Its Constitution states that "[t]he Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture."¹⁵⁹ Contrary to some of the other examples, Poland's language expressly provides for the protection of minority religious or ethnic groups. According to Bali and Lerner, these provisions constitute legal pluralism, providing language that protects certain groups of people and creates a strong legal backdrop to ensure protection.¹⁶⁰ On the other hand, Yemen's Constitution promotes state-wide religious homogenization, stating that all citizens must adhere to the Qur'an and the traditions laid out by Mohammed.¹⁶¹ In contrast, Bulgaria's Constitution illustrates that religious freedom is enshrined within it, but also promotes Eastern Orthodoxy as the country's traditional religion.¹⁶²

Such examples of religious constitutional protection demonstrate how some countries ensure the protection of religious minority groups. Other countries ensure protection but still promote one religion's traditions or ensure that all citizens comply with the traditions of one religion. This information illuminates some of the underlying legislative trends within constitutional discourse.

157. UZB. CONST. (Rev. 2011) art. 4.

158. Dixon, *supra* note 106, at 268.

159. POL. CONST. (Rev. 2009) art. 35.

160. *See generally* CONSTITUTION WRITING, RELIGION AND DEMOCRACY (Asli U. Bali & Hanna Lerner eds., 2017).

161. *Cf.* YEMEN CONST. (Rev. 2015) art. 160 (requiring that the President and other government officials swear an oath "to adhere to the Quran (the Book of God) and the traditions established by Prophet Mohammed.").

162. *See* BULG. CONST. (Rev. 2015) art. 13 ("Religious institutions shall be separate from the State.").

C. Freedom of Expression and Free Speech Restrictions

Several countries place limits on the absolutist nature of free speech, some of which provide caveats against blasphemy, the incitement of hatred, or discriminatory declarations. Blasphemy is one of the main caveats that countries superimpose into their legal scheme. Austria,¹⁶³ in its “Vilification of Religious Teachings” law, penalizes blasphemy and includes a broad definition of what constitutes blasphemy. Antigua and Barbuda have similar provisions but also include the criminalization of profane and threatening language in public spaces,¹⁶⁴ while Bangladesh has several pieces of legislation that narrowly define freedom of thought and conscience.¹⁶⁵ There are a series of laws that criminalize (1) injuring or defiling a place of worship with an intent to insult one’s religion or class; (2) completing malicious acts because of another’s religion or class; or (3) uttering words with the intent to *wound religious feelings*.¹⁶⁶ Consequently, the Bahamas utilizes similar language, stating that no person shall have their freedom of conscience hindered. While the language here does not expressly criminalize behavior that would run counter to one’s freedom, there is an undercurrent of blasphemy condemnation.¹⁶⁷ Myanmar¹⁶⁸ and

163. STRAFGESETZBUCH [StGB] [PENAL CODE] § 188 (Austria) (“Whoever, in circumstances where his or her behaviour is likely to arouse justified indignation, publicly disparages or insults a person who, or an object which, is an object of veneration of a church or religious community established within the country, or a dogma, a lawful custom or a lawful institution of such a church or religious community, shall be liable to up to six months’ imprisonment or a day-fine for a period of up to 360 day.”).

164. The Small Charges Act, 1892 (Act No. 14) c. 405, pt. II, art. 9 (Ant. & Barb.) (“Anyone who makes use of any abusive, blasphemous, indecent, insulting, profane or threatening language – (a) in any public place; or (b) in any place to the annoyance of the public; or (c) tending to a breach of the peace; shall be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding one month.”).

165. Injuring or Defiling Place of Worship, with Intent to Insult the Religion of Any Class, 1860, art. 295 (Bangl.); Deliberate and Malicious Acts Intended to Outrage Religious Feelings of Any Class by Insulting its Religion or Religious Beliefs, 1860, art. 295A (Bangl.); Uttering Words, etc., with Deliberate Intent to Wound Religious Feelings, Article 298 (Bangl.).

166. *Id.*

167. BAH. CONST. (1973) art. 22 (“Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion of belief in worship, teaching, practice and observance.”).

168. Myanmar “Colonia-era ‘offences related to religion’, commonly referred to as ‘blasphemy’ laws, are still part of the Penal Code in Myanmar and are used, effectively, to criminalize criticism of religion, particularly Buddhism.” International Commission of Jurist, Briefing Paper: Challenges to Freedom of Religion or Belief in Myanmar (2009); *see also* MYAN.

Bahrain¹⁶⁹ criminalize criticism of religion, namely Buddhism for the former, thus falling under this blasphemy legal codification. Myanmar's legal scheme is especially relevant given the ongoing religious tension and genocide within the country.

Furthermore, other countries tailor free speech by criminalizing the incitement of violence or discriminatory behavior. Lithuania,¹⁷⁰ Azerbaijan,¹⁷¹ Montenegro,¹⁷² and Bhutan¹⁷³ are examples of such countries that condemn the incitement of religious, ethnic, or social violence. All these states still guarantee some degree of free speech, depending on the statutory interpretation of incitement. Libya, under Article 46, prohibits incitement as well, while also criminalizing the othering of individuals through the forceful imposition of ideas.¹⁷⁴ Despite language within those same various laws proclaiming free speech, these allocations represent restrictions to the absolutist right. Other countries,

CONST. (Rev. 2015) art. 354 ("Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: to express and publish freely their convictions and opinions. . . .").

169. Penal Code 12 art. 309 (Bahr.) ("A punishment for a period not exceeding one year or a fine not exceeding 100 Bahraini dinar shall be inflicted upon any person who commits an offence by any method of expression against one of the recognized religious communities or ridicules the rituals thereof."). *Id.* art. 310 ("The punishment provided for in the preceding Article shall be inflicted upon any person who commits in public an insult against a symbol or a person that is glorified or considered sacred to members of a particular sect; (or) upon any person who imitates in public a religious ritual or ceremony with the intention of ridiculing it.").

170. LITH. CONST. (Rev. 2019) art. 25 ("Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.").

171. AZER. CONST. (Rev. 2016) art. 47 ("Everyone has the freedom of thought and speech. II. Nobody may be forced to identify or refuse his or her ideas and principles. III. Propaganda inciting racial, ethnic, religious, social animosity or hostility or relying on any other criteria is inadmissible.").

172. MONTENEGRO CONST. (Rev. 2013) art. 50 ("There shall be no censorship in Montenegro. The competent court may prevent dissemination of information and ideas via the public media if required so to: prevent invitation to forcible destruction of the order defined by the Constitution; preservation of territorial integrity of Montenegro; prevention of propagating war or incitement to violence or performance of criminal offences; prevention of propagating racial, national and religious hatred or discrimination.").

173. BHUTAN CONST. (2008) art. 7 (listing the fundamental rights of its citizens but also providing an exception for "[i]ncitement to an offence on the grounds of race, sex, language, religion or region.").

174. LIBYA CONST. (Rev. 2012) art. 46 ("Freedom of expression and its preservation shall not be separated. The State shall guarantee freedom of expression and publication and shall adopt the necessary measures to protect private life. The State shall prohibit incitement to hatred, violence, and racism, as well as declaring others as infidels and imposing ideas by force.").

however, such as Belgium¹⁷⁵ and El Salvador¹⁷⁶ use language stating that while utilizing free speech rights, one may be subject to liability for any offenses created in the furtherance of the right.

Additionally, many countries have legislation that creates a free press, if that press does not impose a national security risk or infringe upon the rights of others. Pakistan¹⁷⁷ and the Marshall Islands¹⁷⁸ are two examples, where the former has more restrictive language forbidding publication that may threaten public order.¹⁷⁹ Costa Rica codifies freedom of the press, but also states that a publisher may be liable for any abuses that coincide with the exercise of such a right.¹⁸⁰ Fiji's legal scheme provides for a free press, yet the diction used provides a pathway for limitations of this absolutist right so as to not yield discriminatory behavior.¹⁸¹

While many legal schemes create caveats within their free speech legislation, others provide *carte blanche* delineations in both the

175. 2014 CONST. (Belg.) art. 19 ("Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.").

176. EL SAL. CONST. (1983) art. 6 ("Every person may freely express and disseminate his thoughts provided they do not subvert the public order nor injure the moral, honor or private lives of others. The exercise of this right shall not be subject to previous examination, censorship or bond; but those who infringe on the laws [while] making use of this right, shall respond for the offense they commit.").

177. PAKISTAN CONST. art. 19 ("Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.").

178. MARSH. IS. CONST. (Rev. 1995) art. II § 1 (2) ("Nothing in this Section shall be construed to invalidate reasonable restrictions imposed by law on the time, place, or manner of conduct, provided a. the restrictions are necessary to preserve public peace, order, health, or security or the rights or freedoms of others; there exist no less restrictive means of doing so; and the restrictions do not penalize conduct on the basis of disagreement with the ideas or beliefs expressed.").

179. *Id.*

180. COSTA RICA CONST. (Rev. 2020) art. 29 ("Every one may communicate their thoughts by words or in writing and publish them without prior censorship; but they will be responsible for the abuses committed in the exercise of this right, in the cases and the mode that the law establishes.").

181. FIJI CONST. (2013) art. 17 ("To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) [right to freedom of speech, expression, thought, opinion and publication] in the interests of ... preventing attacks on the dignity of individuals, groups of individuals or respected offices or institutions in a manner likely to promote ill will between ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons.").

limitation and expansion sense. Afghanistan (its Constitution is now suspended) is dissimilar to other countries in that the law expressly states that freedom of speech is not absolute.¹⁸² Rather, the supposed freedom cannot run counter to Islam or any perceived national security issue. This language is divergent from other countries in its limitations, foregoing complete free speech delineation without creating any specific legal caveats. Instead, it is an example of a country that unambiguously inhibits this right. Estonia is an example of the complete opposite, providing a *carte blanche* collocation on free speech.¹⁸³ The right has no restrictions, as long as it does not conflict with the rights of others.¹⁸⁴

D. Summation

1. Reconciling Rights with Culture and Religion: A Comparative Constitutional Analysis

The principles delineated in the constitutional provisions of the now-suspended Afghan Constitution, the newly revised Kenyan Constitution, and the post-genocide Rwandan Constitution provide an interesting lens to a project of reconciling women's rights with cultural and religious norms within their constitutional frameworks.

Afghanistan's 2004 Constitution, now suspended, embraced Islam as the state religion¹⁸⁵ while committing to international human rights treaties such as the UDHR.¹⁸⁶ Despite this commitment, it maintained

182. The Afghan Constitution acknowledges that freedom of expression is not absolute and can be subject to limitations, especially when it comes to matters related to Islam and national security. Article 3 of the Afghan Constitution includes a provision that emphasizes, "[i]n Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." AFG. CONST. (2004) art. 3.

183. ESTONIA CONST. (2015) art. 45 ("Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights and freedoms, health, honor and good name of others. This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice. There is no censorship.").

184. *Id.*

185. AFG. CONST. (2004) art. 2 ("The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan . . .").

186. *Id.* art. 7 ("The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights. The state shall prevent all kinds of terrorist activities, cultivation, and smuggling of narcotics, and production and use of intoxicants.").

that no law should contravene Islamic tenets, suggesting a primary role for religious law.¹⁸⁷ However, Article 22 of the Afghan Constitution notably forbade discrimination, explicitly affirming equality between men and women before the law.¹⁸⁸

Kenya's Constitution manifests a different balance, focusing on the promotion of diversity, including language and culture,¹⁸⁹ and instituting the National Human Rights and Equality Commission to reinforce this commitment.¹⁹⁰ Articles 27¹⁹¹ and 59¹⁹² expressly uphold gender equality and aim to protect against discrimination, setting a strong foundation for reconciling cultural diversity with women's rights. The Kenyan framework seems more assertive in bridging the gap between cultural practices and gender equality.

Rwanda's Constitution, born out of the necessity to forge unity following the genocide, eradicates any form of discrimination and emphasizes the role of national unity and reconciliation.¹⁹³ It stipulates a minimum quota for women's representation in decision-making organs, illustrating a proactive approach to gender parity.¹⁹⁴ The

187. *Id.* art. 3 ("No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.").

188. *Id.* art. 22 ("Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.").

189. CONSTITUTION art. 7 (2010) (Kenya) ("(3) The State shall – (a) Promote and protect the diversity of language of the people of Kenya; and (b) Promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.").

190. *Id.* art. 59 ("(1) There is established the Kenya Human Rights and Equality Commission ...").

191. *Id.* art. 27 ("(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law ... (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex ...").

192. *Id.* art. 59 ("(2) The functions of the Commission are – (a) to promote respect for human rights and develop a culture of human rights in the Republic; (b) to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development ...").

193. RWANDA CONST. (Rev. 2015) pmbl. ("Emphasizing the necessity to strengthen and promote national unity and reconciliation which were seriously shaken by the genocide and its consequences; ... Committed to ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development ...").

194. *Id.* art. 9 ("Building a state government by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty percent of posts in decision-making organs ...").

Constitution also established Gacaca Courts to address crimes against humanity, showing a blend of traditional dispute resolution and the commitment to address past atrocities within a framework of restorative justice.¹⁹⁵

Afghanistan's approach seemed to place religious doctrine at the forefront while attempting to enshrine gender equality principles. Kenya's constitutional provisions provide articles protecting women's rights against cultural and religious discrimination.¹⁹⁶ Rwanda, while navigating post-conflict reconstruction, has instituted measures for women's representation in governance, signifying an effort to integrate gender equality into the core of its reconciliation process.¹⁹⁷

These Constitutions collectively illustrate a spectrum of approaches to gender equality: from Afghanistan's religiously anchored Constitution, which provided for equality but within the contours of Islamic tenets; through Kenya's comprehensive safeguards against discrimination and dedicated mechanisms for human rights promotion; to Rwanda's Constitution, which integrates gender parity as a key element of national unity and development. Each framework reflects a different aspect of the intricate dialogue between culture, religion, and women's rights.

This examination of constitutional provisions on religion, culture, customs, and expression reveals several key themes in how frameworks recognize and reconcile majority religious traditions and cultural value systems with principles of gender equality.

2. Deference, Self-Determination, and Equality

First, a core insight is the variance between rhetorical deference to cultural/religious autonomy and the legal subjugation of women's

195. *Id.* art. 152 ("There is hereby established Gacaca Courts responsible for the trial and judgment of cases against persons accused of the crime of genocide and crimes against humanity which were committed between October 1st 1990 and December 31st 1994 with the exception of cases jurisdiction in respect of which is vested in other courts . . .").

196. CONSTITUTION art. 27(4) (2010) (Kenya) ("The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth . . .").

197. *See, e.g.*, RWANDA CONST. (Rev. 2015) art. 10 ("[B]uilding a State governed by the rule of law, a pluralistic democratic Government, equality of all Rwandans and between men and women which is affirmed by women occupying at least thirty percent of positions in decision-making organs . . ."); RWANDA CONST. (Rev. 2015) art. 54 ("Political organisations must always reflect the unity of Rwandans as well as equality and complementarity of men and women in the recruitment of members, in establishing their leadership organs, and in their functioning and activities . . .").

rights to patriarchal norms. Many constitutions discursively acknowledge majority faiths or “spiritual heritages” as important to national identity. However, legal incorporation of religious doctrines or carve-outs exempting personal laws from rights protections can directly undermine gender equality. Simply declaring a religion as the state religion, for example, is distinct from constitutional overrides allowing *Shari’a* principles to restrict civil liberties. Judicial enforcement determines whether cultural accommodation crosses into women’s rights violations.

Second, a related tension lies in commitments to universal freedoms versus relativist restrictions upholding local traditional attitudes limiting women’s self-determination. Various constitutions subordinate gender equality to nebulous cultural/religious exemptions. Allowing “personal status” issues like marriage and divorce to be determined by religious norms contravenes notions of individual dignity and choice fundamental to human rights philosophies. This demonstrates a reluctance to confront patriarchy entrenched in customary laws.

Third, a key principle is that with legal pluralism, promoting gender justice requires dynamic reconstruction of cultural diversity and faith within an equality paradigm. Rather than ossifying historical customs, constitutions should advance progressive reinterpretations adapting traditional values to today’s context. Reconciling competing rights claims depends on contextual analysis—no rigid formulas suffice. Beyond enabling judicial constraints, transforming underlying discriminatory beliefs, rather than just mitigating their effects, is vital.

In conclusion, these frameworks reveal tensions between principles of self-determination important to pluralism and preventing subordination of disadvantaged groups. Resolving these complex issues involves deliberating faith, custom, and human rights synergistically in evolving socio-political dialogues. But lasting gender justice requires candid confrontation of hegemonic norms.

IV. JUDICIAL INTERPRETATION OF CULTURE AND RELIGION QUA GENDER: CULTURE IN CASE LAW AND THE COURTS

In this part, I examine judicial enforcement of national constitutional and legal provisions at the intersection of cultural and religious norms and women’s rights. The judicial system is the crux of constitutional interpretation and the vindication of constitutional rights—accordingly, the legal questions posed within Part III are examined within the judicial context.

Crucially, judicial systems encounter challenges reconciling traditional beliefs and practices with constitutional guarantees of equality

and bodily autonomy. The outcomes of these collisions demonstrate both courts upholding gender equality and declining to intervene in certain contexts due to cultural/religious considerations. Significant tensions persist around customary laws on family relations and property rights conflicting with egalitarian principles. Incrementally, these cases reflect ongoing legal efforts to define the boundaries between tradition and liberties through judicial channels, legislation, and advocacy worldwide. Documentation of the specific language around rights restrictions grounded in religion or culture across diverse societies highlights shared questions of authority balancing scriptural doctrines, judicial review, constitutional supremacy, and gender equality in manifold contexts. These linguistic differentials are necessary to explore how societies grapple with constitutional questions of religion and culture, while acting as interlocutors of culture.

As Tarun Khaitan argues, the field of “comparative constitutional law/studies” has an obsessive focus on courts.¹⁹⁸ The role of courts has been defined broadly in line with John Hart Ely’s conception of judicial review.¹⁹⁹ As the intellectual forefather of responsive judicial review, John Hart Ely has responded to the counter-majoritarian challenge described by Alexander Bickel.²⁰⁰ In his own framing, given this foundational theory of majoritarian democracy, Ely’s argument “has been and remains that of devising a way or ways of protecting minorities from majority tyranny that is not a flagrant contradiction of the principle of majority rule: in law as in logical theory, anything can be inferred from a contradiction, and it will not do simply to say the majority rules but the majority does not rule.”²⁰¹ Democracy is not the only value of court decisions; equality and the protection of rights, especially those whose rights have been historically undermined, greatly matter. Rosalind Dixon writes,

[a]s constitutional scholars in the 2020s, the challenge we face is to do justice to the intellectual inheritance Ely has given us, but in a way that is fit for purpose in a truly globalized constitutional universe, where the threats to democracy are manifold and increasing by the day. In doing so, our task is also to develop a theory of judicial review that responds to both the

198. See Tarun Khaitan, *Why Courts Cannot Save Democracy* (on file with Author).

199. See generally JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980).

200. See generally ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH* (1962).

201. ELY, *supra* note 199, at 8.

promise of courts as potential guardians of democracy and democratic values, and the inevitable limits on courts' capacity and legitimacy in performing this role.²⁰²

Both the limits and the potential of courts can be best seen in their role in the interpretation of religion, customs, and culture.²⁰³ The question is, can the judiciary perform at times a counter-majoritarian role in interpreting customs and culture in safeguarding the rights of women?²⁰⁴

Adam Chilton and Mila Versteeg question whether courts “alone . . . [are] enough to stop a government determined to curb its citizens' rights.”²⁰⁵ However, in *How Constitutional Rights Matter*, both recognize that in the cultural rights sphere, constitutional courts can help protect individuals' rights.²⁰⁶ Therefore, the question that looms large is whether the courts can actually effectuate change by reconciling human rights principles and cultural norms that pervade countries' constitutions and laws, or if they will fail without the support of the legislature?

The cases analyzed in the next part reflect the complexities and challenges of reconciling cultural practices and women's rights within legal systems worldwide. The central analysis is of the groundbreaking *Sabarimala Temple* case in India wherein the court held the rule

202. ROSALIND DIXON, *RESPONSIVE JUDICIAL REVIEW: DEMOCRACY AND DYSFUNCTION IN THE MODERN AGE* 15 (2023).

203. See discussion *supra* Section III.B (illustrating how cultural norms and religion are often intertwined in the laws, especially the constitutions, of many countries).

204. See discussion *supra* Section III.B.2 (addressing how cultural norms embedded within constitutions often work against women's struggle for human rights and undermine the equality provisions that are often also found within countries' constitutions).

205. Adam Chilton & Mila Versteeg, *Courts' Limited Ability to Protect Constitutional Rights*, 85 U. CHI. L. REV. 293, 297 (2018) (finding in their research that “constitutional rights do not appear to be better protected in countries with independent courts equipped with the power of judicial review . . .”).

206. See ADAM CHILTON & MILA VERSTEEG, *HOW CONSTITUTIONAL RIGHTS MATTER* 1 (Oxford Univ. Press 2020). They argue that,

not all constitutional rights eroded at the same rate. Relative to free speech, it took much longer for religious freedom to deteriorate. This was not because the government did not want to regulate and control the many new religions that had entered the country since the fall of the Soviet Union. As early as 1997, the government attempted to increase control over religious groups by adopting the Law on Freedom of Conscience and Religious Associations. This law . . . limited foreign religions' ability to register and operate. Yet, concerted protests by the affected groups, armed with the Constitution and a Constitutional Court ruling enforcing the Constitution's religious freedom provision, mostly neutralized the law's harmful effects. *Id.* at 3.

prohibiting menstruating women from religious observances in the temple precincts as unconstitutional.²⁰⁷

Analysis of other restrictions based on culture demonstrates the evolving nature of judicial interpretations and the ongoing efforts to protect and promote gender equality in the face of cultural norms and traditions. These cases also challenge the tacit agreement that the rights of women are, indeed, a “family affair.” While this traditional perception of women’s rights as private affairs not to be interfered with by the judiciary may persist where women’s property-related rights are in dispute, courts have been more willing to affirm the rights of women by striking down customs in cases concerning women’s bodily freedom. It is useful to consider how many of the cases at the site of these collisions can be organized under two categories: using culture to control women’s bodies and using culture to control property and economic resources.

In the sections that follow, I begin by exploring the anatomy of the recent case regarding women’s admission to a place of worship which reveals the tensions at the heart of the discussions in this paper.²⁰⁸ Other cases cover issues at the intersection of rights and culture to reveal the profound challenges and legal implications faced by societies grappling with traditional practices and beliefs that conflict with the fundamental rights of women. Collectively, these cases underscore the ongoing challenges that courts face in reconciling deeply ingrained cultural and religious doctrines and authorities with the urgent need to protect and uphold women’s rights to life, security, equality, and bodily autonomy.

A. *Places of Worship: The Sabarimala Temple Case*

The regulation of women’s movement in public spaces presents a critical judicial conundrum—one that tends to emerge where traditional gender roles confront evolving notions of autonomy and equality. This emergence challenges courts to interpret constitutional rights in a culturally sensitive yet rights-affirming manner. Some courts have embraced this challenge by upholding women’s autonomy and legal rights of free movement despite the likelihood of being criticized for undermining cultural and religious norms.

207. See *Sabarimala Temple Entry*, SUP. CT. OBSERVER (June 24, 2022), <https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>.

208. *Indian Young Lawyers Association v. The State of Kerala*, (2018) 9 SCR 561 (per Malhotra, I., dissenting) (India).

For example, in the *Sabarimala Temple* case, concerning a house of worship in Kerala, India, the temple had historically banned the entry of women of menstruating age (ten to fifty years old) based on religious beliefs.²⁰⁹ The Supreme Court of India, in this landmark judgment, overturned the ban, stating that it violated women's fundamental rights to equality and non-discrimination.²¹⁰

The constitutionality of menstrual exclusion practices has been prominently contested, with a majority of 4:1, the only dissenting justice was a woman, who ruled that rules of rationality cannot govern religion. "Judicial review of religious practises ought not to be undertaken, as the Court cannot impose its morality or rationality with respect to the form of worship of a deity. Doing so would negate the freedom to practise one's religion according to one's faith and beliefs. It would amount to rationalising religion, faith and beliefs, which is outside the ken of Courts."²¹¹ The majority ruling acknowledged the broader impact of menstrual stigma on women's human rights, affecting various facets of their lives, as recognized by a group of U.N. human rights experts.²¹²

Sabarimala, located in the southwestern state of Kerala, is a unique Hindu temple known for its remote and challenging access, sporadic opening times, and strict rituals for visitors. Despite its unconventional practices, Sabarimala is one of India's wealthiest religious institutions and a vital part of Kerala's economy. The temple's presiding deity, Ayyappan, and its admission practices have been subject to significant controversy, particularly regarding the exclusion of women of menstruating age.

The issue regarding women's entry to the Sabarimala Temple first came before the State High Court of Kerala in 1991.²¹³ This case was filed by the devotees of the deity who were enraged by the fact that the wives of VIPs were visiting the temple violating the temple's customary

209. *Id.*

210. SUP. CT. OBSERVER, *supra* note 207.

211. *Indian Young Lawyers Ass'n*, 9 SCR at 873.

212. Moreover, across India, communities continue the practice of banishing menstruating individuals to huts or rooms outside the main dwelling during their periods. These enforced menstrual hut practices pose risks to the physical safety and health of those involved, leaving them vulnerable to various dangers and limiting their access to essential resources and opportunities. Similar principles were applied in cases like *Noorjehan Safia Niaz v. State of Maharashtra* by the Bombay High Court and in Nepal's Supreme Court ruling on *Dil Bahadur Bishwokarma v. Prime Minister*, where discriminatory practices against menstruating women were deemed unconstitutional, affirming the state's duty to protect fundamental rights and prevent gender discrimination. *Noorjehan Safia Niaz v. State of Maharashtra*, 5 AIR Bom R 660; *Dil Bahadur Bishwokarma v. Prime Minister*, SC Bulletin, 2067 BS, Poush Vol.3, P.62.

213. *S. Mahendran v. Secretary, Travancore Devaswom Board*, AIR1993 Ker 42.

practices.²¹⁴ Because the deity, Lord Ayappan, is believed to be in the form of a “Naishtik Brahmachari,” i.e., eternal celibate, entry of women is said to “distract” the celibacy of the deity thereby “polluting” the temple.²¹⁵ A “purification ceremony” is conducted by the priests if women of menstruating age enter the temple.²¹⁶ Moreover, the pilgrimage to the temple involves a forty-one-day penance which includes an abstinence from even interacting with menstruating women, walking barefoot, and living a frugal life mimicking the journey of the Lord Ayyappa himself.²¹⁷ Women of menstruating age are believed to be incapable of maintaining the “purity” of this penance.²¹⁸ Such a practice is not only deeply rooted in religious practices but is intertwined with the societal understanding of women’s bodies as “polluting objects.”²¹⁹ The State High Court was deferential to this practice and formally legalized the ban on the entry of women of menstruating age from the temple vicinity.²²⁰

The Sabarimala Temple entry controversy was rekindled through a political movement that arose in 2015. The President of the Travancore Devaswom Board (the statutory body that governs the Sabarimala Temple) proposed to have machines that were capable of screening out menstruating women. As a response to this proposal, 20-year-old young Nikita Azad started the #HappytoBleed campaign critiquing the President for his comments.²²¹ This campaign nudged the Indian Young Lawyers Association to file a public interest litigation (PIL) before the Supreme Court of India arguing that this practice is exclusionary and a violation of constitutionally guaranteed rights such as the right to equality, discrimination, and religious freedom of women.²²²

The *Indian Young Lawyers Association v. State of Kerala*,²²³ otherwise known as the *Sabarimala Temple* judgment, addressed a constitutional

214. Deepa Das Acevedo, *Gods’ Homes, Men’s Courts, Women’s Rights*, 16 INT’L J. CONST. L. 552, 560 (2018).

215. V. Bijukumar, *Pungent Irrationality and Troubled Modernity in Kerala*, 13 HIS. & SOCIO. OF SOUTH ASIA 19, 29 (2019).

216. *Id.*

217. Acevedo, *supra* note 214, at 560.

218. S. Mahendran, AIR 1993 Ker 42.

219. Bijukumar, *supra* note 215, at 30–35.

220. S. Mahendran, AIR 1993 Ker 42.

221. Nikita Azad, *#HappyToBleed: An Initiative Against Sexism*, COUNTERCURRENTS.ORG (Nov. 23, 2015), www.countercurrents.org/azad231115.html.

222. Saira Banu, *Theological Thicket: A Policy Analysis of the Sabarimala Decision*, THE LAW REV. ANTH. (July 27, 2020), <https://lawanthology.com/2020/07/27/theological-thicket-a-policy-analysis-of-the-sabarimala-decision/>.

223. *Indian Young Lawyers Association v. The State of Kerala*, (2018) 9 SCR 561.

challenge to rules permitting the restriction of women's entry into places of worship based on "custom and usage."²²⁴ The Court found that the ban on entry of menstruating-age women into the Sabarimala Temple violated their right to religious practice and non-discrimination on the basis of sex under the Indian Constitution.²²⁵

While the focus of the majority opinions primarily centered on religious freedom, Justice Chandrachud's concurrence highlighted the broader issue of societal oppression rooted in menstruation-related stigma. He emphasized three key points: the intrinsic privacy of a woman's menstrual status, the violation of dignity through exclusionary practices, and the unconstitutional nature of menstrual taboos that lead to systemic discrimination against women.²²⁶ He further made a powerful observation that the practice of excluding women of menstruating age is a manifestation of the concept of "untouchability" which is rooted in the caste system.²²⁷ The history of the caste-based temple entry movement in Kerala is a testimony to such a practice as it is couched in the language of the right of historically marginalized groups to access public spaces.²²⁸ Such an observation is crucial here as the analogy portrays how such practices have far-reaching consequences as they become embedded in the institutional fabric of society.²²⁹

However, as the lone woman judge on the bench, Justice Indu Malhotra gave a dissenting opinion. She observed that the courts must refrain from treading on religious practices unless they are "pernicious, oppressive, or a social evil, like sati." Here she made the distinction by alluding that a practice like "sati" which she argues is a practice that is "pernicious, oppressive, or a social evil."²³⁰ In her opinion, the exclusionary practice of temple entry must be viewed as an "internal religious

224. *Id.*

225. *Id.* at 656–57.

226. *Id.* at 774–75.

227. *Id.* at 804–05.

228. Gautam Bhatia, *The Sabarimala Judgment-III: Justice Chandrachud and Radical Equality*, IND. CON. LAW & PHIL. (Sept. 29, 2018), <https://indconlawphil.wordpress.com/2018/09/29/the-sabarimala-judgment-iii-justice-chandrachud-and-radical-equality/>.

229. Justice Chandrachud has succinctly captured this concern in paragraph 5 of the judgment: "Essentially, the significance of this case lies in the issues which it poses to the adjudicatory role of this Court in defining the boundaries of religion in a dialogue about our public spaces." *Indian Young Lawyers Association*, 9 SCR at 726; The constitutional guarantee enshrined in Article 17 is thus against exclusionary practices "in any form." *Id.* He emphasizes how the tool of "purity and pollution" used in this context to stigmatize menstruating women in the Indian society need to be completely uprooted and ought to be understood within a constitutional framework. *Id.*

230. *Id.* at 859–60.

matter” into which the courts must not tread.²³¹ She further buttressed the argument by asserting that religion and reason cannot always harmonize and there is a need to embrace constitutional pluralism.²³²

After the ruling, several women attempted to enter the temple leading to public outrage.²³³ One notable instance was when two women, Bindu Ammini and Kanaka Durga, attempted to enter the temple secretly with the support of the government and its police forces at the jeopardy of their safety and social ostracization.²³⁴ This stirred a huge uproar in the state leading to public anger. In 2019, a powerful women’s wall marked the beginning of a new social reform agenda.²³⁵ However, anyone who raised their voices supporting the entry into the temple was faced with cyber lynching and assault. Bindu Amini faced a backlash particularly due to her “Dalit identity” (person belonging to an inferior caste) as compared to Kanaka Durga, who belonged to an upper caste, highlighting the complexities that arise with the intersectionality in such social movements.²³⁶

Women’s equal participation in rituals in temples is a fascinating field of analysis and a snapshot of a broader problem of discrimination against women and gender inequalities. In fact, these religious rituals may magnify the symbolic power of masculinity. Although women’s participation in cultural heritage has long been unequal around the world, it is only in the past few decades that their claims have been taken up by courts. The *Sabarimala Temple* case provides an atlas to map the application of the principle of equality, namely the

231. *Id.* at 860.

232. *Id.* at 873 (“Judicial review of religious practises ought not to be undertaken, as the Court cannot impose its morality or rationality with respect to the form of worship of a deity. Doing so would negate the freedom to practise one’s religion according to one’s faith and beliefs. It would amount to rationalizing religion, faith and beliefs, which is outside the ken of Courts.”).

233. The ruling of the Supreme Court was entangled in a polarized web of politics in Kerala which divided the women’s groups. See Rajeev Ramachandran & Joanna Slater, *India’s Top Court Ruled that Women Can Enter a Prominent Temple. Protesters Are Keeping Them Out*, WASH. POST (Nov. 18, 2018), https://www.washingtonpost.com/world/asia_pacific/indias-top-court-ruled-that-women-can-enter-a-prominent-temple-protesters-are-keeping-them-out/2018/11/18/016fcb7a-eb19-11e8-9236-bb94154151d2_story.html.

234. Binitha Thampi, *Sabarimala Shrine: A Complex Web of Feminism, Politics and Religion*, OUTLOOK (Mar. 11, 2023), https://www.outlookindia.com/culture-society/sabarimala-shrine-a-complex-web-of-feminism-politics-and-religion-weekender_story-269062.

235. *Women’s Wall in Kerala Today: All Your Questions Answered*, THE INDIAN EXPRESS (Jan. 1, 2019) <https://indianexpress.com/article/india/womens-wall-in-kerala-vanitha-mathil-pinarayi-vijayan-5517606/>.

236. Vrinda Narain, *Constitutionalizing Women’s Equality in India: Assessing the Sabarimala Decision*, 42 COLUM. J. OF GEND. & LAW 77, 78–79 (2023).

Indian constitutional provisions in the context of participating in religious rituals and temple festivals. This case unpacked women's historical exclusion from sacred spaces of their community. Exclusion of women of menstruating age from these spaces maintains women's second-class role and also reproduces women's absence in the transmission of cultural heritage.

A case like *Sabarimala Temple* also allows us to explore the strategies used in resistance to the situation of subordination in and exclusion from certain ritual spaces. At the same time, these case studies reveal the conservative forces that resist change and oppose the incorporation of women in the public space of places of worship. We see that despite the Supreme Court's ruling, the practice of exclusion remained unchanged. This continuation of exclusion may be described as what Pierre Bourdieu argues in *Masculine Domination*: a space where certain cultural norms may reproduce gender practices and stereotypes which are generally not perceived to be discriminatory by the people who participate in them.²³⁷ This is because gender differentiation and resulting subordination are normalized as the natural order of things. Bourdieu argues that this naturalization is tantamount to *symbolic violence* or *moral violence*: a type of invisible violence that is not perceived as such because it is a subtle form of cultural practice or habitus.²³⁸

Numerous studies have shown how religious rituals, performed in ceremonies and festivals dramatize power relations. For example, scholars writing about festivals in the Basque country argue,

The rituals in the *fiestas* analysed over the past two decades in Spain and revised in Gabeiras is no exception: public and religious (Catholic) authorities play a prominent role and the leading figures, whether in the public eye (parades, cavalcades, processions, dramatisations ...) or behind the scenes of the event's organisation, are mostly males who personify hierarchical structures of prestige, seniority and status. The centrality of these male figures is defined by an oppositional relationship with female figures who either line the streets or watch from windows as spectators or cheerleaders of the event, or take

237. See generally Pierre Bourdieu, *Masculine Domination Revisited*, 41 BERK. J. OF SOCIO, 189 (1996) (describing the pervasive role of ingrained male dominance in shaping unconscious thought and values).

238. *Id.* at 199.

charge of domestic chores, looking after the family and seeing to administrative tasks that underpin the festive ritual, as female-carers or mother-figures.²³⁹

The *Sabarimala Temple* case demonstrates that places of worship can be spaces of political confrontation which reproduce gender discrimination, as well as those of caste, colonial inheritance, and commercialization of religion.

B. Violence Against Women

Women's bodies are often battlegrounds for family or community honor based on tradition and cultural norms of purity and chastity. Honor crimes, child marriage, forced marriage, virginity testing, and female genital mutilation (FGM) are forms of violence committed in the name of family honor. More often than not, courts have invoked culture to dismantle gendered power relations in the context of violence. However, there is an emerging trend that courts in various jurisdictions are becoming reluctant to downplay acts of violence committed against women even if those acts conform with long-established cultural practices.

Honor killings constitute one category of cases in this context. Honor killings present a unique challenge for judicial systems as they must balance the right to life with various written and unwritten concepts of modesty, chastity, and *Qisas* and *Diyat* in the law. These cases test the limits of legal frameworks, compelling courts to navigate the delicate intersection of traditional practices and the fundamental human rights of women, often resulting in landmark decisions that redefine societal boundaries and legal precedents.²⁴⁰

239. Lidia Montesinos & Margaret Bullen, *A Vindication of the Rights of Women: Equal Participation in Rituals in a Festival Context*, in VINDICATORY JUSTICE: BEYOND LAW AND REVENGE 265, 268 (Raúl Márquez Porras et al. eds., 2022).

240. For example, in 2014, the Supreme Court of India took *suo motu* cognizance of a news item that reported the gang-rape of a 20-year-old woman from a village in West Bengal. *See In Re: Indian Woman Says Gang-Raped on Orders of Village Court* Published in Business and Financial News, (2014) 4 SCC 786, 161, 164. It was found that the *khap panchayat* of that village had ordered the gang rape of the young woman as a punishment for having a relationship with a man from a different community. *Id.* The Court held that the state police machinery had failed to prevent the egregious offence as it is the duty of the state to protect the fundamental rights especially the right to life and personal liberty. *Id.* Here the freedom of choice in marriage and the right to choose one's partner transcended the boundaries of customs and culture. This right was read into the constitutionally guaranteed right to life and personal liberty. The Court recognized the

Women's sexual autonomy is a jurisprudential battleground in the culture wars.²⁴¹

C. Marital Rape

Spousal relations and an evolving understanding of sexual assault in the context of intimate partner violence is another collision course site for women's rights and culture. Marital rape is a unique dilemma for courts. Judicial resolution of the issue necessitates the reconciliation of constitutional rights with entrenched cultural norms within the marital and domestic relations sphere. This quandary challenges judicial systems to grapple with culture and redefine the contours of marital consent, privacy, scriptural teachings, and religious law-giving authorities—

need for an institutional reformation through education and awareness that would lead to the upliftment of the socio-economic conditions of women. *Id.* As a long-term measure to curb such crimes, a larger societal change is required via education and awareness. Government will have to formulate and implement policies in order to uplift the socio-economic condition of women, sensitization of the police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is a higher percentage of crimes against women.

241. In 2021, the Lahore Court in Pakistan made a significant decision by banning "virginity tests" in sexual violence cases. *Sadaf Aziz v. Federation of Pakistan*, (2021) 205 PCrLJ 29. This practice, based on the notion that the insertion of two fingers into the vagina indicates lack of virginity, has been contested by various groups. Petitioners, including women from diverse professional backgrounds, argued that such examinations lacked scientific and legal validity while violating constitutional rights to privacy and dignity. The Lahore High Court, concurring with these arguments, deemed the practice humiliating and focused on victim-blaming rather than addressing the accused.

The ruling garnered widespread approval in Pakistan, indicating strong societal support. Additionally, the Court considered Pakistan's international commitments, citing the United Nations Convention on the Elimination of All Forms of Discrimination against Women. International experts have consistently denounced "virginity testing" in sexual violence cases, emphasizing its reinforcement of gender inequality and control over women and girls.

Dr. Qarar Abbasi, a senior police surgeon, highlighted the need for updating medical curriculum and increasing the presence of female forensic medicine specialists in government hospitals. These efforts aim to modernize medico-legal practices related to violence against women and ensure better training for medical and legal professionals.

The LHC referred to the CEDAW and other U.N. committees as persuasive authority, because all of them had labeled virginity testing a harmful practice. *See id.* ¶ 25 (citing as support for its decision "the United Nations Committee on the Elimination of All Forms of Discrimination against Women and the United Nations Committee on the Rights of the Child, the United Nations Special Rapporteur in Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Special Rapporteur on Violence Against Women"). Because Pakistan has ratified the CEDAW, the LHC reasoned that the Pakistani government was obligated to take the "necessary steps . . . to prevent discrimination and specifically to prevent carrying out virginity testing." *Id.* ¶ 26. The court also noted that virginity testing is neither scientifically grounded nor necessary to establish sexual assault offenses. *Id.* ¶ 22.

ultimately juxtaposing traditional marital exemptions against evolving standards of women's rights and bodily autonomy. Courts, in addressing this, not only navigate complex socio-legal landscapes but also contribute to the progressive interpretation of personal and constitutional liberties.²⁴²

Furthermore, judge-made law is another source of cultural as well as legal authority on marital rape—an authority that only judges can revise when they see fit. While the cultural conception of marriage has evolved in the United Kingdom and it has criminalized marital rape,²⁴³ India continues to allow marital rape as an exception to rape as an offense within its Penal Code, preserving the colonial legacy.²⁴⁴

242. For example, in Nepal, the Forum for Women, Law and Development challenged the marital rape exception on the basis of provisions in the Constitution and Nepal's CEDAW commitments. *The Forum for Women, Law & Development v. His Majesty's Government*; SC Bulletin 2058 BS, Writ. No. 55 33, 34. The Supreme Court declined to accept the argument that a consent requirement was incompatible with marriage under Hindu Law. *Id.* The Supreme Court also held that there is no justification for differentiating between women who are wives and other women and called on the legislature to define marital rape as a criminal offense. *Id.* As another example in 2006, the Nepal parliament passed the Gender Equality Law which criminalized marital rape.

243. The U.K. courts shifted the balance between cultural and legal considerations by dismissing the cultural justification for an otherwise illegal act of rape in the landmark U.K. case of marital rape, *R. v. R.* The defendant argued that, according to an English common law exemption, he had the right to have sex with his wife without her consent. *R. v. R.* [1991] UKHL 12, 1 AC 599 (HL) (appeal taken from Eng.). The Court of Appeal ruled that the defendant's cultural beliefs did not excuse or justify the rape, highlighting the clash between longstanding cultural norms as enshrined in common law and women's rights to bodily autonomy and consent. *Id.* The House of Lords upheld the decision, noting that the "common law is . . . capable of evolving in the light of changing social, economic and cultural developments." *Id.*

244.

375. Rape.- A man is said to commit 'rape' if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Currently, the constitutionality of the marital rape exception is pending a decision before the Supreme Court of India.²⁴⁵

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Indian Penal Code, 2013, § 375.

245. However, the decision by the division bench of the High Court of Delhi was a split decision. *RIT Foundation v. Union of India*, W.P.(C) 284/2015 & CM Nos.54525-26/2018, High Court of Delhi, India, May 11, 2022.

The judge who held that the marital rape exception is unconstitutional and violative of the fundamental rights of the married women made the following pertinent observations:

The fact that the rapist is the husband of the victim does not make the act of sexual assault any less injurious, degrading or dehumanizing. Irrespective of who the perpetrator is, forced sex mars the woman-victim physically, psychologically and emotionally. Rape, as an offence, deserves societal disapprobation in the strongest terms, notwithstanding, the fact that the rapist is in a marital relationship with the victim.

Id. ¶ 162.

The judge also highlighted the need to re-emphasize the relevance of the CEDAW, alluding to the "heightened awareness in most jurisdictions across the world that violence against women is an obstacle to the attainment of equality, development and peace and an obstacle to the enjoyment of rights and feelings, which otherwise are natural rights conferred on any human being." *Id.* ¶ 182.2.

The dissenting judge however made a scathing judgment supporting the marital rape exception by stating that "[j]ust as every incident of taking of the life by one, of another, is not murder, every incident of non-consensual sex of a man with a woman is not rape." *Id.* ¶ 104.

The judge then stated,

In our country, marital vows are still regarded as inviolable, and marital fidelity is, fortunately, still the norm, profligacy being the exception (even if adultery is no longer a criminal offence). . . . In this relationship, given its unique character and complexity, the legislature has, advisedly, felt that no allegation of "rape" has place. . . . A legislation that seeks to keep out, from the parameters of such a relationship, any allegation of 'rape', in my view, is completely immune to interference. . . . Introducing, into the marital relationship, the possibility of the husband being regarded as the wife's rapist, if he has, on one or more occasion, sex with her without her consent would, in my view, be completely antithetical to the very institution of marriage, as understood in this country, both in fact and in law.

D. *Family Relations*

One of the most ubiquitous forms of gender discrimination is seen in laws governing family relations.²⁴⁶ There are various instances in which national courts consider matters of family law that involve resolving some questions on the disparate treatment of women and men with respect to family law-based privileges, rights, and duties. In particular, these cases often concern child marriage, the age of consent, and divorce. But there are instances when courts have resorted to religious laws to strike down gender discriminatory laws. For example, a Pakistani court heard a challenge to a national law—Section 10 of the Citizenship Act of 1951—that permitted male citizens to obtain Pakistani citizenship for their foreign wives, but female citizens were not accorded the same rights for their foreign husbands.²⁴⁷ In *Suo Moto*, Pakistan's Federal *Shari'a* Court found the provision discriminatory, applying the Sunnah and the Qur'an, which the Court observed provides for the equality of women and men.²⁴⁸ Similar to the Lahore High Court in *Sadaf Aziz*, the Federal *Shari'a* Court here noted that Pakistan ratified various international treaties, including CEDAW and the UDHR, which informed the Court's obligation to decide the case in favor of gender equality.²⁴⁹

Notwithstanding the use of religious texts in outlawing gender inequality, several courts have upheld the principle of religious voluntarism, albeit in the context of the supremacy of the constitution.²⁵⁰ Customs often define the personality of family relations, and the devaluation of women is often legitimized in the name of cultural practice.²⁵¹

Id. ¶¶ 116, 119, 120.

In essence, according to the dissenting judge, the cultural and traditional underpinnings of the institution of marriage makes it sacred and immune to such evolution that would protect a married woman's fundamental rights including her right to life and bodily autonomy. Now the ball is the Supreme Court of India's court to make a final determination on this issue.

246. *Id.*

247. *Suo Moto* No.I/K of 2006, (2006) 2008 PLD (FSC) 1 (Pak.).

248. *Id.* at 21.

249. *Id.* at 22.

250. South Africa's Justice Dikgang Mosenke's decision that "the tenets of our Constitution promises religious voluntarism, diversity and independence within the context of the supremacy of the Constitution." *Daniels v. Campbell and Others* 2004 (5) SA 331 (CC) at 62–63 (S. Afr.). This provides a clear framing for arguments both on the right to personhood and the right to religion or custom.

251. Lastly, one more unique case in Pakistan on a woman's right to marry in the manner in which she prefers presents another frontier of this collision course between family law and culture. In *Humaira Mehmood v. The State*, the Lahore High Court considered a case of alleged *zina* and abduction registered by a father (a sitting member of the Punjab Provincial Assembly)

One of the subtle but most pervasive areas of discrimination against women is the inequality that occurs within the family.²⁵²

Other cases in this realm of family law concern divorce and marriage.²⁵³ A leading case in this domain would be the *Triple Talaq* case. For example, the Supreme Court of India struck down the unilateral, arbitrary, and capricious practice of *talaq* divorce on the basis that it violated the fundamental rights of women in the Muslim community.²⁵⁴ The Supreme Court of India cited CEDAW while striking down the discriminatory practice of instant divorce known as “triple *talaq*” among Muslims. The Court held that the practice violated the fundamental rights of Muslim women, including the right to equality and non-discrimination.²⁵⁵ An interesting case that concerned whether Taiwanese women can qualify as successors for ancestors’ “worship” had the Taiwanese Constitutional Court in its dissent argue that the CEDAW guaranteed anti-gender stereotypes in the law.²⁵⁶

against the husband of his daughter, sparked by her having married of her own choice. The father knew, at the time of his complaint, that his daughter and the accused were lawfully married but went ahead and filed a case of *zina* nonetheless, as a result of which they fled. The police took the daughter home against her will, and her family faked a “suitable” marriage ceremony, which they filmed and later produced in court as evidence of a prior marriage.

The judgment against the father was a landmark decision in several ways, drawing as it did on a combination of Islamic law, the Constitution, and human rights instruments and comparable documents from Islamic forums. The judge emphasized the duty of state institutions to respect, protect and promote the fundamental rights of every person, reminded the parties that Pakistan was a U.N. member and a party to the CEDAW, and drew attention to Article 16, which enjoins all member states to respect the right of women to family life on a basis of equality with men. Justice Jilani also referred to Article 5 of the Cairo Declaration on Human Rights in Islam to reinforce his argument of women’s rights within an Islamic framework. He condemned in no uncertain language the “alliance” of state, society and family in undermining women’s rights. *Humaira Mehmood v. The State*, PLD 1999 Lahore 494 (Pak.).

252. For example, in Nepal, the Supreme Court decided in *Meera Dhungana v. Prime Minister* an issue related from polygamy. *Meera Dhungana for FWLD v. Government of Nepal*, Writ No. 64/2061 (Nepal). Specifically, after hearing a petition from the Forum for Women, Law and Development in Nepal, the Supreme Court ruled to invalidate a law allowing men to seek a second wife if, after ten years of marriage, they have not had a child with their first wife. *See id.*

253. For example, in the cases of *APDF* and *IHRDA v. Republic of Mali*, the African Court on Human and Peoples’ Rights ruled that several provisions contained in Mali’s Family Code violated international and regional human rights provisions where the Code did not state a minimum age of marriage, provide for the right to consent, or allow equitable inheritance for women and children. *APDF & IHRDA v Republic of Mali*, Application 046/2016, African Court on Human and Peoples’ Rights, [Afr. Ct. H.P.R.] 30 (May 11, 2018).

254. *Shayara Bano v. Union of India*, AIR 2017 SC 311 (India).

255. *Id.*

256. Taiwan specifically applied the CEDAW in Judicial Yuan (JY) Interpretation No. 728, which concerned whether women can qualify as successors for ancestors worship guide; the Taiwanese Constitutional Court cited the CEDAW and concluded that the legislators have a

E. *Using Culture to Control Women's Property and Economic Resources*

The other core domain of cases involving the collision of women's rights and culture involves property rights. Gender inequality in property ownership, conveyancing, and inheritance is not only about property but structural issues of power and control over women's movement and autonomy. The Indian Supreme Court, for instance, has held that the conferral of inferior status to women due to unequal property rights is an "anathema to equality" and argued that such personal laws, which derive from religious scripture, must nonetheless comply with the Constitution lest they violate fundamental rights.²⁵⁷ And cases concerning inheritance turn on similar inferior status conferral—for example, in another Indian Supreme Court case, the Court interpreted the Hindu Succession Act of 1956 and other laws to require an equal interest in property "by way of inheritance, gift, or bequeath" for women as well as for men.²⁵⁸ In addition, dowry laws, and child marriage laws which of course have strong marital and family law dimensions, nonetheless, can be categorized here as economic in effect.

These cases cover a wide range of issues related to women's property rights but share some common threads. The subsections below will explore three major categories of cases: those concerning property ownership, inheritance, and employment. While economic considerations feature prominently across these categories, the cases also implicate fundamental dignity interests and equality rights for women.

legitimate interest in respecting tradition by excluding women from being successors. *See* Qualifications for Successors of Ancestor Worship Guilds Case, 2015 Const. Ct. Interp. No. 728 (Taiwan) (Const. Ct. R.O.C. Mar. 20, 2015). In addition, three justices cited Articles 2 and 5 of the CEDAW in their separate dissenting opinions to argue that the state has a positive duty to eliminate gender stereotyping and improve gender equality. *See id.* Taiwan's legislature, the Legislative Yuan, passed the Enforcement Act of CEDAW in 2011.

257. *Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*, AIR 1996 SC 1 (India). The Court contended, "[The r]ight to equality is a fundamental right. . . . Parliament, therefore, has enacted Section 14 to remove pre-existing disabilities fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section 14(1) enlarging the scope of acquisition of the property by a Hindu female appending an explanation with it." *Id.*

258. *See* John Vallamattom and Anr. v. Union of India, AIR 2003 SC 2902, ¶ 36 (India) ("The right of equality of women vis-a-vis their male counterpart is accepted worldwide. *It will be immoral to discriminate a woman on the ground of sex. It is forbidden both in our domestic law as also international law.* Even right of women to derive interest in a property by way of inheritance, gift or bequeath is statutorily accepted by reason of Hindu Succession Act, 1956 and other enactments. This court, therefore, while considering constitutionality of Section 118 of the Indian Succession Act, is entitled to take those facts also into consideration.") (emphasis added).

1. Property Ownership

Many countries have introduced legal reforms to address women's property rights in line with CEDAW principles.²⁵⁹ For example, countries like Rwanda, Tanzania, and Mozambique have enacted laws that promote women's land and property rights, recognizing the importance of gender equality and women's economic empowerment.²⁶⁰ A Despite these law reforms, implementation of such rulings favorable to

259. The apotheosis of the collision between religion and rights was seen in the case of *Mohd. Ahmed Khan v. Shah Bano Begum* in 1985, when the Supreme Court of India dealt with the issue of maintenance for divorced Muslim women. *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*, (1985) 2 SCC 556 (India); see generally Nawaz B. Mody, *The Shah Bano Judgment and Its Aftermath*, 27 ASIAN SURVEY 935 (1987); see Utkarsh Anand, *From Shah Bano to Salma*, INDIAN EXPRESS (Sept. 24, 2009), <https://indianexpress.com/article/news-archive/web/from-shah-bano-to-salma/> ("Enacted in the wake of the row over the Supreme Court judgment in the Shah Bano case, the law is little known and so hardly ever used by Muslim women.").

For example, the High Court of Malawi in two cases held in favor of women's economic rights to matrimonial property. In *Tewesa v. Tewesa*, the Court held that under Malawi constitutional and customary law a wife was entitled to compensation and a share of matrimonial property upon the dissolution of her marriage when she contributed to the household both financially and in non-monetary ways while her husband sought a bachelor's degree. *Tewesa v. Tewesa*, Matrimonial Cause No. 9 of 2012, High Court of Malawi 1 (Malawi) ("... [The] Constitution [is] ... also considered when it comes to distribution of matrimonial property at dissolution of marriage. ... [T]he Constitution ... grants women the same rights as men to enter into contracts, acquire and maintain rights in property. ... [T]he Constitution grants women the right, on the dissolution of marriage, to a fair disposition of property that is jointly held with the husband and applies to every marriage.").

And in *Madikhula v. Goba*, the Court condemned acts of land grabbing and property deprivation against widows and declared that such actions jeopardized the financial independence of women under domestic law principles. *Madikhula v. Goba*, Civil Cause No. 2 of 2017, High Court of Malawi 1 (Malawi) (describing a village headman's allocation of a deceased man's land to people other than his wife as "arbitrary deprivation of the land.").

Likewise, in *Mwanamwalye v. Mwanamwalye*, the Local Court in Zambia (now known as the High Court) held that women married under customary Zambian law are entitled to a fair and equitable share of marital property upon the dissolution of marriage or death of the husband. *Mwanamwalye v. Mwanamwalye*, 2002/HP/No. 0029 (Zam.).

Lastly, the Constitutional Court of South Africa in *Gumede v. President of the Republic of South Africa* invalidated several South African statutes as they were deemed discriminatory against women in customary marriages because they afforded husbands exclusive control over family property and deprived women of their marital property rights in violation of the South African Constitution and regional and international human rights law. *Elizabeth Gumede vs. President of the Republic of South Africa* 2008 (3) SA 152 (CC) at 3 (S. Afr.).

260. See, e.g., Aparna Polavarapu, *Procuring Meaningful Land Rights for the Women of Rwanda*, 14 YALE HUM. RTS. & DEV. L.J. 105, 106 (2011); Garance Genicot & Maria Hernandez-de-Benito, *Women's Land Rights and Village Institutions in Tanzania*, 153 WORLD DEV. 1, 1 (2022); Marianna Bicchieri, *Women's Land-Related Human Rights in Mozambique: The Gap Between Commitments de Jure and Local Practice*, 58 STAN. J. INT'L L. 113, 122–23 (2022).

women's property-oriented rights remains a challenge, including in the practice of dowry, as was seen in Nepal, where the Supreme Court of Nepal refused to outlaw the practice of dowry, unless excessive in its scope.²⁶¹ These efforts are particularly stark in the context of the transfer of property across generations, potentially creating gender disparities in generational wealth.²⁶²

Despite the willingness of the courts to strike down discriminatory customary laws on property, challenges still remain. The case-by-case interpretation of customary law does not always attack the root causes of structural discrimination in informal laws. Secondly, the implementation of these rulings in practice remains a challenge in many countries.

261. For example, in 2007, the Supreme Court of Nepal held that allowing dowries for women was not discriminatory per the Nepalese Constitution. *Rama Panta Kharel v. Off. of Council Ministers*, Write No.63-WS-0019 of the Year 2060, S. Ct. (2008) (Nepal). The Court struck down a petition to replace existing limitations on dowry size in the Nepalese Constitution with a prohibition on dowries. *See id.* ("A petition to replace the existing limitations on dowry size in the Interim Constitution of Nepal (2007) with a prohibition of all dowries based on the mandate for gender equality in Article 11 of the Constitution and international conventions such as CEDAW was quashed on grounds that there was not sufficient proof that allowing limited dowries was discriminatory. However, in recognition of the social harm caused by large dowries including impoverishment, competitiveness, and negative views of women, the Court directed that current laws limiting dowries be enforced more effectively and that sensitization on the harmful aspects of dowries be implemented. This ruling demarcates the limits of petitioning for gender equality against traditional and constitutional law while still showing the willingness of the Court to promote women's rights through means outside the Constitution."'). The Court seems to be less willing to address harmful cultural practices when what is at stake is property and economic resources.

262. For example, in the case of *Noel v. Toto*, the Supreme Court of Vanuatu found no justification to distinguish between men and women for the purposes of inheriting land. *Noel v. Toto*, Case No. 18 of 1994, S. Ct. 10–11, 20 (1995) (Vanuatu). The land in question included a tourist hotspot, which generated income by giving rights to cruise ships to visit the area. Who has the right to that income? Custom law was muddy on enforcement and how to portion requested land and other crucial points. PACIFIC HUMAN RIGHTS LAW DIGEST, 1 PACIFIC ISLANDS LEGAL INFORMATION INSTITUTE 31 (2005). *See* Laitia Tamata, *Application of Human Rights Conventions in the Pacific Island Courts*, 13 J. SOUTH PAC. L. (2009).

Relevant constitutional provisions' purpose was apparently to confer permanent ownership upon the custom group who were the original owners of the land. The Court saw no evidence of custom law regarding the distribution of money, with historically there being no such thing. *Id.* The Court found that the brothers of Obed are part of the group of custom owners of the land, being from different mothers had no effect. *Id.* The Court then highlighted that custom differentiated between men and women, which is in conflict with the constitutional right to be free from discrimination on the grounds of sex. *Id.* The right of others to share in the income derives from their rights as custom owners of the land. The Court found no justification to distinguish between members of the group.

2. Inheritance

In many countries, inheritance laws and practices have historically disadvantaged women, limiting their ability to inherit property or receive an equal share of inheritance compared to male relatives. Such discriminatory practices perpetuate gender inequalities and can have significant economic and social consequences for women. CEDAW provides a framework for challenging and rectifying discriminatory inheritance laws and practices through legal avenues.²⁶³ It has been used in court cases and legal advocacy to challenge discriminatory inheritance practices and advocate for equal rights for women in inheritance matters.²⁶⁴ However, court rulings on this matter present a more

263. For example, in the case of *Bhe v. Khayelitsha Magistrate*, the South African Constitutional Court relied on CEDAW to declare a customary law that denied women the right to inherit property as unconstitutional. *Bhe v. Khayelitsha Magistrate* 2005 (1) BCLR 55 (CC) (S. Afr.). The court emphasized that the law violated the equality provisions of the South African Constitution and the country's obligations under CEDAW. *Id.* The Court also contended that excluding women from "succeeding to the family head" cannot be reckoned with the industrial transformation that African communities have undergone. *Id.* at 121. Not only that, but the court also noted that international agreements and obligations, including CEDAW, are highly persuasive authority here. *See id.* Specifically, the Court concluded, "CEDAW requires South Africa to ensure, amongst other things, the practical realization of the principle of equality between men and women and to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitutes discrimination against women." *Id.*

264. Consider *Mojekwo v. Ejikeme*, in which the Nigerian Court of Appeal "held that the *Nrachi* custom, which is designed to oppress and cheat women and compromises the basic tenets of family life, was inequitable and judicially unenforceable." *Mojekwo v Ejikeme* [2000] 5 NWLR 402 (Nigeria). Accordingly, the Court held, "a female child does not need the performance of *Nrachi* in order to inherit her deceased father's estate. It held that the custom was also repugnant to natural justice because the children born to a daughter in respect of whom the ceremony is performed are denied the paternity of their natural father. The custom was also inconsistent with public policy as it encourages promiscuity and prostitution. A female child is generally entitled to inherit her deceased father's estate and does not need to perform any customary ceremony such as *Nrachi* to exercise that right." *Id.*

"The Court held that the custom of *Ili-Ekpe* also discriminated against women. The fact that the appellants were born out of wedlock was immaterial since s. 39(2) of the 1979 Constitution prohibits discrimination on the grounds of circumstance of birth. In this case the acceptance into Ruben's family of the third appellant and her sister was sufficient acknowledgement of the two daughters by their grandparents to entitle them to full rights of succession to the estate of their grandfather. The Court concluded that the appellants had been in possession of Ruben's estate for many years and it would be inequitable to throw them out. The Court of Appeal held that the trial judge therefore applied two customs which are repugnant to the principles of natural justice, equity and good sense. With the *Nrachi* custom rendered unenforceable, the appellants, as blood relations, should have inherited Rubens's estate." *Id.* ("Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls on States Parties to modify social and cultural patterns of conduct in order to eliminate prejudices, customs and

ambivalent result, as in some instances the constitutional right of equality failed to trump gender-discriminatory inheritance laws and customs.

In the case discussed earlier, *Shilubana v. Nwamitwa*, the South African court weighed whether traditional leaders of a community can develop their customs and traditions to promote gender equality in the succession of traditional leadership in accordance with the Constitution.²⁶⁵ As narrated by Hosi Shilubana in her interview, the case found its way through an interdiction²⁶⁶ obtained by her nephew that was directed to stop her crowning ceremony as the first woman tribal chief. She relentlessly fought the case before the High Court²⁶⁷ and the Supreme Court of Appeal,²⁶⁸ both of which rendered verdicts against Hosi Shilubana ascending to the throne and in favor of her nephew, Mr. Nwamitwa. The reasoning of both the Courts was that even if the traditional and customary laws of the Valoyi community permitted a woman to become the chief, Mr. Nwamitwa was the rightful successor to the throne. This prompted Hosi Shilubana to seek relief from the final and the highest authority, the Constitutional Court of South Africa. The Constitutional Court took a pragmatic approach by holding that where there is a dispute over the legal position under customary law, a court must consider both the traditions and the present practices of the community.²⁶⁹ If there is a new development within the community, the Court must strive to recognize and give effect to that development, to the extent it is consistent with protecting rights.²⁷⁰ The Court found that the customary law of the Valoyi community did not permit a woman to succeed without amendment, but that the Royal Family had the power to amend the customs and that their actions represented a development of law consistent with the spirit

practices based on the inferiority or superiority of either sex. Plaintiff is a victim of such prejudices.”).

265. See *Shilubana v. Nwamitwa* 2009 (2) SA 66 (CC) (S. Afr.).

266. See *id.* at 5 n.8.

267. See *Nwamitwa v. Phillia and Others* 2005 (3) SA 536 (T) (S. Afr.).

268. *Shilubana v. Nwamitwa* 2006 SCA 174 (S. Afr.).

269. *Id.*

270. *Id.*

of the Constitution.²⁷¹ Thus, it was a valid legal change, vesting Ms. Shilubana with the right to succeed to chieftainship.

Various courts have gone in a different direction, ignoring constitutional rights to gender equality in cases of succession to a chieftainship.²⁷² Although several jurisdictions—often relying on CEDAW—have upheld such claims,²⁷³ customary laws, especially female heirs’

271. *Id.*

272. By contrast, the High Court of Lesotho dismissed a constitutional claim to inheriting a chieftainship in 2013. *See Masupha v. Kolobe*, Constitutional Case 5 of 2010, LSHC 9 (2013) (Lesotho). Senate Masupha, the firstborn daughter of a late chief, challenged a law that prevented her from inheriting the chieftainship. After her father’s death, her mother became a caretaker chief, but when her mother passed away, Masupha’s uncle claimed the inheritance. Masupha argued that the law was unconstitutional and discriminatory. However, both the High Court and the Court of Appeal upheld the law, which effectively denied women the right to succeed to chieftainship based on traditional customs. *See id.* ¶ 55 (“It is significant to further point out that in acceding to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Government of Lesotho expressed its reservation and specifically excluded itself from the provisions of that convention or treaty in so far as it concerns the customary practices relating to succession to the throne and to chieftainship. Is the court supposed to ignore this for purposes of this case, or at all? In our view, it cannot.”).

In another case that took the same direction, Nepal’s highest court in 1993 held that differential conditions for women in inheritance did not constitute gender discrimination under the Nepalese Constitution. *See Kumari Dhungana v. HMG Ministry of Law, Justice and Parliamentary Affairs*, Writ No. 8392, 2050 BS (1993) (Nepal), published in English in *Landmark Decisions*, Timalsena (ed.), 164, 169. These differential conditions actually amounted to *no* conditions on sons’ inheritance whatsoever. The Court held that the Code did not discriminate against women. The Court held that both sons and daughters had similar access to family property although the means of their access differed. *Id.* A son inherited property through his birth family and a daughter inherited property through her husband and his family or, if she remained unmarried, through her birth family. *Id.* The Court found that changing the inheritance laws in favor of women would be tantamount to discriminating against men. *Id.*

273. For example, the High Court of Botswana found in favor of three women who took legal action against their nephew, who tried to evict them from their family home that he believed he had inherited. *See Mmusi v. Ramantele* (2013) 4 LRC 437 (Bots.). The dispute revolved around the traditional law of the Ngwaketse tribe, which favored male inheritance. The Court stated that this discriminatory law violated their constitutional right to equality. *Id.* The Court of Appeal upheld the decision, acknowledging the importance of adapting to modern values and promoting gender equality. *See id.* at 45. (“It seems to me that the time has now arisen for the justices of this court to assume the role of the judicial midwives and assist in the birth of a new world struggling to be born, a world of equality between men and women as envisioned by the framers of the Constitution.”).

Furthermore, in *Ephraim v. Pastory*, the respondent inherited clan land from her father by a valid will and sold the land to a man who was not a member of her clan. *See Ephraim v. Pastory* (2001) AHRLR 326 (Tanz.). The next day, the appellant filed suit seeking a declaration that the

marital status, take center stage in this jurisprudence.²⁷⁴

sale of land by Ms. Pastory was void under the customary law that a woman has no power to sell clan land. The Court held that the customary law regarding women's property rights discriminated on the ground of sex in violation of CEDAW, the African Charter on Human and Peoples' Rights and the ICCPR as well as the Tanzania Constitution. *See id.* ¶ 10 ("What is more is that since the Bill of Rights was incorporated in our 1977 Constitution, see Act no 15 of 1984, by article 13(4) discrimination against women has been prohibited. But some people say that that is a dead letter. And the Universal Declaration of Human Rights, 1948, which is part of our Constitution by virtue of article 9(1)(f) prohibits discrimination based on sex as per article 7. Moreover, Tanzania has ratified the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.").

And the Swaziland Supreme Court invalidated the Swazi Deeds Registry Act on constitutional grounds in *Attorney General v. Aphane*, finding that the act discriminated against women by preventing women married in community of property from owning property. *See Attorney General v. Aphane* (2010) SZSC 32 (Swaz.). Wife and husband married in community of property, where all property of either spouse is combined in a joint estate regardless of whether it was acquired before or during the marriage and regardless of how much each spouse contributed. Despite marrying in community of property, the couple was not permitted to register newly purchased land in both of their names because the wife had continued to use her maiden name. Section 16(3) of the Deeds Registry Act only permitted land to be registered by the husband and wife if the wife used her husband's name; otherwise, the Act permits the land to be registered in the name of the husband only. Because the Section 16(3) of the Deeds Registry Act only affected the rights of wives and not husbands, the Supreme Court held that is invalid as it amounts to unfair discrimination and a violation of Section 20 and 28 of the Constitution.

274. For example, in a 1998 case over a deceased man's estate, the High Court of Kenya held that a customary law prohibiting married daughters from inheriting from their father's estate was discriminatory. Applicants, daughters of the deceased, were listed as beneficiaries. *See Kamunzyu v. Kamunzyu*, Succession Cause 303 of 1998 (2005) ILDC 1342 (KE 2005) (Kenya). Whether a woman was married was crucial; dowry is paid amongst the Kamba and said that unmarried ladies are entitled to inherit from their father's estate if not married. The Court found that the Kamba customary law was discriminatory on account of sex and section 40 of the Succession Act, which was not discriminatory because it only mentioned "the children." Section 29 of that Act also defined dependent as someone maintained or not by the deceased immediately before his death. The Court found the objector to be a beneficiary. *See id.* ("Does this mean that the objector will then have no recourse? I think not, because Kenya subscribes to international customary laws and has ratified several international covenants and treaties. Kenya subscribes to the international Bill of Rights which is the Universal Declaration of Human Rights (1948) and the covenant on economic social and cultural rights and the covenant on Civil and political rights. In 1984 Kenya also ratified [CEDAW] . . .").

Furthermore, in 2008, the High Court of Kenya weighed whether the Masai customary law, which prohibited women from inheriting, or the Law of Succession Act, which allowed women to inherit, applied to a Masai family. *See Est. of Lerionka Ole Ntutu* (2008) K.L.R. 1 (Kenya). The Court found that even if customary laws were applicable in this case, such laws that abrogate the right of daughters to inherit the estate of a father cannot be applicable because it would be repugnant to justice and morality. The Court held that the daughters were entitled to inherit from the asset of the estate. *See id.* ("It is now well established under our jurisprudence that there cannot be any discrimination also between the married and unmarried daughters. . . . Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of

In closing, courts are increasingly intervening to enable female inheritance, whether of family property in Kenya or chieftaincy succession in South Africa. Yet, translations of progressive judgments into enduring social transformations around customarily constrained economic agency remain slow. As was seen in the *Shilubana* case, fundamentally realigning the structural underpinnings of gender inequality requires coordinated civil society and institutional efforts. With power and property in equal shares, concentrated among men, many women still navigate a male terrain of structural dominance. Reforming unequal inheritance frameworks to promote gender-equitable political participation remains part of the unfinished work across societies grappling with historically ingrained inequity traditions. The gradual accretion of legal wins can shift the discourse but dismantling deep customary constraints on economic parity may need holistic approaches addressing layered cultural assumptions that devalue female inheritance claims.

3. Employment

The final category of cases concerning economic rights at the collision site of women's rights and culture concerns employment and patriarchal gender norms therein. For example, in *Dolon v. Gov't of Bangladesh*, female teachers at a primary school were directed to wear scarves, and when many protested, the Education Officer called the headmistress a prostitute.²⁷⁵ She was hospitalized for days due to distress caused by the remarks.²⁷⁶ The Supreme Court of Bangladesh stated that any attempt to impose a dress code on women amounted to a form of sexual harassment.²⁷⁷

Similarly, under a different religious tradition, in the Belize case of *Roches v. Wade*, a female teacher at a Roman Catholic school was dismissed by a letter saying that she failed to live according to Jesus's teaching on marriage and sex.²⁷⁸ Roches asserts this letter was prompted by the fact that she was unmarried and pregnant. Respondents claimed that the action was nondiscriminatory because they would fire any teacher involved in an unmarried pregnancy. The Supreme Court of Belize ruled that biology prevents this from being true because men do

impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political economic, social cultural, civil or any other field.”).

275. *Dolon v. Gov't of Bangladesh*, 63 DLR (2011) 80 (Bangl.).

276. *See id.* at 5.

277. *Id.* at 8.

278. *See Roches v. Wade*, Action No. 132, 299 (2004) (Belize).

not get pregnant.²⁷⁹ The Court further reasoned that the country's CEDAW ratification was persuasive as to the country's commitment "to remove some of the extensive discrimination which has existed against women."²⁸⁰ The Court then explicitly included in that commitment "ensuring women's effective right to work" and called on state entities to "take appropriate measures" to ban dismissals on the basis of pregnancy or maternity leave.²⁸¹ The Court concluded that "to allow the respondent's action against Ms. Roches on account of her unmarried pregnancy to stand, would as well seriously undercut Belize's obligation under CEDAW" and that "nothing in law . . . justif[ied] what can only be a material breach of this obligation by Belize, if the respondent's action were to stand."²⁸²

F. *Summation*

In examining the complex interplay between culture, religion, and constitutional rights, these cases reveal the complex balancing of rights and judicial hesitation, whether in majority or dissenting opinions, to interfere with deeply entrenched customary norms. From the above discussion, I draw a few themes.

First, courts in many cases have used all three tools, the constitutional bill of rights, the CEDAW, and progressive interpretation of religious texts as a way to protect women's rights. As evidenced in several cases, notions of rights can evolve significantly at the intersection of a progressive interpretation of culture and religion, constitutional authority, and human rights treaties. However, courts are less likely to address structural and deep-rooted challenges to women's liberties.

Second, reconciling customs and human rights involves complex deliberations on adapting long-standing traditions to modern principles of non-discrimination. In the case on dowry, the Nepalese Supreme Court drew a distinction between lavish dowries and modest dowries in an attempt to balance both the commodification of women's matrimony and deeply embedded cultural practices that are seen to be difficult to dislodge. Thirdly, even as several landmark judgments invalidate customary constraints on women's liberties, translating these decisions into meaningful change remains thwarted by ingrained patriarchal social structures as seen in the *Sabarimala Temple* case. The episodic nature of court interventions cannot alone dismantle systemic

279. *Id.* at 28.

280. *Id.* at 29.

281. *Id.*

282. *Id.*

inequities perpetuated through long standing customs. As Chilton and Versteeg argue, “While courts can render authoritative rulings on whether rights have been violated, ensuring that courts are presented with rights violations requires organizational capacity.”²⁸³ This posits courts in a consistent state of limbo—requiring constitutions to foreground the work of the judiciary. Sustained multisectoral efforts are imperative to reform underlying socio-legal foundations that subjugate women under the veneer of ancient cultural traditions.

Fourth, reconciling competing rights claims has invoked complex considerations that call for a context-specific analysis that has sometimes tilted toward favoring male hierarchies. While the universal principles enshrined in instruments like the CEDAW have helped inform judicial reasoning, localized social realities have shaped the contours of each decision. We saw this in the lower court decision in the *Shilubana* case. This has resulted in a case-by-case analysis at the sacrifice of structural and systemic changes. Looking beyond these judicial determinations, translating progressive judgments into substantive improvements in women’s lives continues to pose challenges worldwide. Once again, a case in point is the *Sabarimala Temple* case. Although the Supreme Court of India struck down the prohibition against the entrance of menstruating women and girls to the temple, the prohibition still exists in practice.

V. CONCLUSION

A. *Navigating the Balance*

An essential question is how effective courts and constitutions are when balancing different rights. We see how courts have moderated this tension between rights and culture, specifically focusing on the judicial interpretation of human rights. In fact, in the case of the Islamic tradition, Dawood Ahmed and Tom Ginsburg argue, citing Nathan Brown and Clark Lombardi, that “constitutions that incorporate Islam may not in fact threaten human rights since a progressive judiciary can interpret laws in a progressively compatible way.”²⁸⁴ Similarly, Ran Hirschl argues that jurists in majority-Muslim countries have created a form of constitutional theocracy that embeds religion in state constitutions while curbing certain negative downstream effects on liberal

283. CHILTON & VERSTEEG, *supra* note 206, at 11.

284. Dawood I Ahmed & Tom Ginsburg, *Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions*, 54 VA. J. INT’L. L. 615, 623 (2014).

democracy.²⁸⁵ Certain scholars such as Chilton and Versteeg argue that courts are not very effective in many facets, but cultural rights are a unique exception.²⁸⁶ Constitutions that expressly provide language around these legal quagmires provide a strong legal foreground to ensure that rights are upheld by the judiciary.

Ahmed and Ginsburg assail the orthodoxy that there is a fundamental incompatibility between constitutional designs that incorporate both religion and human rights. They argue that their scholarship “empirically show[s] that constitutions which incorporated Islamic supremacy clauses were accompanied by more human rights and are indeed even more rights-heavy when compared to constitutions of other comparable jurisdictions which did not incorporate these clauses.”²⁸⁷ Although the authors recognize that in certain instances, the rights provisions may be under-enforced in practice, they only seek to argue that in terms of constitutional drafting, rights and religion (in this case Islam) may not be incompatible.

In my examination too, these theistic constitutions go through an exercise of balancing rights and religion. However, despite the arguments made by Ginsburg et al., very few cases challenging gender inequality have come before some of the courts in the Middle East that exercise the *Shari’a* Law or courts in Myanmar which apply Buddhist Law. Given that courts as interpreters of the law are more likely than other traditional tribunals to rebalance the power to ensure that women’s rights are not trumped by religion, it is important to strengthen adjudicatory systems that safeguard women’s rights from a system of cultural hegemony.²⁸⁸

Article 27 of the Vienna Convention on the Law of Treaties, in part, provides that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”²⁸⁹ On the other hand, persuasive authority makes appearances in these “collision” cases. Melissa Waters argues in her work that the interpretation of the Bangalore Declaration implies that the international law of human rights is the primary authoritative source of human rights norms.²⁹⁰

285. See generally RAN HIRSCHL, *CONSTITUTIONAL THEOCRACY* (2006).

286. See *supra* notes 205–213 and accompanying text.

287. See Ahmed & Ginsburg, *supra* note 284, at 615, 623.

288. Nazila Ghanea, *Navigating the Tensions: Women’s Rights, Religion and Freedom of Religion or Belief*, 16 RELIGION & HUMAN RTS. 67, 80–81 (2021).

289. Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331.

290. See Melissa Waters, *Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties*, 107 COLUM L. REV. 628, 648 (2007) (“[T]he universality of human rights derives from the moral principle of each individual’s personal and equal autonomy and human

That is, domestic legal sources are merely derivatives of international human rights law.²⁹¹ Under this approach, the role of judges is to harmonize domestic law with the superior law in an integrated legal order, a role that recent case law indicates some judges are fulfilling by presuming that statutes are intended to conform to international norms,²⁹² and that nation-specific cultural practices cannot validate the deprivation of rights generally recognized under international law.

Moreover, a clear pattern can be seen in court references to the CEDAW as a basis for upholding fundamental rights and freedom for women. With 189 states parties, the CEDAW's domestic judicial jurisprudence is rich in context and diverse legal and cultural traditions adding a universal dimension to the CEDAW's interpretive project. The domestic translation of the CEDAW is seen through the judicial application of international women's human rights. The innovative and imaginative approach to judicial interpretation and application of the CEDAW is an important testament to the dynamic and enduring value of the treaty. Thus, a key interpretive question with respect to these cases' references to CEDAW is whether the deciding court attempts to interpret culture as *co-existing with non-discrimination*.

Three trends can be identified in the balancing of gender equality and the right to culture. First is an incrementalist approach. This approach is often spurred by international treaty bodies such as the CEDAW calling upon the legislature and the courts to harmonize domestic laws in line with the treaties that have had an impact on some of the *de jure* changes.²⁹³ Thus, law revision has come to define culture in line with these human rights obligations. For example, as observed at the Eighty-seventh session of the CEDAW, states like Djibouti are gradually and incrementally undertaking reformist initiatives to bring their personal status laws not only in line with the CEDAW but with best

dignity. That principle transcends national political systems and is in the keeping of the judiciary.”).

291. *See id.* (“[W]hile human rights norms may ‘find expression’ in various domestic constitutions and legal texts, their ‘anchor’—their origin and true home—is found in international human rights treaties.”).

292. *See* Vicki Jackson, *Constitutional Comparisons: Convergences, Resistance, Engagement*, 119 HARV. L. REV. 109, 205 (2005).

293. *See generally* Rangita de Silva de Alwis & Ambassador Melanne Verveer, “*Time Is A-Wasting*”: Making the Case for CEDAW Ratification by the United States, 60 COLUM. J. TRANSNAT’L L. 1 (2021).

practices in comparative laws; for example, in the case of Djibouti, in line with Tunisia's more progressive personal status laws.²⁹⁴

What we see in many instances is that when religious, customary, and cultural rights have come into conflict with women's rights,²⁹⁵ courts can play a role in calling for legislative reform.

Despite a reformist zeal, de facto implementation of laws remains slow unless driven by progressive social movements. As Isobel Coleman has argued in *Paradise Beneath Her Feet*, laws' view of cultural determinism is changing gradually because of powerful women's social movements which are challenging religious and cultural immutability.²⁹⁶ Moreover, women are demonstrating that such communities are shaped by forces that are dynamic and internally contested.

Third, the balance is often achieved through an evolutionary process. In fact, in General Recommendation 25, the CEDAW Committee itself argued that the Convention is an evolutionary instrument that must anticipate the emergence of new challenges to women's rights. The capacity of courts and constitutions to anticipate emerging and burgeoning threats to women's human rights remains a great challenge in addressing any new clash between culture and women's rights.

Balancing rights calls for a clear distinction between the rights to religion and cultural practices that does not limit women's rights. Once this complex balance is struck, the rights of women to religious and cultural practices can also remain a vital part of the corpus of women's rights rather than in competition with each other. Recognizing that these tensions remain, some of the great challenges in human rights will help us to continue to anticipate growing challenges and continue the task of careful interrogation of the ever-changing and shape-shifting tensions between the exercise of these rights.

In the final analysis, balancing competing rights calls for the search for an equilibrium that does not sacrifice one right in favor of the other. While an essentialized view of culture as immutable and frozen in amber creates a worldview where religion and rights are in binary opposition with each other, a more dynamic interpretation of culture sees it as dynamic and constantly evolving with time.

294. U.N. Comm. on the Elimination of Discrimination against Women [CEDAW], Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Djibouti ¶ 45, U.N. Doc. CEDAW/C/DJI/CO/4-5 (Feb. 26, 2024).

295. See discussion *supra* Section III.B.2.

296. See generally ISOBEL COLEMAN, *PARADISE BENEATH HER FEET: HOW WOMEN ARE TRANSFORMING THE MIDDLE EAST* (Random House 2013).

What we see in many instances is that although courts can and do play a role in calling for legislative reform, courts rarely ask the question of who in a community has the power to define culture and who does not.²⁹⁷ That question will make all the difference in navigating the balance.

B. *Coda: Can Judges be a “Mouthpiece of Divinity”*

Law itself is part of a culture’s way of making sense of meaning and the social order of things. In *Law as Culture: An Invitation*, Lawrence Rosen, the legal anthropologist, invites us to examine how the processes of legal decision-making are part of how a culture is glued together: law is a metaphor for the nature of culture itself and the construction of meaning-making.²⁹⁸ Law can be both an autonomous system of rules but also a mirror of how a community might see themselves and their relations to each other. If the law itself is a cultural artifact that allows us to survive and flourish, law is then a key domain of culture. For example, Rosen argues that one should see “laws constituted by culture, and culture (in no small way) by the law . . . [and that it] is indeed an excellent storehouse of stories.”²⁹⁹ And that “like art and literature, through law, we attempt to order our ties to one another.”³⁰⁰

In this analysis, courts can play a role in interrogating culture, debunking its ossification, and in developing a living culture. In seizing this role, according to Justice Cardozo,³⁰¹ judges become the “mouthpiece of divinity”³⁰² whose “magisterial or imperative” style can “fill cathedrals or the most exalted of tribunals.”³⁰³ The thrill of such decision-making, he continues, “is irresistible. We feel the mystery and the awe of inspired revelation.”³⁰⁴ Judging itself can be a process of metamorphosis. Judges as storytellers can choose to remake a narrative through the medium of changing mores and new contexts. The idea of

297. See *supra* notes 70–76 and accompanying text.

298. See generally LAWRENCE ROSEN, *LAW AS CULTURE: AN INVITATION* (Princeton Univ. Press 2006).

299. *Id.* at 11.

300. *Id.* at 199.

301. BENJAMIN NATHAN CARDOZO, *LAW AND LITERATURE AND OTHER ESSAYS AND ADDRESSES*, reprinted in *SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO: THE CHOICE OF TYCHO BRAHE* 338, 344, 342 (Fallon Publications 1947).

302. *Id.* at 344.

303. *Id.* at 342.

304. *Id.*

textualism and originalism in cultural traditions that are deemed irreconcilable with gender equality and the dueling forces of culture and rights must give to courts protecting rights in culture. In this vision, a feminist cultural narrative can become the interpretive tool for constitutional analysis and judicial decision-making.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

VI. APPENDIX: CONSTITUTION MAPPING

Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Does the state constitution authorize or refer to a state religion?	Does the state constitution refer to any cultural customs and traditions, including through informal laws?	Does the state constitution enshrine certain customary laws (e.g., sons inherit)?	Does the state constitution enable freedom of expression and/or carve out space for restrictions on expression (e.g., blasphemy laws)?
Afghanistan ³⁰⁵	<p>The Constitution authorizes Islam as the state religion.</p> <p><u>Article 2:</u> The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals.</p> <p>“In 2004 the Constitution accorded both Shia and Sunni Islam equal recognition.”³⁰⁶</p> <p><u>Article 149:</u> The principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism</p>	No mention.	<p>It is a mix of Islamic law and civil law, along with customary laws. Customary laws vary across regions. No specific enshrinement of customary laws has been seen; however customary laws are very prominent.³⁰⁷</p>	<p>The Afghan Constitution, particularly in Article 34, recognizes and protects freedom of expression.</p> <p><u>Article 34:</u> Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this Constitution.</p> <p>However, it also has provisions that allow for certain restrictions on expression. The Afghan Constitution also acknowledges that freedom of expression is not absolute and can</p>

305. AFG. CONST. (2004) arts. 2, 3, 34, 149; Mass Media Law art. 45 (Afg.).

306. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Afghanistan 1 (2011).

307. Afghanistan, JUDICIARIES WORLDWIDE, <https://judiciariesworldwide.fjc.gov/country-profile/afghanistan> (last accessed Feb. 2, 2025).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	shall not be amended.			<p>be subject to limitations, especially when it comes to matters related to Islam and national security.</p> <p><u>Article 3:</u> No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.</p> <p>Specific laws: <u>Mass Media Law</u> - <u>Article 45:</u> Production, reproduction, print and publishing of the following reports and material in mass media, and agencies mentioned in article (27) of this law are not permissible:</p> <p>1. Works and materials those are contrary to the principles and provisions of the holy religion of Islam.</p> <p>2. Works and materials which are offensive to other religions and sects.</p>
Albania ³⁰⁸	<p><u>Article 10:</u> In the Republic of Albania there is no official religion.</p>	<p>No mention of customs.</p> <p>Traditions are only used for regional division. <u>Article 110(1):</u> A region consists of several</p>	No mention.	<p>No blasphemy laws found.</p> <p><u>Article 22:</u> 1. Freedom of expression is guaranteed.</p>

308. ALB. CONST. (Rev. 2016) arts. 10, 22, 108, 110(1).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>basic units of local government with traditional, economic and social ties and joint interests.</p> <p><u>Article 108(2):</u> The territorial-administrative division of the units of local government are established by law on the basis of mutual economic needs and interests and historical tradition. Their borders may not be changed without first taking the opinion of the inhabitants.</p>		<p>2. The freedom of the press, radio and television are guaranteed.</p> <p>3. Prior censorship of a means of communication is prohibited.</p> <p>4. The law may require the granting of authorization for the operation of radio or television stations.</p>
Algeria ³⁰⁹	<p>Article 2: Islam shall be the religion of the State.</p>	<p>It says culture will be protected.</p> <p><u>Article 80:</u> The right to culture shall be guaranteed for all citizens.</p> <p>Each person shall have an equal right to culture.</p> <p>The State shall protect and work towards preserving the tangible and intangible national cultural heritage.</p>	<p>State shall decide over customs.</p> <p><u>Article 144:</u> Parliament shall legislate on the subject matters assigned to it by the Constitution as well as in the following fields . . . 14. the customs system.</p>	<p>No, it curbs freedom of expression.</p> <p><u>Penal Code of 19794 - Article 144:</u> Allows for up to five years imprisonment and a fine of 50,000 to 100,000 dinars (\$680-\$1,360) for “insulting the prophet and any of the messengers of God, or denigrating the creed and precepts of Islam, whether by writing, drawing, declaration, or</p>

309. ALG. CONST. (2020) arts. 2, 80, 144; Penal Code of 19794, art. 144 (Alg.); Information Code of 19906, art. 77 (Alg.).

CONTINUED

Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				any other means.” The <u>Information Code of 19906 - Article 77</u> : Regulates the media and restricts blasphemy. Also bans insults against Islam and the other “heavenly religions” (Christianity and Judaism).
Andorra ³¹⁰	<u>Article 11(3)</u> : The Constitution guarantees the Roman Catholic Church free and public exercise of its activities and the preservation of the relations of special co-operation with the State in accordance with the Andorran tradition. The Constitution recognizes the full legal capacity of the bodies of the Roman Catholic Church which have legal status in accordance with their own rules.	<u>Article 84</u> : The laws shall take into account custom and usage in order to determine the jurisdiction of Districts and Neighborhoods, as well as their relationship with the Local Councils.	No mention.	<u>Criminal Code - Article 301</u> : Anyone who insults religious beliefs in public or impedes or disrupts a religious act or ceremony shall be subject to a maximum prison sentence of six months.

310. ANDORRA CONST. (1993) arts. 11(3), 84; Criminal Code, art. 301 (Andorra).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Angola ³¹¹	<p>Article 10. <u>Secular state:</u> 1. The Republic of Angola shall be a secular state and there shall be separation between state and church, under the terms of the law.</p> <p>2. The state shall recognise and respect the different religious faiths, which shall be free to organise and exercise their activities, provided that they abide by the Constitution and the laws of the Republic of Angola.</p> <p>3. The state shall protect churches and faiths and their places and objects of worship, provided that they do not threaten the Constitution and public order and abide by the Constitution and the law.</p>	<p>Article 79(3). <u>Right to education, culture and sports:</u> Private and co-operative initiatives in the spheres of education, culture and sports shall be exercised under the terms prescribed by law.</p>	<p>Article 92(2). <u>Economic sectors:</u> The state shall recognise and protect the right of rural communities to use and benefit from the means of production, under the terms of the Constitution, the law and customary law.</p>	<p>Article 40. <u>Freedom of expression and information:</u> 1. Everyone shall have the right to freely express, publicise and share their ideas and opinions through words, images or any other medium, as well as the right and the freedom to inform others, to inform themselves and to be informed, without hindrance or discrimination.</p> <p>2. The exercise of the rights and freedoms described in the previous point may not be obstructed or limited by any type or form of censorship.</p>
Antigua and Barbuda ³¹²	<p>No, it does not recognize a state religion. They refer to God; but provides for the freedom of religion and the separation of religion from the state.</p> <p>Preamble: Whereas the</p>	No mention.	No mention.	<p>It penalizes blasphemy.</p> <p><u>Small Charges Act 10 - Part II - Article 9:</u> Anyone who makes use of any abusive, blasphemous, indecent, insulting, profane or</p>

311. ANGL. CONST. (2010) arts. 10, 40(1)–(2), 79(3), 92(2).

312. ANT. & BARB. CONST. (1981) pmbl.; Small Charges Act 10, Part II, art. 9. (Ant. & Barb.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>People of Antigua and Barbuda- (a) proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person, the entitlement of all</p> <p>persons to the fundamental rights and freedoms of the individual, the position of the family in a society of free men and women and free institutions.</p>			<p>threatening language—</p> <p>(a) in any public place; or</p> <p>(b) in any place to the annoyance of the public; or</p> <p>(c) tending to a breach of the peace;</p> <p>shall be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding one month.</p>
Argentina ³¹³	Article 2: The Federal Government supports the Roman Catholic Apostolic Faith.	No mention.	No mention.	Article 32: The Federal Congress shall not enact laws that restrict the freedom of the press or that establish federal jurisdiction over it.
Armenia ³¹⁴	<p>Article 18. The Armenian Apostolic Holy Church:</p> <p>I. The Republic of Armenia shall recognize the exceptional mission of the Armenian Apostolic Holy Church, as the</p>	<p>Article 15(1). Promotion of Culture, Education, and Science, Protection of the Armenian language and Cultural Heritage:</p> <p>The state shall promote the development of</p>	No mention.	<p>Article 41. The Freedom of Thought, Conscience, and Religion:</p> <p>1. Everyone shall have the right to the freedom of thought, conscience, and religion. This right shall</p>

313. Arts. 2, 32, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

314. ARM. CONST. (Rev. 2015) arts. 15(1), 18, 41, 42.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>national church, in the spiritual life of the Armenian people, in the development of its national culture, and in the preservation of its national identity.</p> <p>2. The relationship between the Republic of Armenia and the Armenian Apostolic Holy Church may be regulated by a law.</p>	<p>culture, education, and science.</p>		<p>include the freedom to change one's religion or beliefs and the freedom, either alone or in community with others in public or in private, to manifest religion or beliefs in preaching, church ceremonies, other rituals of worship or in other forms.</p> <p>2. The expression of the freedom of thought, conscience, and religion may be restricted only by law with the aim of protecting state security, the public order, health and morals, or the fundamental rights and freedoms of others.</p> <p><u>Article 42. The Freedom of Expression of Opinion:</u></p> <p>1. Everyone shall have the right to freely express his opinion. This right shall include freedom to hold own opinions, as well as to seek, receive, and impart information and ideas by any means of information without interference by state or local self-government bodies and regardless of state frontiers.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				<p>2. The freedom of the press, radio, television and other means of information shall be guaranteed. The state shall guarantee the activities of an independent public television and radio offering a diversity of informational, educational, cultural, and entertainment programs.</p> <p>3. The freedom of expression of opinion may be restricted only by law with the aim of protecting state security, the public order, health and morals, or honor and reputation of others, and other fundamental rights and freedoms.</p>
Australia ³¹⁵	<p><u>Article 116. Commonwealth not to legislate in respect of religion:</u> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test</p>	No mention.	No mention.	No mention.

315. *Australian Constitution* s 116.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	shall be required as a qualification for any office or public trust under the Commonwealth.			
Austria ³¹⁶	<p>No state religion.</p> <p>Article 7(1): All nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded. No one shall be discriminated against because of his disability. The Republic (Federation, Laender and municipalities) commits itself to ensuring the equal treatment of disabled and non-disabled persons in all spheres of everyday life.</p>	No mention.	No mention.	<p>Penalizes blasphemy.</p> <p><u>Criminal Code 11 - Section 188:</u> [Disparaging of religious precepts]</p> <p>Whoever publicly disparages or mocks a person or a thing, respectively, being an object of worship or a dogma, a legally permitted rite, or a legally permitted institution of a church or religious society located in Austria, in a manner capable of giving rise to justified annoyance, is liable to imprisonment for a term not exceeding six months or to a fine liable to imprisonment for a term not exceeding six months or to a fine.</p>

316. BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] art. 7(1) (Austria); STRAFGESETZBUCH [StGB] (PENAL CODE) § 188 (Austria).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Azerbaijan ³¹⁷	Secular state. <u>Article 18(1). Religion and the State:</u> In the Republic of Azerbaijan religion is separated from the State. All religions are equal before the law.	Not explicitly. <u>Article 94(I). General Rules to be Determined by the Milli Majlis of the Republic of Azerbaijan:</u> The Milli Majlis of the Republic of Azerbaijan determines the general rules on the following matters. . . . 25. customs.	No mention.	<u>Article 47. Freedom of Thought and Speech:</u> I. Everyone has the freedom of thought and speech. II. Nobody may be forced to identify or refuse his or her ideas and principles. III. Propaganda inciting racial, ethnic, religious, social animosity or hostility or relying on any other criteria is inadmissible.
The Bahamas ³¹⁸	No mention.	No mention.	No mention.	<u>Article 22(1). Protection of freedom of conscience:</u> Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community

317. AZER. CONST. (Rev. 2016) arts. 18(1), 47, 94(I)(25).

318. BAH. CONST. (1973) art. 22(1).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				with others, and both in public and in private, to manifest and propagate his religion of belief in worship, teaching, practice and observance.
Bahrain ³¹⁹	Article 2: The religion of the State is Islam. The Islamic Shari'a is the primary source of law. The official language is Arabic.	Article 22: Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.	Article 5(d): Inheritance is a guaranteed right governed by the Islamic Shari'a.	<p><u>Penal Code 12 - Article 309:</u></p> <p>A punishment for a period not exceeding one year or a fine not exceeding BD 100 shall be inflicted upon any person who commits an offence by any method of expression against one of the recognized religious communities or ridicules the rituals thereof.</p> <p><u>Penal Code 12 - Article 310:</u></p> <p>The punishment provided for in the preceding Article shall be inflicted upon any person who commits in public an insult against a symbol or a person that is glorified or considered sacred to members of a particular sect; (or) upon any person who imitates in public a</p>

319. BAHR. CONST. (Rev. 2017) arts. 2, 5(d), 22; Penal Code 12, arts. 309–10 (Bahr.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				religious ritual or ceremony with the intention of ridiculing it.
Bangladesh ³²⁰	Article 2A. <u>The state religion:</u> The state religion of the Republic is Islam, but other religions may be practiced in peace and harmony in the Republic.	Article 23. <u>National Culture:</u> The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture. Article 23A. <u>The culture of tribes, minor races, ethnic sects and communities:</u> The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.	No mention.	Freedom of thought and conscience is guaranteed but laws restricting them with respect to blasphemy are in place. Article 295. <u>Injuring or Defiling Place of Worship, with Intent to Insult the Religion of Any Class:</u> Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to

320. BANGL. CONST. (Rev. 2014) arts. 2A, 23, 23A; Penal Code, 1860 (Act No. XLV/1860) arts. 295, 295A, 298 (Bangl.).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				<p>two years, or with fine, or with both.</p> <p><u>Article 295A.</u> <u>Deliberate and Malicious Acts</u> <u>Intended to Outrage Religious Feelings of Any Class by</u> <u>Insulting its Religion or Religious Beliefs:</u> Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Bangladesh, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.</p> <p><u>Article 298.</u> <u>Uttering Words, etc., with Deliberate Intent to Wound Religious Feelings:</u> Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
Barbados ³²¹	<p>Article 19: 1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.</p> <p>2. Every religious</p>	No mention.	No mention.	<p>Article 11: Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely. . .</p>

321. BARB. CONST. (Rev. 2007) arts. 11, 19.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.			
Belarus ³²²	<p>Article 16: Religions and faiths shall be equal before the law.</p> <p>Article 31,</p> <p>Everyone shall have the right independently to determine one's attitude towards religion. . . .</p>	<p>Article 51: Everyone shall have the right to take part in cultural life.</p>	<p>Article 52: Everyone in the territory of the Republic of Belarus shall abide by its Constitution and laws and respect national traditions.</p>	<p>Article. 33: Everyone is guaranteed freedom of thoughts and beliefs and their free expression.</p> <p>No one shall be forced to express one's beliefs or to deny them. No monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted.</p>
Belgium ³²³	<p>Article 19:</p> <p>Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.</p>	<p>Article 23: . . . the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.</p>	No mention.	<p>Article 19: Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.</p>

322. BELR. CONST. (Rev. 2004) arts. 16, 19, 20, 31, 33, 51–52.

323. CONST. (Belg.) arts. 19, 22, 23, 58, 101, 124, 134.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p><u>Article 20</u></p> <p>No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest.</p>			<p>Article 22bis: Each child has the right to express his or her views in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity.</p> <p>Article 58: No member of either House can be prosecuted or be the subject of any investigation with regard to opinions expressed and votes cast by him in the exercise of his duties.</p> <p>Article 101: No minister can be prosecuted or be the subject of any investigation with regard to opinions expressed by him in the exercise of his duties.</p> <p>Article 124: No member of a Community or Regional Government can be prosecuted or be the subject of any investigation with regard to opinions expressed and votes cast by him in the exercise of his duties.</p>

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Belize ³²⁴	Freedom of religion enshrined in Article 11(1).	Preamble(e): Require policies of state . . . which protect the identity, dignity and social and cultural values of Belizeans, including Belize's indigenous peoples.	No mention.	Article 3(b). <u>Fundamental rights and freedoms:</u> Freedom of conscience, of expression and of assembly and association. Article 12(1) provides for freedom of expression without interference. Article 12(2) provides circumstances where state may regulate. It may "in the interests of defence, public safety, public order, public morality or public health;" in the interest of protecting reputations, confidential information, broadcasting, and officers of public service.
Benin ³²⁵	Article 2: The Republic of Bénin shall be one-indivisible, secular, and democratic. . . . Article 23: Every person has the right to freedom of . . . religion.	Article 10: Every person has a right to culture. The State has the duty to safeguard and promote the national values of civilizations, as much material as spiritual, as well as the cultural traditions.	Article 98: Under the domain of the law are the rules concerning: . . . The procedure according to which customary laws shall be recorded and brought into harmony with the fundamental principles of the Constitution.	Article 23: Every person has the right to freedom of thought, of conscience, of religion, of creed, of opinion and of expression with respect for the public order established by law and regulations. The exercise of a creed

324. BELIZE CONST. (Rev. 2011) pmb., arts. 3(b), 11(1), 12(1)–(2).

325. BENIN CONST. (1990) arts. 2, 10–11, 23–24, 98, 142, 375.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Article 11: "All communities comprising the Béninese nation shall enjoy the freedom to use their spoken and written languages and to develop their own culture while respecting those of others.</p> <p>The State must promote the development of national languages of inter-communication</p>		<p>and the expression of beliefs shall take place with respect for the secularity of the State.</p> <p>Article 24: Freedom of the press shall be recognized and guaranteed by the State. It shall be protected by the High Authority of Audio-Visuals and Communications under the conditions fixed by an organic law.</p> <p>Article 142: The High Commission of Audio-Visuals and Communications shall have as its mission to guarantee and assure the freedom and the protection of the press, as well as all of the means of mass communication with respect to the law. . .</p>
Bhutan ³²⁶	<p>Buddhism is the "spiritual heritage" of the state, as stated in Article 3.</p> <p>Article 7(4). <u>Fundamental rights:</u> A Bhutanese citizen shall</p>	<p>Article 4. <u>Culture:</u></p> <p>The State shall endeavour to preserve, protect and promote the cultural heritage of the country,</p>	No mention.	<p>Article 7(2). <u>Fundamental rights:</u> A Bhutanese citizen shall have the right to freedom of speech, opinion and expression.</p> <p>Article 7(3).</p>

326. BHUTAN CONST. (2008) arts. 3–4, 7.2–5, 7.22.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	have the right to freedom of thought, conscience and religion. No person shall be compelled to belong to another faith by means of coercion or inducement.	including monuments, places and objects of artistic or historic interest, Dzongs, Lhakhangs, Goendeys, Tensum, Nyes, language, literature, music, visual arts and religion to enrich society and the cultural life of the citizens.		<p><u>Fundamental rights:</u> A Bhutanese citizen shall have the right to information.</p> <p>Article 7(5). <u>Fundamental rights:</u> There shall be freedom of the press, radio and television and other forms of dissemination of information, including electronic.</p> <p>Article 7(22) carves out exceptions to all fundamental rights listed in Article 7. Included among the list is an exception allowing restriction (d), “[i]ncitement to an offence on the grounds of race, sex, language, religion or region.”</p>
Bolivia ³²⁷	Article 4: The State respects and guarantees freedom of religion and spiritual beliefs, according to their view of the world. The State is independent of religion.	<p>Article 5: The official languages of the State are Spanish and all the languages of the rural native indigenous nations and peoples. . .</p> <p>Article 21: Bolivians have the following rights:</p>	Article 13(IV): International treaties and conventions ratified by the Pluri-National Legislative Assembly (Asamblea Legislativa), which recognize human rights and prohibit their limitation in States of Emergency,	<p>Article 106(I-III): I. The State guarantees the right to communication and the right to information.</p> <p>II. The State guarantees the right of Bolivians to freedom of expression, opinion and</p>

327. BOL. CONST. (2009) arts. 4–5, 13(IV), 21, 30, 99, 100(I), 106(I)–(III), 107(I), 151(I).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>To cultural self-identification. . .</p> <p><u>Article 30:</u> I. A nation and rural native indigenous people consists of every human collective that shares a cultural identity, language, historic tradition, institutions, territory and world view, whose existence predates the Spanish colonial invasion.</p> <p>II. In the framework of the unity of the State, and in accordance with this Constitution, the nations and rural native indigenous peoples enjoy the following rights: . . .</p> <p>6. to the collective ownership of land and territories; . . .</p> <p>11. to the collective ownership of intellectual property in their knowledge; . . .</p> <p>17. to autonomous indigenous territorial management . . .</p> <p><u>Article 99:</u> I. The cultural patrimony of the Bolivian people is inalienable, and it may not be attached or limited. The economic</p>	<p>prevail over internal law. The rights and duties consecrated in this Constitution shall be interpreted in accordance with the International Human Rights Treaties ratified by Bolivia.</p> <p><u>Article 21:</u> Bolivians have the following rights: . . .</p> <p>3. To freedom of belief, spirituality, religion and cult, expressed individually or collectively, in public and in private, for legal purposes. . .</p> <p>5. To freely express and disseminate thoughts and opinions by any means of oral, written or visual communication, individually or collectively.</p> <p>6. To have access to information and to interpret, analyze and communicate it freely, individually or collectively.</p>	<p>information, to rectification and reply, and the right to freely publish ideas by whatever means of dissemination, without prior censorship.</p> <p>III. The State guarantees freedom of expression and the right to communication and information to workers of the press.</p> <p><u>Article 107(I):</u> The public means of communication must contribute to the promotion of the ethical, moral and civic-minded values of the different cultures of the country with the production and dissemination of multilingual educational programs and in an alternative language for the disabled.</p> <p><u>Article 151(I):</u> The members of the assembly shall enjoy personal privilege during the time of their mandate, and afterwards they may not be criminally processed for their opinions, communications, representations, requests, questions,</p>

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>resources that they generate are regulated by law to give priority to their conservation, preservation and promotion.</p> <p>II. The State shall guarantee the registry, protection, restoration, recovery, revitalization, enrichment, promotion and dissemination of its cultural patrimony, in accordance with the law.</p> <p>III. The natural, architectural, paleontological, historic, and documentary riches, and those derived from religious cults and folklore, are cultural patrimony of the Bolivian people, in accordance with the law.</p> <p><u>Article 100(I):</u> The world views, myths, oral history, dances, cultural practices, knowledge and traditional technologies are patrimony of the nations and rural native indigenous peoples. This patrimony forms part of the expression and identity of the State.</p> <p><u>Article 374(II):</u> The State shall recognize,</p>		<p>denouncements, proposals, expressions or any legislative act or act of reporting or control, which they formulate or undertake while performing their functions.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		respect and protect the uses and customs of the community, of its local authorities and the rural native indigenous organizations over the right, management and administration of sustainable water. Article 375 offers similar protections for irrigation.		
Bosnia and Herzegovina ³²⁸	Article II(3)(g): Freedom of thought, conscience, and religion.	No mention.	Article II(2): The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.	Article II(3)(h): Freedom of expression.
Botswana ³²⁹	Article 11 (protection of freedom of conscience) enshrines religion.	No mention.	Article 77. <u>Establishment and composition of Ntlo ya Dikgosi.</u> Article 88(2). <u>Introduction of Bills:</u> The National Assembly shall	Article 3(b). <u>Fundamental rights and freedoms of the individual:</u> Freedom of conscience, of expression and of assembly and association.

328. BOSN. & HERZ. CONST. (Rev. 2009) arts. II 2, II 3(g)–(h).

329. BOTS. CONST. (Rev. 2016) arts. 3(b), 11, 12, 77, 88.2.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution or affect—</p> <p>a. the designation, recognition, removal of powers of Dikgosi or Dikgosana;</p> <p>b. the organization, powers or administration of customary courts;</p> <p>c. customary law, or the ascertainment or recording of customary law; or</p> <p>d. tribal organization or tribal property, unless—</p> <p>i. a copy of the Bill has been referred to the Ntlo ya Dikgosi after it has been introduced in the National Assembly; and</p> <p>ii. a period of 30 days has elapsed from the date when the copy of the Bill was referred to the Ntlo ya Dikgosi.</p>	<p>Article 12. <u>Protection of freedom of expression.</u></p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Brazil ³³⁰	Article 5(VI) enshrines freedom of religion.	Section II. <u>Culture, Article 215</u> : The National Government shall guarantee to all full exercise of cultural rights and access to sources of national culture, and shall support and grant incentives for appreciation and diffusion of cultural expression.	Section VIII. <u>Indians, Article 231</u> : The social organization, customs, languages, creeds and traditions of Indians are recognized, as well as their original rights to the lands they traditionally occupy. The Union has the responsibility to delineate these lands and to protect and ensure respect for all their property.	Article 5(IV): Manifestation of thought is free, but anonymity is forbidden. Article 5(V): <u>The right of reply</u> is assured, in proportion to the offense, as well as compensation for pecuniary or moral damages or damages to reputation. Article 5(IX): <u>Expression of intellectual, artistic, scientific, and communication activity</u> is free, independent of any censorship or license. Article 215(1): The National Government shall protect expressions of popular, indigenous and Afro-Brazilian cultures and those of other participant groups in the process of national civilization. Chapter V. <u>Article 220</u> : The expression of thoughts, creation, speech and information, through whatever form, process or vehicle, shall not be

330. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] arts. 5, 215, 220, 231 (Braz.).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				subject to any restrictions, observing the provisions of this Constitution.
Brunei ³³¹	<p>Part II. Religion and Adat Istiadat, Article 3(1) establishes Islam as the official state religion. Freedom of religion also enshrined.</p> <p>Article 3(2): The Head of the official religion of Brunei Darussalam shall be His Majesty the Sultan and Yang Di-Pertuan.</p>	No mention.	<p>Part II. Article 3A(2). <u>Majlis Mesyuarat Adat Istiadat</u>: The Adat Istiadat Council shall be the authority responsible for advising His Majesty the Sultan and Yang Di-Pertuan on matters relating to Adat Istiadat or State custom:</p> <p>Provided that His Majesty the Sultan and Yang Di-Pertuan is not bound to act in accordance with the advice of the Adat Istiadat Council.</p>	No mention.
Bulgaria ³³²	In Article 13, freedom of religion is enshrined, Church and State is deemed separate, and Eastern Orthodox Christianity is considered the traditional religion in the state.	Article 23: The State shall establish conditions conducive to the free development of science, education and the arts, and shall assist that development. It shall organize the conservation of all national monuments of history and culture.	No mention.	<p>Article 39: 1. [E]veryone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way.</p> <p>2. This right shall not be used to the detriment of the</p>

331. BRUNEI CONST. (Rev. 2006) art. 3.

332. BULG. CONST. (Rev. 2015) arts.13, 23, 39, 40.1, 54.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		In Article 54, the right to develop one's own culture in accordance with their ethnic self-identification is enshrined.		rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone. Article 40(1): The press and the other mass information media shall be free and shall not be subjected to censorship.
Burkina Faso ³³³	In Article 7, the freedom of belief and religion enshrined. Article 31 states that the State is secular.	No mention.	Preamble: R[ecognizing] the customary and traditional leadership as [a] moral authority[,], depository of the customs and of the traditions in our society.	Article 8: The freedoms of opinion, of the press and the right to information are guaranteed. Every person has the right to express and to disseminate his opinions within the order of the laws and regulations in force."
Burundi ³³⁴	Article 1 establishes that the state is secular. Freedom of religion enshrined in Article 31.	Article 53: Every citizen has the right to equal access to instruction, education, and culture. Article 68: Each Burundian	No mention.	Article 31: Freedom of expression is guaranteed.

333. BURK. FASO CONST. (Rev. 2015) pmbl., arts. 7, 8, 31.

334. BURUNDI CONST. (2018) arts. 1, 31, 53.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		must ensure, in relations with society, the preservation and reinforcement of Burundian cultural values; and must contribute to the establishment of a morally sound society.		
Cambodia ³³⁵	<p><u>Article 43:</u> Khmer citizens of either sex shall have the rights to freedom of belief.</p> <p>Freedom of belief and religious worship shall be guaranteed by the State on the condition that such freedom does not affect other beliefs and religions or violate public order and security.</p> <p>Buddhism shall be the religion of the State.</p>	<p><u>Article 47:</u> Children shall have the duty to take good care of their elderly parents according to Khmer customs.</p> <p><u>Article 69:</u> The State shall preserve and promote national culture.</p> <p><u>Article 70:</u> Any offense affecting cultural artistic heritage shall carry a severe punishment.</p> <p>Khmer citizens have the right to cultural life, as stated in Article 35.</p>	No mention.	<p><u>Article 41:</u> Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly.</p>
Cameroon ³³⁶	<p><u>Preamble (14-15):</u></p> <p>The State shall be secular. The neutrality and independence of the State in</p>	<p>Article 56 established jurisdiction in Regions for areas necessary for cultural development.</p>	No mention.	<p>Freedom of communication, expression, and the press enshrined in the Preamble.</p>

335. CAMBODIA CONST. (Rev. 2008) arts. 35, 41, 43, 47, 69, 70.

336. CAMEROON CONST. (Rev. 2008) pmbl., art. 56.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	respect of all religions shall be guaranteed; freedom of religion and worship shall be guaranteed. Article 1 also established that the state is secular.			
Canada ³³⁷	No state religion, but deeply influenced by Christian traditions.	No mention.	No mention.	Article 2(b). <u>Fundamental freedoms:</u> Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.
Cape Verde ³³⁸	Majority is Roman Catholic, but no mention.	Article 85. <u>Obligations of the State:</u> For the protection of the family, the State shall have the following duties: a. To assist the family in its mission of guarding the social values recognized by the community; b. To promote the social and economic independence of family units; c. To cooperate with parents in	Article 46(11): Seizure of newspapers or other publications shall be permitted only for infractions of law and when those responsible for the publication are not indicated in it. <u>Article 47. The Right to Airtime, Response and Political Reply:</u> 1. Political parties shall have the following rights: a. Airtime on public radio and television,	Article 45. <u>Freedom of Expression and Information:</u> 1. Everyone shall have freedom of expression by speech, image, or any other medium; no one shall be harassed because of political, philosophical, religious, or other opinions. 2. Everyone shall have the freedom to inform and to be informed, obtaining, receiving, and giving out

337. Canadian Charter of Rights and Freedoms, art. 2(b).

338. CAPE VERDE CONST. (Rev. 1992) arts. 45(1)–(2), 46(11), 47, 73, 85, 86, 271(1)–(2).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>the education of their children;</p> <p>d. To define and execute, in consultation with associations representing families, a family policy of general, national scope.</p> <p><u>Article 86:</u> <u>Paternity and Maternity:</u> 1. Fathers and mothers must give assistance to children born within or outside marriage, namely food, care, and education.</p> <p>2. Fathers and mothers shall have the right to the protection of society and the State to accomplish these duties in regard to their children.</p> <p>3. Fatherhood and motherhood constitute the highest social values.</p>	<p>in accordance with their size and other objective criteria defined by law;</p> <p>b. Response and political reply to the Government's declarations;</p> <p>2. The right to airtime may also be granted by law to trade unions, companies, and religious institutions.</p> <p>3. The right to reply shall be granted to all professional associations and representatives of economic, social, and cultural activities, as well as religious institutions.</p> <p>4. During electoral campaigns, candidates shall have the right to regular, equal airtime on all radio and television stations, of whatever range and ownership, as provided by law.</p> <p>5. The right to airtime, response, and reply established in this article shall be regulated by law.</p> <p><u>Article 73:</u> <u>Education</u></p> <p>The State shall assure universal primary education, free and</p>	<p>information and ideas in any form without limitation, discrimination, or impediment.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			compulsory, the duration of which shall be established by law. <u>Article 271.</u> <u>Military Service:</u> 1. The defense of the Nation shall be the right and duty of all Cape Verdians. 2. Military service shall be compulsory, as provided by law.	
Central African Republic ³³⁹	No state religion. Prohibits religious intolerance and “fundamentalism” which is not defined in law.	<u>Article 9:</u> Each has the right of access to sources of knowledge. The State guarantees to any citizen access to instruction, to culture, and to professional training [formation]. <u>Article 17:</u> The freedom of intellectual, artistic and cultural creation is recognized and guaranteed. It is exercised within the conditions established by the law.	<u>Article 22:</u> The defense of the Fatherland is a duty for every citizen. Military or civil service is obligatory and is exercised within the conditions established by the law. <u>Article 153:</u> Expressly excluded from revision are: the republican and secular form of the State; the number and duration of the presidential mandates; the conditions of eligibility;	<u>Article 15:</u> The freedom to inform, to express and to disseminate one’s opinions by speech, the pen and the image and any other means of communication under reserve of respect for the rights of others, is guaranteed individually and collectively.

339. CENT. AFR. REP. CONST. (2016) arts. 9, 15, 17, 22, 153.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			the incompatibilities to the functions of President of the Republic; the fundamental rights of the citizen; the provisions of this Article.	
Chad ³⁴⁰	Article 1 declares that the country is a secular state.	<u>Preamble</u> Years of dictatorship and of single-party rule prevented the flourishing of any democratic culture and political pluralism. <u>Article 217:</u> The Traditional and Customary Authorities are the guarantors of use and custom. <u>Article 218:</u> The Traditional and Customary Authorities participate in particular in: The valuing of use and customs; The promotion of the ideas of peace, of development and of social cohesion; The non-jurisdictional regulation of	<u>Article 56:</u> The defense of the country and the integrity of the national territory is a duty for every Chadian. Military service is obligatory. <u>Article 227:</u> No procedure of revision may be implemented or pursued when it infringes: the integrity of the territory, independence, or the national unity; the republican form of the State, the principle of the separation of powers and secularity; the freedoms and fundamental rights of the citizen; the policy of pluralism.	No mention.

340. CHAD CONST. (2018) pmbl., arts. 1, 56, 217, 218, 228.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		disputes within their territorial jurisdiction.	Article 228: No procedure of revision may be implemented when the President of the Republic exercises exceptional powers or when the Interim President exercises the functions of President of the Republic in accordance with the provisions of Articles 82 and 95 of this Constitution. Customary international law.	
Chile ³⁴¹	The country is secular and the freedom of religion is established under its Constitution, but Christianity—particularly Catholicism—is widely practiced. ³⁴²	Article 1: Family is the fundamental core of society. The State recognizes and protects the intermediate groups through which society organizes and structures itself and guarantees them the necessary autonomy to fulfill their own specific purposes. Article 130. National Plebiscite: Free reception television channels must	Article 13: Citizens are those Chileans who have reached the age of eighteen years and who have never been sentenced to afflictive punishment. Article 19(15): Associations that are contrary to morals, public order and security of the State are forbidden. Article 22: Military service and other personal charges that the law	Article 19(12): Freedom to express opinions and to inform, without prior censorship, in any form and by any means, notwithstanding the liability for crimes and abuses committed in the exercise of these freedoms, in accordance with the law, which shall be of qualified quorum.

341. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 1, 13, 19(12), 19(15), 22, 124, 130, Transitory Provision – Forty Third.

342. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Chile (2022).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		allocate thirty minutes a day of their broad-casts free of charge to elec-toral propa-ganda on this plebiscite, and must give expression to the two options contemplated in each certi-ficate card, in ac-cordance with an agreement to be adopted by the National Television Council and which shall be published in the Official Gazette, within a period of thirty days since the publication of the call for the national plebiscite, granting a strict equality in the promotion of the plebiscite options.	<p>imposes are obligatory in the terms and forms estab-lished in it.</p> <p>Article 124: The positions of regional gov-ernor, regional councilor, mayor, coun-cilor, regional presidential del-egate and pro-vincial presi-dential delegate will be incom-patible with each other.</p> <p>Transitory Provisions - <u>Forty-Third. On the participa-tion of indige-nous peoples in the election of conventional constituents:</u> In order to guarantee the representation and participa-tion of the in-digenous peo-ples recognized in Law No. 19,253, the Constitutional Convention will include seven-teen seats re-served for indigenous peo-ples. The seats will only be ap-plicable to the towns recog-nized in Law No. 19,253 as of the date of pub-lication of this reform.</p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
China ³⁴³	Holds a policy of state Atheism.	<p>Preamble: China is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition.</p> <p>Article 21: The State develops medical and health services, promotes modern medicine and traditional Chinese medicine. .</p> <p>Article 22: ... The State protects places of scenic and historical interest, valuable cultural monuments and relics and other important items of China's historical and cultural heritage.</p> <p>Article 23: The State trains specialized personnel in all fields who serve socialism, increases the number of intellectuals and creates conditions to give full scope to their role in socialist modernization.</p>	No mention.	No mention.

343. XIANFA pmbl., art. 21–25 (1982) (China).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Article 24: The State strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education, education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas.</p> <p>Article 25: The State promotes family planning so that population growth may fit the plans for economic and social development.</p>		
Colombia ³⁴⁴	Does not have an official religion. However, Roman Catholicism is the dominant faith.	Article 42: The family is the basic nucleus of society. It is formed on the basis of natural or legal ties, through the free decision of a man and woman to contract matrimony or through the	Article 221: The punishable conduct committed by the members of the public force in active service, and in relation to the same service, will confront the martial courts and the military courts,	Article 20: Every individual is guaranteed the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass

344. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] arts. 20, 42, 56, 64, 77, 221, 281, Transitional Article 66.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>responsible resolve to comply with it.</p> <p>The state and society guarantee the integral protection of the family. An Act shall determine the inalienable and unseizable family patrimony. The family's honor, dignity, and intimacy are inviolable.</p> <p><u>Article 56:</u> The right to strike is guaranteed, except in the case of essential public services defined by the legislature.</p> <p><u>Article 64:</u> It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance with the purpose of improving the incomes and quality of life of the peasants.</p>	<p>according to the provisions of the Military Penal Code.</p> <p><u>Article 77:</u> The Congress of the Republic shall adopt an Act which determines the policy on matters of television.</p> <p><u>Article 281:</u> The Ombudsman will carry out functions in an autonomous manner. The officeholder will be elected by the House of Representatives for an institutional period of four years from a short-list created by the President of the Republic.</p> <p><u>Transitional Article 66:</u> A Truth Commission shall be created by statute. Such statute shall establish its purpose, composition, powers and functions. The Commission powers shall include recommendations for the implementation of transitional justice instruments, including the application of selection criteria.</p>	<p>communications media.</p> <p>The latter are free and have social responsibility. The right to make corrections under conditions of equity is guaranteed. There shall be no censorship.</p>

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Comoros ³⁴⁵	Islam state religion. Sole religion is Sunni Muslim.	<p>Preamble: The Comorian people solemnly affirm their will to:</p> <p>cultivate a national identity based on a sole people, a sole religion (Sunni Islam) and a sole language;</p> <p>promote religious and moral practices of a nature to assure an education which strengthens the national conscience;</p> <p>develop sport and culture as elements of promotion of the national spirit; . . .</p>	<p>Requirements for naturalization stated in Article 17.</p> <p><u>Article 17:</u> The law may provide for restrictions on the exercise of the political rights and to the accession to certain public functions or employments for Comorian citizens of foreign origin.</p> <p><u>Article 28:</u> Freedom of information, communication, and the press are guaranteed within the conditions established by law.</p> <p><u>Article 48:</u> Every individual has a duty to participate in the defense of their country.</p> <p><u>Article 97:</u> Islam is the State religion.</p> <p>The State draws on this religion, the Sunni principles and rules of obedience and the Chafi'i rites that govern belief and social life.</p>	<p>Article 21: The right to liberty is inviolable.</p> <p>The freedom of thought and of expression, of association, of intellectual, artistic or cultural creation, of protest and the other freedoms consecrated by the Constitution, the laws and by the international law received within the juridical internal order, are guaranteed.</p>
		No mention.	No mention.	

345. COMOROS CONST. (2018) pmbL., arts. 17, 21, 28, 48.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Congo (Republic of the) ³⁴⁶	Secular state, three-fourths of the population is Christian.			<p>Article 23: All persons have the right to freedom of expression.</p> <p>This right implies the freedom to express their opinions or their convictions, notably by speech, print and pictures, under reserve of respect for the law, for public order and for morality.</p>
Congo (Democratic Republic of the) ³⁴⁷	Secular state, prohibits religious discrimination and makes "religious fanaticism," such as forced conversion, punishable by law.	<p>Article 51: The State has the duty to assure and to promote the peaceful and harmonious coexistence of all the ethnic groups of the country.</p> <p>It assures equally the protection and the promotion of vulnerable groups and of all minorities.</p> <p>It sees to their development.</p>	<p>Article 63: All Congolese have the sacred right and duty to defend the country and its territorial integrity in the face of an external threat or aggression.</p> <p>Obligatory military service can be instituted under the conditions determined by the law.</p> <p>All national, provincial, local and customary authorities have the duty to safeguard the unity of the Republic and the integrity of its territory, under penalty</p>	<p>Article 25: Any citizen has the right to express and to freely diffuse his opinion by words [par la parole], writing, images or by any other means of communication.</p> <p>The freedom of information and communication is guaranteed. It is exercised within respect for the law.</p> <p>Censorship is prohibited.</p> <p>The access to the sources of information is free and protected within the conditions</p>

346. CONGO CONST. (2015) art 23.

347. DEM. REP. CONGO CONST. (Rev. 2011) arts. 25, 51, 63, 153, 207.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>of high treason.</p> <p><u>Article 153:</u> The civil and military Courts and Tribunals apply the duly ratified international treaties, the laws, [and] the regulatory acts, provided that they are in conformity with the laws as well as customary [law] unless the latter is contrary to the public order or to morality.</p> <p><u>Article 207:</u> The customary authority is recognized.</p> <p>It is devolved conforming to local custom, provided that it is not contrary to the Constitution, to the law, to public order and to good morals.</p>	<p>determined by the law.</p>
Costa Rica ³⁴⁸	Roman Catholicism is the state religion.	<p><u>Article 76:</u> Spanish is the official language of the Nation. However, the State will see to the maintenance and cultivation of the national indigenous languages.</p> <p><u>Article 82:</u> The State will provide food</p>	<p><u>Article 14:</u> [The following] are Costa Ricans by naturalization:</p> <p>1. The ones who have acquired this nationality by virtue of previous laws.</p> <p>2. The nationals of other countries of Central</p>	<p><u>Article 29:</u> Every one may communicate their thoughts by words or in writing and publish them without prior censorship; but they will be responsible for the abuses committed in the exercise of this right, in the cases and the</p>

348. COSTA RICA CONST. (Rev. 2020) arts. 14, 29, 76, 82.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		and clothing to the indigent pupils, in accordance with the law.	<p>American, the Spanish, and the Spanish-Americans by birth, who have officially resided in the country for five years at a minimum and that fulfill the other requirements established by the law.</p> <p>3. The Central Americans, the Spanish and the Spanish-Americans that are not so by birth, and the other foreigners who have officially resided in the country for seven years at a minimum and that fulfill the other requirements established by the law.</p> <p>4. The foreign woman who by contracting marriage with a Costa Rican loses her nationality.</p> <p>5. The foreign persons who by marrying Costa Ricans lose their nationality or that after being married two years to Costa Ricans, and residing for that same time period in the country, manifest their desire to acquire the Costa Rican nationality.</p> <p>6. Whoever</p>	mode that the law establishes.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

CONTINUED

Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			holds honorary nationality granted by the Legislative Assembly.	
Croatia ³⁴⁹	No official religion.	No mention.	<p><u>Article 47:</u> Military service and the defense of the Republic of Croatia shall be the duty of every capable citizen of the Republic of Croatia.</p> <p><u>Article 93:</u> The Ombudsperson shall be a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms enshrined in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia.</p>	<p><u>Article 38:</u> Freedom of thought and expression shall be guaranteed.</p> <p>Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.</p> <p>Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information.</p>
Cuba ³⁵⁰	Secular state providing for the separation of religion and state, "but the Cuban Communist Party (CCP), through the Office of Religious	<p><u>Preamble:</u> W[e, the people of Cuba],</p> <p>, inspired by the heroism and patriotism of those that fought for a free, independent, sovereign,</p>	<p><u>Article 4:</u> The defense of our socialist homeland is the greatest honor and the supreme duty of every Cuban.</p> <p>Treason is the most serious of</p>	<p><u>Article 54:</u> The State recognizes, respects, and guarantees people freedom of thought, conscience, and expression.</p>

349. CROAT. CONST. (Rev. 2013) arts. 38, 47, 93.

350. CUBA CONST. (2019) pmb., arts. 4, 54.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Affairs and the Ministry of Justice (MOJ), regulates religious practice.” ³⁵¹	and democratic homeland of social justice and human solidarity, forged through the sacrifice of our ancestors; by the indigenous peoples who resisted submission. . .	crimes, whoever should commit treason will be subject to the most severe sanctions. The socialist system that this Constitution supports is irrevocable.	
Cyprus ³⁵²	No official religion.	<u>Article 1:</u> The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided. <u>Article 12:</u> A person who has been acquitted or convicted of an offence shall not be tried again for the same offence. No person shall be punished twice for the same act or omission except where death ensues	<u>Article 111(B) (5):</u> Notwithstanding the provisions of the first paragraph of this section, the free choice of a civil marriage is offered to the members of the Greek Community.	<u>Article 19(1):</u> Every person has the right to freedom of speech and expression in any form.

351. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Cuba (2023).

352. CYPRUS CONST. (Rev. 2013) arts. 1, 12, 19(1), 22(b), 111(b) (5).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		from such act or omission. <u>Article 22(b):</u> If the provisions of Article 111 are not applicable to any of the parties to the marriage and neither of such parties is a member of the Turkish Community, the marriage shall be governed by a law of the Republic which the House of Representatives shall make and which shall not contain any restrictions other than those relating to age, health, proximity of relationship and prohibition of polygamy.		
Czech Republic ³⁵³	No official religion.	<u>Chapter 3. The Rights of National and Ethnic Minorities.</u> <u>Article 25(1):</u> Citizens who constitute a national or ethnic minority are guaranteed all-round development, in particular the right to develop, together with other members of the minority,	<u>Appendix B. Article 4(1):</u> The armed forces shall be supplemented on the basis of the military service obligation.	<u>Chapter 2. Human Rights and Fundamental Freedoms.</u> <u>Article 17(1):</u> The freedom of expression and the right to information are guaranteed.

353. Ústavní zákon č. 1/1993 Sb., Ústava České Republiky [Constitution of the Czech Republic] art. 4, 17(1), 25(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		their own culture, the right to disseminate and receive information in their native language, and the right to associate in national associations. Detailed provisions shall be set down by law.		
Denmark ³⁵⁴	Part 7. Article 66: The constitution of the Established Church shall be laid down by Statute.	No mention.	No mention.	Part 8. Article 77: Any person shall be entitled to publish his thoughts in printing, in writing, and in speech, provided that he may be held answerable in a court of justice. Censorship and other preventive measures shall never again be introduced.
Djibouti ³⁵⁵	Article 1: Islam is the Religion of the State The State of Djibouti is a democratic, sovereign, one and indivisible Republic. It assures to all equality before the law without distinction of language, of origin, of race, of	No mention.	No mention.	Article 15: Each has the right to express and to disseminate freely their opinions by word, pen, and image. These rights may be limited by prescriptions in the law and in respect for the honor of others. All the citizens have the right

354. DEN. CONST. (1953) arts. 66, 77.

355. DJIB. CONST. (Rev. 2010) arts. 1, 15.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	sex or of religion. It respects all beliefs.			to constitute associations and trade unions freely, under reserve of conforming to the formalities ordered in the laws and regulations. The right to strike is recognized. It is exercised within the framework of the laws which govern it. It may in no case infringe the freedom to work.
Dominica ³⁵⁶	No state religion. <u>Article 9(2). Protection of freedom of conscience:</u> Except with his own consent (or, if he is a person under the age of eighteen years, the consent of his guardian) a person attending any place of education, detained in any prison or corrective institution or serving in a naval, military or air force shall not be required to receive religious instruction or to take part in or attend any religious ceremony	No mention.	No mention.	<u>Article 9(1). Protection of freedom of conscience:</u> Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

356. DOMINICA CONST. (Rev. 2014) art. 9(1)–(3).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>or observance if that instruction, ceremony or observance relates to a religion which is not his own.</p> <p>Article 9(3). <u>Protection of freedom of conscience:</u> Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community whether or not it is in receipt of a government subsidy or other form of financial assistance designed to meet in whole or in part the cost of such course of education.</p>			

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Dominican Republic ³⁵⁷	No state religion.	Article 10. <u>Borderland System</u> : Security, economic, social, and touristic development of the Borderland Zone, its transportation, communication, and productive integration, as well as the spread of national and cultural values of the Dominican people are declared to be of supreme and permanent national interest.	Only with respect to territories in accordance with international law.	Yes, freedom of expression. <u>Article 64. Right to culture</u> : All persons have the right to participate and act with freedom and without censure in the cultural life of the Nation, to full access and enjoyment of cultural assets and services, of scientific advances and literary and artistic production. . . .
East Timor ³⁵⁸	No state religion. <u>Article 12. The State and Religious Denominations</u> : 1. The State 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. 2. The State promotes the cooperation with the different religious denominations that	No; gives full freedom of individual culture. <u>Article 59(1). Education and Culture</u> : The State recognizes and guarantees that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its possibilities and in	Yes; it recognizes customary laws. <u>Article 2(4). Sovereignty and Constitutionality</u> . The State recognizes customary laws of East Timor, subject to the Constitution and to any legislation dealing specifically with customary law.	<u>Article 41(5). Freedom of the Press and Means of Social Communication</u> : The State guarantees the existence of a public radio and television service that is impartial in order to, among other objectives, protect and disseminate the culture and the traditional values of the Democratic Republic of East Timor and guarantee the expression of different opinions. <u>Article 59(1). Education and Culture</u> :

357. DOM. REP. CONST. (2015) arts. 10, 64.

358. TIMOR-LESTE CONST. (2002) arts. 2(4), 12, 41(5), 59(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	contribute to the well-being of the people of East Timor.	conformity with the law.		The State recognizes and guarantees that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its possibilities and in conformity with the law.
Ecuador ³⁵⁹	No mention.	<p>No, but:</p> <p><u>Article 378:</u> The national system for culture shall be comprised of all the institutions of the cultural sector that receive public funding and of the groups and persons who are voluntarily linked to the system.</p> <p>The cultural entities that receive public funding shall be subject to control and accountability. . . .</p>	No mention.	<p>No restrictions.</p> <p><u>Article 378:</u> The State shall exercise leadership of the system through the competent body, with respect to the freedom of creation and expression, interculturalism and diversity, it shall be responsible for the management and promotion of culture, as well as the drafting and implementation of national policy in this field.</p> <p><u>Section 4. Culture and Science. Article 21:</u> Persons have the right to build and uphold their</p>

359. ECUADOR CONST. (Rev. 2021) arts. 21, 66(8), 378.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				<p>own cultural identity, to decide their belonging to one or various cultural communities, and to express these choices; the right to aesthetic freedom; the right to learn about the historical past of their cultures and to gain access to their cultural heritage; to disseminate their own cultural expressions and to have access to diverse cultural expressions.</p> <p>Culture cannot be used as an excuse when infringing rights recognized in the Constitution.</p> <p><u>Article 66(8):</u> The following rights of persons are recognized and guaranteed:</p> <p>The right to practice, keep, change, profess in public or private one's religion or beliefs and to disseminate them individually or collectively, with the constraints imposed by respect for the rights of others.</p> <p>The State shall protect voluntary religious practice, as well the expression</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				of those who profess no religion whatsoever, and shall favor an environment of plurality and tolerance.
Egypt ³⁶⁰	<p><u>Article 1. Nature of the Republic:</u> The Arab Republic of Egypt is a sovereign state, united and indivisible, where nothing is dispensable, and its system is democratic republic based on citizenship and the rule of law.</p> <p>Egypt is part of the Arab nation and enhances its integration and unity. It is part of the Muslim world, belongs to the African continent, is proud of its Asian dimension, and contributes to building human civilization.</p> <p><u>Article 2. Islam, Principles of Islamic Sharia:</u> Islam is the religion of the state and Arabic is its official language. The principles</p>	No mention.	No mention.	Restriction: presence of blasphemy rules.

360. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 1–3, 64.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>of Islamic Sharia are the principle source of legislation.</p> <p>Article 3. <u>Christian and Jewish religious affairs:</u> The principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders</p> <p>Article 64. <u>Freedom of belief:</u> Freedom of belief is absolute.</p> <p>The freedom of practicing religious rituals and establishing places of worship for the followers of revealed religions is a right organized by law.</p>			
El Salvador ³⁶¹	<p>Article 26: The juridical personality of the Catholic Church is recognized. The other churches may obtain recognition of their personality in</p>	<p>Article 1: El Salvador recognizes the human person as the origin and the end of the activity of the State, which is organized to attain justice, judicial</p>	No mention.	<p>Article 6: Every person may freely express and disseminate his thoughts provided they do not subvert the public order nor injure the moral, honor</p>

361. EL SAL. CONST. (1983) arts. 1, 6, 25, 26, 53.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>conformity with the law.</p> <p>Article 25: The free exercise of all religions, without other restrictions than those required by the moral and the public order, is guaranteed. No religious act shall serve as evidence of the civil status of persons.</p>	<p>security, and the common good.</p> <p>In that same manner, it recognizes as a human person every human being since the moment of conception.</p> <p>In consequence, it is the obligation of the State to secure for the inhabitants of the Republic, the enjoyment of liberty, health, culture, economic well-being and social justice.</p> <p>Article 53: The right to an education and to culture is inherent to the human person; in consequence, the preservation, promotion, and dissemination of culture is an obligation and primary end of the State.</p>		<p>or private lives of others. The exercise of this right shall not be subject to previous examination, censorship or bond; but those who infringe on the laws [while] making use of this right, shall respond for the offense they commit. . . .</p>
Equatorial Guinea ³⁶²	No mention.	<p>Article 7: The State defends the sovereignty of the Nation, strengthens its unity and ensures respect of fundamental rights of man and the</p>	No mention.	<p>Article 13: Every citizen enjoys the following rights and freedoms..</p> <p>b. To the freedom of expression, thinking, ideas and opinions. . .</p>

362. EQ. GUINEA CONST. (Rev. 2012) arts. 7, 13, 16.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>promotion of the economic, social and cultural progress of its citizens.</p> <p>Article 16: <u>All</u> Equatoguineans have the obligation to honor the Fatherland, defend its sovereignty, territorial integrity and national unity, as well as to contribute to the preservation of peace, national security, and the essential values of the Equatoguinean tradition and to protect national interests.</p>		<p>f. To freedom of a religion and worship;</p>
Eritrea ³⁶³	No mention.	<p>Article 7(2). <u>Democratic Principles:</u> Any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited.</p>	No mention.	<p>Yes, freedom with no restriction.</p> <p>Article 19. <u>Freedom of Conscience, Religion, Expression of Opinion, Movement, Assembly and Organization:</u> 1. Every person shall have the right to freedom of thought, conscience and belief. 2. Every person shall have the freedom of</p>

363. ERI. CONST. (1997) arts. 7(2), 19.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				<p>speech and expression, including freedom of the press and other media.</p> <p>3. Every citizen shall have the right of access to information.</p> <p>4. Every person shall have the freedom to practice any religion and to manifest such practice. . .</p> <p>8. Every citizen shall have the right to move freely throughout Eritrea or reside and settle in any part thereof.</p> <p>9. Every citizen shall have the right to leave and return to Eritrea and to be provided with passport or any other travel documents.</p>
Estonia ³⁶⁴	<p>No state religion.</p> <p>Article 40: Everyone has freedom of conscience, religion and thought.</p> <p>Everyone may freely belong to churches and religious societies.</p>	<p>Integration of ethnic communities.</p> <p>Article 50: National minorities have the right, in the interests of national culture, to establish self-governing agencies under</p>	No mention.	<p>No restrictions.</p> <p>Article 45: Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by</p>

364. EST. CONST. (Rev. 2015) arts. 40, 45, 50.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	There is no state church.	conditions and pursuant to procedure provided by the National Minorities Cultural Autonomy Act.		law to protect public order, morals, and the rights and freedoms, health, honor and good name of others. This right may also be restricted by law for state and local government public servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice. There is no censorship.
Ethiopia ³⁶⁵	<p><u>Article 11. Separation of State and Religion:</u></p> <p>1. State and religion are separate.</p> <p>2. There shall be no state religion.</p> <p>3. The state shall not interfere in religious matters and religion shall not interfere in state affairs.</p>	<p>Yes; it encodes it in the form of customary laws.</p> <p><u>Article 91 (1). Cultural Objectives:</u></p> <p>Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the</p>	<p><u>Article 34(4). Marital, Personal and Family Rights:</u></p> <p>In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.</p> <p><u>Article 34(5). Marital, Personal and Family Rights:</u></p> <p>This Constitution</p>	<p><u>Article 29. Right of Thought, Opinion and Expression:</u></p> <p>Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of</p>

365. ETH. CONST. (1994) arts. 9(1), 11, 29, 34(4)–(5), 35, 78(5), 91(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		provisions of the Constitution.	<p>shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.</p> <p><u>Article 78(5). Independence of the Judiciary:</u> Pursuant to sub-Article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.</p> <p>But also:</p> <p><u>Article 35. Rights of Women:</u> The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that</p>	art, or through any media of his choice.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>oppress or cause bodily or mental harm to women are prohibited.</p> <p><u>Article 9(1). Supremacy of the Constitution:</u></p> <p>The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.</p>	
Fiji ³⁶⁶	<p>No state religion.</p> <p><u>Article 4. Secular State:</u></p> <p>1. Religious liberty, as recognised in the Bill of Rights, is a founding principle of the State.</p> <p>2. Religious belief is personal.</p> <p>3. Religion and the State are separate, which means-</p> <p>a. the State and all persons holding public office must treat all religions equally;</p> <p>b. the State and</p>	<p>Preamble:</p> <p>R[ecognising] the indigenous people or the iTaukei, their ownership of iTaukei lands, their unique culture, customs, traditions and language;</p> <p>R[ecognising] the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language;</p> <p>R[ecognising] the descendants of the indentured labourers from</p>	<p>Protection of the lands on customary basis.</p> <p><u>Article 28. Rights of ownership and protection of iTaukei, Rotuman and Banaban lands.</u></p>	<p><u>Article 17(3). Freedom of speech, expression and publication:</u></p> <p>To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection</p> <p>(1) in the interests of- . .</p> <p>d. preventing attacks on the dignity of individuals, groups of individuals or respected offices or institutions in a manner likely to promote ill will between</p>

366. FIJI CONST. (2013) pmbL., arts. 17(3), 28.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	all persons holding public office must not dictate any religious belief; c. the State and all persons holding public office must not prefer or advance, by any means, any particular religion, religious denomination, religious belief, or religious practice over another, or over any non-religious belief; and d. no person shall assert any religious belief as a legal reason to disregard this Constitution or any other law.	British India and the Pacific Islands, their culture, customs, traditions and language; and R[ecognising] the descendants of the settlers and immigrants to Fiji, their culture, customs, traditions and language,		ethnic or religious groups or the oppression of, or discrimination against, any person or group of persons.
Finland ³⁶⁷	No state religion.	Section 17. <u>Right to one's language and culture:</u> . . . The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign	No mention.	Section 12. <u>Freedom of expression and right of access to information:</u> Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are

367. FIN. CONST. (Rev. 2011) §§ 12, 17.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.		<p>laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.</p> <p>Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.</p>
France ³⁶⁸	No state religion.	No mention.	<p>Only in this one case:</p> <p><u>Article 77:</u> After approval of the agreement by the vote provided for in article 76, the Institutional Act passed after consultation with the Deliberative Assembly of New Caledonia shall determine, in order to ensure the development of New Caledonia in accordance with the guidelines set out in that agreement</p>	<p><u>Article 11:</u> The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law.</p>

368. 2008 CONST. arts. 11, 77 (Fr.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			and in the manner required for its implementation: . . . the rules concerning citizenship, the electoral system, employment, and personal status as laid down by customary law.	
Gabon ³⁶⁹	<p>Preamble mentions the State's responsibility before God, though no specific religion.</p> <p>Article 1 enshrines freedom of religion.</p> <p>Article 2 establishes separation of State and religion.</p>	<p>Preamble proclaims its attachment to its traditional social values, to its material and spiritual cultural patrimony. Right to culture enshrined in Article 95.</p>	No mention.	Article 1 establishes freedom of expression and communication as inalienable human rights.
Gambia ³⁷⁰	<p>Article 100(2) prohibits the establishment of any religion as a state religion.</p> <p>Protections of fundamental rights and freedoms. Freedom of religion listed.</p>	<p>Article 7 defines which laws the Gambia consists of, "(d) The common law and principles of equity; (e) Customary law so far as concerns members of the communities to which it applies; (f) The sharia as regards matters of marriage, divorce and inheritance among</p>	<p><u>Article 137: The Cadi Court</u></p> <p>(2) requires for first-instance hearings by a Cadi panel to consist of two other scholars of the Sharia.</p> <p>(4) outlines jurisdiction to apply Sharia in matter of marriage, divorce, and inheritance where interested parties are Muslim.</p>	Freedom of expression enshrined in Article 25(1).

369. GABON. CONST. (Rev. 2011) pmbl., arts. 1, 2, 95.

370. GAM. CONST. (2019) arts. 7, 25(1), 39(3), 59(2), 100(2), 137(2), 137(4), 212(3), Chap. XV.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>members of the communities to which it applies.”</p> <p>Article 212(3) states that people of The Gambia are entitled to their cultural values which do not disturb the cohesion of the State.</p> <p>Chapter XV Local Government and Traditional Rulers.</p> <p>Article 39(3) enshrines every citizen over 18 entitled to vote in elections for local government authorities and traditional rulers in their area.</p>	<p>Article 59(2): The Minister shall, in making an appointment under subsection (1), take into account traditional lines of inheritance.</p>	
Georgia ³⁷¹	<p>Article 8. <u>Relationship between the State and the Apostolic Autocephalous Orthodox Church of Georgia:</u> Freedom of religion mentioned. State recognizes the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia and its independence</p>	<p>Article 11(2). <u>Right to equality:</u> In accordance with universally recognised principles and norms of international law and the legislation of Georgia, citizens of Georgia, regardless of their ethnic and religious affiliation or language, shall have the right to maintain and develop</p>	<p>No mention.</p>	<p>Article 16(3). <u>Freedom of belief, religion and conscience:</u> No one shall be persecuted because of his/her belief, religion or conscience, or be coerced into expressing his/her opinion thereon.</p>

371. GEOR. CONST. (Rev. 2018) arts. 8, 11(2), 16, 20.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	from the State. The relationship between the Church and State shall be determined by a constitutional agreement. <u>Article 16. Freedom of religion enshrined.</u>	their culture, and use their mother tongue in private and in public, without any discrimination. <u>Article 20. Freedom of creativity, cultural heritage.</u>		
Germany ³⁷²	<u>Preamble:</u> Conscious of their responsibility before God and man . . . But does not mention a specific religion. Article 4 enshrines freedom of religion.	Article 29 establishes division of federal territory may be revised to ensure it can perform its functions effectively. Article 29(1). <u>New delimitation of the federal territory:</u> . . . Due regard shall be given in this connection to regional, historical and cultural ties, economic efficiency, and the requirements of local and regional planning.	No mention.	Article 5 protects freedom of expression and forbids censorship.
Ghana ³⁷³	<u>Preamble:</u> In the name of the almighty God . . ." Article 21 enshrines freedom of religion.	Article 11(2). <u>The Laws of Ghana:</u> The common law of Ghana shall comprise the rules of law generally known as the	Article 125(2). <u>The Judicial Power of Ghana:</u> Citizens may exercise popular participation in the administration of justice	Article 21 enshrines freedom of expression.

372. Grundgesetz [GG] [Basic Law], pmbl., arts. 4, 5, 29(1) (Ger.).

373. GHANA CONST. (Rev. 1996) pmbl., arts. 11(2)–(3), 21, 26(2), 29, 39, 125(2), 267(1)–(2).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.</p> <p><u>Article 11(3). The Laws of Ghana:</u> For the purposes of this article, 'customary law' means the rules of law which by custom are applicable to particular communities in Ghana.</p> <p><u>Article 26(2). Cultural Rights and Practice:</u> All customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.</p> <p>Article 39 (Cultural Objectives) outlines State obligations to protecting and fostering cultural integrity.</p>	<p>through the institutions of public and customary tribunals and the jury and assessor systems.”</p> <p><u>Article 267(1) Stool and Skin Lands and Property:</u> All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.</p> <p><u>Article 267(2). Stool and Skin Lands and Property:</u> There shall be established the Office of the Administrator of Stool Lands. ..</p>	
Greece ³⁷⁴	Article 3(1) establishes Eastern Orthodox Church of	No mention.	No mention.	<u>Article 14(1):</u> Every person may express and propagate his thoughts

374. 1975 SYNTAGMA [SYN.] [CONSTITUTION] arts. 3(1), 13, 14(1), 15(1) (Greece).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>Christ as the "prevailing religion in Greece."</p> <p>Freedom of religion is enshrined in Article 13, however it also provides, "[t]he practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited."</p>			<p>orally, in writing and through the press in compliance with the laws of the State.</p> <p>Article 15(1): The protective provisions for the press in the preceding article shall not be applicable to films, sound recordings, radio, television or any other similar medium for the transmission of speech or images.</p> <p>Radio and television are under direct State control.</p>
Grenada ³⁷⁵	<p>Preamble states "acknowledge the fatherhood and supremacy of God" and mentions "the Creator," but no specific religion mentioned.</p> <p>Article 9 (Protection of freedom of conscience) enshrines freedom of religion. It also protects propagation of religion.</p>	No mention.	No mention.	<p>Freedom of expression is enshrined in Article 1 (b).</p> <p>Article 10 (Protection of Freedom of Expression) further enshrines expression protections and a few exceptions, including defense, public safety, public order, public morality, or public health.</p>
Guatemala ³⁷⁶			No mention.	

375. GREN. CONST. (Rev. 1992) pmbi., arts. 1(b), 10.

376. GUAT. CONST. (Rev. 1993) arts. 36-37, 58-61-63, 66, 68.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>Article 36. <u>Freedom of Religion.</u></p> <p>Article 37. <u>Juridical Personality of the Churches:</u> The juridical personality of the Catholic Church is recognized. The other churches, cults, entities, and associations of religious character will obtain the recognition of their juridical personality in accordance with the rules of their institution[,] and the Government may not deny it [,] aside from reasons of public order.</p>	<p>Article 58 (cultural identity) recognizes the right to cultural identity in accordance with their values, language, and customs.</p> <p>Article 59 establishes a primary obligation of the State to promote, protect, and disseminate national culture.</p> <p>Article 60 (cultural heritage) states that cultural artifacts are under State protection.</p> <p>Article 61. <u>Protection of Cultural Heritage.</u> The archaeological sites, [the] collections of monuments and the Cultural Center of Guatemala [Centro Cultural de Guatemala], will receive special attention from the State, with the purpose of preserving its characteristics and safeguarding [resguardar] its historical value and cultural assets. The Tikal National Park, the Archeological Park of Quiriguá, and the city of Ancient [Antigua] Guatemala, will be subject to a special conservation regime because they</p>		<p>Article 63. <u>Right to Creative Expression.</u></p> <p>[. . . The state] supports and encourages the scientist, the intellectual and the national artist, promoting their formation and professional and economic improvement.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>have been declared [part of the] Heritage of the World [Patrimonio Mundial], as well as those that acquire a similar recognition.</p> <p>Article 62. <u>Protection of Traditional Art, Folklore, and Handicrafts.</u></p> <p>Third Section <u>Indigenous Communities.</u> The national artistic expression, the popular art, the folklore, and the autochthonous handicrafts and industries, must be [the] object of special protection by the State, with the purpose of preserving their authenticity. The State will propitiate the opening of national and international markets for the free commercialization of the work of the artists and artisans, promoting their production and adequate technification [tecnificación].</p> <p>Article 66. <u>Protection of Ethnic Groups.</u></p> <p>Guatemala is formed by diverse ethnic groups among which are found the indigenous groups of Mayan descent. The State recognizes, respects, and</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>promotes their forms of life, customs, traditions, forms of social organization, the use of the indigenous attire by men and women, [and their] languages and dialects.</p> <p><u>Article 67. Protection of the Indigenous Agricultural Lands and Cooperatives.</u></p> <p>The lands of the cooperatives, [the] indigenous communities or any other forms of communal or collective possession of agrarian ownership, as well as the family patrimony and the people's housing, will enjoy special protection of the State, [and] of preferential credit and technical assistance, which may guarantee their possession and development, in order to assure an improved quality of life to all of the inhabitants.</p> <p>The indigenous communities and others that hold lands that historically belong to them and which they have traditionally administered in special form, will maintain that system.</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p><u>Article 68. Lands for Indigenous Communities.</u></p> <p>Through special programs and adequate legislation, the State will provide state lands to the indigenous communities who may need them for their development.</p>		
Guinea ³⁷⁷	<p>Article 1 establishes Guinea as a secular republic.</p> <p>Freedom of religion enshrined in Article 7.</p>	<p><u>Article 1:</u> ... The State assures the promotion of the cultures and of the languages of the People of Guinea.</p>	<p><u>Article 21:</u> ... They have [the] right to the preservation of their patrimony, of their culture and of their environment.</p>	<p>Freedom of expression stemming from Article 7, which states that “[e]ach one is free to believe, to think and to profess their religious faith, their political and philosophical opinions.” Includes expression of word, writing, and images. The freedom of press and right of access to public information are also enshrined.</p>
Guinea-Bissau ³⁷⁸	<p>Article 1 establishes State as a secular republic.</p> <p>Article 6 establishes separation of State and religious institutions. All legally recognized religions are protected. Article 52</p>	<p>Article 17: he State’s fundamental imperative is to create and promote favorable conditions for preservation of cultural identity. . . .</p>	No mention.	<p>Article 44(1): All may enjoy the rights to a personal identity, civil capacity, citizenship, good-name and reputation, image, expression and the protection of intimate privacy and family life.</p>

377. GUINEA CONST. (2013) arts. 1, 7, 21.

378. GUINEA-BISSAU CONST. (Rev. 1996) arts. 1, 6, 17, 44(1), 51(1), 52, 130.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	enshrines freedom of religion. Article 130: No draft revision may affect . . . the secular nature of State.			Article 51(1): All have the right to freely express and spread their thoughts by any means available . . .
Guyana ³⁷⁹	Article 1 establishes State is secular. Article 38F prohibits the vilification of any religion.	Article 212A establishes Ethnic Relations Commission. <u>Article 212R(i). Functions of the Women and Gender Equality Commission:</u> Evaluate any system of personal and family law, customs and practices or any law likely to affect gender equality or the status of women and make recommendations to the National Assembly with regard thereto. Article 27 (right to education) establishes State's duty to provide education curricula designed to reflect country's cultural diversities. <u>Article 149G. Indigenous peoples' right:</u> Indigenous peoples shall have the right	No mention.	Freedom of expression enshrined in Article 146.

379. GUY. CONST. (Rev. 2016) arts. 1, 27, 38F, 146, 149G, 212A, 212R, 212T.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		to the protection, preservation and promulgation of their languages, cultural heritage and way of life. <u>Article 212T (c). Functions of the Indigenous Peoples Commission:</u> [M]ake recommendations for the protection, preservation and promulgation of the cultural heritage and language of the indigenous peoples.		
Haiti ³⁸⁰	Article 289 states that nine member Provisional Electoral Council must include religious entities: one for the Episcopal Conference and one for "the Protestant religions." <u>Article 30:</u> All religions and faiths shall be freely exercised. Article 30(2) stipulates law establishes conditions for recognition and	Article 215 states that cultural artifacts are under the protection of the State.	No mention.	Freedom of expression enshrined in Article 28. <u>Article 7:</u> The cult of the personality is categorically forbidden. Effigies and names of living personages may not appear on the currency, stamps, seals, public buildings, streets or works of art.

380. HAITI CONST. (Rev. 2012) arts. 7, 28, 30, 215, 289.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	practice of religion.			
Honduras ³⁸¹	<p>Preamble invokes protection of God, but no specific religion.</p> <p>Article 77: The free exercise of all religions and cults is guaranteed without preference to one, provided they do not violate the law and public order.</p>	<p>Article 173: The State shall preserve and promote the native cultures as well as authentic expressions of national folklore, popular art and handicrafts.</p>	No mention.	<p>Article 72 enshrines freedom of expression.</p> <p>Article 73: The control of print newspapers, of radio and television newscasts, and the intellectual, political and administrative orientation of the same shall be exercised exclusively by Hondurans by birth.</p> <p>Article 74: The right of expression of thought may not be restricted by indirect avenues or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information.</p>
Hungary ³⁸²	<p><u>Preamble:</u></p> <p>... [T]he role of Christianity in preserving nationhood. We value the various religious traditions of our country.</p>	<p><u>Preamble:</u></p> <p>... We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and</p>	No mention.	<p>Article IX enshrines freedom of speech. May not be exercised with the aim of violating human dignity of others or the dignity of the</p>

381. HOND. CONST. (Rev. 2013) pmbl., arts. 72–74, 77, 173.

382. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY, pmbl., arts. VII, IX.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Article VII enshrines freedom of religion. State and religious communities shall operate separately.	cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. Article P recognizes that the state and everyone is responsible for protection of “[n]atural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation.”		Hungarian nation or of any national, ethnic, racial, or religious community.
Iceland ³⁸³	Article 62: The Evangelical Lutheran Church shall be the State Church. . . Article 63 enshrines freedom of religion.	No mention.	No mention.	Article 73: Everyone has the right to freedom of opinion and belief. Everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to

383. ICE. CONST. (Rev. 2013) arts. 62, 63, 73.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				freedom of expression. Freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions.
India ³⁸⁴	No state religion. "The constitution mandates a secular state and provides for freedom of conscience and the right of all individuals to profess, practice, and propagate religion freely, subject to considerations of public order, morality, and health." ³⁸⁵ <u>Article 25 and Explanation II:</u> 2. Nothing in this article shall affect the operation of any existing law or prevent the State from	No mention.	<u>Article 371A(1) (a). Special Provision with respect to the State of Nagaland:</u> ... ii. Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law.	<u>Article 19(1) (a). Protection of certain rights regarding freedom of speech, etc.:</u> All citizens shall have the rights to freedom of speech and expression.

384. India Const. arts. 19, 25(2) (b), Art. 25 Explanation II, 371A(1) (a).

385. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: India 1 (2023).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>making any law</p> <p>b. providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.</p> <p>In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.</p>			
Indonesia ³⁸⁶	<p>Preamble refers to God, “[b]y the grace of God Almighty,” and motivation for having the constitution “the Republic of Indonesia which shall be built into a sovereign state based on a belief in the One and Only God,” but doesn’t invoke a specific religion.</p>	<p><u>Article 18B(2):</u> The State recognises and respects traditional communities along with their traditional customary rights . . .</p>	<p>The Pancasila eagle (Garuda Pancasila) with the motto Unity in Diversity (Bhinneka Tunggal Ika) is a national motto that includes 5 pillars/principles. The first one being “belief in the one and only God.”</p>	<p><u>Article 28E(3):</u> Every person shall have the right to the freedom to associate, to assemble and to express opinions.</p> <p>Indonesia’s Criminal Code prohibits blasphemy.</p> <p><u>Criminal Code Art. 156(a):</u></p> <p>By a maximum imprisonment</p>

386. INDON. CONST. (Rev. 2022) pmbL., arts. 18B(2), 28E(3); Criminal Code, 1915, art. 156(a), (Indon.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act, a. which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; b. with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.
Iran ³⁸⁷	Preamble: In the Name of Allah, the Compassionate, the Merciful. ... Muslim people of Iran.	Article 3(4): Strengthening the spirit of inquiry, investigation, and innovation in all areas of science, technology, and culture, as well as Islamic studies, by establishing research centres and encouraging researchers. Mass Communication Media (under Human dignity): The mass-communication media, radio and television, must serve the	The constitution declares the "official religion of Iran is Islam and the doctrine followed is that of Ja'afari (Twelver) Shiism." Article 4 states that all laws and regulations must be based on undefined "Islamic criteria" and official interpretation of Sharia (Islamic law).	The Iranian Constitution states very general rules concerning freedom of expression. Article 24: Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public.... Law against blasphemy derives from Sharia.

387. ISLAHAT VA TAQYIRATI VA TATMIMAH QANUNI ASSASSI [AMENDMENT TO THE CONSTITUTION] 1368 [1989] pmbL., arts. 3, 24 (Iran).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		diffusion of Islamic culture in pursuit of the evolutionary course of the Islamic Revolution.		
Iraq ³⁸⁸	<p><u>Preamble:</u> In the name of God, the Most merciful, the Most compassionate. . .</p> <p>Preamble also refers to “Shiite and Sunni, Arabs and Kurds and Turkmen.”</p>	<p><u>Article 45, First:</u> The State shall prohibit the tribal traditions that are in contradiction with human rights.</p> <p><u>Article 35:</u> The state shall promote cultural activities and institutions in a manner that befits the civilizational and cultural history of Iraq, and it shall seek to support indigenous Iraqi cultural orientations.</p>	<p><u>Article 45, Second:</u> The State shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights.</p>	<p><u>Article 38, First:</u> The State shall guarantee in a way that does not violate public order and morality:</p> <p>First. Freedom of expression using all means.</p>
Ireland {Republic} ³⁸⁹	<p><u>Preamble:</u> ... Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial. . .</p>	<p><u>Article 1:</u> The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with</p>	<p>In Ireland the common law was imported from England supplanting the customary law of the Irish.</p>	<p><u>Article 40(6) (1)(i):</u> The State guarantees liberty for the exercise of the following rights, subject to public order and morality:</p> <p>The right of the citizens to</p>

388. Pmbl., Articles 35, 38, 45, Dustūr Jumh. ūriyat al-’Irāq [The Constitution of the Republic of Iraq] of 2005.

389. CONSTITUTION OF IRELAND 1937 pmb., arts. 1, 40(6) (1) (i), 44.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p><u>Article 44:</u></p> <p>1. The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.</p> <p>2. (1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen. (2) The State guarantees not to endow any religion.</p> <p>Though Ireland is legally secular, it is largely Christian, with eighty-eight percent of the population identifying as Roman Catholic.³⁹⁰</p>	<p>other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and traditions.</p>		<p>express freely their convictions and opinions.</p> <p>The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.</p>
Israel ³⁹¹	<p>Only Orthodox Judaism is officially recognized. The Knesset is the parliament of the State.</p>	<p><u>Article 12. Convening of the Knesset (Amendment 37):</u> The Knesset shall convene for its first</p>	<p><u>Article 7A(a) (1). Prevention of participation of candidates' list (Amendments 9, 35, and 39):</u> A candidates'</p>	<p><u>Article 6A(b). Restriction on the candidacy of a Knesset member seceding from his faction (Amendments</u></p>

390. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Ireland (2023).

391. §§ 6A(b), 7A(a) (1), 12, 28(c), Basic Law (Isr.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		meeting, after the election results are published, within fourteen days of Election Day on the date fixed by law, unless an earlier date is prescribed by law due to a rest day, holiday, festival day, memorial day, or due to proximity to one of them, or due to the intermediate days of certain Jewish festivals.	list shall not participate in elections to the Knesset, and a person shall not be a candidate for election to the Knesset, if the objects or actions of the list or the actions of the person, expressly or by implication, include one of the following: negation of the existence of the State of Israel as a Jewish and democratic state; . . .	12, 21 and 36): <u>Secession from a faction - including voting in the Knesset plenum not in accordance with the faction's position regarding the expression of confidence or no confidence in the government; however, such voting shall not be deemed as secession if the Knesset member has not received any consideration in exchange for his vote.</u> <u>Article 28(c). Expression of no confidence in the Government:</u> If the Knesset has expressed no confidence in the Government, the Government shall be deemed to have resigned on the day of the expression of no confidence. The President will, within two days, charge the Knesset Member so named with the task of forming a Government. No mention of freedom of expression.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Italy ³⁹²	<p>“Italy is officially a secular state. However, its religious and social landscape is deeply influenced by the Roman Catholic tradition. Indeed, the epicentre and government of the Catholic Church (the Vatican) and its leader (the Pope) are located in Rome.”³⁹³</p> <p>Article 7: The State and the Catholic Church are independent and sovereign, each within its own sphere.</p> <p>Their relations are regulated by the Lateran pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments.</p>	<p>Article 9: The Republic promotes the development of culture and of scientific and technical research.</p>	<p>No mention.</p>	<p>Article 68: Members of Parliament cannot be held accountable for the opinions expressed or votes cast in the performance of their function.</p> <p>Article 21: Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication.</p> <p>The press may not be subjected to any authorisation or censorship.</p>
Ivory Coast ³⁹⁴	<p>No state religion.</p>	<p>Article 175: Traditional chieftaincy is represented by the National House of Kings and Traditional Chiefs. The National House of Kings and Traditional</p>	<p>The right to inherit in customary law—“in most African traditions, only men can inherit from parents, since women are destined to get married and thus become</p>	<p>Article 19: Freedom of thought and freedom of expression, particularly, freedom of conscience, of philosophical and religious conviction or of worship are</p>

392. Arts. 7, 9, 21, 68 COSTITUZIONE [COST.] (It.).

393. Nina Evason, *Italian Culture: Religion*, CULTURAL ATLAS (2017), <https://culturalatlas.sbs.com.au/italian-culture/italian-culture-religion>.

394. CÔTE D’IVOIRE CONST. (2016) arts. 19, 175.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Chefs is the Institution regrouping all the Traditional Kings and Chiefs of Côte d'Ivoire.</p> <p>It is notably responsible for: the valuing of habits and customs;</p> <p>the promotion of the ideals of peace, development and social cohesion; the non-judicial settlement of conflicts in villages and between communities.</p> <p>The traditional chieftaincy participates, under the conditions determined by a law, in the administration of the territory.</p>	<p>part of another family. Therefore, women are barred from inheriting land in the Ivory Coast because it might go to their husbands."³⁹⁵</p>	<p>guaranteed to everyone. Everyone has the right to express and disseminate their ideas freely.</p> <p>These freedoms are exercised subject to respect for the law, for the rights of others, for national security and for public order.</p> <p>Any propaganda whose objective or outcome is to elevate one social group above another, or to encourage racial, tribal or religious, hatred is prohibited.</p>
Jamaica ³⁹⁶	No state religion.	No mention.	No mention.	<p><u>Chapter III.</u> <u>Chapter of Fundamental Rights And Freedoms.</u> <u>Article</u></p> <p>13(3)(c). <u>Fundamental rights and freedoms:</u> [t]he right to freedom of expression.</p>
Japan ³⁹⁷	No state religion.	No mention.	No mention.	<u>Article 21:</u> Freedom of

395. Pauline Yao, *The Right to Inherit in Customary Law: An Obstacle to Women's Emancipation in Ivory Coast*, CITEGO (2014), https://www.citego.org/bdf_fiche-document-1388_en.html.

396. JAM. CONST. (Rev. 2015) ch. III.

397. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 21 (Japan).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				assembly and association as well as speech, press and all other forms of expression are guaranteed.
Jordan ³⁹⁸	Article 2: Islam is the religion of the State and Arabic is its official language.	No mention.	No mention.	Article 15: The State shall guarantee freedom of opinion; and every Jordanian shall freely express his opinion by speech, writing, photography and the other means of expression, provided that he does not go beyond the limits of the law.
Kazakhstan ³⁹⁹	No state religion.	Preamble: We, the people of Kazakhstan, united by common historic fate, creating state on the indigenous Kazakh land. . .	Article 30: 1. The citizens shall be guaranteed free secondary education in state educational establishments. Secondary education shall be obligatory. 2. A citizen shall have the right to receive on competitive basis higher education in state higher educational establishment. 3. The citizens shall have the right to pay and receive an education in	Freedom of opinion/ thought/conscience: Article 22: Everyone shall have the right to freedom of conscience. The right to freedom of conscience must not specify or limit universal human and civil rights and responsibilities before the state.

398. JORDAN CONST. (Rev. 2016) arts. 2, 15.

399. KAZ. CONST. (Rev. 2017) pmbl., arts. 22, 30.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			private educational establishments on the basis and terms established by law. 4. The state shall set uniform compulsory standards in education. The activity of any educational establishment must comply with these standards.	
Kenya ⁴⁰⁰	No state religion, but preamble refers to God "A [cknowledging] the supremacy of the Almighty God of all creation. . ."	Article 60. <u>Principles of land policy:</u> Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles. . . f. elimination of gender discrimination in law, customs and practices related to land and property in land. <u>Article 11. Culture:</u> 1. This Constitution recognises culture as the foundation of the nation and as the cumulative civilization	Article 63(2) (d). <u>Community land:</u> Land that is- i. lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ii. ancestral lands and lands traditionally occupied by hunter-gatherer communities; or iii. lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under <u>Article 21(3):</u> <u>All State organs and all public</u>	<u>Article 33(1). Freedom of expression:</u> Every person has the right to freedom of expression, which includes- a. freedom to seek, receive or impart information or ideas. . .

400. CONSTITUTION pmbL, arts. 33(1), 45(4), 60, 21(3), 63(2) (d) (2010) (Kenya).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>of the Kenyan people and nation.</p> <p>2. The State shall-</p> <p>a. promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.</p> <p><u>Article 45(4):</u> Parliament shall enact legislation that recognises-</p> <p>a. marriages concluded under any tradition, or system of religious, personal or family law; and</p> <p>b. any system of personal and family law under any tradition, or adhered to by persons professing a particular religion,</p>	<p>officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.</p> <p>“marginalised community” means-</p> <p>a. a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;</p> <p>b. a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;</p> <p>c. an indigenous community that has retained and</p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			maintained a traditional life-style and livelihood based on a hunter or gatherer economy	
Kiribati ⁴⁰¹	No state religion, but the preamble states “acknowledging God as the Almighty Father in whom we put our trust, and with faith in the enduring value of our traditions and heritage.”	<p>Preamble: We shall continue to cherish and uphold the customs and traditions of Kiribati.</p> <p>Article 125(a). <u>Interpretation:</u> In this Chapter —</p> <p>“Banaban” and “Banabans” means the former indigenous inhabitants of Banaba and such other persons one of whose ancestors was born in Kiribati before 1900 as may now or hereafter be accepted as members of the Banaban community in accordance with custom.</p>	<p>Kiribati’s customary laws are given recognition in the Courts.</p> <p>“Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. In Kiribati, the Constitution gives constitutional status to customary law.”⁴⁰²</p> <p>Although bigamy is a criminal offence it does not apply to customary marriages, in effect, making bigamy lawful if recognised within customary law.”⁴⁰³</p> <p>“Customary law prevails over common law.”⁴⁰⁴</p> <p>“Customary law, where women are</p>	<p>Chapter II. <u>Article 3(b):</u> Freedom of conscience, of expression and of assembly and association. . .</p>

401. KIRIBATI CONST. (Rev. 2013) pmbll., arts. 3(b), 5, 125(a); Laws of Kiribati Act 1989 Schedule 4 (a)-(l).

402. CEDAW LEGISLATIVE COMPLIANCE REVIEW: KIRIBATI 199, 214, 226-27 (2015).

403. *Id.*

404. *Id.*

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>discriminated against in terms of ownership and access to land use continues to be the basis of land ownership. In particular, inheritance laws favour paternal lines and therefore, women are not equal in the ownership or the disposition of property.⁴⁰⁵</p> <p><u>Laws of Kiribati Act 1989 Schedule 4 (a)-(l):</u> Customary law may be applied in a case concerning the right to custody of children. Customary law may be applied in a case concerning inheritance.</p> <p><u>Laws of Kiribati Act 1989, Schedule 4 (a)-(l):</u></p> <p>Customary law may be applied in a case concerning the right to the guardianship of infants.</p>	
Korea, North ⁴⁰⁶	No state religion. <u>Preamble:</u> The Democratic	Article 4: The sovereignty of the Democratic People's	No mention.	No explicit mention of expression. <u>Article 67:</u>

405. *Id.*

406. N. KOR. CONST. (Rev. 2016) arts. 4, 8, 40, 67, 68, 86.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	People's Republic of Korea is the socialist motherland of Juche where the ideas and leadership of the great Comrades Kim Il Sung and Kim Jong Il are applied.	<p>Republic of Korea resides in the workers, peasants, soldiers, working intellectuals and all other working people. The working people exercise State power through their representative organs—the Supreme People's Assembly and local People's Assemblies at all levels.</p> <p>Article 8: The social system of the Democratic People's Republic of Korea is a people-centred system under which the working people are the masters of everything and everything in society serves them. The State shall defend the interests of the workers, peasants, soldiers, working intellectuals and all other working people who have been freed from exploitation and oppression and become the masters of the State and society, and respect and protect human rights.</p> <p>Article 40: The</p>		<p>Citizens are guaranteed freedom of speech, the press, assembly, demonstration and association. The State shall guarantee the conditions for the free activities of democratic political parties and social organizations.</p> <p>Insulting Kim Jong-UN and his family is severely punishable blasphemy.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Democratic People's Republic of Korea shall, by carrying out a thorough cultural revolution, train all the people to be builders of socialism equipped with a profound knowledge of nature and society and a high level of culture and technology, thus making the whole of society intellectual.</p> <p>Article 86: National defence is the supreme duty and honour of citizens. Citizens shall defend the country and serve in the armed forces as required by law.</p> <p>Article 68: Citizens have freedom of religious belief. This right is granted through the approval of the construction of religious buildings and the holding of religious ceremonies. Religion must not be used as a pretext for drawing in foreign forces or for harming the State or social order.</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Korea, South ⁴⁰⁷	Article 20: All citizens shall enjoy freedom of religion. No state religion shall be recognized, and church and state shall be separated.	No mention.	No mention.	No mention.
Kosovo ⁴⁰⁸	Article 38(1). <u>Freedom of Belief, Conscience and Religion:</u> Freedom of belief, conscience and religion is guaranteed.	Chapter III. <u>Rights of Communities and Their Members.</u> Article 57(1). <u>General Principles:</u> Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.	Article 59(1). <u>Rights of Communities and their Members:</u> Members of communities shall have the right, individually or in community, to: express, maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and culture.	Article 40. <u>Freedom of Expression:</u> 1. Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment. 2. The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.
Kuwait ⁴⁰⁹	Article 2: The religion of the State is Islam and Islamic Law shall be a main source of legislation.	No mention.	No mention.	Article 36: Freedom of opinion and scientific research is guaranteed. Subject to the conditions and stipulations

407. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 20 (S. Kor.).

408. KOS. CONST. (Rev. 2016) arts. 38(1), 40, 57(1), 59(1).

409. KUWAIT CONST. (Reinst. 1992) pmb., arts. 2, 35–37.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Article 35: Freedom of belief is unrestricted. The State shall protect freedom in the observance of religious rites established by custom, provided such observance does not conflict with morals or disturb public order.			specified by Law, every person shall have the right to express his opinion by speaking or writing or otherwise. Article 37: Freedom of the press and of publication is guaranteed, subject to the conditions and stipulations prescribed by Law.
Kyrgyzstan ⁴¹⁰	Article 7: 1. No religion in the Kyrgyz Republic shall be recognized as the state or mandatory one. 2. Religion and all cults shall be separated from the state. 3. The involvement of religious associations and ministers of religion in the activity of state authorities shall be prohibited.	Article 37(1): In the Kyrgyz Republic, folk customs and traditions which do not infringe upon human rights and freedoms shall be supported by the State.	Article 37(1): In the Kyrgyz Republic, folk customs and traditions which do not infringe upon human rights and freedoms shall be supported by the State.	Article 31: 1. Everyone shall have the right to freedom of thought and opinion. 2. Everyone shall have the right to free expression of opinion, freedom of speech and press. 3. No one may be forced to express his/her opinion or deny it. 4. The propagation of national, ethnic, racial and religious hatred, gender as well as other social supremacy which calls to discrimination, hostility and violence shall be prohibited.

410. KYRG. CONST. (Rev. 2016) arts. 7, 31, 37(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Laos ⁴¹¹	<p>Article 9 (Amended): The State respects and protects all lawful activities of Buddhists and of followers of other religions, [and] mobilizes and encourages Buddhist monks and novices as well as the priests of other religions to participate in activities that are beneficial to the country and people. All acts creating division between religions and classes of people are prohibited.</p>	<p>No mention as such.</p> <p>Article 23: The State promotes preservation of the national culture which is representative of the fine tradition of the country and its ethnic people while accepting selected progressive cultures from around the world.</p> <p>The State promotes cultural activities, fine arts and invention, manages and protects the cultural, historical and natural heritage and maintains antiques and historical places.</p> <p>The State attends to improving and expanding mass media activities for the purpose of national building and protection.</p> <p>All cultural and mass media activities which are detrimental to national interests or the fine traditional culture and dignity of Lao people are prohibited.</p>	No mention.	<p>Article 44: Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the laws.</p>

411. LAOS CONST. (Rev. 2015) arts. 9, 23, 44.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Latvia ⁴¹²	<p>Latvia is a secular state with no official state religion. The constitution guarantees freedom of religion.</p> <p>Article 99: Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.</p>	No mention.	No mention.	<p>Article 100: Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.</p>
Lebanon ⁴¹³	<p>“Lebanon has a complex religious landscape with eighteen recognized religious sects. There is no official state religion, and the constitution provides for freedom of religion.”⁴¹⁴</p> <p>Article 9: Freedom of conscience is absolute. In assuming the obligations of glorifying God, the Most High, the State respects all religions and creeds and safeguards the freedom of exercising the religious rites under its protection, without disturbing the</p>	No mention.	No mention.	<p>Article 13: The freedom of opinion, expression through speech and writing, the freedom of the press, the freedom of assembly, and the freedom of association, are all guaranteed within the scope of the law.</p>

412. LAT. CONST. (Rev. 2016) arts. 99, 100.

413. LEB. CONST. (Rev. 2004) arts. 9, 13.

414. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Lebanon (2021).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	public order. It also guarantees the respect of the system of personal status and religious interests of the people, regardless of their different creeds.			
Lesotho ⁴¹⁵	<p>Lesotho is a secular state with no official state religion. The constitution guarantees freedom of religion.</p> <p><u>Article 13(1).</u> <u>Freedom of conscience:</u> Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.</p>	Yes, but mostly for customary laws.	<p>Yes, typically for succession of the throne.</p> <p><u>Article 7(6):</u> Nothing contained in or done under the authority of any provision of the customary law of Lesotho shall be held to be inconsistent with or in contravention of this section to the extent that that provision authorises the imposition of restrictions upon any person's freedom to reside in any part of Lesotho.</p>	<p><u>Article 14(1).</u> <u>Freedom of expression:</u></p> <p>Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p>

415. LESOTHO CONST. (1993) arts. 7(6), 13(1), 14.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Liberia ⁴¹⁶	<p>Liberia is a secular state, and the constitution provides for the separation of religion and state. There is no official state religion.</p> <p>Article 14: ... Consistent with the principle of separation of religion and state, the Republic shall establish no state religion.</p>	<p>Yes, but Article 2 of the constitution says, “[a]ny laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional.”</p>	<p>Article 23(b): The Legislature shall enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages.</p> <p>Article 65: The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgements of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government. Nothing in this Article shall prohibit administrative consideration of the Justiciable matter prior to review by a court of competent jurisdiction.</p>	<p>Article 15(a): Every person shall have the right to freedom of expression, being fully responsible for the abuse thereof. This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution.</p>

416. LIBER. CONST. (1986) art. 2, 14, 15(a), 23(b), 65.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Libya ⁴¹⁷	Libya is an Islamic republic, and Islam is the state religion. The legal system is based on Islamic law.	No mention.	No mention.	Article 46. <u>Freedom of Expression and Publication:</u> Freedom of expression and its preservation shall not be separated. The State shall guarantee freedom of expression and publication and shall adopt the necessary measures to protect private life. The State shall prohibit incitement to hatred, violence, and racism, as well as declaring others as infidels and imposing ideas by force.
Liechtenstein ⁴¹⁸	Liechtenstein is a secular state with no official state religion. The constitution guarantees freedom of religion. Article 37: 1. Freedom of belief and conscience are guaranteed for all persons. 2. The Roman Catholic Church is the State Church and as such enjoys the full protection of the State; other confessions	No mention.	No mention.	No mention.

417. LIBYA CONST. (Rev. 2012) art. 46.

418. LIECH. CONST. (Rev. 2011) art. 37.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	shall be entitled to practise their creeds and to hold religious services to the extent consistent with morality and public order.			
Lithuania ⁴¹⁹	<p>Lithuania is a secular state with no official state religion. The constitution guarantees freedom of religion.</p> <p>Article 26: Freedom of thought, conscience and religion shall not be restricted.</p>	<p>Article 37: Citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.</p>	No mention.	<p>Article 25: Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.</p>
Luxembourg ⁴²⁰	<p>Luxembourg is a secular state with no official state religion. The constitution guarantees freedom of religion.</p> <p>Article 19: The freedom of religions, that of their public exercise, as well as the freedom to manifest religious opinions, are guaranteed, save for the repression of crimes committed on the occasion of the practice of these freedoms.</p>	No mention.	No mention.	No mention.

419. LITH. CONST. (Rev. 2019) arts. 25, 26, 37.

420. LUX. CONST. (Rev. 2009) art. 19.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Macedonia ⁴²¹	North Macedonia is a secular state with no official state religion. The constitution guarantees freedom of religion. The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical Methodist Church, the Jewish Community and other Religious communities and groups are separate from the state and equal before the law. ⁴²²	No mention.	No mention.	No mention.
Madagascar ⁴²³	Madagascar is a secular state with no official state religion. The constitution provides for freedom of religion. <u>Article 2:</u> The State affirms its neutrality concerning the different religions.	No mention.	No mention; inheritance is governed by state laws.	<u>Article 10:</u> The freedoms of opinion and of expression, of communication, of the press, of association, of assembly, of circulation, of conscience and of religion are guaranteed to all and may only be limited by the respect for the freedoms and rights of others, and by the

421. MACED. CONST. (REV. 2011).

422. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: North Macedonia (2019).

423. MADAG. CONST. (2010) arts. 2, 10.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				imperative of safeguarding the public order, the national dignity and the security of the State.
Malawi ⁴²⁴	<p>No state religion mentioned.</p> <p>Article 33 enshrines freedom of religion.</p> <p>Article 68(c) (iii) (composition of the state) requires representatives of major faiths.</p>	<p><u>Article 24(2). Rights of Women:</u> Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women . . .</p> <p><u>Article 200. Saving of laws in force:</u> Except in so far as they are inconsistent with this Constitution, all Acts of Parliament, common law and customary law in force on the appointed day shall continue to have force of law, as if they had been made in accordance with and in pursuance of this Constitution . . .</p> <p><u>Article 110(3). Subordinate courts:</u> Parliament may make provision for traditional or local courts</p>	<p><u>Article 22. Family and Marriage:</u> Freedom of right to marry and no forced marriage apply to marriages at law and custom.</p>	<p><u>Article 35. Freedom of expression:</u> Every person shall have the right to freedom of expression.</p> <p><u>Article 45. Derogation and Public Emergency:</u> (4). Derogation from the rights contained in this Chapter, other than the rights listed in subsection (2), shall be permissible during a state of emergency within the meaning of this section and to the extent that— a. such derogation is consistent with the obligations of Malawi under international law; and b. in the case of i. war or threat of war, it is strictly required to prevent the lives of defensive combatants and civilians as well as legitimate military objectives from being placed in direct jeopardy;</p>

424. MALAWI CONST. (Rev. 2017) arts. 22, 24(2), 35, 45, 68, 110(3).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		presided over by lay persons or chiefs: Provided that the jurisdiction of such courts shall be limited exclusively to civil cases at customary law and such minor common law and statutory offences as prescribed by an Act of Parliament.		or ii. a widespread natural disaster, it is strictly required for the protection and relief of those people and facilities whether in or outside the disaster area.
Malaysia ⁴²⁵	<p>Article 3(1). <u>Religion of the Federation:</u></p> <p>Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.</p>	<p>Article 76(2). <u>Power of Parliament to legislate for States in certain cases:</u> No law shall be made . . . with respect to any matters of Islamic law or the custom of the Malays or to any matter of native law or custom in the States of Sabah and Sarawak and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government of any State concerned has been consulted.</p> <p>Article 90. <u>Special provisions relating to customary land in Negeri Sembilan and Malacca, and</u></p>	<p>Article 3(2). <u>Religion of the Federation:</u> In every State other than States not having a Ruler the position of the Ruler as the Head of the religion of Islam in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired; but in any acts, observances of ceremonies with respect to which the Conference of Rulers has agreed that they should</p>	<p>Article 10(1) (a) enshrines freedom of expression for every citizen, but Parliament may impose (a), "on the rights conferred by [freedom of expression], such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or</p>

425. MALAY. CONST. (Rev. 2007) arts. 3(1)–(2), 10(1) (a), 76(2), 161.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p><u>Malay holdings in Terengganu.</u></p> <p><u>Article 161. Use of English and of native languages in States of Sabah and Sarawak.</u></p>	<p>extend to the Federation as a whole each of the other Rulers shall in his capacity of Head of the religion of Islam authorise the Yang di-Pertuan Agong to represent him.</p> <p><u>Article 161A (5). Special position of natives of States of Sabah and Sarawak:</u> Article 89 shall not apply to the State of Sabah or Sarawak, and Article 8 shall not invalidate or prohibit any provision of State law in the State of Sabah or Sarawak for the reservation of land for natives of the State or for alienation to them, or for giving them preferential treatment as regards the alienation of land by the State.</p> <p><u>Article 15. Citizenship by registration (wives and children of citizens).</u></p>	<p>incitement to any offence.”</p>
Maldives ⁴²⁶	Article 2 establishes the democratic Republic is	Article 67(g) states that it is the responsibility of every	Shari’a mentioned as prohibiting acts.	<u>Article 27. Freedom of expression:</u> Everyone has

426. MALDIVES CONST. (2008) arts. 2, 10, 19, 27, 67, 142, 149.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>based on the principles of Islam.</p> <p><u>Article 10. State Religion:</u> a. The religion of the State of the Maldives is Islam. Islam shall be the one of the basis of all the laws of the Maldives</p> <p>b. No law contrary to any tenet of Islam shall be enacted in the Maldives</p>	<p>citizen "to preserve and protect the State religion of Islam, culture, language and heritage of the country."</p>	<p><u>Article 19. Freedom from restraint:</u> A citizen is free to engage in any conduct or activity that is not expressly prohibited by Islamic Shari'ah or by law. No control or restraint may be exercised against any person unless it is expressly authorised bylaw.</p> <p><u>Article 59. Retrospective legislation:</u> a. No person shall be found guilty of any act or omission which did not constitute an offence under Islamic Shari'ah or law at the time committed. Nor shall a more severe penalty be imposed than the one applicable at the time the offence was committed. If the punishment for an offence has been reduced between the time of commission and the time of sentencing, the accused is entitled to the benefit of the lesser punishment.</p> <p><u>Article 149. Qualifications of Judges:</u> b. In addition to the</p>	<p>the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>qualifications specified in article (a), a Judge shall possess the following qualifications: 1. be a Muslim and a follower of a Sunni school of Islam; 3. has not been convicted of an offence for which a <i>hadd</i> is prescribed in Islam, criminal breach of trust, or bribery;</p> <p><u>Article 142. Compliance with Law:</u> The Judges are independent, and subject only to the Constitution and the law. When deciding matters on which the Constitution or the law is silent, Judges must consider Islamic Shari'ah. In the performance of their judicial functions, Judges must apply the Constitution and the law impartially and without fear, favour or prejudice.</p>	
Mali ⁴²⁷	Preamble pledges to defend the secular form of the state.	Title XIII (the economic social and cultural council) recognizes that they have	No mention.	Article 4 enshrines freedom of expression.

427. MALI CONST. (1992) pmb., title XIII, art. 4.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Article 25 establishes state is secular as well. Freedom of religion enshrined in Article 4.	competence in all aspects of economic, social, and cultural development.		
Malta ⁴²⁸	Article 2 establishes Roman Catholic Apostolic Religion as State Religion. The Church authorities have authority to determine what principles are right and wrong. All state schools are required to teach the state religion. Article 40 provides for freedom of religious worship.	Article 8 establishes that the State must promote the development of culture.	No mention.	Article 41(2) (a) enshrines the freedom of expression. This does not bar the state to curtail the freedom that is reasonably required, "i. in the interests of defence, public safety, public order, public morality or decency, or public health; or ii. for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of

428. MALTA CONST. (Rev. 2016) arts. 2, 8, 40, 41(2)(a).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				communication, public exhibitions or public entertainments . . .”
Marshall Islands ⁴²⁹	<p>Preamble mentions the Republic’s trust in “God, the Giver of our life, liberty, identity and our inherent rights,” but no specific religion is mentioned.</p> <p>Article II, Section 1 enshrines freedom of religion.</p>	<p><u>Article I. Supremacy of the Constitution.</u></p> <p>Article III (the Council of Iroij) discusses Customary Law and traditional practice mentioned as setting requirements multiple times.</p> <p><u>Article VI. The Judiciary. Section 4(3). The Traditional Rights Court:</u> The jurisdiction of the Traditional Rights Court shall be limited to the determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice in the Republic of the Marshall Islands.</p>	<p><u>Article X. Traditional Rights. Section 1(1). Traditional Rights of Land Tenure Preserved:</u> Traditional Rights of Land Tenure Preserved</p> <p>Nothing in Article II shall be construed to invalidate the customary law or any traditional practice concerning land tenure or any related matter in any part of the Republic of the Marshall Islands, including, where applicable, the rights and obligations of the Iroijlaplap, Iroijedrik, Alap and Dri Jerbal.</p> <p><u>Article X. Traditional Rights. Section 1(2). Traditional Rights of Land Tenure Preserved:</u> Without prejudice to the continued application of the customary law</p>	<p>Article II, Section 1 enshrines freedom of speech and press.</p> <p><u>Article II. Bill of Rights. Section 1(2). Freedom of Thought, Speech, Assembly, Association, and Petition:</u></p> <p>Nothing in this Section shall be construed to invalidate reasonable restrictions imposed by law on the time, place, or manner of conduct, provided</p> <p>a. the restrictions are necessary to preserve public peace, order, health, or security or the rights or freedoms of others;</p> <p>b. there exist no less restrictive means of doing so; and</p> <p>c. the restrictions do not penalize conduct on the basis of disagreement with the ideas or beliefs expressed.</p>

429. MARSH. IS. CONST. (Rev. 1995) pmbL., arts. I–III, VI, X.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>pursuant to Section 1 of Article XIII, and subject to the customary law or to any traditional practice in any part of the Republic, it shall not be lawful or competent for any person having any right in any land in the Republic under the customary law or any traditional practice to make any alienation or disposition of that land, whether by way of sale, mortgage, lease, license or otherwise, without the approval of the Iroijlaplap, Irojedrik, where necessary, Alap and the Senior Dri Jermal of such land, who shall be deemed to represent all persons having an interest in that land.</p> <p><u>Article X.</u> <u>Traditional Rights. Section 2. Declaration of the Customary Law:</u> 1. In the exercise of its legislative functions, it shall be the responsibility of the Nitijela, whenever and to the extent considered appropriate, to</p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>declare, by Act, the customary law in the Republic of the Marshall Islands or in any part thereof. The customary law so declared may include any provisions which, in the opinion of the Nitijela, are necessary or desirable to supplement the established rules of customary law or to take account of any traditional practice.</p> <p>2. This Section shall not be construed to authorize the making of any law that would defeat an otherwise valid claim under</p> <p><u>Article IV. The Legislature.</u> <u>Section 2(5).</u> <u>Membership of the Nitijela:</u> The Nitijela shall not proceed further than the first reading of any Bill or amendment to a Bill which, in the opinion of the Speaker, makes provision for any declaration pursuant to paragraph (1) of this Section unless a joint committee of the Council of Iroij and the Nitijela has been afforded a reasonable</p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			opportunity to make a report on the matters dealt with in that Bill or amendment and any such report has been published.	
Mauritania ⁴³⁰	Article 1 establishes Islam as the State religion. Article 5: Islam is the religion of the people and of the State. Article 23: The President of the Republic is the Head of the State. He is of Muslim religion.	No mention.	No mention.	Freedom of expression enshrined in Article 10, which states “[l]iberty cannot be limited except by the law.”
Mauritius ⁴³¹	Freedom of religion enshrined in Article 11.	Article 2: <u>Constitution</u> established as supreme law.		Freedom of expression included in Article 3. <u>Article 12(2). Protection of Freedom of Expression:</u> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

430. MAURITANIA CONST. (Rev. 2012) arts. 1, 5, 10, 23.

431. MAURITIUS CONST. (Rev. 2016) arts. 2, 3, 11, 12(2).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				<p>a. in the interests of defence, public safety, public order, public morality or public health;</p> <p>b. for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or</p> <p>c. for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Mexico ⁴³²	<p>Article 40 establishes that the state is secular.</p> <p>Article 24 provides for freedom of religion.</p>	<p>Article 2: ... [a]n indigenous community is defined as the community that constitutes a cultural, economic and social unit settled in a territory and that recognizes its own authorities, according to their customs.</p> <p>Indigenous people's right to self-determination shall be subjected to the Constitution in order to guarantee national unity. States' and Federal District's constitutions and laws must recognize indigenous peoples and communities, taking into account the general principles established in the previous paragraphs, as well as ethnic-linguistic and land settlement criteria</p> <p>Article 2(A): This Constitution recognizes and protects the indigenous peoples' right to self-determination and,</p>	No mention.	<p>Article 6: Expression of ideas shall not be subject to judicial or administrative inquiry, except for those cases when such expression of ideas goes against the moral, privacy or the rights of third parties, causes perpetration of a felony, or disturbs the public order. The right of reply shall be exercised according to law. The State shall guarantee the right to information.</p>

432. Constitución Política de los Estados Unidos Mexicanos, CP, arts. 2, 6, 24, 40, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		consequently, the right to autonomy, so that they can: . . . VII. Elect indigenous representatives for the town council in those municipalities with indigenous population. The constitutions and laws of the States shall recognize and regulate these rights in the municipalities, with the purpose of strengthening indigenous peoples' participation and political representation, in accordance with their traditions and regulations.		
Micronesia ⁴³³	<u>Article IV. Declaration of Rights. Section 2:</u> No law may be passed respecting an establishment of religion or impairing the free exercise of religion, except that assistance may be provided to parochial schools for nonreligious purposes.	<u>Article V. Traditional Rights. Section 1:</u> Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at	No mention.	<u>Article IV. Declaration of Rights. Section 1:</u> No law may deny or impair freedom of expression, peaceable assembly, association, or petition.

433. MICR. CONST. (Rev. 1990) arts. IV(2), V(1)-(2), IX(2)(p), XII(11).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>any level of government as may be prescribed by this Constitution or by statute.</p> <p><u>Article V.</u> <u>Traditional Rights. Section 2:</u> The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.</p> <p><u>Article IX.</u> <u>Legislative. Section 2(p):</u></p> <p>The following powers are expressly delegated to Congress: . . . to define national crimes and prescribe penalties, having due regard for local custom and tradition.</p> <p><u>Article XI.</u> <u>Judicial. Section 11:</u> Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		decision a court shall consult and apply sources of the Federated States of Micronesia.		
Moldova ⁴³⁴	<p>Article 5(2). <u>Democracy and political pluralism:</u> No ideology may be instituted as official ideology of the State.</p> <p>Article 10(2). <u>Unity of the people and the right to national identity:</u> The State shall recognize and guarantee the right of all citizens to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.</p> <p>Article 31 guarantees freedom of conscience.</p>	<p>Article 31(2). <u>Freedom of conscience:</u> The freedom of religious cults shall be guaranteed and they shall organise themselves according to their own statutes, under the law.</p>	No mention.	<p>Article 32(2). <u>Freedom of opinion and expression:</u> The freedom of expression may not prejudice the honour, dignity or the right of the other person to hold his/her own viewpoint.</p> <p>Article 32(3). <u>Freedom of opinion and expression:</u> The law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order.</p>

434. MOLD. CONST. (Rev. 2016) arts. 5(2), 10(2), 31, 32(2)-(3).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Monaco ⁴³⁵	<p>Article 9: The Catholic, Apostolic and Roman religion is the religion of the State.”</p> <p>Article 23: Freedom of religion and of public worship, and freedom to express one’s opinions in all matters, is guaranteed, subject to the right to prosecute any offences committed in the exercise of the said freedoms.</p>	No mention.	No mention.	Article 23: Freedom of religion and of public worship, and freedom to express one’s opinions in all matters, is guaranteed, subject to the right to prosecute any offences committed in the exercise of the said freedoms.
Mongolia ⁴³⁶	<p>Article 9: 1. The State shall respect the Church and the Church shall honor the State.</p> <p>2. State institutions may not engage in religious activities and the Church may not pursue political activities. The State shall respect the Church and the Church shall honor the State.</p> <p>Freedom of religion enshrined in Article 16(15).</p>	<p>Article 7: 1. The historical, cultural, scientific, and intellectual heritage of the Mongolian people is under the protection of the state.</p> <p>2. Intellectual values produced by the citizens are the property of their authors and the national wealth of Mongolia.”</p>	No mention.	Freedom of expression enshrined in Article 16(16).
Montenegro ⁴³⁷	Article 14 establishes separation of	Article 9. Legal order: The ratified	No mention.	Article 47. Freedom of expression:

435. MONACO CONST. (Rev. 2002) arts. 9, 23.

436. MONG. CONST. (Rev. 2001) arts. 7, 9, 16(16).

437. MONTENEGRO CONST. (Rev. 2013) arts. 9, 14, 46, 47, 50, 78, 79.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>religious communities from the State.</p> <p><u>Article 46. Freedom of thought, conscience and religion:</u> ... Freedom to express religious beliefs may be restricted only if so required in order to protect life and health of the people, public peace and order, as well as other rights guaranteed by the Constitution.</p>	<p>and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation ...</p> <p>Article 22 guarantees the right to local self-government.</p> <p><u>Article 78. Protection of natural and cultural heritage:</u> ... The state shall protect the national and cultural heritage.</p> <p><u>Section 5. Special Minority Rights. Article 79. Protection of Identity:</u> Persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, as follows ...</p> <p>7. the right to write and use their own name and surname also in their own language and alphabet in the official documents. ...</p>		<p>Everyone shall have the right to freedom of expression by speech, writing, picture or in some other manner.</p> <p>The right to freedom of expression may be limited only by the right of others to dignity, reputation and honor and if it threatens public morality or the security of Montenegro.</p> <p><u>Article 50. Prohibition of censorship:</u> There shall be no censorship in Montenegro.</p> <p>The competent court may prevent dissemination of information and ideas via the public media if required so to:</p> <p>prevent invitation to forcible destruction of the order defined by the Constitution;</p> <p>preservation of territorial integrity of Montenegro;</p> <p>prevention of propagating war or incitement to violence or performance of criminal offences; prevention of propagating racial, national</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>9. the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action . . .</p> <p>10. the right to proportionate representation in public services, state authorities and local self-government bodies; . . .</p> <p>13. the right to establish councils for the protection and improvement of special rights.</p>		and religious hatred or discrimination.
Morocco ⁴³⁸	<p><u>Preamble:</u> A sovereign Muslim State . . .</p> <p><u>Article 1:</u> The Nation relies for its collective life on the federative constants [constantes federatrices], on the occurrence of moderate Muslim religion . . .</p>	<p><u>Article 5:</u> A National Council of Languages and of Moroccan Culture . . . is created, charged with . . . the protection and the development of the Arabic and Tamazight languages and of the diverse Moroccan cultural</p>	No mention.	<p><u>Article 25:</u> The freedoms of thought, of opinion and of expression under all their forms[,] are guaranteed.</p> <p>The freedoms of creation, of publication and of presentation [exposition] in literary and artistic matters and of scientific</p>

438. MOROCCO CONST. (2011) pmbi., arts. 1, 3, 5, 25.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Article 3: Islam is the religion of the State, which guarantees to all the free exercise of beliefs [cultes].	expressions, which constitute one authentic patrimony and one source of contemporary inspiration. . . An organic law determines its attributions, composition and the modalities of [its] functioning.		and technical research[,] are guaranteed.
Mozambique ⁴³⁹	Secular state.	Article 11. <u>Fundamental Objectives:</u> The fundamental objectives of the Republic of Mozambique shall be: . . . g. the promotion of a society of pluralism, tolerance and a culture of peace; h. the development of the economy and scientific and technological progress; . . . i. the affirmation of the Mozambican identity, of its traditions and other social and cultural values; j. the establishment and development of relations of friendship and cooperation with other	Article 4. <u>Legal Pluralism:</u> The State recognises the different normative and dispute resolution systems that co-exist in Mozambican society, insofar as they are not contrary to the fundamental principles and values of the Constitution.	Article 48. <u>Freedom of Expression and Information:</u> 1. All citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information. 2. The exercise of freedom of expression, which consists of the ability to impart one's opinions by all lawful means, and the exercise of the right to information shall not be restricted by censorship.

439. MOZAM. CONST. (Rev. 2007) arts. 4, 12, 48(1)–(2), 123(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>peoples and States.</p> <p><u>Article 12. Lay State:</u> 1. The Republic of Mozambique shall be a lay State. 2. The lay nature of the State rests on the separation between the State and religious denominations.</p> <p><u>Article 123(1). Youth:</u> Young people, honourably upholding the patriotic traditions of the Mozambican people, played a decisive role in the national liberation struggle and the struggle for democracy, and they constitute a force for the renewal of society.</p>		
Myanmar, (Burma) ⁴⁴⁰	<p>“Although there is no official state religion, the constitution states the government ‘recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union.’”⁴⁴¹</p>	<p><u>Preamble:</u> Myanmar is a Nation with magnificent historical traditions.</p>	<p><u>Article 20:</u> a. The Defence Services is the sole patriotic defence force which is strong, competent and modern. b. The Defence Services has the right to independently administer and</p>	<p>“A number of laws in Myanmar impair the enjoyment of the right to freedom of religion or belief. Colonia-era ‘offences related to religion,’ commonly referred to as</p>

440. MYAN. (BURMA) CONST. (Rev. 2015) pmbL., art. 20, 354.

441. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Burma (2022).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			adjudicate all affairs of the armed forces. c. The Commander-in-Chief of the Defence Services is the Supreme Commander of all armed forces.	'blasphemy' laws, are still part of the Penal Code in Myanmar and are used, effectively, to criminalize criticism of religion, particularly Buddhism." <u>Article 354:</u> Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: to express and publish freely their convictions and opinions;
Namibia ⁴⁴²	The constitution of Namibia allows for freedom of religion and the country is a secular state. It is thought that around ninety-seven percent of Namibians are Christian. ⁴⁴³	No mention.	<u>Article 66, Customary and Common Law:</u> I. Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not	<u>Article 21(1) (a), Fundamental Freedoms:</u> All persons shall have the right to: freedom of speech and expression, which shall include freedom of the press and other media.

442. NAMIB. CONST. (Rev. 2014) arts. 21(1) (a), 66.

443. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Namibia (2023).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>conflict with this Constitution or any other statutory law.</p> <p>2. Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.</p>	
Nauru ⁴⁴⁴	<p>Preamble: WHEREAS we the people of Nauru acknowledge God as the almighty and everlasting Lord and the giver of all good things. . .</p>	<p>Article 63(1). <u>Phosphate Royalties:</u> Parliament may provide for the establishment of a fund for the benefit of persons from whose land phosphate deposits have been recovered and for the payment into that fund of amounts from the Treasury Fund and for the payment of moneys out of that fund to those persons.</p>	<p>Article 11. <u>Freedom of conscience:</u> . . . 2. Except with his consent, no person shall be hindered in the enjoyment of a right or freedom referred to in clause (1.) of this Article.</p> <p>3. Except with his consent or, if he is under the age of twenty years, the consent of his parent or guardian, no person attending a place of education is required to receive religious instruction or to take</p>	<p>Preamble: . . . b. Freedom of conscience, of expression and of peaceful assembly and association.</p>

444. NAURU CONST. (Rev. 2015) pmb1., art. 63(1), 74.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>part in or attend a religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own religion or belief.</p> <p><u>Article 74. Women married to Nauruan citizens:</u> A woman, not being a Nauruan citizen, who is married to a Nauruan citizen or has been married to a man who was, throughout the subsistence of the marriage, a Nauruan citizen, is entitled, upon making application in such manner as is prescribed by law, to become a Nauruan citizen.</p>	
Nepal ⁴⁴⁵	Secular state.	<p><u>Article 51 (j). State policies:</u> ... 8. Making special arrangements to ensure the rights of Adivasi Janajatis (indigenous ethnic groups) to lead a dignified life with their respective identities, and making them</p>	<p><u>Article 51 (m) (1). State policies:</u> Policy regarding international relations:</p> <p>Pursuing an independent foreign policy considering national interest to be of utmost importance, on the basis of the UN</p>	<p><u>Article 17(2) (a). Right to freedom:</u> Every citizen shall have the following freedoms:</p> <p>freedom of opinion and expression.</p>

445. NEPAL CONST. (Rev. 2016) arts. 51 (j), 51 (m) (1), 176(6), 267(3).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>participate In decision making processes that concern them, and preserving and maintaining the traditional knowledge, skill, experience, culture and social practices of Adivasi Janajatis and local communities.</p> <p><u>Article 176(6). Formation of the Provincial Assembly:</u> The representation of women, Dalit, indigenous, indigenous nationalities, Khas Arya, Madhesi, Muslim, backward region and minorities community on the basis of geography and population in the nominations filed by the political parties for the election to be held for the Provincial Assembly through the proportional representation (PR) election system shall be made on the basis of closed list in accordance with Federal law.</p> <p><u>Article 267(3). Provisions relating to Nepal Army:</u> The entry of women, Dalit, indigenous community,</p>	<p>Charter, non-alignment, principle of Panchasheel, international law and universal norms, and by remaining active to defend the sovereignty, indivisibility, national independence and national interest.</p>	

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		Khash Arya, Madhesi, Tharu, Muslim, people of backward class and backward region shall be ensured in Nepal Army, based on the principle of equality and principles of inclusion as provided for in the Federal law.		
Netherlands ⁴⁴⁶	No state religion.	No mention.	Article 98(2): Compulsory military service and the power to defer the call-up to active service shall be regulated by Act of Parliament.	No mention.
New Zealand ⁴⁴⁷	No state religion.	Supreme Court Act 2003. <u>Article 3(1) (a):</u> To establish within New Zealand a new court of final appeal comprising New Zealand judges— i. to recognise that New Zealand is an independent nation with its own history and traditions; and ii. to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be	<u>Article 20. Rights of minorities:</u> A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language of that minority.	<u>Article 14. Freedom of expression:</u> Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

446. GW. [CONSTITUTION] art. 98(2) (Neth.).
 447. Bill of Rights Act 1990, ss 14, 20 (N.Z.); Supreme Court Act 2003, s 3 (N.Z.); Human Rights Act 1993, s 11 (N.Z.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		resolved with an understanding of New Zealand conditions, history, and traditions; and . . .	<p><u>Human Rights Act 1993, Article 11 (1) (a). Criteria for appointments:</u></p> <p>. . . ii. New Zealand law, or the law of another country, or international law, on human rights:</p> <p>iii. the Treaty of Waitangi and rights of indigenous peoples:</p> <p>iv. current economic, employment, or social issues:</p> <p>v. cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society.</p>	
Nicaragua ⁴⁴⁸	<p><u>Article 14:</u></p> <p>The State has no official religion.</p> <p>“The constitution states there is no official religion; however, the law entrusts government-controlled, community-level action groups, known as Family Committees,</p>	<p><u>Article 87:</u></p> <p>No worker is obliged to belong to a particular union or to resign from the one to which he/she belongs. The full autonomy of organized labor is recognized and the traditional rights (fuero) of the unions are respected.</p>	<p><u>Article 180:</u></p> <p>The communities of the Caribbean Coast Caribbean Coast have the inalienable right to live and develop themselves under the forms of political-administrative, social and cultural organization that correspond to their historic</p>	<p><u>Article 30:</u></p> <p>Nicaraguans have the right to freely express their convictions in public or in private, individually or collectively, in oral, written or any other form.</p>

448. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [Cn.] arts. 30, 89, 160, 180, LA GACETA, DIARIO OFICIAL [L.G.] 9 January 1987.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	with promoting “Christian values” at the community level.” ⁴⁴⁹	<p>Article 89: The communities of the Atlantic Coast are indivisible parts of the Nicaraguan people, and as such they enjoy the same rights and have the same obligations.</p> <p>The communities of the Atlantic Coast have the right to preserve and develop their cultural identities within the national unity, to provide themselves with their own forms of social organization, and to administer their local affairs according to their traditions.</p> <p>Article 160: The administration of justice guarantees the principle of legality; it protects and safeguards human rights and guarantees access to justice through the application of the law in cases and proceedings falling within its jurisdiction.</p>	<p>and cultural traditions.</p> <p>Article 181: The State shall organize by means of a law the regime of autonomy for the indigenous peoples and ethnic communities of the Atlantic Coast, which shall have to contain, among other rules: the functions of their government organs, their relation with the Executive and Legislative Power and with the municipalities, and the exercise of their rights. This law shall require for its approval and reform the majority established for the amendment of constitutional laws.</p>	

449. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Nicaragua 3 (2022).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		The administration of justice recognizes the citizens' participation through the traditional leaders of the original tribes of the Caribbean Coast and the Judicial Facilitators in the whole country as alternative means of access to justice and dispute resolution in conformity with the law.		
Niger ⁴⁵⁰	No state religion.	<p>Article 157: ... [t]he promotion of sport and Nigerien culture in the programming of the emissions diffused by the public and private companies of audiovisual communication.</p> <p>Article 167: The State recognizes the traditional leadership [chefferie] as the depositary of customary authority. As such, it participates in the administration of the territory of the Republic in the conditions determined by the law.</p>	<p>Article 99: ... [t]he procedure according to which customs [coutumes] will be declared and brought into harmony with the fundamental principles of the Constitution.</p> <p>Article 167: The State recognizes the traditional leadership [chefferie] as the depositary of customary authority. As such, it participates in the administration of the territory of the Republic in the conditions determined by the law. ...</p>	Article 30: Any person has the right to freedom of thought, of opinion, of expression, of conscience, of religion and of worship [culte].

450. NIGER CONST. (Rev. 2017) arts. 30, 99, 167.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		The traditional leadership is held to a strict obligation of neutrality and reserve. It is protected against any abuse of power tending to divert it from the role conferred on it by the law.		
Nigeria ⁴⁵¹	<u>Section 9(10):</u> The Government of the Federation or of a State shall not adopt any religion as State Religion.	<u>Section 21:</u> The State shall- a. protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter. <u>Section 7(2):</u> The person authorised by law to prescribe the area over which a local government council may exercise authority shall- a. define such area as clearly as practicable; and b. ensure, to the extent to which it may be reasonably justifiable that in	<u>Section 237:</u> 1. There shall be a Court of Appeal. 2. The Court of Appeal shall consist of- a. President of the Court of Appeal; and b. such number of Justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary law, as may be prescribed by an Act of the National Assembly. F. <u>The Customary Court of Appeal of the Federal Capital</u>	<u>Section 39(1):</u> Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

451. CONSTITUTION OF NIGERIA (1999), §§ 7(2), 9(10), 21(a), 39(1), 237, 265.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>defining such area regard is paid to-</p> <p>i. the common interest of the community in the area;</p> <p>ii. traditional association of the community; and</p> <p>iii. administrative convenience.</p>	<p>Territory, Abuja. <u>Section 265:</u></p> <p>1. There shall be a Customary Court of Appeal of the Federal Capital Territory, Abuja.</p> <p>2. The Customary Court of Appeal of the Federal Capital Territory, Abuja shall consist of-</p> <p>a President of the Customary Court of Appeal; and</p> <p>b. such number of Judges of the Customary Court of Appeal as may be prescribed by an Act of the National Assembly.</p>	
Norway ⁴⁵²	<p><u>Article 2:</u> Our values will remain our Christian and humanistic heritage. This Constitution shall ensure democracy, a state based on the rule of law and human rights.</p>	<p><u>Article 17:</u> The King may issue and repeal ordinances relating to commerce, customs, all livelihoods and the police, although these must not conflict with the Constitution or with the laws passed by the Storting (as hereinafter prescribed in Articles 76, 77, 78 and 79).</p>	No mention.	<p><u>Article 100:</u> There shall be freedom of expression</p>

452. NOR. CONST. (Rev. 2016) arts. 2, 17, 100.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		They shall remain in force provisionally until the next Storting.		
Oman ⁴⁵³	<u>Article 2:</u> The religion of the State is Islam and Islamic Sharia is the basis for legislation.	<u>Article 13. The Cultural Principles:</u> Education is a cornerstone for the progress of the Society which the State fosters and endeavours to disseminate and make accessible to all. <u>Article 35:</u> Every foreigner who is legally present in the Sultanate shall enjoy protection for himself and his property in accordance with the Law. He shall observe the values of the Society and respect the traditions and sentiments thereof.	No mention.	<u>Article 31:</u> The freedom of the press, printing, and publishing is guaranteed according to the terms and conditions prescribed by the Law. Anything that leads to discord, affects the security of the State, or prejudices human dignity or rights, is prohibited.
Pakistan ⁴⁵⁴	<u>Article 2:</u> Islam shall be the State religion of Pakistan. <u>Article 227:</u> All existing laws shall be brought in conformity with the Injunctions	<u>Article 28. Preservation of language, script and culture:</u> Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the	No mention.	<u>Preamble:</u> Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought,

453. OMAN CONST. (Rev. 2011) arts. 2, 13, 35, 31.

454. PAKISTAN CONST. arts. 2, 28, 227; PAK. PENAL CODE arts. 295-A, 295-B, 295-C

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.	same and subject to law, establish institutions for that purpose.		<p>expression, belief, faith, worship and association, subject to law and public morality.</p> <p>However, Pakistan's Penal Code does contain blasphemy laws.</p> <p><u>Penal Code art. 295-A:</u> Whoever, with deliberate and malicious intention of outraging the 'religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.</p> <p><u>Penal Code art. 295-B:</u> Whoever wilfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.</p>

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				Penal Code art. <u>295-C</u> : Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.
Palau ⁴⁵⁵	<u>Preamble</u> : We venture into the future with full reliance on our own efforts and the divine guidance of Almighty God.	<u>Preamble</u> : In exercising our inherent sovereignty, We, the people of Palau proclaim and reaffirm our immemorial right to be supreme in these islands of Palau, our homeland. We renew our dedication to preserve and enhance our traditional heritage, our national identity and our respect for peace, freedom and justice for all mankind. <u>ARTICLE I. TERRITORY.</u>	No mention.	<u>ARTICLE IV. FUNDAMENTAL RIGHTS.</u> <u>Section 2</u> : The government shall take no action to deny or impair the freedom of expression or press

455. PALAU CONST. (Rev. 1992) pmb., arts. 1(2), 4(2), 5(1)–(2), 11(1), 12(6), 13(1)

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Section 2: Each state shall have exclusive ownership of all living and non-living resources, except highly migratory fish, from the land to twelve (12) nautical miles seaward from the traditional baselines; provided, however, that traditional fishing rights and practices shall not be impaired.</p> <p>ARTICLE V. <u>TRADITIONAL RIGHTS.</u> Section 1: The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government.</p> <p>Section 2: Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>the extent it is not in conflict with the underlying principles of the traditional law.</p> <p><u>ARTICLE XI.</u> <u>STATE GOVERNMENTS.</u> <u>Section 1:</u> The structure and organization of state governments shall follow democratic principles, traditions of Palau, and shall not be inconsistent with this Constitution. The national government shall assist in the organization of the state government.</p> <p><u>Article XIII.</u> <u>GENERAL PROVISIONS.</u> <u>Section 1:</u> The Palauan traditional languages shall be the national languages. Palauan and English shall be the official languages. The Olbiil Era Kelulau shall determine the appropriate use of each language.</p> <p><u>ARTICLE XII.</u> <u>FINANCE.</u> <u>Section 6:</u> a. Each state shall be entitled to revenues derived from the exploration and exploitation of all living and non-living resources,</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		except highly migratory fish, and fines collected for violation of any law within the marine area extending from the land to twelve (12) nautical miles seaward from [<i>sic</i>] the traditional baselines.		
Panama ⁴⁵⁶	<p><u>Article 35:</u></p> <p>All religions may be professed and all forms of worship practiced freely, without any other limitation than respect for Christian morality and public order. It is recognized that the Catholic religion is practiced by the majority of Panamanians.</p>	<p><u>Chapter 4. National Culture. Article 80:</u></p> <p>The State recognizes the right of every individual to participate in the Culture of the Nation, and shall foster the participation of all inhabitants of the Republic in National Culture.</p> <p><u>Article 81:</u></p> <p>National Culture consists of the artistic, philosophic and scientific manifestations produced by man in Panama through the ages.⁴⁵⁷</p> <p><u>Article 87:</u></p> <p>The State recognizes that folkloric tradition constitutes an essential element of national</p>	No mention.	<p><u>Article 37:</u></p> <p>Every person may express his/her opinion freely, either orally, in writing or by any other means, without being subject to prior censorship. Legal responsibility (liability) will, however, be incurred when by any of these means, the reputation or honor of persons is assailed, or when social security or public order is attacked.</p>

456. PAN. CONST. (Rev. 2004) arts. 35, 37, 80, 81, 87, 90, 132.

457. PAPUA N.G. CONST. (Rev. 2016) pmbll., §§ 5(3)–(4), 37, 45(1)–(5), 46(1), 53(5)(e), 172 (2).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>culture, and shall promote its study, preservation and publication, establishing its primacy over manifestations or tendencies that adulterate it.</p> <p>Article 90: The State recognizes and respects the ethnic identity of national indigenous communities, and shall establish programs to develop the material, social and spiritual values of each of their cultures. It shall establish an institution for the study, preservation and publication of these cultures and their languages, and for promotion of full development of said human groups.</p> <p>Article 132: Political rights and the capacity to perform public functions with power and jurisdiction are reserved to natural born Panamanian cultures.</p>		
Papua New Guinea	<p>Article 45: Every person has the right to freedom of conscience, thought and religion and the</p>	<p>Preamble: WE, THE PEOPLE OF PAPUA NEW GUINEA- . . .</p> <ul style="list-style-type: none">• acknowledge the worthy	<p>Section 53(5). <u>PROTECTION FROM UNJUST DEPRIVATION OF PROPERTY:</u> Nothing in the</p>	<p>Section 46(1). <u>FREEDOM OF EXPRESSION:</u> Every person has the right to freedom of expression and publication,</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>practice of his religion and beliefs, including freedom to manifest and propagate his religion and beliefs in such a way as not to interfere with the freedom of others, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38 (general qualifications on qualified rights).</p> <p>However, the government regularly aligns with Christian groups for various purposes.⁴⁵⁸</p>	<p>customs and traditional wisdoms of our people which have come down to us from generation to generation</p> <p>• pledge ourselves to guard and pass on to those who come after us our noble traditions and the Christian principles that are ours now.</p> <p><u>Section 5. PAPUA NEW GUINEAN WAYS:</u></p> <p>WE ACCORDINGLY CALL FOR</p> <p>3. recognition that the cultural, commercial and ethnic diversity of our people is positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of</p>	<p>preceding provisions of this section prevents- . . .</p> <p>e. Any taking of possession or acquisition of ownerless or abandoned property (other than customary land).</p> <p><u>Section 172(2). ESTABLISHMENT OF OTHER COURTS:</u></p> <p>Courts established under Subsection (1) may include courts intended to deal with matters primarily by reference to custom or in accordance with customary procedures, or both.</p>	<p>except to the extent that the exercise of that right is regulated or restricted by a law-</p> <p>a. that imposes reasonable restrictions on public office-holders; or</p> <p>b. that imposes restrictions on non-citizens; or</p> <p>c. that complies with Section 38 (general qualifications on qualified rights).</p>

458. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Papua New Guinea (2022).

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		development; and 4. traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality. Section 45(5). <u>FREEDOM OF CONSCIENCE, THOUGHT AND RELIGION:</u> A reference in this section to religion includes a reference to the traditional religious beliefs and customs of the peoples of Papua New Guinea.		
Paraguay ⁴⁵⁹	Article 24, no official religion.	No mention.	<u>Article 63. Of the Ethnic Identity:</u> The right of the indigenous peoples to preserve and to develop their ethnic identity in the respective habitat is recognized and guaranteed. They have the right, likewise, to freely apply their systems of political, social, economic,	<u>Article 26. Of the Freedom of Expression and of the Press:</u> The free expression and the freedom of the press are guaranteed as well as the diffusion of thoughts and of opinions, without any censorship, with no other limitations than those provided for in this

459. PARA. CONST. (Rev. 2011) arts. 24, 46, 63, 65.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>cultural, and religious organization, as well as the voluntarily subjection to their customary norms for the regulation of [their] internal coexistence [convivencia], as long as they do not infringe upon the fundamental rights established in this Constitution. Concerning conflicts of jurisdiction the indigenous customary right will be taken into account.</p> <p><u>Article 65. Of the Right to Participate:</u> The right to participate in the economic, social, political and cultural life of the country, is guaranteed to the Indigenous peoples in accordance with their customary uses of the Constitution, and the national laws.</p>	<p>Constitution. In consequence, there will be no law dictated to make them impossible [imposibilitar] or to restrict them. There will be no press crimes, except common crimes committed through the press.</p>
Peru ⁴⁶⁰	<p>"It provides for the separation of religion and state but also recognizes the historic importance of the Roman</p>	<p>Article 2: Every person has the right: . . .</p> <p>8. To freedom of intellectual, artistic, technical, and</p>	<p>Article 149: Authorities of rural and native communities, in conjunction with the peasant patrols, may exercise jurisdictional</p>	<p>Article 2: Every person has the right: . . .</p> <p>4. To freedom of information, opinion, expression, and</p>

460. PERU CONST. (Rev. 2021) arts. 2(4), 2(8), 26, 149.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Catholic Church. ⁴⁶¹	scientific creation, as well as to ownership of such creations and to any benefits derived from them. The State promotes access to culture and encourages its development and dissemination.	functions at the territorial level in accordance with common law, provided they do not violate the fundamental rights of the individual. The law provides forms for coordination of such jurisdiction with Justices of the Peace and other bodies of the Judicial Branch.	dissemination of thought, whether oral, written, or in images, through any medium of social communication, and without previous authorization, censorship, or impediment, under penalty of law.
Philippines ⁴⁶²	Secular but preamble states, “We, the sovereign Filipino people, imploring the aid of Almighty God”	<u>Arts and Culture.</u> Section 14: The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. Section 17: 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	Section 5: The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.	Section 4: No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

461. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Peru 1 (2022).

462. CONST. (1987), pmbl., §§ 4, 5, 14, 17, 18 (Phil.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>rights in the formulation of national plans and policies.</p> <p>Section 18: 1. The State shall ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues.</p> <p>2. The State shall encourage and support researches and studies on the arts and culture.</p>		
Poland ⁴⁶³	<p>Article 25: 1. Churches and other religious organizations shall have equal rights. 3. The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of</p>	<p>Preamble: "Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values,"</p> <p>Article 35(1): The Republic of Poland shall ensure Polish citizens belonging to national</p>	No mention.	<p>Article 54(1): The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.</p>

463. POL. CONST. (Rev. 2009) pmbl., arts. 25(1)–(3), 35(1), 53(2), 68(5), 73, 54(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>cooperation for the individual and the common good.</p> <p><u>Article 53(2):</u></p> <p>Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching.</p> <p>Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.</p> <p>“A concordat with the Holy See defines relations with the Roman Catholic Church.”⁴⁶⁴</p>	<p>or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.”</p> <p><u>Article 68(5):</u> Public authorities shall support the development of physical culture, particularly amongst children and young persons.</p> <p><u>Article 73:</u> The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone.</p>		

464. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: Poland 1 (2022).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Portugal ⁴⁶⁵	Secular but vast majority of Portuguese identify as Roman Catholic. ⁴⁶⁶	<p>Article 70(1). <u>Youth:</u> In order to ensure the effective enjoyment of their economic, social and cultural rights, young people shall receive special protection, particularly:</p> <p>a. In education, vocational training and culture.</p> <p>Chapter III. <u>Cultural rights and duties.</u> Article 73(1). <u>Education, culture and science:</u> Everyone shall possess the right to education and culture.</p> <p>Article 74(2). <u>Education:</u> In implementing the education policy, the state shall be charged with: . . .</p> <p>h. Protecting and developing Portuguese sign language, as an expression of culture and an instrument for access to education and equal opportunities;</p> <p>i. Ensuring that emigrants' children are taught</p>	No mention.	<p>Article 37(1). <u>Freedom of expression and information:</u> Everyone shall possess the right to freely express and publicise his thoughts in words, images or by any other means, as well as the right to inform others, inform himself and be informed without hindrance or discrimination.</p>

465. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [C.R.P.], arts. 8(1), 37(1), 54, 70(1)(a), 73(1), 74(2)(h)–(i), 78(2)(d).

466. Chara Scroope, *Portuguese Culture: Religion*, CULTURAL ATLAS (2018), <https://culturalatlas.sbs.com.au/portuguese-culture/portuguese-culture-religion>.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>the Portuguese language and enjoy access to Portuguese culture.</p> <p><u>Article 78(2). Cultural enjoyment and creation:</u> Acting in cooperation with all cultural agents, the state shall be charged with:</p> <p>d. Developing cultural relations with all peoples, especially those that speak Portuguese, and ensuring the defence and promotion of Portuguese culture abroad.</p>		
<p>⁴⁶⁷Qatar</p>	<p>Official state religion is Wahhabai Sunni Islam.⁴⁶⁸</p>	<p><u>Article 57:</u> Respect of the Constitution, compliance with the laws issued by the Public Authority, abiding by the public order and public morals, and observing the national traditions and established customs are a duty of all those who reside in the State of Qatar or enter its territory.</p>	<p>No mention.</p>	<p>Only mention of:</p> <p><u>Article 105:</u> Every member of the Council has the right to initiate the laws. Every bill is referred to the relevant committee in the Council for studying it and expressing opinion thereof, and submitting it to the Council subsequently. If the Council decides to accept the bill, it refers it to the Government</p>

467. QATAR CONST. (2003) arts. 57, 105.

468. *Religion and Public Life: Qatar*, HARV. DIVINITY SCH., <https://rpl.hds.harvard.edu/religion-context/country-profiles/qatar> (last accessed Feb. 2, 2025).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				after putting it in the form of a law proposal for studying it and expressing opinions thereof, and returning it to the Council in the same session or the following one.
Romania ⁴⁶⁹	No state religion, but mainly Orthodox Christians. ⁴⁷⁰	<p>Article 33. <u>Access to culture:</u> 1. The access to culture is guaranteed in accordance with the law.</p> <p>2. A person's freedom to develop his/her spirituality and to get access to the values of national and universal culture shall not be limited.</p> <p>3. The State has to make sure that spiritual identity is preserved, national culture is supported, arts are stimulated, cultural legacy is protected and preserved, contemporary creativity is developed, and Romania's cultural and artistic values are promoted throughout the world.</p>	No mention.	<p>Article 30. <u>Freedom of Expression:</u> 1. The freedom to express ideas, opinions, and beliefs, and the freedom of creation in any form-orally, in writing, through images, by means of sound, or by any other means of public communication-are inviolable.</p> <p>2. Censorship of any kind is prohibited.</p> <p>3. Freedom of the press also includes the freedom to establish publications.</p> <p>4. No publication may be banned.</p> <p>5. The law may oblige the mass media to account</p>

469. ROM. CONST. (Rev. 2003) arts. 1(3), 3(2), 33, 30(1)–(5).

470. Nina Evason, *Romanian Culture: Religion*, CULTURAL ATLAS (2024), <https://culturalatlas.sbs.com.au/romanian-culture/romanian-culture-religion>.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		Article 1(3). <u>The Romanian State:</u> Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizen's rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed.		publicly for the sources of their financing.
Russian Federation ⁴⁷¹	Secular state.	Article 44(3): Everyone shall be obliged to care for the preservation of the cultural and historical heritage, and to protect monuments of history and culture. Article 72(1): The following shall be within the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation: . . .	No mention.	Article 29: 1. Everyone shall be guaranteed freedom of thought and speech. 2. Propaganda or agitation, which arouses social, racial, national or religious hatred and hostility shall be prohibited. Propaganda of social, racial, national, religious or linguistic supremacy shall also be prohibited.

471. KONSTITUTSIJA ROSSII±SKOI± FEDERATSII [KONST. RF] [CONSTITUTION] arts. 17, 29(1)–(4), 44(3), 72(1)(1), 131(1) (Russ.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>1. protection of the traditional habitat and the traditional way of life of small ethnic communities.</p> <p>Article 131(1): Local self-government shall be administered in urban and rural settlements and on other territories with due consideration to historical and other local traditions. The structure of bodies of local self-government shall be determined by the population independently.</p>		<p>3. Nobody shall be forced to express his thoughts and convictions or to deny them.</p> <p>4. Everyone shall have the right freely to seek, receive, transmit, produce and disseminate information by any legal means. The list of types of information, which constitute State secrets, shall be determined by federal law.</p>
Rwanda ⁴⁷²	No state religion.	<p>Article 36. <u>Right to activities promoting National Culture:</u> Every Rwandan has the right to activities that promote National Culture and the duty to promote it.</p> <p>Article 47. <u>Safeguard and promotion of national culture:</u> The State has the duty to safeguard and promote national values based on cultural traditions and</p>	<p>Article 176. <u>Commencement of Laws:</u> Unwritten customary law remains applicable provided it has not been replaced by written law, is not inconsistent with the Constitution, laws, and orders, and neither violates human rights nor prejudices public security or good morals.</p>	<p>Article 38: <u>Freedom of press, of expression and of access to information:</u> Freedom of press, of expression and of access to information are recognised and guaranteed by the State.</p>

472. RWANDA CONST. (Rev. 2015) arts. 36, 38, 47, 176.

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		practices so long as they do not conflict with human rights, public order and good morals.		
St Kitts & Nevis ⁴⁷³	<p>Preamble: WHEREAS the People of Saint Christopher and Nevis</p> <p>a. declare that the nation is established on the belief in Almighty God and the inherent dignity of each individual.</p>	No mention.	No mention.	<p>Article 12(1). <u>Protection of freedom of expression:</u> Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication is to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p>
St Lucia ⁴⁷⁴	<p>Preamble: WHEREAS the People of Saint Lucia-</p> <p>a. affirm their faith in the</p>	No mention.	No mention.	<p>Article 10(1): Except with his own consent, a person shall not be hindered in the enjoyment of</p>

473. ST. KITTS & NEVIS CONST. (1983) pmbL., § 12(1).

474. ST. LUCIA CONST. (1978) pmbL., § 12.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	supremacy of the Almighty God.			his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.
Saint Vincent & the Grenadines ⁴⁷⁵	Preamble: WHEREAS the Peoples of the Islands of Saint Vincent, who are known as Vincentians- a. have affirmed that the Nation is founded on the belief in the supremacy of God and the freedom and dignity of man.	No mention.	No mention.	Article 10(1). <u>Protection of freedom of expression:</u> Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public

475. ST. VINCENT CONST. (1979) pmb1., § 10(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				generally or to any person or class of persons) and freedom from interference with his correspondence.
Samoa ⁴⁷⁶	Article 11. <u>Freedom of religion:</u> Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief, and freedom, either alone or in community with others, and, in public or private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.	PART IX. <u>LAND AND TITLES.</u> Article 100. Matai titles: A Matai title shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.	Preamble: <u>WHEREAS</u> the Leaders of Samoa have declared that Samoa should be an Independent State based on Christian principles and Samoan custom and tradition; Article 8. <u>Freedom from forced labour:</u> 1. No person shall be required to perform forced or compulsory labour. 2. For the purposes of this Article, the term “forced or compulsory labour” shall not include . . . d. any work or service which is required by Samoan custom or which forms part of normal civic obligations. Article 101. <u>Land in Samoa:</u> 1. All land in Samoa is customary land, freehold land or public land. 2. Customary land means land held from Samoa in	Article 13(1). <u>Rights regarding freedom of speech, assembly, association, movement and residence:</u> All citizens of Samoa shall have the right a. to freedom of speech and expression; and b. to assemble peaceably and without arms; and c. to form associations or unions; and d. to move freely throughout Samoa and to reside in any part thereof.

476. SAMOA CONST. (Rev. 2017) pmb., arts. 8, 11, 13(1), 100, 101(1)–(2), 103.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.</p> <p><u>Article 103. Land and Titles Court:</u> There shall be a Land and Titles Court with such composition and with such jurisdiction in relation to Matai titles and customary land as may be provided by Act.</p>	
San Marino ⁴⁷⁷	<p><u>Declaration on the Citizens' Rights and Fundamental Principles art. 6:</u></p> <p>Everybody shall enjoy civil and political freedoms in the Republic. In particular, personal freedoms, freedom of residence, establishment and expatriation, freedom of assembly and association, freedom of thought, conscience and religion shall be guaranteed.</p>	No information.	No information.	<p>"The law forbids media professionals from generating and spreading information that may discriminate against someone on the basis of religion, among other factors. Anyone may report a case to the Authority for Information, a government body, which may take disciplinary action. The authority may issue sanctions for a violation of the code, ranging from a warning to censure, suspension, or removal from the professional register. These sanctions are in addition to the</p>

477. Declaration on the Citizens' Rights and Fundamental Principles, 1974 (Decree No. 79/2002) (San Marino).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
				ones already provided in the criminal code. ⁴⁷⁸
Sao Tome & Principe ⁴⁷⁹	Article 27(1). <u>Freedom of conscience, religion and worship:</u> Freedom of conscience, religion and worship is inviolable.	Article 56. <u>Culture and sports:</u> 1. Conditions will be created so that all citizens may have access to culture and are encouraged to participate actively in its creation and dissemination. 2. The State preserves, defends and esteems the cultural patrimony of the Sao Tomean people. 3. It is incumbent upon the State to encourage and promote the practice and spreading of sports and of physical culture.	No mention.	Article 27. <u>Freedom of conscience, religion and worship:</u> 1. Freedom of conscience, religion and worship is inviolable. 2. No one may be persecuted, deprived of right or exempted from civic obligations or duties because of his convictions or practice of religion. 3. No one may be questioned by any authority about his convictions or religious practices except for the collection of statistical data not individually identifiable nor be prejudiced for refusing to answer. 4. Religious confessions are free in worship, in education and in their organization.

478. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Report on International Religious Freedom: San Marino 3 (2022).

479. SÃO TOMÉ & PRÍNCIPE CONST. (Rev. 2003) arts. 27, 56.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Saudi Arabia ⁴⁸⁰	Article 1: The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Religion: Islam	No clear mention except: Article 1: Constitution: The Holy Qur'an and the Prophet's Sunnah (traditions)	No mention.	Article 39: Mass media, publication facilities and other means of expression shall function in a manner that is courteous and fair and shall abide by State laws
Senegal ⁴⁸¹	Article 1: The Republic of Senegal is secular, democratic, and social. It assures the equality before the law of all the citizens, without distinction of origin, of race, of sex [and] of religion. It respects all beliefs [croyances].	Article 24: The freedom of conscience, the freedoms and the religious and cultural practices, [and] the profession of religious educator [...] are guaranteed to all under reserve of the public order. The institutions and the religious communities have the right to develop themselves without hindrance [entrave]. They are disengaged from the protection [tutelle] of the State. They regulate and administer their affairs in an autonomous manner.	No mention.	Article 10: Each one has the right of expression and to disseminate their opinion freely by word, pen, image, [and] peaceful march, provided that the exercise of these rights does not infringe the honor and the consideration of others, or the public order.
Serbia ⁴⁸²	Article 11. <u>Secularity of the State:</u> The Republic of Serbia is a secular state.	No mention.	No mention.	Article 49. <u>Prohibition of inciting racial, ethnic and religious hatred:</u> Any inciting of

480. SAUDI ARABIA CONST. (Rev. 2013) arts. 1, 39.

481. SEN. CONST. (Rev. 2016) arts. 1, 10, 24.

482. SERB. CONST. (2006) arts. 11, 49, 79.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>Churches and religious communities shall be separated from the state.</p> <p>No religion may be established as state or mandatory religion.</p>			<p>racial, ethnic, religious or other inequality or hatred shall be prohibited and punishable.</p> <p><u>Article 79. Right to preservation of specificity:</u> Members of national minorities shall have a right to: expression, preservation, fostering and public expression of national, ethnic, cultural, religious specificity</p>
Seychelles ⁴⁸³	<p>No state religion.</p> <p><u>Article 21:</u> Every person has a right to freedom of conscience and for the purpose of this article this right includes freedom of thought and religion, freedom to change religion or belief and freedom either alone or in community with others and both in public and in private, to manifest and propagate the religion or belief in worship, teaching, practice and observance.</p>	<p><u>Article 39:</u> The State recognises the right of every person to take part in cultural life and to profess, promote, enjoy and protect the cultural and customary values of the Seychellois people subject to such restrictions as may be provided by law and necessary in a democratic society including-</p> <p>b. the protection of public order, public morals and public health;</p> <p>b. the prevention of crime;</p> <p>c. the protection of the rights and freedoms of other persons.</p>	<p><u>Article 39:</u> The State recognises the right of every person to take part in cultural life and to profess, promote, enjoy and protect the cultural and customary values of the Seychellois people subject to such restrictions as may be provided by law and necessary in a democratic society including-b. the protection of public order, public morals and public health;</p> <p>b. the prevention of crime;</p> <p>c. the protection of the rights and freedoms of other persons.</p>	<p><u>Article 22:</u> Every person has a right to freedom of expression and for the purpose of this article this right includes the freedom to hold opinions and to seek, receive and impart ideas and information without interference.</p>

483. SEY. CONST. (Rev. 2017) arts. 21, 22, 39.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Sierra Leone ⁴⁸⁴	No state religion.	<p>Article 12. <u>Enhancement of national culture:</u> The Government shall—</p> <p>a. promote Sierra Leonean culture such as music, art, dance, science, philosophy, education and traditional medicine which is compatible with national development;</p> <p>b. recognize traditional Sierra Leonean institutions compatible with national development;</p> <p>c. protect and enhance the cultures of Sierra Leone; and</p> <p>d. facilitate the provision of funds for the development of culture in Sierra Leone.</p>	<p>Article 170. <u>The Laws of Sierra Leone:</u> 2. The common law of Sierra Leone shall comprise the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law including those determined by the Superior Court of Judicature.</p> <p>3. For the purposes of this section the expression “customary law” means the rules of law which by custom are applicable to particular communities in Sierra Leone.</p>	<p>Article 24(1). <u>Protection of freedom of conscience:</u> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.</p>
Singapore ⁴⁸⁵	No state religion.	<p>Article 152(2). <u>Minorities and special position of Malays:</u> The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are</p>	No mention.	<p>Article 14. <u>Freedom of speech, assembly and association:</u> Subject to clauses (2) and (3)—</p> <p>a. every citizen of Singapore has the right to freedom of</p>

484. SIERRA LEONE CONST. (Rev. 2013) arts. 12, 24(1), 170(2)–(3).

485. SING. CONST. (Rev. 2016) arts. 14, 152(2).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.		speech and expression; b. all citizens of Singapore have the right to assemble peaceably and without arms; and c. all citizens of Singapore have the right to form associations.
Slovakia ⁴⁸⁶	No state religion.	No mention.	No mention.	<u>Article 24(1)</u> : The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed, or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express his thoughts, religious creed. [<i>sic</i>] Everyone has the right to publicly express his thoughts.
Slovenia ⁴⁸⁷	<u>Article 7</u> : The state and religious communities shall be separate.	No mention except: <u>Article 5</u> : In its own territory, the state	No mention.	<u>Article 39(1)</u> . <u>Freedom of Expression</u> : Freedom of expression of thought,

486. SLOVK. CONST. (Rev. 2017) art. 24(1).

487. SLOVN. CONST. (Rev. 2016) arts. 5, 7, 39(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. It shall provide for the preservation of the natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia.		freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions.
Solomon Islands ⁴⁸⁸	No state religion.	Article 75. <u>Application of laws:</u> 1. Parliament shall make provision for the application of laws, including customary laws. 2. In making provision under this section, Parliament	Article 16(8). <u>Provisions for period of public emergency:</u> Where a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the	Article 12(1). <u>Protection of freedom of expression:</u> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this of section the said freedom

488. SOLOM. IS. CONST. (Rev. 2018) arts. 12(1), 16(8) (d), 75.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.	<p>purpose of dealing with the situation that exists in Solomon Islands during that period, the following provisions shall apply, that is to say—</p> <p>d. for the application of customary law.</p> <p><u>Article 75.</u> <u>Application of laws:</u> 1. Parliament shall make provision for the application of laws, including customary laws.</p> <p>2. In making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.</p>	includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.
Somalia ⁴⁸⁹	<p><u>Article 2. State and Religion:</u> 1. Islam is the religion of the State.</p> <p>2. No religion other than Islam can be propagated in the country.</p> <p>3. No law which is not compliant with the</p>	<p><u>Article 30(5). Education:</u> The government shall encourage the promotion of research, creativity, and arts, and the advancement of cultural and traditional dances and sports and shall promote the</p>	<p><u>Article 40(4). Interpretation of the Fundamental Rights:</u> The recognition of the fundamental rights set out in this Chapter does not deny the existence of any other rights that are recognized or</p>	<p><u>Article 18. Freedom of Expression and Opinions:</u> 1. Every person has the right to have and express their opinions and to receive and impart their opinion, information and ideas in any way.</p>

489. SOM. CONST. (2012) arts. 2, 18, 30(5), 31(1), 40(4).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	general principles of Shari'ah can be enacted.	positive customs and traditions of the Somali people. <u>Article 31 (1). Language and Culture:</u> The state shall promote the positive traditions and cultural practices of the Somali people, whilst striving to eliminate from the community customs and emerging practices which negatively impact the unity, civilization and well-being of society.	conferred by Shari'ah, or by customary law or legislation to the extent that they are consistent with the Shari'ah and the Constitution.	2. Freedom of expression includes freedom of speech, and freedom of the media, including all forms of electronic and web-based media. 3. Every person has the right to freely express their artistic creativity, knowledge, and information gathered through research.
South Africa ⁴⁹⁰	<u>Article 15(1). Freedom of religion, belief and opinion:</u> Everyone has the right to freedom of conscience, religion, thought, belief and opinion.	No mention.	<u>CHAPTER 12. TRADITIONAL LEADERS.</u> <u>Article 211. Recognition:</u> 1. The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. 2. A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments	<u>Article 16. Freedom of expression:</u> 1. Everyone has the right to freedom of expression, which includes- a. freedom of the press and other media; b. freedom to receive or impart information or ideas; c. freedom of artistic creativity; and d. academic freedom and freedom of scientific research.

490. S. AFR. CONST., 1996, arts.15(1), 16, 211, 212(2).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			<p>to, or repeal of, that legislation or those customs.</p> <p>3. The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.</p> <p><u>Article 212(2). Role of traditional leaders:</u> To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law-</p> <p>a. national or provincial legislation may provide for the establishment of houses of traditional leaders; and</p> <p>b. national legislation may establish a council of traditional leaders.</p>	<p>2. The right in subsection (1) does not extend to-</p> <p>a. propaganda for war;</p> <p>b. incitement of imminent violence; or</p> <p>c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.</p>
South Sudan ⁴⁹¹	<p>No state religion.</p> <p><u>Article 8. Religion:</u> 1. Religion and State shall be separate.</p>	<p><u>Article 5. Sources of Legislation:</u> The sources of legislation in South Sudan shall be:</p>	<p><u>Article 126(2). Competences of the Supreme Court:</u> The Supreme Court shall exercise competences as follows: ...</p>	<p><u>Article 24. Freedom of Expression and Media:</u> 1. Every citizen shall have the right to the freedom of</p>

491. S. SUDAN CONST. (Rev. 2013) arts. 5, 8, 24, 126(2) (b), 166(6) (i), 167, 171 (7).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	2. All religions shall be treated equally and religion or religious beliefs shall not be used for divisive purposes.	a. this Constitution; b. written law; c. customs and traditions of the people; d. the will of the people; e. and any other relevant source.	b. be the court of final judicial instance in respect of any litigation or prosecution under National or state law, including statutory and customary law; <u>Article 166(6). Local Government:</u> The objects of local government shall be to: i. acknowledge and incorporate the role of Traditional Authority and customary law in the local government system; <u>Article 167. Traditional Authority:</u> 1. The institution, status and role of Traditional Authority, according to customary law, are recognised under this Constitution. 2. Traditional Authority shall function in accordance with this Constitution, the state constitutions and the law. 3. The courts shall apply customary law subject to this Constitution and the law. <u>Article 171(7). Land Tenure:</u> Rights in land and resources owned, held or otherwise acquired by the Government shall be exercised	expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law. 2. All levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society. 3. All media shall abide by professional ethics.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
			through the appropriate or designated level of government which shall recognize customary land rights under customary land law.	
Spain ⁴⁹²	<u>Section 16(3):</u> No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions.	<u>Preamble:</u> Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions.	<u>Section 125:</u> Citizens may engage in popular action and take part in the administration of justice through the institution of the jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts.	<u>Section 16:</u> 1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law. 2. No one may be compelled to make statements regarding his or her ideology, religion or beliefs. 3. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions.

492. C.E., B.O.E. n. 311, Dec. 29, 1978, pmb1., arts. 16, 125 (Spain).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Sri Lanka ⁴⁹³	<p>Article 9: The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(c).</p> <p>Article 10 enshrines freedom of religion.</p>	<p>Article 33(2) <u>(h). Duties, powers and functions of the President:</u> [The President] has the power to, “to do all such acts and things, not inconsistent with the provisions of the Constitution or written law, as by international law, custom or usage the President is authorized or required to do.</p> <p>Article 27(2). <u>Directive Principles of State Policy:</u> [State objectives include]</p> <p>h. to do all such acts and things, not inconsistent with the provisions of the Constitution or written law, as by international law, custom or usage the President is authorized or required to do . . .</p> <p>Article 27(10). <u>Directive Principles of State Policy:</u> The State shall assist the development of the cultures and the languages of the People.</p>	No mention.	<p>Article 14 enshrines freedom of speech and expression.</p> <p>Article 15 carves out restrictions on fundamental rights. The right is subject to “ . . . such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.”</p>

493. SRI LANKA CONST. (Rev. 2015) arts. 9, 10, 14, 15, 27(2)(h), 27(10), 33(2)(h).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Sudan ⁴⁹⁴	No mention of state religion. Article 26, freedom of religion protected.	Article 49(4). <u>Women's Rights:</u> The state works to combat harmful customs and traditions that reduce the dignity and status of women. Article 66. <u>Ethnic and cultural groups:</u> All ethnic and cultural groups have the right to enjoy their own private culture and develop it freely. The members of such groups have the right to exercise their beliefs, use their languages, observe their religions or customs, and raise their children in the framework of such cultures and customs.	No mention.	Article 57(1). <u>Freedom of Expression and the Press:</u> Every citizen has the unrestricted right to freedom of expression, to receive and publish information and publications, and to access the press, without prejudice to public order, safety and morals in accordance with what is determined by law.
Suriname ⁴⁹⁵	Article 18, freedom of religion enshrined	Article 38(5): The State shall promote the democratization of culture by promoting the enjoyment of culture and cultural relations and through assuring the availability of those cultural creations to all citizens by means of cultural and	No mention.	Article 19: Everyone has the right to make public his thoughts or feelings and to express his opinion through the printed press or other means of communication, subject to the responsibility of all as set forth in the law.

494. SUDAN CONST. (2019) arts. 26, 49(4), 57(1), 66.

495. SURIN. CONST. (Rev. 1992) arts. 18, 19, 38(5).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		recreational organizations, information media and other suitable channels.		
Eswatini ⁴⁹⁶	<p>Preamble mentions “humble submission to Almighty God”</p> <p>Freedom of Religion enshrined in Article 23.</p>	<p>Preamble: Whereas it has become necessary to review the various constitutional documents, decrees, laws, customs and practices so as to promote good governance, the rule of law, respect for our institutions and the progressive development of the Swazi society;</p> <p>Whereas it is necessary to blend the good institutions of traditional Law and custom with those of an open and democratic society so as to promote transparency and the social, economic and cultural development of our Nation.</p> <p>Article 252. <u>Law of Swaziland</u>: 2. Subject to the provisions of this Constitution,</p>	<p>Chapter II. Monarchy, includes many mentions of governance by the Constitution and Swazi Custom:</p> <p><u>Article 4. King and iNgwenyama.</u></p> <p><u>Article 5(1). Succession to the Throne:</u> Succession to the office of King and iNgwenyama is hereditary and governed by this Constitution and Swazi law and custom.</p> <p><u>Article 6. Umntfwana (Crown Prince).</u></p> <p><u>Article 7. The Ndlovukazi</u></p> <p><u>Article 8. Umntfwanenkhosi Lomkhulu (Senior Prince).</u></p> <p><u>Article 12. Oath by King and iNgwenyama.</u></p>	<p>Article 24 provides for freedom of expression. Section 3 provides exceptions, including (a) “interests of defence, public safety, public order, public morality or public health.”</p>

496. SWAZ. CONST. (2005) pmbl., arts. 4, 5(1), 6, 7, 8, 12, 23, 24(3) (a), 25, 34, 43(4)–(5), 45(3), 45(6), 60(10), 115(7), 252(2)–(3), 227–31, 233–35, 251–52, 268.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>the principles of Swazi customary law (Swazi law and custom) are hereby recognised and adopted and shall be applied and enforced as part of the law of Swaziland.</p> <p>3. The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, or repugnant to natural justice or morality or general principles of humanity.</p> <p><u>Article 268(2). Existing Law:</u> For the purposes of this section, the expression “existing law” means the written and unwritten law including customary law of Swaziland as existing immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force on or after that date.</p>	<p><u>Chapter IV. Citizenship.</u></p> <p><u>Article 43. Citizenship by birth:</u> 4. Where a child born outside of marriage is not adopted by its father or claimed by that father in accordance with Swazi law and custom and the mother of that child is a citizen of Swaziland, the child shall be a citizen of Swaziland by birth.</p> <p>5. A child adopted, whether before or after the commencement of this Constitution, under the legislation relating to the adoption of children or under customary law, shall, if not already a citizen, be deemed to be a citizen of Swaziland by birth if, at the time of adoption the adoptive parent was a citizen of Swaziland or would have been a citizen if this Constitution were in force.</p> <p><u>Article 45. Citizenship by registration:</u> 3. A person who is ordinarily resident in</p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Article 34. <u>Property rights of spouses:</u> 1. A surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or customary rites.</p> <p>2. Parliament shall, as soon as practicable after the commencement of this Constitution, enact legislation regulating the property rights of spouses including common-law husband and wife.</p> <p>Swazi Custom is mentioned as authoritative source throughout.</p> <p>Article 60(10). <u>Social objectives:</u> The State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that appropriate customary and cultural</p>	<p>Swaziland and has been so resident for a period of at least ten years and whose application is supported by a Chief after consultation with bandlan-cane or supported by three reputable citizens, may be registered as a citizen . . .</p> <p>6. In this section, "bandlan-cane" means a Chief's council established in accordance with Swazi law and custom.</p> <p>Chapter XIV. <u>Traditional Institutions.</u> Article 227(1). <u>Traditional Institutions:</u> 1. The Swazi traditional government is administered according to Swazi law and custom and the traditional institutions that are pillars of the monarchy as set out in subsection (2).</p> <p>Article 228(1). <u>Ingwenyama:</u> Ingwenyama is the traditional head of the Swazi State and is chosen by virtue of the rank and character of his mother in accordance with Swazi law and custom.</p> <p>Article 229. <u>The</u></p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		values are adapted and developed as an integral part of the growing needs of the society as a whole. <u>Article 115(7). Matters regulated by Swazi law and custom:</u> Subject to the provisions of this section, the matters listed under subsection (6) shall continue to be regulated by Swazi law and custom.	<u>Ndlovukazi.</u> <u>Article 230. Ligunqa:</u> <u>Article 231. Liqoqo:</u> <u>Article 233. Tikhulu (Chiefs).</u> <u>Article 234. Umntfwanenkhozi Lomkhulu (Senior Prince).</u> <u>Article 235. Tindvuna.</u> <u>Chapter XVIII. Misc. Article 251. Council of Chiefs.</u>	
Sweden ⁴⁹⁷	No mention of state religion. Freedom of religion enshrined in Chapter 2. Article 1.	<u>Chapter 1. Article 2;</u> The opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted. <u>Chapter 2. Article 17:</u> The right of the Sami population to practise reindeer husbandry is regulated in law.	No mention.	Chapter 2. Article 1 enshrines freedom of expression.

497. REGERINGSFORMEN [RF] [CONSTITUTION] 1:2, 2:1, 2:17 (Swed.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Switzerland ⁴⁹⁸	<p><u>Article 72 Church and state:</u> 1. The regulation of the relationship between the church and the state is the responsibility of the Cantons.</p> <p>2. The Confederation and the Cantons may within the scope of their powers take measures to preserve public peace between the members of different religious communities.</p> <p>3. The construction of minarets is prohibited.</p> <p>First line of Preamble, "[i]n the name of Almighty God!"</p> <p>Article 15 enshrines freedom of religion.</p>	<p><u>Article 10a. Ban on covering the face:</u> 1. No person may cover their face in public spaces or in places that are accessible to the public or where services are offered to anyone wishing to partake of them; the ban does not apply to places of worship.</p> <p>2. No person may force another person to cover their face on the grounds of their sex.</p> <p>3. The law shall provide for exceptions. These may only be justified on the grounds of health, safety, weather conditions or local custom.</p> <p>Article 2(2) states that the Confederation shall promote cultural diversity of the country.</p> <p>Article 69 designates culture as a matter of cantonal responsibility.</p> <p>Article 188 provides Constitution supreme authority.</p>	<p><u>Article 70(2). Languages:</u> The Cantons shall decide on their official languages. In order to preserve harmony between linguistic communities, the Cantons shall respect the traditional territorial distribution of languages and take account of indigenous linguistic minorities.</p>	<p>Freedom of expression protected in Article 16.</p> <p><u>Article 93 Radio and television:</u> 1. The Confederation is responsible for legislation on radio and television as well as on other forms of public broadcasting of features and information.</p> <p>2. Radio and television shall contribute to education and cultural development, to the free shaping of opinion and to entertainment. They shall take account of the particularities of the country and the needs of the Cantons. They shall present events accurately and allow a diversity of opinions to be expressed appropriately.</p> <p>3. The independence of radio and television as well as their autonomy in deciding on programming is guaranteed.</p>

498. BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, pmbl., arts. 2(2), 10a, 16, 69, 70(2), 72, 93(1)–(3), 188 (Switz.).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Syria ⁴⁹⁹	Article 3: The religion of the President of the Republic is Islam; Islamic jurisprudence shall be a major source of legislation; The State shall respect all religions, and ensure the freedom to perform all the rituals that do not prejudice public order; The personal status of religious communities shall be protected and respected.	Article 9 establishes protection of cultural diversity.	Article 3 states Islamic jurisprudence major source of legislation. Article 21: Martyrdom for the sake of the homeland shall be a supreme value, and the State shall guarantee the families of the martyrs in accordance with the law.	Article 42(2): Every citizen shall have the right to freely and openly express his views whether in writing or orally or by all other means of expression.
Taiwan ⁵⁰⁰	No mention of state religion. Freedom of religion enshrined in Article 13.	Article 162: All public and private educational and cultural institutions in the country shall, in accordance with the law, be subject to State supervision. Article 10: The State shall promote universal health insurance and promote the research and development of both modern and traditional medicines . . . The State affirms cultural pluralism and shall actively preserve and	No mention.	Article 11 enshrines freedom of speech.

499. SYRIA CONST. (2012) arts. 3, 9, 21, 42(2).
500. MINGUO XIANFA arts. 10, 11, 13, 162 (1947) (Taiwan).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		foster the development of aboriginal languages and cultures.		
Tajikistan ⁵⁰¹	<p>Article 1 establishes state is secular.</p> <p>Article 8 reaffirms separation between religion and state.</p> <p>Article 26 enshrines freedom of religion.</p>	<p>Article 10 states the Constitution is supreme law, though if contradiction between international legal acts recognized by Tajikistan and the Constitution, norms of international acts apply.</p>	No mention.	<p>Article 30: Everyone is guaranteed freedom of speech, press, [and] the right to use means of mass information.</p> <p>Propaganda and agitation inciting social and racial, national, religious and language enmity and hostility are prohibited.</p> <p>State censorship and prosecution for criticism is prohibited.</p> <p>A list of information constituting a state secret is determined by law.</p>
Tanzania ⁵⁰²	<p>Preamble establishes state is secular.</p> <p>Article 19 enshrines freedom of religion.</p>	<p>Article 92(1). <u>Meetings of the National Assembly</u>: The National Assembly shall hold its meetings at the place where it is customary to hold such meetings or at any other place in the United Republic as the</p>	No mention.	<p>Article 18 enshrines freedom of expression.</p>

501. TAJ. CONST. (Rev. 2016) pmb., arts. 1, 8, 10, 26, 30.

502. TANZ. CONST. (Rev. 2005) pmb., arts. 18, 29(3)–(4), 92(1), 108.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>President may designate in that behalf.</p> <p>Article 29. <u>Fundamental rights and duties:</u> 3. No citizen of the United Republic shall have a right, status or special position on the basis of his lineage, tradition or descent.</p> <p>4. It is hereby prohibited for any law to confer any right, status, or special position upon any citizen of the United Republic on the basis of lineage, tradition or descent.”</p> <p>Article 108(2). <u>High Court of the United Republic and its jurisdiction:</u> Similarly, the High Court shall have jurisdiction to deal with any matter which, according to legal traditions obtaining in Tanzania, is ordinarily dealt with by a High Court provided that</p> <p>There is a similar requirement in appointment of High Court judges.</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Thailand ⁵⁰³	<p>Section 7: The King is a Buddhist and Upholder of religions.</p> <p>Section 6: The King shall be enthroned in a position of revered worship and shall not be violated.</p> <p>No person shall expose the King to any sort of accusation or action.</p> <p>Section 67 states that the State should support and protect Buddhism and other religions.</p> <p>Section 31 enshrines freedom of religion.</p>	<p>Section 70: The State should promote and provide protection for different ethnic groups to have the right to live in the society according to the traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference, insofar as it is not contrary to public order or good morals or does not endanger the security of the security, health or sanitation.</p> <p>Section 55 states the State shall promote and support the development of Thai traditional medicine.</p> <p>Section 5 states anything contradictory with the Constitution is unenforceable.</p>	No mention.	<p>Section 34:</p> <p>A person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people.</p> <p>Academic freedom shall be protected. However, the exercise of such freedom shall not be contrary to the duties of the Thai people or good morals, and shall respect and not obstruct the different views of another person.</p>
Togo ⁵⁰⁴	<p>No state religion. Article 1 establishes state is secular.</p> <p>Article 144 establishes that the secular</p>	<p>Article 22: Every Togolese citizen has the right to circulate freely and to establish themselves in the national</p>	No mention.	<p>Article 25: Every person has the right to the freedom of thought, of conscience, of religion, of belief, of opinion and</p>

503. THAI. CONST. (2017) §§ 5, 6, 7, 31, 34, 55, 67, 70.

504. TOGO CONST. (Rev. 2007) pmb., arts. 1, 22, 25, 26, 84, 144, 143–44.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>nature of the State may not be revised.</p> <p>The Preamble mentions “placing ourselves under the protection of God.”</p> <p>Freedom of religion enshrined in Article 25.</p>	<p>territory in any place of their choice within the conditions defined by the law or local custom.</p> <p><u>Article 84:</u></p> <p>The law establishes the rules concerning:</p> <p>... the procedure following which customs are declared and harmonized with the fundamental principles of the Constitution;</p> <p>...</p> <p><u>Article 143:</u></p> <p>The Togolese State recognizes the traditional chiefdom, guardian of use and customs.</p> <p>The designation and the enthronement of the traditional chief obeys the use and customs of the locality.</p>		<p>of expression. The exercise of these rights and freedoms is made within respect for the freedoms of others, of the public order and of the norms established by the law and the regulations.</p> <p><u>Article 26:</u></p> <p>The freedom of the press is recognized and guaranteed by the State. It is protected by the law.</p> <p>Every person has the freedom to express and to disseminate through speech, writing or any other means, their opinions or the information which they possess, within respect for the limits defined by the law.</p> <p>The press may not be subject to prior authorization, to caution [bail/security], to censorship or to other restraints. The prohibition of dissemination of any publication may only be pronounced by virtue of a decision of justice.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Tonga ⁵⁰⁵	<p>Clause 1 mentions “the will of God.”</p> <p>Clause 6. <u>Sabbath Day to be kept holy:</u> The Sabbath Day shall be kept holy in Tonga and no person shall practise his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law; and any agreement made or witnessed on that day shall be null and void and of no legal effect.</p> <p>Clause 5. <u>Freedom of worship:</u> All men are free to practise their religion and to worship God as they may deem fit in accordance with the dictates of their own consciences and to assemble for religious service in such places as they may appoint. But it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of</p>	<p>Clause 4. <u>Same law for all classes:</u> There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land.</p> <p>Clause 111. <u>Law of succession:</u> Whereas by Tongan custom provision has always been made that an adopted child might succeed to the estates and titles of his adoptive father now therefore it is decreed that upon the death of the holder of an estate or title who has inherited such estate or title by virtue of his blood descent from such adopted child the estate and title shall revert to the descendant by blood of the original holder of the estate and title in accordance with the provisions</p>	<p>Clause 111. <u>Law of succession:</u> The following is the law of succession to hereditary estates and titles:</p> <p>Children lawfully born in wedlock only may inherit and the eldest male child shall succeed and the heirs of his body but if he have no descendants then the second male child and the heirs of his body and so on until all the male line is ended. Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no descendants the second female child and the heirs of her body and so on until the female line is ended. And failing direct heirs the property shall revert to the eldest brother of the owner of the property beginning with the eldest and his heirs in succession to the youngest and</p>	<p>Clause 7. <u>Freedom of the press:</u></p> <p>1. It shall be lawful for all people to speak, write, and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of defamation, official secrets or the laws for the protection of the King and the Royal Family.</p> <p>2. It shall be lawful, in addition to the exceptions set out in sub-clause (1), to enact such laws as are considered necessary or expedient in the public interest, national security, public order, morality, cultural traditions of the Kingdom, privileges of the Legislative Assembly and to provide for contempt of Court and the commission of any offence.</p>

505. TONGA CONST. (Rev. 2013) cls. 1, 4, 6, 7, 111.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	worship to do what is contrary to the law and peace of the land.	<p>of this clause and should there be alive no such descendant by blood the provisions of the one hundred and twelfth clause shall apply.</p> <p>And whereas by Tongan custom the noble Niukapu forms part of the 'Ulutolu line, now therefore it is decreed that in the event the holder of the estate and title of Niukapu is not a descendant by blood of the original Niukapu before 1875, such estate and title shall revert at the death of such holder to a descendant by blood of the Niukapu line.</p>	<p>their heirs in accordance with the law of inheritance. And if the brothers have no descendants it shall descend to the eldest sister and the female line as provided in the case of the male line. And if these should have no descendants and there should be no legitimate heir it shall revert to the Crown in accordance with the one hundred and twelfth clause. But should a female be next in succession to the title of a noble or of a hereditary chief the next male heir shall inherit the title and estates. . . .</p>	3. It shall be lawful to enact laws to regulate the operation of any media.
Trinidad & Tobago ⁵⁰⁶	<p>No mention.</p> <p><u>Preamble:</u> Whereas the People of Trinidad and Tobago-</p> <p>a. have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy</p>	<p>Article 2: Any law inconsistent with Constitution is void to extent of inconsistency.</p>	No mention.	Freedom of expression enshrined in Article 4(i).

506. TRIN. & TOBAGO CONST. (Rev. 2007) pmbL., arts. 2, 4(h), 4(i).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	<p>of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator.</p> <p>Freedom of religion enshrined in Article 4(h).</p>			
Tunisia ⁵⁰⁷	<p>Article 1 designates Islam as the state religion, which may not be amended.</p> <p>Article 6 enshrines freedom of conscience and belief and the exercise of religious practices.</p>	<p>Article 5: The Republic of Tunisia is part of the Arab Maghreb and works towards achieving its unity and takes all measures to ensure its realization.</p> <p>Article 6: The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of</p>	No mention.	<p>Article 31: Freedom of opinion, thought, expression, information and publication shall be guaranteed.</p> <p>These freedoms shall not be subject to prior censorship.</p>

507. TUNIS. CONST. (2014) arts. 1, 5, 6, 31.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		violence and hatred. <u>Article 39:</u> The state guarantees the right to free public education at all levels and ensures provisions of the necessary resources to achieve a high quality of education, teaching, and training. It shall also work to consolidate the Arab-Muslim identity and national belonging in the young generations, and to strengthen, promote and generalize the use of the Arabic language and to openness to foreign languages, human civilizations and diffusion of the culture of human rights.		
Turkey ⁵⁰⁸	Article 2 designates secular state. Freedom of religion enshrined in Article 24.	<u>Article 134:</u> The “Atatürk High Institution of Culture, Language and History” shall be established as a public corporate body, under the moral aegis of Atatürk, under the supervision	No mention.	<u>Article 26:</u> Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or

508. TURK. CONST. (Rev. 2017) arts. 2, 24, 26, 134.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		of and with the support of the President of the Republic, attached to the Minister to be assigned by the President of the Republic, and composed of the Atatürk Research Centre, the Turkish Language Institution, the Turkish History Institution and the Atatürk Culture Centre, in order to conduct scientific research, to produce publications and to disseminate information on the thought, principles and reforms of Atatürk, Turkish culture, Turkish history and the Turkish language.		<p>collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.</p> <p>The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Turkmenistan ⁵⁰⁹	<p><u>Article 18:</u></p> <p>The state shall guarantee freedom of religion and belief, and equality before the law. Religious organizations shall be separate from the state, their interference in the state affairs and carrying out the state functions shall be prohibited.</p> <p>The public education system shall be separate from religious organizations and secular.</p> <p>Though officially secular, "the state actively privileges a form of traditional Islam."</p> <p>Religion is used as a foundation for a "post-Soviet, national Turkmen identity."</p>	<p><u>Article 15:</u></p> <p>The state shall be responsible for safeguarding the national historical, cultural and natural heritage, natural environment, ensuring equality between social and ethnic communities.</p> <p>The state shall encourage scientific, technical and artistic creativity and distribution of its positive results.</p> <p>The state shall promote development of international cooperation in the fields of culture, training, sports and tourism.</p> <p><u>Article 40:</u></p> <p>Parents and substitute parents shall have the right and obligation to raise the children, care for their health, development, education, prepare them for work, and impart to them the culture of respect for the law, historical and national traditions.</p>	No mention.	<p><u>Article 42:</u></p> <p>Everyone shall be guaranteed the freedom of opinion and expression. No one shall have the right to prohibit an individual to freely express his/her opinion as well as prevent its dissemination in accordance with the law.</p>

509. TURKM. CONST. (Rev. 2016) pmbL., arts. 15, 18, 40, 42, 52, 56, 57.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p><u>Article 56:</u> Citizens of Turkmenistan shall have the right to participate in cultural life, to freedom of artistic, scientific and technical creativity. All rights (copyrights) and interests of citizens in the area of scientific, technical, creative, artistic, literary and cultural activities shall be protected by law.</p> <p>The state shall contribute to the development of science, culture, arts, folk arts, sports and tourism.</p> <p><u>Article 57:</u> Everyone, living or staying temporarily on the territory of Turkmenistan, shall be obliged to abide by the Constitution and the laws of Turkmenistan, and respect the national traditions, historic, cultural and natural heritage.</p> <p><u>Article 52:</u> Every citizen shall have the right to health-care, including free use of the services of public health institutions.</p>		

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		Paid medical and non-traditional health-care shall be permitted under, and in accordance with, the procedure established by law.		
Tuvalu ⁵¹⁰	The preamble of the constitution states the country is “an independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition.”	<p><u>Preamble, Principles of the Constitution</u></p> <p>4. Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline.</p> <p>5. In government, and in social affairs generally, the guiding principles of Tuvalu are-agreement, courtesy and the search for consensus, in accordance with traditional Tuvaluan procedures, rather than alien ideas of confrontation and divisiveness; the need for mutual respect and co-operation between the different</p>	<p><u>Preamble</u></p> <p>AND WHEREAS the people of Tuvalu desire to constitute themselves as an independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition.</p>	<p><u>Section 24(1). Freedom of expression:</u> Subject to the provisions of this Part, and in particular to-</p> <p>a. subsection (3); and</p> <p>b. section 29 (protection of Tuvaluan values, etc.); and</p> <p>c. section 30 (provisions relating to certain officials); and</p> <p>d. section 31 (disciplined forces of Tuvalu); and</p> <p>e. section 32 (foreign disciplined forces); and</p> <p>f. section 33 (hostile disciplined forces); and</p> <p>g. section 36 (restrictions on certain rights and liberties</p>

510. TUVALU CONST. (Rev. 2010) pmbl., §§ 14, 15(5)(a), 15(6), 18(2)(b)(vii), 23(7)(a), 24(1), 26(3)(d)(v), 29–33, 36.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>kinds of authorities concerned, including the central Government, the traditional authorities, local governments and authorities, and the religious authorities.</p> <p>6. The life and the laws of Tuvalu should therefore be based on respect for human dignity, and on the acceptance of Tuvaluan values and culture, and on respect for them.</p> <p><u>Section 26(3)</u> <u>(d). Freedom of movement:</u></p> <p>Nothing in or under a law shall be considered to be inconsistent with subsection (1) to the extent that the law makes provision imposing restrictions on the movement within Tuvalu or the residence in any part of Tuvalu, of any class of person where such restrictions are reasonably required to meet the special circumstance of a part of Tuvalu, for example— v. the disruption or potential disruption of the</p>		<p>during public emergencies),</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>local economy, ecology or distinctive culture.</p> <p><u>Section 29(1). Protection of Tuvaluan values, etc:</u> The Preamble acknowledges that Tuvalu is an Independent State based on Christian principles, the Rule of Law, Tuvaluan values, culture and tradition, and respect for human dignity.</p> <p><u>Section 23(7). Freedom of belief:</u> Nothing in or done under a law shall be considered to be inconsistent with this section to the extent that the law makes reasonable provision—</p> <p>a. requiring a person who proves that he has a conscientious objection to performing some reasonable and normal traditional, communal or civic obligation, or to performing it at a particular time or in a particular way, to perform instead, some reasonably equivalent service of benefit to the community;</p> <p><u>Section 18(2). Slavery and forced labour:</u></p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>b. forced labour does not include—</p> <p>vii. or labour reasonably required as part of reasonable and normal traditional, communal or civic obligations, including any service required in accordance with section 23 (7) (which relates to the performance of certain services instead of other traditional, etc., obligations).</p> <p>Section 15. <u>Reasonably justifiable in a democratic society:</u></p> <p>5. In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to—</p> <p>a. traditional standards, values and practices, as well as previous laws and judicial decisions, of Tuvalu;</p> <p>6. Notwithstanding subsection (5), any law, or any act done under a valid law, which accords with traditional</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		standards, values and practices shall not contravene subsection (1) above, unless the relevant traditional standard, value or practice would be regarded by an ordinary modern citizen of Tuvalu as one which should be eliminated.		
Uganda ⁵¹¹	No state religion.	<p>III. <u>National Unity and Stability</u>: iii. Everything shall be done to promote a culture of cooperation, understanding, appreciation, tolerance and respect for each other's customs, traditions and beliefs.</p> <p>XXV. <u>Preservation of public property and heritage</u>: The State and citizens shall endeavour to preserve and protect and generally promote, the culture of preservation of public property and Uganda's heritage.</p> <p>Article 32(2). <u>Affirmative action in favour of marginalised</u></p>	<p>Article 237. <u>Land Ownership</u>: 4. On the coming into force of this Constitution-</p> <p>a. all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and</p> <p>b. land under customary tenure may be converted to freehold land ownership by registration.</p> <p>Article 178(3). <u>Committees of the Regional Assembly</u>: 4. In this paragraph "cultural matters" include the following-</p>	<p>Article 29(1): <u>Protection of freedom of conscience, expression, movement, religion, assembly and association</u>: Every person shall have the right to-</p> <p>a. freedom of speech and expression, which shall include freedom of the press and other media.</p>

511. UGANDA CONST. (Rev. 2017) arts. III(iii), XXIV, XXV, 29(1)(a), 32(2), 37, 178(3)(4)(d)-(h), 237(4)(a)-(b), 246(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>groups: Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group to which clause (1) relates or which undermine their status, are prohibited by this Constitution.</p> <p>Article 37. <u>Right to culture and similar rights:</u> Every person has a right as applicable, to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.</p> <p>Article 246(1). <u>Institution of traditional or cultural leaders:</u> Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.</p>	<p>d. clan, traditional and customary matters;</p> <p>e. matters relating to cultural funeral rites, cultural succession and customary heirs;</p> <p>f. cultural or traditional lands, sites, shrines and installations;</p> <p>g. clan lands, sites, shrines and installation; and</p> <p>h. traditional, customary and cultural practices which are consistent with this Constitution.</p> <p>XXIV. <u>Cultural objectives:</u> Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution may be developed and incorporated in aspects of Ugandan life.</p>	

NEGOTIATING THE BALANCE ON GENDER EQUALITY

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
Ukraine ⁵¹²	<p><u>Article 35:</u></p> <p>Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.</p> <p>Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.</p> <p>The Church and religious organisations in Ukraine are separated from the State, and the school - from the Church. No religion shall be recognised by the State as mandatory.</p>	<p><u>Article 11:</u></p> <p>The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.</p> <p><u>Article 49:</u></p> <p>The State provides for the development of physical culture and sports, and ensures sanitary-epidemic welfare.</p> <p><u>Article 138:</u></p> <p>The competence of the Autonomous Republic of Crimea comprises:</p> <p>8. ensuring the operation and development of the state language and national languages and cultures in the Autonomous Republic of Crimea; protection and use of historical monuments</p>	No mention.	<p><u>Article 34:</u></p> <p>Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.</p>

512. UKR. CONST. (Rev. 2019) arts. 11, 34, 35, 49, 132, 138(8).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
	Though separation of church and state is mandated, "Eastern Orthodoxy has long been the dominant religious institution." ⁵¹³	Article 132: The territorial structure of Ukraine is based on the principles of unity and indivisibility of the state territory, the combination of centralisation and decentralisation in the exercise of state power, and the balanced socio-economic development of regions that takes into account their historical, economic, ecological, geographical and demographic characteristics, and ethnic and cultural traditions.		
United Arab Emirates ⁵¹⁴	Islam is the official religion.	Article 32: Freedom to exercise religious worship is guaranteed in accordance with the generally-accepted traditions provided that such freedom is consistent with the public policy or does not violate the public morals.	No mention.	Article 30: Freedom of opinion and of expressing that opinion verbally, in writing, or by any other medium of expression is guaranteed as provided in law.

513. Chara Scroope & Mariia Kazmyrchuk, *Ukrainian Culture*, CULTURAL ATLAS (2023), <https://culturalatlas.sbs.com.au/ukrainian-culture/ukrainian-culture-religion>.

514. U.A.E. CONST. (Rev. 2009) arts. 7, 30, 32.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
United Kingdom ⁵¹⁵	No state religion.	Section 28D: 2. The Executive Committee shall adopt a strategy setting out how it proposes to enhance and develop the Ulster Scots language, heritage and culture.	No mention.	Section 12. <u>Freedom of expression:</u> 1. This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
United States ⁵¹⁶	No official religion.	No mention.	No mention.	Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
Uruguay ⁵¹⁷	No specific religion.	Article 34: All the artistic or historical wealth of the country, whoever may be its owner, constitutes the cultural treasure of the Nation; it shall be placed	No mention.	Article 29: The expression of opinion on any subject by word of mouth, private writing, publication in the press, or by any other method of dissemination is

515. Amendments of the Northern Ireland Act 1998 c. 47, § 28D(2); Human Rights Act 1998 c. 42 § 12(1).

516. U.S. CONST. amend. I.

517. URU. CONST. (Rev. 2004) arts. 29, 34.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		under the protection of the State and the law shall establish what is deemed necessary for such protection.		entirely free, without prior censorship; but the author, printer or publisher as the case may be, may be held liable, in accordance with law, for abuses which they may commit.
Uzbekistan ⁵¹⁸	Secular state.	<p>Article 42: Everyone shall be guaranteed the freedom of research and engineering work, the right to enjoy cultural benefits.</p> <p>The state shall promote the cultural, scientific and technical development of the society.</p> <p>Article 49: It is the duty of citizens to protect the historical, spiritual and cultural heritage of the people of Uzbekistan.</p> <p>Article 4: The state language of the Republic of Uzbekistan shall be Uzbek.</p> <p>The Republic of Uzbekistan shall ensure a respectful attitude toward the languages,</p>	No mention.	<p>Article 29: Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information except that which is directed against the existing constitutional system and some other instances specified by law.</p> <p>Freedom of opinions and their expression may be restricted by law if any state or other secret is involved.</p> <p>Article 117: Citizens of the Republic of Uzbekistan shall have the right to elect and be elected to the representative bodies of state authority.</p>

518. UZB. CONST. (Rev. 2011) arts. 4, 29, 42, 49, 117.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		customs and traditions of all nationalities and ethnic groups living on its territory, and the creation of the conditions for their development.		Every elector shall have one vote. The right to vote, equality and freedom of expression of will shall be guaranteed by law
Vanuatu ⁵¹⁹	No official state religion.	<p>Article 7. <u>FUNDAMENTAL DUTIES:</u> h. In the case of a parent, to support, assist and educate all his children, legitimate and illegitimate, and in particular to give them a true understanding of their fundamental rights and duties and of the national objectives and of the culture and customs of the people of Vanuatu</p> <p>Article 30. <u>FUNCTIONS OF COUNCIL:</u> 1. The Malvatumauri Council of Chiefs has a general competence to discuss all matters relating to land, custom and tradition and may make recommendations for the preservation and promotion</p>	<p>Article 52. <u>VILLAGE AND ISLAND COURTS:</u> Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.</p> <p>Article 78. <u>CUSTOMARY INSTITUTIONS TO RESOLVE LAND OWNERSHIP AND DISPUTES</u></p> <p>1. Parliament by enactment shall formalise the recognition of appropriate customary institutions or procedures to resolve land ownership or any disputes over custom land.</p>	<p>Article 5(1). <u>Fundamental Rights and Freedoms of the Individual:</u> g. freedom of expression</p>

519. VANUATU CONST. (Rev. 2013) pmbL, arts. 5(1)(g), 7(h), 30(1)–(2), 52, 78(1)–(3), 81(2), 95.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>of ni-Vanuatu culture and languages.</p> <p>2. The Council must be consulted on any question, particularly any question relating to land, tradition and custom, in connection with any bill before Parliament.</p> <p>Preamble: HEREBY proclaim the establishment of the united and free Republic of Vanuatu founded on traditional Melanesian values, faith in God, and Christian principles,</p> <p>Article 5(1): The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens and holders of dual citizenship who are not indigenous or naturalised citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to</p>	<p>2. Parliament may recognise an institution as a customary institution by enactment for the purposes of subarticle (1).</p> <p>3. Despite the provisions of Chapter 8 of the Constitution, the final substantive decisions reached by customary institutions or procedures in accordance with Article 74, after being recorded in writing, are binding in law and are not subject to appeal or any other form of review by any Court of law.</p> <p>Article 81. <u>Redistribution of Land:</u> 2. When redistributing land in accordance with subarticle (1), the Government shall give priority to ethnic, linguistic, customary and geographical ties.</p> <p>Article 95. <u>Existing Law:</u> Customary law shall continue to have effect as part of the law of the Republic of Vanuatu.</p>	

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health-		
Vatican City ⁵²⁰	His Holiness Pope Francis issued a new constitution for Vatican City State.	<p><u>Executive Function.</u> Article 15(1): The president of the Pontifical Commission is the president of the Governorate and carries out the executive function.</p> <p>Article 16(1): The president is assisted by a general secretary.</p> <p><u>Article 19(2):</u> The Governorate administers all matters related to security, health, public hygiene, the environment, infrastructure and connectivity, and culture (including the Vatican museums) for Vatican City State.</p> <p><u>Article 20:</u> The Governorate is assisted by the Gendarmerie Corps (Corpo</p>	No mention.	And it can also be said that, within the borders of the State of Vatican City, freedom of the press and freedom of expression are fully protected, unless their exercise undermines the interests and fundamental values of the State.

520. VATICAN CONST. (2023) arts. 15.1, 16.1, 19.2, 20.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		della Gendarmeria) and the Pontifical Swiss Guard.		
Venezuela ⁵²¹	No state religion.	Chapter VI. <u>Culture and Educational Rights.</u> Article 98: Cultural creation is free. This freedom includes the right to invest in, produce and disseminate the creative, scientific, technical and humanistic work, as well as legal protection of the author's rights in his works. The State recognizes and protects intellectual property rights in scientific, literary and artistic works, inventions, trade names, patents, trademarks and slogans, in accordance with the conditions and exceptions established by law and the international treaties executed and ratified by the Republic in this field.	Article 126: Native peoples, as cultures with ancestral roots, are part of the Nation, the State and the Venezuelan people, which is one, sovereign and indivisible. In accordance with this Constitution, they have the duty of safeguarding the integrity and sovereignty of the nation. The term people in this Constitution shall in no way be interpreted with the implication it is imputed in international law.	Article 57: Everyone has the right to express freely his or her thoughts, ideas or opinions orally, in writing or by any other form of expression, and to use for such purpose any means of communication and diffusion, and no censorship shall be established. Anyone making use of this right assumes full responsibility for everything expressed

521. VENEZ. CONST. (Rev. 2009) arts. 57, 59, 98–101, 119, 122, 126.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>Article 99: Cultural values are the unrenounceable property of the Venezuelan people and a fundamental right to be encouraged and guaranteed by the State, efforts being made to provide the necessary conditions, legal instruments, means and funding. The autonomy of the public administration of culture is recognized, on such terms as may be established by law. The State guarantees the protection and preservation, enrichment, conservation and restoration of the cultural tangible and intangible heritage and the historic memories of the nation. The assets constituting the cultural heritage of the nation are inalienable, not subject to dis-trait or to statute of limitations. Penalties and sanctions for damage caused to these assets shall be provided for by law.</p> <p>Article 100: The folk cultures comprising the</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>national identity of Venezuela enjoy special attention, with recognition of and respect for intercultural relations under the principle of equality of cultures.</p> <p>Incentives and inducements shall be provided for by law for persons, institutions and communities which promote, support, develop or finance cultural plans, programs and activities within the country and Venezuelan culture abroad.</p> <p>The State guarantees cultural workers inclusion in the Social security system to provide them with a dignified life, recognizing the idiosyncrasies of cultural work, in accordance with law.</p> <p>Article 101: The State guarantees the issuance, receiving and circulation of cultural information. The communications media have the duty of assisting in the dissemination of the values of folk traditions and the work of artists, writers, composers,</p>		

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>motion-picture directors, scientists and other creators of culture of the country.</p> <p><u>Article 119:</u> The State recognizes the existence of native peoples and communities, their social, political and economic organization, their cultures, practices and customs, languages and religions, as well as their habitat and original rights to the lands they ancestrally and traditionally occupy, and which are necessary to develop and guarantee their way of life</p> <p><u>Article 122:</u> Native peoples have the right to a full health system that takes into consideration their practices and cultures. The State shall recognize their traditional medicine and supplementary forms of therapy, subject to principles of bioethics.</p>		
Vietnam ⁵²²	Atheist state.	<p><u>Article 60(1):</u> The State and the society shall</p>	No mention.	No mention.

522. VIET. CONST. (Rev. 2013) arts. 60(1), 96(3).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>take care of the construction and development of the Vietnamese culture, which is modern and deeply imbued with the national identity, and absorbs the mankind's cultural quintessence.</p> <p><u>Article 96(3):</u> To exercise uniform management of the economy, culture, society, education, medicine, science, technology, environment, information, media, international relations, national defence, national security, and social order and security; to exercise the decisions on mobilization and the state of emergency and carry out all other necessary measures to protect the country and to safeguard the live and the property of the people.</p>		
Yemen ⁵²³	Islam is the official religion.	<p><u>Article 27:</u> The state shall guarantee freedom of scientific research</p>	No mention.	<p><u>Article 42:</u> Every citizen has the right to participate in the political,</p>

523. YEMEN CONST. (Rev. 2015) arts. 2, 27, 42, 160.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		and achievements in the fields of literature, arts and culture, which conform with the spirit and objectives of the Constitution. The state shall provide means conducive to such achievements and shall provide support and encouragement for scientific and technical invention, and artistic creation and shall protect achievements thereof. Article 160: I swear by Almighty Allah: To adhere to the Quran (the Book of God) and the traditions established by Prophet Mohammed.		economic, cultural life of the country. The state shall guarantee freedom of thought and expression of opinion in speech, writing and photography within the limits of the law. Yemen maintains blasphemy laws under its Penal Code which criminalize certain acts seen as offensive to Islam. Punishments range from three years imprisonment for the ridicule of religion to death for apostasy ("pronounced words or deeds that are inconsistent with the rules and principles of Islam intentionally or with insistence"). ⁵²⁴
Zambia ⁵²⁵	Christian nation.	Article 165(1). <u>Institution of chieftaincy and traditional institutions:</u> The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the	Article 1(1). <u>Supremacy of Constitution:</u> This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent	Article 20(1). <u>Protection of Freedom of Expression:</u> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without

524. *Yemen*, END BLASPHEMY L. (Sept. 29, 2020), <https://end-blasphe-my-laws.org/countries/middle-east-and-north-africa/yemen/>.

525. CONST. OF ZAMBIA (Rev. 2016) pmbl., arts. 1(1), 7(d)–(e), 18(12) (b), 20(1), 165(1), 169 (5) 254(1).

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>people to whom they apply.</p> <p><u>Article 169(5). House of Chiefs and function:</u> The functions of the House of Chiefs are to—</p> <p>a. consider and discuss a Bill relating to custom or tradition referred to it by the President, before the Bill is introduced into the National Assembly;</p> <p>b. initiate, discuss and make recommendations to the National Assembly regarding socio-economic development in the Province;</p> <p>c. initiate, discuss and decide on matters relating to customary law and practice;</p> <p>d. initiate, discuss and make recommendations to a local authority regarding the welfare of communities in a local authority;</p> <p>e. make proposals on areas in customary law that require codification;</p> <p>f. advise the Government on traditional and customary matters;</p> <p>g. and perform</p>	<p>with its provisions is void to the extent of the inconsistency.</p> <p><u>Article 254(1). Classification and alienation [sic] of land and land tenure:</u></p> <p>Land shall be delimited and classified as State land, customary land and such other classification, as prescribed.</p> <p><u>Article 7. Laws of Zambia:</u> d. Zambian customary law which is consistent with this Constitution; and</p> <p>e. the laws and statutes which apply or extend to Zambia, as prescribed.</p> <p><u>Article 18(12). Provisions to Secure Protection of Law:</u> Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—</p> <p>b. paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law,</p>	<p>interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.</p>

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		other functions as prescribed.	being proceedings against any person who, under that law . . . <u>Article 169(5) (c)-(f): House of Chiefs and function:</u> The functions of the House of Chiefs are to— c. initiate, discuss and decide on matters relating to customary law and practice; d. initiate, discuss and make recommendations to a local authority regarding the welfare of communities in a local authority; e. make proposals on areas in customary law that require codification; f. advise the Government on traditional and customary matters;	
Zimbabwe ⁵²⁶	“Zimbabwe is declared a secular state, but the government is strongly influenced by Christianity.” ⁵²⁷	<u>Article 282(1). Functions of traditional leaders:</u> Traditional leaders have the following functions within their areas of jurisdiction— a. to promote and uphold	<u>Article 332. Definitions:</u> “law” means c. any unwritten law in force in Zimbabwe, including customary law; and “lawful”, “lawfully”, “legal” and “legally” are to be construed	<u>Article 60(1). Freedom of conscience:</u> Every person has the right to freedom of conscience, which includes— a. freedom of thought, opinion, religion or belief; and

526. ZIM. CONST. (Rev. 2017) pmb., arts. 60(1)(a)–(b), 61(1)(a)–(b), 61(5), 282–83, 282(1)(a)–(b), 283, 286(1)(a), 332.

527. *Zimbabwe*, HUMANISTS INT’L (Nov. 30, 2020), <https://fot.humanists.international/countries/africa-eastern-africa/zimbabwe/>.

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Country	Religion	Custom / Culture	Customary Laws	Freedom of Expression
		<p>cultural values of their communities and, in particular, to promote sound family values;</p> <p>b. to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines</p> <p><u>Article 283. Appointment and removal of traditional leaders:</u> An Act of Parliament must provide for the following, in accordance with the prevailing culture, customs, traditions and practices of the communities concerned</p> <p><u>Article 286(1). Functions of National Council and provincial assemblies of Chiefs:</u> The National Council of Chiefs and, within its province, a provincial assembly of Chiefs have the following functions—</p> <p>a. to protect, promote and develop Zimbabwe's culture and traditions</p>	<p>accordingly;</p> <p>"Communal Land" means land set aside under an Act of Parliament and held in accordance with customary law by members of a community under the leadership of a Chief;</p> <p>"Constitutional Bill" means a Bill which, if enacted, would have the effect of amending any of the provisions of this Constitution;</p> <p>"Constitutional Court" means the Constitutional Court established by section 162(a);</p> <p>"Constitutional matter" means a matter in which there is an issue involving the interpretation, protection or enforcement of this Constitution;</p> <p>"Customary Law" means the customary law of any section or community of Zimbabwe's people.</p>	<p>b. freedom to practise and propagate and give expression to their thought, opinion, religion or belief, whether in public or in private and whether alone or together with others.</p> <p><u>Article 61. Freedom of expression and freedom of the media:</u> 1. Every person has the right to freedom of expression, which includes—</p> <p>a. freedom to seek, receive and communicate ideas and other information;</p> <p>b. freedom of artistic expression and scientific research and creativity</p> <p>5. Freedom of expression and freedom of the media exclude—</p> <p>a. incitement to violence;</p> <p>b. advocacy of hatred or hate speech;</p> <p>c. malicious injury to a person's reputation or dignity; or</p> <p>d. malicious or unwarranted breach of a person's right to privacy.</p>