

| ASIA<br>PACIFIC | Legislation prohibiting incitement to national, racial and religious hatred ( <i>Indicate relevant paragraphs and where possible text</i> )   | Legislation protecting freedom of speech ( <i>Indicate relevant paragraphs and where possible text</i> ) | Other information or observations in relation to the public discussion of both.   | Examples of or information on relevant jurisprudence on incitement to hatred and/or freedom of speech   | Relevant policies in relation to incitement to hatred and/or freedom of speech   |
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| Australia       | <p><b>The Racial Discrimination Act (1975)</b> (Extended by The 1995 Racial Hatred Act)</p> <p><u>Section 9:</u> (1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. (1A) Where:</p> <p>(a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and</p> <p>(b) the other person does not or cannot comply with the term, condition or requirement; and</p> <p>(c) the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life; the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person's race, colour, descent or national</p> |  | <p>The Committee on the Elimination of Racial Discrimination (CERD) is concerned by the absence of any entrenched protection against racial discrimination in the federal Constitution and that sections 25 and 51 (xxvi) of the Constitution in themselves raise issues of racial discrimination. It notes with interest the recommendations from the National Human Rights Consultation Report and findings of a significant degree of community support for a federal Human Rights Act to thoroughly address the gaps in the existing model of human rights protection. CERD also notes information provided on the State party's plans to review all federal anti-discrimination laws, with the intention of their harmonization under the Human Rights Framework.</p> <p>CERD also regrets the limited progress towards Constitutional acknowledgement of Australia's Indigenous peoples, and slow implementation of the principle of Indigenous peoples' exercising meaningful control over their affairs (Concluding Observations of the Committee on the Elimination of Racial Discrimination on Australia, 13 September 2010, <a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/449/00/P/DF/G1044900.pdf?OpenElement">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/449/00/P/DF/G1044900.pdf?OpenElement</a>)</p> | <p><i>Australian Capital Television v Commonwealth</i> (1992): The plaintiffs sought declarations that Part IIID of the <i>Broadcasting Act 1942</i> (Cth) was invalid. Part IIID contained a series of provisions prohibiting the radio and television broadcasting of political material (political advertisements broadcasts) and other provisions compelling broadcasters to provide free election broadcasting time during an election period. It was conceded by the plaintiffs that these provisions came within one or more heads of Commonwealth power. Thus, the critical question was whether there was an implied guarantee of freedom of expression in the Constitution, at least in relation to public and political discussion and, if so, whether Part IIID contravened that guarantee.</p> <p>Held per Mason CJ, Deane, Toohey and Gaudron JJ: that Part IIID was wholly invalid on the ground that it infringed the right to freedom of communication on matters relevant to political discussion that was implied in the system of representative government for which the Constitution provided. Per Mason CJ, the implied freedom of communication extends to all matters of public affairs and political discussion, not withstanding that a particular matter at a given time might appear to have a primary or immediate connection with the affairs of a State, a local authority or a Territory and little or no connection with Commonwealth</p> | <ul style="list-style-type: none"> <li>- expression of support, in April 2009, to the United Nations Declaration on the Rights of Indigenous Peoples, as a first step in building a sustained and constructive partnership with Indigenous peoples.</li> <li>- the National Apology for past negative Government policies issued by the State party on 13 February 2008 to Indigenous peoples and in particular the Stolen Generations, as a first step towards genuine reconciliation and reparations to be made in recognition of the history of gross violations of human rights.</li> <li>- the ratification by the State party of the International Convention on the Rights of Persons with Disabilities and the related Optional Protocol, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the standing invitation extended to all thematic special procedures, noting, in particular, the visits of the Special Rapporteur on the situation of the human rights and fundamental freedoms of Indigenous peoples as well as the Special Rapporteur on the right to health in 2009.</li> <li>- the Government's commitment to address Indigenous disadvantage as set out in the six "Closing the Gap" targets.</li> <li>- the extensive National Human Rights Consultation between December 2008 and September 2009 showing an overwhelming support for the protection of human rights.</li> </ul> |

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|  | <p>or ethnic origin.</p> <p>(2) A reference in this section to a human right or fundamental freedom in the political, economic, social, and cultural or any other field of public life includes any right of a kind referred to in Article 5 of the Convention.</p> <p>(3) This section does not apply in respect of the employment, or an application for the employment, of a person on a ship or aircraft (not being an Australian ship or aircraft) if that person was engaged, or applied, for that employment outside Australia.</p> <p>(4) The succeeding provisions of this Part do not limit the generality of this section.</p> <p>...</p> <p><u>Section 18C:</u> (1) It is unlawful for a person to do an act, otherwise than in private, if:</p> <p>(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and</p> <p>(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.</p> <p><b>The Australian Human Rights Commission Act (1986)</b></p> <p><u>Section 7:</u> (1) There is established by this Act a Commission by the name of the Human Rights and Equal Opportunity Commission.</p> <p><u>Section 10A:</u> (1) It is the duty of the Commission to ensure that the functions of the Commission under this or any other Act are performed:</p> <p>(a) with regard for:</p> <p>(i) the indivisibility and universality of human rights; and</p> <p>(ii) the principle that every person is free and equal in dignity and rights; and</p> <p>(b) efficiently and with the</p> |  |  | <p>affairs. Per Deane, Toohey and Gaudron JJ, the implication of freedom of communication contained in the Constitution extends to all political matters, including matters relating to other levels of government, within the national system which exists under the Constitution.</p> |  |
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|                  | greatest possible benefit to the people of Australia. ...  |  |   |   |  |
| <b>Cambodia</b>  | <p><b>Constitution</b><br/> <u>Article 31, 2</u>): Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.</p>  | <p><b>Constitution</b><br/> <u>Article 41</u>: Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.<br/> The regime of the media shall be determined by law.</p>   | <p>On 19 December 2009, Cambodia deported twenty asylum seekers, Chinese nationals of Uighur ethnicity. This ethnic group of asylum-seekers is the only one which has been subjected to deportations by the Cambodian authorities, while their refugee claims were still being considered by Cambodia and UNHCR. The current whereabouts of the Uighurs remain unknown. It is likely that the deportations occurred because of the close political and economic ties between China and Cambodia.</p> <p>Relevant authorities of Cambodia have officially declared that the Khmer Krom are Cambodian nationals. However, there are several public reports on the difficulties they face in obtaining ID cards. Human Rights Watch report, <i>On the Margins: Rights Abuses of Ethnic Khmer in Vietnam's Mekong Delta</i>, 21 January 2009, refers to such difficulties ( pages 56 and 77). The Khmer Krom need ID cards to exercise other basic rights in the country.</p> |   | <p>- The October 2008 establishment of the Refugee Office within the Immigration Department of the Ministry of the Interior, which should permit to protect victims of persecution for reasons of nationality, race or religious hatred.<br/> - The adoption by Cambodia of the <i>Sub-Decree on the Procedure of Determination of Refugee Status and the Right to Asylum for Aliens in the Kingdom of Cambodia</i> on 17 December 2009, as the beginning of the development of a legal framework.</p> |
| <b>Indonesia</b> | <p><b>Blasphemy Law (Penal Code Article 156/a)</b><br/> By a maximum imprisonment of five years shall be punished any person who deliberately publicly gives expression to feelings, or commits an act<br/> a. who principally have the character of enmity with, abusing or staining a religion, adhered to in Indonesia;<br/> b. with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.</p> | <p><b>The 1945 Constitution</b><br/> <u>Article 28</u>: The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.<br/> <u>Article 28 E</u>:(1) Every person shall be free to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.<br/> (2) Every person shall have the</p> | <p>The religious intolerance in Indonesia seems to be on the increase and clearly raises concern for UNHCR in Indonesia as well as from a human rights perspective.<br/> There have been an increase number of attacks and religious intolerance reported in Indonesia in the past years and only in the first six months of 2010, 28 reported anti-Christian attacks took place across Indonesia. Various radical Islamic groups have been reported to take violent action against Christian congregations in several areas of</p>   | <p>On 19 April 2010, the Constitution Court of Indonesia ruled that the Blasphemy Law is a lawful restriction of minority religious beliefs as it maintains public order. The Blasphemy Law (Article 156a of the Indonesian Criminal code) is based on the 1965 government regulations which declared that Islam, Catholicism, Protestantism, Buddhism and Hinduism were official religions. Confucianism was also added in the list in 1998.</p> |  |

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|  |  | <p>right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience.</p> <p>(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.</p> | <p>wider Jakarta. Among others, the Batak Christian Protestant Church (Huria Kristen Batak Protestant or HKBP) has been the target of Islamic extremists for years, where their church has been shut down twice and the group has been prevented from holding services in private houses, hotels and other locations. They are now obliged to have celebrated Mass in an open field in a suburb of Bekasi (West Java), under the protection of hundreds of police agents.</p> <p>In addition to the attacks against the Christians, the Ahmadiya group has also suffered various attacks for a number of years and in July 2010 a new violent attack took place in West Java, where some 200 people were hurling stones at the Ahmadiya mosque, this after the local government had ordered it to be closed.</p> <p>The recent public statements in August 2010 by the Minister for Religious Affairs announcing that the Ahmadiyahs should be outlawed and disband has further raised the reasons for concern.</p> <p>There has also been an increase of enforced local sharia laws in many different parts of Indonesia, such as Aceh, South Sulawesi, West Java and West Sumatra. These laws are among others enforcing Islamic dress, prohibiting alcohol, display of public affection, banning suspicious behaviour and at times imposing public canning punishments.</p> <p>Some political parties and personalities both within and outside the coalition government as well as National Commission on Human Rights chairman, Mr. Ildhal Kasim, have stressed fact that such bylaws are not in line with the Constitution and violate international laws on human rights that the country has ratified.</p> |  |  |
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|                        |  |  | <p>However, support to bylaws has become a complex element of local power politics as several Regional Authorities which have imposed sharia-inspired regulations are being supported by Golkar and other nationalist parties, including regional leaders of the Indonesian Democratic Party of Struggle (PDI-P) of Ms. Megawati, the daughter of Indonesia's founding hero.</p> <p>Many members of the main political parties do agree that the imposition of sharia-based bylaws is a political manoeuvre designed by aspiring regional leaders who want to garner votes. However, they also stress the fact that such laws are also an expression of regional autonomy given to these regions. The debate about the increasing number of bylaws tends, therefore, to continue with some political forces recommending a stronger involvement of the Supreme Court as the authority to review bylaws and other products of law which might induce strong discrimination practices against individuals and violate basic rights protected by the State Constitution.</p> |  |   |
| <p><b>Malaysia</b></p> | <p><b>Constitution</b><br/> <u>Article 8:</u> 1) All persons are equal before the law and entitled to the equal protection of the law.<br/> (2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.</p> <p><b>Sedition Act 1948</b><br/> <u>Article 3:</u> (1) A "seditious</p> | <p><b>Constitution</b><br/> <u>Article 10:</u> (1) Subject to Clauses (2), (3) and (4) -<br/> m (a) every citizen has the right to freedom of speech and expression;<br/> m (b) all citizens have the right to assemble peaceably and without arms;<br/> (c) all citizens have the right to form associations.</p> |   |  | <ol style="list-style-type: none"> <li>1. The formation of the National Civics Bureau (BTN)</li> <li>2. The National Service Programme.</li> <li>3. The formation of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism</li> <li>4. The formation of the Malaysia Interfaith Network</li> <li>5. The setting up of Rukun Negara/ National Principles</li> <li>6. The Department of National Unity &amp; Integration</li> <li>7. University Course on Ethnic Relations</li> <li>8. Introduction of 1 Malaysia Concept</li> </ol> |

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|             | <p>tendency” is a tendency ... (e) to promote feelings of ill will and hostility between different races or classes of the population of Malaysia;</p> <p><b>Article 4:</b> (1) Any person who—<br/> (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;<br/> (b) utters any seditious words;<br/> (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or<br/> (d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.</p> |   |  |  | (See Addendum)   |
| New Zealand | <p><b>The Human Rights Act (1993)</b><br/> <u>Section 4:</u> (1) There shall continue to be a Human Rights Commission, which shall be the same body as the Human Rights Commission established under section 4 of the Human Rights Commission Act 1977.</p> <p><u>Section 5:</u> The primary functions of the Commission are—<br/> (a) to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and<br/> (b) to encourage the maintenance and development of harmonious relations between individuals and</p>  | <p><b>The New Zealand Bill of Rights Act (1990)</b><br/> <u>Section 14:</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.</p> | <p>The Committee on the Elimination of Racial Discrimination (CERD) remains concerned that the New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status and that the enactment of legislation contrary to the provisions of that Act is therefore possible. The Committee considers that the requirement whereby the Attorney-General may bring to the attention of Parliament any provision of a Bill that appears to be inconsistent with the NZBORA is insufficient to guarantee full respect for human rights, in particular the right not to</p> |  | <ul style="list-style-type: none"> <li>- the adoption of the 2004 New Zealand Settlement Strategy and the Settlement National Plan of Action.</li> <li>- the New Zealand Diversity Action Programme.</li> <li>- the reduction of socio-economic disparities between Maori and Pacific peoples on the one hand, and the rest of the population on the other, in particular in the areas of employment and education.</li> <li>- the ratification in 2006 of the 1961 Convention on the Reduction of Statelessness.</li> <li>- increase of the budget provided to the New Zealand</li> </ul> |

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|                           | <p>among the diverse groups in New Zealand society.</p> <p><u>Section 21:</u> (1) For the purposes of this Act, the prohibited grounds of discrimination are ...</p> <p>(c) Religious belief:</p> <p>(d) Ethical belief, which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions:</p> <p>(e) Colour:</p> <p>(f) Race:</p> <p>(g) Ethnic or national origins, which includes nationality or citizenship ...</p> <p>Each of the grounds specified in subsection (1) of this section is a prohibited ground of discrimination, for the purposes of this Act, if—</p> <p>(a) It pertains to a person or to a relative or associate of a person; and</p> <p>(b) It either—</p> <p>(i) Currently exists or has in the past existed; or</p> <p>(ii) Is suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated.</p> <p><b>The New Zealand Bill of Rights Act (1990)</b></p> <p><u>Section 19:</u> Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.</p> <p>(2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.</p> |  | <p>suffer from discrimination based on race, colour, descent or national or ethnic origin. CERD is also still concerned that the effectiveness of procedures to address racial discrimination may be compromised by a lack of public knowledge of the most appropriate avenues for particular complaints, inadequate accessibility by vulnerable groups and a lack of confidence by such groups in their effectiveness, as acknowledged by the Human Rights Commission (art. 6) (Concluding Observations of the Committee Against Racial Discrimination on New Zealand, 15 August 2007, <a href="http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.NZL.CO.17.pdf">http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.NZL.CO.17.pdf</a>).</p> |   | <p>Human Rights Commission by a yearly 20 per cent over the next four years.</p> |
| <p><b>Philippines</b></p> |   | <p><b>The 1987 Constitution</b></p> <p><u>Article 3 – Section 4:</u> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the</p> | <p>In the Philippines, UNHCR currently monitors developments as to the status of the pending anti-discrimination bill in Congress, i.e. House Bill No.</p>  | <p>In the Philippines, a number of Supreme Court decisions play an important role in regard to the application of the freedom of religious profession and worship</p> |  |

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|  |  | <p>people peaceably to assemble and petition the government for redress of grievances.</p> <p><u>Article 3 - Section 5:</u> No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.</p> | <p>948, which seeks to stop religious or racial discrimination and has already been approved for deliberation as of April 2008 (<a href="http://www.gma-news.tv">www.gma news.tv</a>. Anti-discrimination bill gains ground in lower house) and Senate Bills 2001 and 2888: An Act Prohibiting Discrimination Against Persons on Account of Ethnic Origin and/or Religious Belief (<a href="http://www.saligan.org">www.saligan.org</a>. Position Paper on the Anti-Discrimination Bills).</p> | <p>clause enshrined in the Constitution. In <i>Ebralinag v. Division Superintendent of Schools of Cebu</i>, 219 SCRA 256 the Supreme Court upheld the right of the petitioners to refuse to salute the Philippine flag on account of their religious scruples; <i>Victoriano v. Elizalde Rope Workers Union</i>, 59 SCRA 54, where the Supreme Court upheld the validity of a law, exempting members of a religious sect from being compelled to join a labour union; <i>American Bible Society v. City of Manila</i>, 101 Phil 386, where the Supreme Court recognized the “right to proselytize” as part of religious freedom, and invalidated the application of a City Ordinance imposing license fees on the sale of merchandise to the sale of religious tracts.<sup>1</sup></p> |  |
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