

ISLAM IN UZBEKISTAN: WHY FREEDOM OF RELIGION IS FUNDAMENTAL FOR PEACE AND STABILITY IN THE REGION

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This paper is dedicated to the people in Uzbekistan, known and unknown, whose future depends on peace and stability in the region. I wrote this paper with two different readers in mind: for the first reader, this paper provides an introduction to the current struggle in Uzbekistan between the traditional values of the non-governmental form of Islam and the modern values of the secular government; for the second reader, who is familiar with this struggle, this paper presents and defends one side of the debate—the traditional values of the independent form of Islam. A discussion of the dilemma posed by this struggle, which is common in many emerging nations, is beyond the purpose of this paper. In the interest of fairness, however, a response would be in order on the problems faced by a newly emerging government with a predominantly Muslim population with the different trends and the varying degrees of fervor and activism one is witness to in such populations. In other words, the current Uzbek regime should also be evaluated in terms of realpolitik. In this way, both sides of the Uzbek question might be revealed for all interested readers.*

“Such people must be shot in the head. If necessary, I will shoot them myself.”
President Islam Karimov, referring to Islamic radicals.¹

* Editors' note: The Editors acknowledge the controversial nature of this article, but feel that it presents a well documented argument concerning not just country-specific but also general issues about which the readers of the Journal will wish to be well informed. An equally well documented response, which the author herself solicits, would be welcome.

¹ *Republic of Uzbekistan Crackdown in the Ferghona Valley: Arbitrary Arrests and Religious Discrimination*, 10 Human Rights Watch 4, 3 (May 1998) [hereinafter Human Rights Watch; references here are to the paper version but an electronic file is available at <<http://www.hrw.org/hrw/reports98/uzbekistan/>>] (quoting the Uzbek president's speech to the Uzbek Parliament); see also *Islamists Go on Public Trial in Uzbekistan*, BBC News, World: S/W Asia, 6 May 1998, <http://news.bbc.co.uk/hi/english/world/s_w_asia/newsid_88000/88722.stm> (26 Jan. 1999) (reporting that Islam Karimov told the Uzbek Parliament that he, personally, was prepared to take any action against Islamic fundamentalists, including lethal action).

Introduction

Since Uzbekistan announced its independence from the former Soviet Union in 1991,² the Uzbek government has made little progress in moving away from the Soviet-style repression of human rights, specifically religious freedom.³ With the largest and most devout Muslim population in Central Asia,⁴ the Islamic religion flourished in Uzbekistan as a result of the break-up of the Soviet Union.⁵ Uzbekistan's President, Islam Karimov,⁶ believes that the Islamic religion is an ideological and political threat and warns that Islamic activists, or fundamentalists are trying to destabilize his regime.⁷ In response, Karimov ordered a crackdown against unofficial, independent Islamic worship and imposed state-sponsored, or official Islamic observance.⁸ This suppression and subjugation of independent Islamic adherence to the state violates the Uzbek Constitution and international human rights standards protecting religious freedom, including the right to practice one's

² See *Independent Uzbekistan Today* 3 (Tashkent, 1993) (setting forth Uzbekistan's Declaration of Independence, adopted by the Supreme Council of Uzbekistan on August 31, 1991).

³ See Human Rights Watch, *supra* note 1, at 3 (noting that Uzbekistan's human rights record is poor, especially with regard to religious freedom).

⁴ See Martha Brill Olcott, *Central Asia's New States: Independence, Foreign Policy, and Regional Security* 117 (United States Institute of Peace Press, 1996) (asserting that Uzbekistan is home to the largest and potentially most restive Muslim community).

⁵ See Shireen T. Hunter, *Central Asia Since Independence* 35–38 (Praeger, 1996) (discussing the rise of Islam in Uzbekistan in the post-independence era).

⁶ See *id.* at 21, 51 (explaining that Karimov came to power as the First Secretary of the Communist Party in Uzbekistan in 1986 and was elected president in December 1991).

⁷ See *id.* at 36–37 (noting that the Uzbek leadership accepts the view that there is an Islamic network in Central Asia dedicated to spreading militant Islam and establishing an Islamic government, and that the Uzbek leadership embarked on a policy of preventing this alleged threat); see also *Worries about Islam*, *Economist*, 21–27 Feb. 1998, at 40 (explaining that religious freedom is being tempered in Uzbekistan by fear of the possible spread of Islamic fundamentalism).

⁸ See Hunter, *supra* note 5, at 37 (explaining that in response to the Islamic threat, the Uzbek government encouraged a less militant Islamic faith and created a state-dominated Islamic establishment); see also Olcott, *supra* note 4, at 118–19 (discussing Karimov's offensive against Uzbekistan's independent Islamic community); Human Rights Watch, *supra* note 1, at 3 (outlining Karimov's escalation of the offensive against independent Islamic adherents and the complete suppression of independent Islamic practice by the state).

religion, the right to a religious education, and the right to teach and lead religious worship without unauthorized state interference or involvement.⁹

The disregard for Uzbek constitutional protections raises serious issues concerning the rule of law in Uzbekistan and its future as a constitutional state.¹⁰ Moreover, the February 1999 bombing in the capital of Uzbekistan proves that Karimov's repressive tactics threaten rather than ensure peace and stability in Uzbekistan.¹¹ Thus, the question of religious freedom in Uzbekistan is foremost for determining the limitations of civil liberties in that country as well as Uzbekistan's future as a stable, democratic state under the rule of law.¹²

This paper closely examines Uzbek legislation and official practices towards religious freedom in light of the international standards, mentioned above, governing religious freedom. While other major religious groups in Uzbekistan are affected by the religion laws and official acts, this paper focuses on Islam because it represents the majority religion in Uzbekistan.¹³ The first part of this paper establishes the role of Islam in Uzbekistan today by examining the cultural and political history of the Islamic religion in Uzbekistan since the Russian invasion in the 19th century. The second part sets

⁹ See Human Rights Watch, *supra* note 1, at 3 (arguing that Karimov's actions against independent Islamic followers represents the most dramatic and worrisome human rights violations in Uzbekistan to date).

¹⁰ See Hunter, *supra* note 5, at 60–61 (describing the various violations of the Uzbek Constitution and concluding that so much of the population is denied their basic rights and freedoms that Uzbekistan resembles a criminal state).

¹¹ See Daniel Williams, *13 Die in Uzbek Bombings; President Escapes Injury*, Wash. Post, 17 Feb. 1999, at A11 (reporting a series of bombings in Tashkent, the capital of Uzbekistan, where at least 13 people were killed and more than 100 were injured, in what appears to have been an attack on President Karimov's life); see also *Uzbek President Vows Revenge*, BBC World News, 16 Feb. 1999, <http://news.bbc.co.uk/hi/english/world/asia-pacific/newsid_280000/280629.stm> (23 Feb. 1999) (stating that Karimov linked the bombings to Islamic extremists and asked that local authorities monitor the activity of mosques, even though regional analysts suggest that the attack could also be linked to the recent sacking of senior government officials or other possibilities).

¹² See Hunter, *supra* note 5, at 38–39 (discussing the importance of religion and religious freedom to the future prospects of democracy in Uzbekistan, not only in building a law-based state, but also in establishing tolerance and trust between the government and the governed).

¹³ See Human Rights Watch, *supra* note 1, at 12 (asserting that independent Islamic adherents are the primary targets of the Karimov government and most other religious observers are not strictly controlled and monitored).

forth the international documents that establish the international standards of freedom of religion. The third part examines the specific provisions of the Uzbek Constitution guaranteeing and protecting religious freedom, as well as recent legislation and official acts restricting religious freedom in violation of the Uzbek Constitution and international standards. The fourth part suggests protection and promotion of the Uzbek Constitution, the revocation of recent Uzbek legislation, and changes in official practice to bring Uzbekistan into compliance with its own law and existing and applicable international standards.

I. Islam in Uzbekistan Since the 19th Century—An Overview

Some understanding of Uzbekistan's more recent religious history is necessary to analyze the current law and practices and understand their future implications. This brief discussion will provide both an historical introduction to Uzbekistan since the Russian invasion of Central Asia in the 19th century and a consideration of the role of the Islamic religion in Uzbek history.

In the 19th century,¹⁴ Czarist troops invaded Central Asia and what is modern-day Uzbekistan.¹⁵ The Russians, for the most part, ignored Islam and focused on expansion.¹⁶ After the Revolution of 1917, however, the Bolsheviks turned their attention towards Islam¹⁷ because it was the antithesis to

¹⁴ See generally *id.* (discussing the era of the “Great Game” where Russia and the British Empire were both intent on securing part of the southern frontier for economic, social, political, and strategic purposes).

¹⁵ See Alexandre Benningsen and Chantal Lemerrier-Quellejey, *Islam in the Soviet Union* 10–11 (Geoffrey E. Wheeler and Hubert Evans trans.) (Praeger, 1967) (arguing that the Imperial Russian conquest of Uzbekistan in the 19th century was easily accomplished due to the tribal or clan warfare); see also Calum MacLoad and Bradley Mayhew, *Uzbekistan: The Golden Road to Samarkand* 14, 21 (Passport Books, 1997) (giving the dates on which the great cities of Uzbekistan fell to the Russians during the late 19th century).

¹⁶ See MacLoad and Mayhew, *supra* note 15, at 21 (asserting that in the early years, the Russians were mere intruders and did not overtly attempt to transform Islam in Central Asia); see also Benningsen and Lemerrier-Quellejey, *supra* note 15, at 15 (stating that the Russians did not exert much power, money, or time in what is modern-day Uzbekistan, and for the most part, left the Muslims and Islamic observance alone).

¹⁷ See MacLoad and Mayhew, *supra* note 15, at 23 (arguing that after the October Revolution of 1917 it became clear to the Muslims of Central Asia that the Bolsheviks had no intention of granting Muslim independence, even though the Muslims initially supported the Bolshevik Revolution); see also Benningsen and Lemerrier-

Marxist ideology.¹⁸ By 1920, Soviet Russia suppressed Islam in Central Asia.¹⁹ In 1924, the Uzbek Soviet Socialist Republic was born.²⁰ After early concessions to the Muslims,²¹ to win support for the Soviet Union, the Soviet government viewed Islam as a political and ideological threat and set out to

Quelquejey, *supra* note 15, at 11 (explaining that initially the Russians adopted a policy of assimilation that was passive enough to preserve the archaic form of Islam and Islamic culture, but that it soon became a more aggressive stance against Islam).

¹⁸ See Hunter, *supra* note 5, at 8 (asserting that Islam conflicted with the Bolsheviks' mission to create a "new socialist man"); see also Benningsen and Lemerrier-Quelquejey, *supra* note 15, at 49 (discussing the difficulties between Muslims and the tenets of socialism because Muslim society had little use for socialism, and the Russian and Western socialist leaders took no practical interest in Islam). "The acceptance by [Central Asian Muslim] groups of certain socialist ideas did not imply any change in the orientation of their campaign. It was simply the revolutionary aspect of the Russian socialist movements that attracted them, not Marxist doctrine." *Id.* at 53. See also MacLoad and Mayhew, *supra* note 15, at 23 (explaining that Muslim freedom fighters fought alongside the White Russians in the civil war against the Bolsheviks and that the civil war was fought largely on Muslim soil).

¹⁹ See Benningsen and Lemerrier-Quelquejey, *supra* note 15, at 83 (identifying the decree of the Council of the People's Commissars of 1918 that created the "Central Commissariat for Muslim Affairs," whose task for the next several years was to "bolshelize" the Muslim masses); see also *id.* at 140 (defining the legal status of religious bodies and establishing that they were all nationalized); *id.* at 99 (explaining that by 1920, the outlook for the Uzbek Muslim population was tragically grim); and MacLoad and Mayhew, *supra* note 15, at 23 (emphasizing that by 1920 Russian troops had stormed present-day Uzbekistan's Islamic citadels and transformed them into people's republics inside the Soviet Republic of Turkestan).

²⁰ See Christopher S. Mott, *Understanding Uzbekistan: Your Guide to Effectiveness in Uzbekistan* 44 (ABA, Ltd. Spring 1994) (on the Soviet Union's division of Central Asia in 1924 into five Republics: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan); see also Benningsen and Lemerrier-Quelquejey, *supra* note 15, at 126 (explaining Moscow's plan to create modern nations, which would stamp out a religious ideology or pan-Islamic ideology); MacLoad and Mayhew, *supra* note 15, at 23 (observing that by 1924, the Turkestan Soviet people's republic was carved up by the then Commissar of Nationalities, Joseph Stalin, into four ethnic republics and Uzbekistan was born).

²¹ See Benningsen and Lemerrier-Quelquejey, *supra* note 15, at 135 (explaining that the early Soviet policy towards the Muslim population, called *korenizatsiia*, which means literally the striking of the roots, resembled a modern-day affirmative action plan); see also *id.* at 144 (explaining that in 1921, the Soviet government restored all rights and privileges to Muslim institutions previously declared null and void by legislation).

destroy it.²² Stalin, Secretary General of the Soviet Union from 1924 to 1953,²³ strictly controlled Islam and regulated Islamic practice through state laws and regulations.²⁴ Soviet officials confiscated religious property and either placed mullahs under strict government control or forced them out of their religious positions.²⁵ Soviet policy relaxed during World War II,²⁶ thus allowing registered clerics to worship within the constraints of state-sponsored Islam.²⁷ After World War II, clandestine Islamic practice in-

²² See *id.* at 139–41 (detailing the Soviet’s cautious plan to destroy Islam); see also *id.* at 145–49 (describing the explicit legislative acts of the Soviet government leveled against Islam in the early twenties); MacLoad and Mayfew, *supra* note 15, at 23 (explaining that after early concessions to Islam, the Soviets initiated a series of anti-religious drives, called the “Movement of the Godless,” in Uzbekistan from the late 1920s to the terrible purges by Stalin in 1937).

²³ Cf. John M. Thompson, *A Vision Unfulfilled: Russia and the Soviet Union in the Twentieth Century* (D. C. Heath, 1996); also *id.* Appendix B.

²⁴ See Mott, *supra* note 20, at 45 (listing the various ways that Islam was controlled under Stalin, including, *inter alia*, controlling the publishing and selling of the Koran and outlawing three of the five pillars of Islam, 1) the pilgrimage to Mecca [*hajj*]; 2) the obligatory giving of alms [*zakāt*]; and 3) the month-long fast of Ramadan [*ṣiyām*]); see also Benningsen and Lemerrier-Quelquejay, *supra* note 15, at 151–52 (discussing the government’s assault upon Islamic rituals and observances); MacLoad and Mayfew, *supra* note 15, at 23 (describing the various practices and expressions of Islam that were made illegal under Stalin).

²⁵ See MacLoad and Mayfew, *supra* note 15, at 24–25 (defining mullahs as Islamic teachers considered a primary threat to the Russians and to the Soviet State); Mott, *supra* note 20, at 45 (stating that thousands of mosques and *madrasas* (religious schools) in Central Asia were closed, reduced to rubble, or transformed in some other fashion); see also Benningsen and Lemerrier-Quelquejay, *supra* note 15, at 151 (explaining that the Soviets launched a campaign for the closure of the mosques, which were turned into clubs, cinemas, or other places of public utility); MacLoad and Mayfew, *supra* note 15, at 25 (asserting that the number of mosques fell from 25,000 in 1917 to 1,700 in 1942, and that *waqfs* (religious endowments/lands) were confiscated and mullahs deprived of their income).

²⁶ See Thompson, *supra* note 23, at Appendix C (regarding the Soviet involvement in World War II from 1941 to 1945).

²⁷ See MacLoad and Mayfew, *supra* note 15, at 25 (explaining that World War II brought a wave of religious concessions, including allowing registered clerics to practice Islam under the watchful eye of the party central); see also Benningsen and Lemerrier-Quelquejay, *supra* note 15, at 165 (explaining how the abatement of hostilities towards the Muslim people took form). “[T]he authorities conferred on Islam a legal status by creating four Muslim Spiritual Directorates, designed to administer the religious affairs of the Muslims and to represent them at the seat of government.”

creased within the government-monitored system.²⁸ Finally, in the 1980s, under Gorbachev's perestroika,²⁹ independent Islamic observance emerged,³⁰ and the question of religious freedom in Uzbekistan was boldly posited.³¹

On September 1, 1991, Uzbekistan declared its independence from the So-

Id. Cf. id. at 172 (discussing the four Spiritual Boards established in 1941, which were located thousands of miles apart, making unification of Soviet Muslims impossible); Mark Saroyan, *Rethinking Islam in the Soviet Union*, in *Beyond Sovietology: Essays in Politics and History* at 39 (Susan Gross Solomon, ed.) (M. E. Sharpe, 1993) (arguing that the Religious Boards of the Soviet state were merely apparatuses of the state in the business of transmitting state-oriented ideology); but see Mott, supra note 20, at 46 (arguing that the creation of the four Spiritual Boards was not a concession, but an attempt to weaken any potential for unification between Muslims and an attempt to secularize the religion to an extent).

²⁸ See Mott, supra note 20, at 46 (explaining that when religion became more restricted officially, clandestine Islam became a central mode of practice, prayer, and teaching in Uzbekistan); see also Benningsen and Lemerrier-Quellejay, supra note 15, at 178–83 (discussing the practice of Islam behind the official line, including unofficial mullahs, worship, and private prayer); MacLoad and Mayfew, supra note 15, at 25 (arguing that the rise of official Islam merely spurred the growth of an independent Islam).

²⁹ See Hunter, supra note 5, at 20 (explaining that the reforms of 1987, undertaken by Mikhail Gorbachev, set goals to reinvigorate the Russian economy, but not implement political liberalization); see also Mark Saroyan, *Minorities, Mullahs, and Modernity: Reshaping Community in the Former Soviet Union* 8 (Edward W. Walker, ed.) (International and Area Studies, University of California, 1997) (on Mikhail Gorbachev's program of radical socioeconomic and political reform).

³⁰ See MacLoad and Mayfew, supra note 15, at 25 (arguing that Gorbachev's perestroika unlocked a Pandora's box of events that led to nationalistic grievances, spite towards Russian chauvinism, and ultimately, rioting and ethnic strife in the fervently Islamic Fergana Valley); see also Hunter, supra note 5, at 22 (stating that perestroika's limited freedom led to the emergence of religious groups and unleashed inter-ethnic tensions that sometimes degenerated into violence, including riots and attacks). But see Saroyan, supra note 29, at 8 (discussing the instability among the Muslim populations of the former Soviet Union in the 1970s and 1980s, but arguing that there was not a great Muslim insurgency against the state like that found in Afghanistan and Iran).

³¹ See Hunter, supra note 5, at 22–23 (explaining that Gorbachev used the emergence of Islam and other competing forces to replace local leaders and force them to follow Moscow's line, while Yeltsin, Gorbachev's primary opponent, promised even more freedom to the republics and encouraged Islamic activities to undermine the republican leadership sided with Gorbachev).

viet Union.³² Islam Karimov,³³ a former Communist leader, was installed as president of the Republic of Uzbekistan,³⁴ and instantly found himself engaged in a struggle with Uzbekistan's Islamic leaders over religious freedom.³⁵ The Islamic leaders, arguing against state-sponsored Islam, attracted the support of many Uzbeks.³⁶ President Karimov viewed the Islamic leaders as ideological rivals and a threat to his political interests.³⁷ To suppress Islamic power, Karimov fortified the state-dominated Islamic establishment and banned independent Islamic practice.³⁸

Faced with economic crisis and shortages of basic goods,³⁹ the majority of

³² See MacLoad and Mayhew, *supra* note 15, at 28 (on Uzbekistan's declaration of independence September 1, 1991, as the Soviet Union disintegrated, and conversion of the 1924 borders to real international boundaries). See also generally *Independent Uzbekistan Today*, *supra* note 2, at 3 (setting forth Uzbekistan's Declaration of Independence).

³³ See Hunter, *supra* note 5, at 21 (on Karimov's appointment as First Secretary of the Communist Party in Uzbekistan in 1989).

³⁴ See MacLoad and Mayhew, *supra* note 15, at 28 (explaining that Karimov, former chief of the Communist Party, was sworn in as president with one hand on his heart and the other hand on the Koran); see also Olcott, *supra* note 4, at 31, 114 (on Karimov's being popularly elected President in December 1991 and arguing that his symbolic adherence to Islam at the onset of his presidency was only for financial reasons); Hunter, *supra* note 5, at 39 (on Karimov's tenure as president until the year 2000).

³⁵ See Olcott, *supra* note 4, at 117 (discussing the losing battle Karimov fought against Uzbekistan's Islamic leaders over Islam and religious freedom).

³⁶ See *id.* (noting that the Islamic leaders, who championed religious freedom, attracted supporters from all parts of society).

³⁷ See *id.* at 118 (explaining that Karimov began to see the Islamic leaders as possible traitors); see also Hunter, *supra* note 5, at 36–37 (discussing the Uzbek government's assumption that the Islamic leaders are establishing a strong Islamist network dedicated to spreading Islamic fundamentalism and establishing Islamic governments).

³⁸ See Hunter, *supra* note 5, at 36–37 (stating that Karimov created a state-dominated Islamic establishment in reaction to his fear of Islamic fundamentalism); see also Olcott, *supra* note 4, at 117–19 (explaining that Karimov subjugated religious affairs to the control of the state, just as they were under the Soviet apparatus).

³⁹ See Olcott, *supra* note 4, at 21 (explaining that due to a clash on Uzbek cotton prices with Russia, Uzbekistan entered the winter of 1992 with a shortage of fuel and grain); see also Hunter, *supra* note 5, at 71–73 (discussing the high inflation, high unemployment, and deteriorating living standards in Uzbekistan since 1992).

Uzbeks are indifferent to Karimov's actions.⁴⁰ Islamic leaders and their fervent followers, however, want the freedom of religion as a basic human right that is protected by international human rights law and the Uzbek Constitution.⁴¹

II. International Law and Religious Freedom

Freedom of religion is considered the most fundamental⁴² human right protected by international law,⁴³ and all states are obligated to respect and protect this right.⁴⁴ Religious freedom⁴⁵ is as important to the sanctity and dignity of the human person⁴⁶ as it is to the recognition, protection, and maintenance of a free and democratic state.⁴⁷

⁴⁰ See MacLoad and Mayhew, *supra* note 15, at 28 (characterizing the reaction of the people, faced with shortages of basic needs, to Karimov's actions as cynical).

⁴¹ See *id.* at 28 (arguing that in the ideological vacuum, people are returning to Islam for consolation); see also Hunter, *supra* note 5, at 35 (noting that many observers have maintained that Islam could be the main contender to fill the ideological vacuum created by the discrediting of communism); Olcott, *supra* note 4, at 33 (arguing that Islam will come to power in Uzbekistan at some point).

⁴² See James E. Wood, Jr., *The Relationship of Religious Liberty to Civil Liberty and a Democratic State*, B.Y.U.L. Rev. 479, 489 (1998) (arguing that it is widely conceded that freedom of religion is a basic civil liberty or human right, fundamental and integral to the advancement of all other human rights).

⁴³ See Statute of the International Court of Justice, Art. 38(1)(a–d) (identifying four sources of international law: 1) international conventions, 2) customary international law, 3) state practice (as recognized by “civilized nations”), and 4) subsidiary sources of international law).

⁴⁴ See Wood, *supra* note 42, at 496–97 (arguing that more states are voluntarily entering into constitutional and treaty commitments to secure freedom of religion for their own citizens).

⁴⁵ See *id.* at 479 (defining religious liberty, *inter alia*, as the inherent right of a person to profess or not to profess a religious faith; to worship or not to worship, in public or in private, according to one's own conscience, understanding, or preferences; to join in association with others of like faith or beliefs).

⁴⁶ See U.N. Charter preamble (declaring the purpose of the Charter, *inter alia*, to reaffirm faith in fundamental human rights and in the dignity and worth of the human person); see also Wood, *supra* note 42, at 484–85 (asserting that the sacredness of personhood, the intrinsic worth of the human person, is intrinsically bound to freedom of religion).

⁴⁷ See Wood, *supra* note 42, at 484 (arguing that religious freedom ultimately forms the basis of constitutional government, a limited state, and a free and democratic society). “Recognition of freedom of religion and conscience is integrally

Since World War II, freedom of religion has earned international recognition in the norms of international law and in international agreements,⁴⁸ which comprise a primary source of human rights.⁴⁹ The United Nations established freedom of religion as an international standard with the Universal Declaration of Human Rights (UDHR),⁵⁰ the International Covenant on Civil and Political Rights (ICCPR),⁵¹ and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (DRID).⁵² These international agreements provide the international standard for religious freedom with which Uzbekistan's legislation and official practice must comport.

A. Universal Declaration of Human Rights. The United Nations General Assembly adopted the UDHR, which gives specific attention to freedom of religion as a fundamental human right.⁵³ Article 2 of the UDHR establishes that everyone is entitled to all the rights and freedoms in the UDHR without respect to religion.⁵⁴ Additionally, Article 18 specifically recognizes the right to freedom of religion.⁵⁵

related to all other civil liberties and to the maintenance of a free and democratic state." *Id.* at 488.

⁴⁸ See Eric Kolodner, Comment, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation*, 12 *UCLA Pac. Basin L.J.* 407, 410 (1994) (explaining that post-World War I religious minority agreements influenced and provided a basis for post-World War II agreements); see also Wood, *supra* note 42, at 491 (arguing that it has only been during the past half century, since World War II, that freedom of religion has been given international recognition).

⁴⁹ See Emily N. Marcus, Note, *Conscientious Objection as an Emerging Human Right*, 38 *Va. J. Int'l L.* 507, 513 (1998) (asserting that international treaties comprise a primary source of rights in international and human rights law).

⁵⁰ U.N. G.A. Res. 217 (III 1948) [hereinafter UDHR] (adoption of the UDHR by the General Assembly on Dec. 10, 1948).

⁵¹ 999 U.N.T.S. 171 (16 Dec. 1966) [hereinafter ICCPR].

⁵² GA Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981) [hereinafter DRID].

⁵³ See Wood, *supra* note 42, at 493 (stating that three years after its founding, the U.N. General Assembly adopted into force the UDHR, which gives specific attention to a person's right to religion as a basic human right).

⁵⁴ UDHR, *supra* note 50, Art. 2 (proscribing discrimination based on religion). "Everyone is entitled to all the rights and freedoms set forth in the declaration, without discrimination of any kind, such as . . . religion." *Id.*

⁵⁵ See *id.* at Art. 18 (guaranteeing religious freedom). "Everyone has the right to

While the UDHR affirms religious freedom, Article 29 also authorizes a state to restrict such rights and freedoms to meet the requirements of “morality,” “public order,” and “the general welfare in a democratic society.”⁵⁶ The restrictive language of this provision raises difficult interpretive issues as to the meaning and scope of religious freedom recognized by the UDHR.⁵⁷ Restriction of religious freedom based on morality is especially disturbing because it allows government action based on ascribed superiority and inferiority.⁵⁸ Moreover, it is unclear from the language of Article 29 whether such authorized restrictions are subject to procedural safeguards.⁵⁹

Irrespective of the interpretive problems, Uzbek law and practice restrict-

freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” *Id.* See also Wood, *supra* note 42, at 493 (observing that Article 18 of the UDHR has been incorporated into the national constitutions of many nations throughout the world, particularly in the nations that have emerged since 1948).

⁵⁶ UDHR, *supra* note 50, Art. 29(2) (providing derogations to religious freedom). “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” *Id.* See also Kolodner, *supra* note 48, at 411 (stating that while the Declaration echoed previous antidiscrimination principles and expanded religious freedom, it still included conditions under which any government could legitimately restrict such rights).

⁵⁷ See Kolodner, *supra* note 48, at 411 (arguing that the ambiguity of these three terms inherently raises difficulties); see also Francesco Francioni, *An International Bill of Rights: Why it Matters, How it Can Be Used*, 32 *Tex. Int’l L.J.* 471, 480 (1997) (discussing some of the problems raised by the concepts and terms in the derogations clauses).

⁵⁸ See Kolodner, *supra* note 48, at 412 (stating that restrictions based on morals potentially licenses a government to prohibit any religious system whose moral foundation diverges from majoritarian values); see also Francioni, *supra* note 57, at 480–81 (explaining that these terms entail a very wide latitude of discretionary appreciation by national authorities).

⁵⁹ See Francioni, *supra* note 57, at 480–81 (explaining that discretionary limitations should not be left unchecked and the national courts should subject these terms to procedural safeguards); see also Kolodner, *supra* note 48, at 412 (arguing that the explication and limitation of such derogation clauses is a difficult but necessary task confronting the international community).

ing Islamic adherents' right to teach,⁶⁰ practice,⁶¹ and worship,⁶² on the basis of political fears,⁶³ without legal justification, does not comport with Article 29⁶⁴ and the religious freedom standard of the UDHR.⁶⁵

B. *The International Covenant On Civil and Political Rights*. The ICCPR⁶⁶ is a primary source of international human rights law,⁶⁷ and a

⁶⁰ See United States Department of State, *Uzbekistan Country Report on Human Rights Practices for 1997*, Bureau of Democracy, Human Rights, and Labor, 30 Jan. 1998, <http://www.state.gov/www/global/human_rights/1997_hrp_report/uzbekist.html>, 2.c (11 Feb. 2000) [hereinafter Country Report 1997] (describing how several imams were forbidden to teach for failing a government-designed test).

⁶¹ See International Helsinki Federation for Human Rights (IHFHR), Annual Report 1998, 23 Oct. 1998, <<http://www.ihf-hr.org/reports/ar98/ar98uze.htm>>, section "Freedom of Religion" (11 Feb. 2000) [hereinafter Helsinki Annual Report 1998], and Human Rights Watch World Report 1999, *Uzbekistan: Human Rights Developments*, <<http://www.hrw.org/hrw/worldreport99/europe/uzbekistan.html>>, at t.ss. "simply because they had beards" and "wearing "ritual" attire" (11 Feb. 2000) [hereinafter HRW World Report 1999] (describing the various aspects of independent Islam that have been restricted by the government, including the call to worship, Islamic dress, and traditions).

⁶² See Abdumannob Polat, *Uzbekistan: Is Islamic Fanaticism a Threat to Stability?*, Union of Councils for Soviet Jews Central Asia Human Rights Network, 9 Dec. 1998, <<http://www.fsumonitor.com/stories/120998uzbek.shtml>>, at t.s. "Fridays, at noon" (11 Feb. 2000) (asserting that many Muslims only attend mosque on Fridays, at noon, because of fear for the authorities' reactions).

⁶³ See Hunter, *supra* note 5, at 36–37 (describing Karimov's political fears of Islamic fundamentalism as the only reason for limiting religious freedom); see also Economist, *supra* note 7, at 40 (asserting that political fears have obstructed religious freedom); see also Polat, *supra* note 62, at t.s. "The real threat of fanatical Islam" (summarizing that the threat of Islamic fundamentalism is inflated by the government to justify its denial of freedom of expression and competition to the regime).

⁶⁴ UDHR, *supra* note 50, Art. 29(2) (setting forth the authorized limitations).

⁶⁵ See *id.* (establishing as the standard that religious freedom shall *only* be subject to such limitations as are determined by law); see also Francioni, *supra* note 57 (asserting that the standard shall be that any derogation or restriction should be transparent, prescribed by law, necessary to a democratic society, and in accordance with the law).

⁶⁶ ICCPR, *supra* note 51.

⁶⁷ See Marcus, *supra* note 49, at 514 (stating that the ICCPR is a primary human rights document because it is a treaty with numerous state parties, articulates human rights with specificity, and serves as a model for other human rights treaties); see also Kolodner, *supra* note 48, at 412 (asserting that the ICCPR is an important inter-

powerful protector of religious freedom.⁶⁸ Article 2 of the ICCPR proscribes religious discrimination in fulfilling any of the rights set out in the provisions of the ICCPR.⁶⁹ In the same vein, Article 26 of the ICCPR prohibits religious discrimination.⁷⁰ Article 18(1) specifically guarantees the right to freedom of religion.⁷¹ This article mandates that the freedom of an individual to have or adopt a religion may not be restricted.⁷² Additionally, Article 18(4) of the ICCPR guarantees the right to a religious education.⁷³

national agreement that protects religious liberties).

⁶⁸ See Kolodner, *supra* note 48, at 412 (stating that the ICCPR is legally binding on parties who accede to it); see also Francioni, *supra* note 57, at 474 (arguing that the ICCPR transformed the “soft law,” i.e., non-binding effect of the UDHR into hard and more precise law that is more powerful); Donna E. Artz, *Heroes or Heretics: Religious Dissidents Under Islamic Law*, 14 *Wis. Int’l L.J.* 349, 358 (asserting that the strength of the ICCPR comes from it being adopted by 125 countries, including 23 Muslim states).

⁶⁹ ICCPR, *supra* note 51, Art. 2(1) (stating that each party to the Covenant undertakes to ensure and respect the rights in the Covenant without distinction of any kind such as, *inter alia*, religion).

⁷⁰ See *id.*, at Art. 26 (proscribing religious discrimination). “[T]he law shall prohibit any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as, *inter alia*, religion.” *Id.* See also Kolodner, *supra* note 48, at 412 (explaining that Art. 26 of the ICCPR mirrors the prohibition on discrimination found in Art. 2 of the UDHR).

⁷¹ ICCPR, *supra* note 51, Art. 18(1) (guaranteeing religious freedom): “Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of 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.” *Id.* See also Kolodner, *supra* note 48, at 412 (drawing similarities between Art. 18 of the ICCPR and Art. 18 of the UDHR).

⁷² See Marcus, *supra* note 49, at 515 (asserting that the right to *adopt a religion or belief* of one’s choice, set out in Art. 18(1) of the ICCPR, is a *non-derogable* right); *but see* ICCPR, *supra* note 51, Art. 18(2) (specifying that the freedom to *manifest or practice* one’s religion or beliefs may be subject to such limitations as are prescribed by law); Kolodner, *supra* note 48, at 412 (addressing the similarities between the ICCPR and the UDHR in regard to the derogations permitted in both documents to the freedom to *manifest* one’s religion).

⁷³ ICCPR, *supra* note 51, Art. 18(4) (guaranteeing a religious education for children). “The States Parties to the present Covenant undertake to have respect for the liberty of parents, and when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” *Id.*

Article 18(3) of the ICCPR only authorizes limitations to the right to practice one's religion as prescribed by law.⁷⁴ Despite the interpretive flexibility found in the language of the derogations,⁷⁵ the Uzbek government's official distaste for Islam as an ideological rival does not qualify as a legal restriction under Article 18(3).⁷⁶ Moreover, by arbitrarily closing Islamic religious schools,⁷⁷ without legal justification, Uzbekistan's restrictions do not conform with the authorized limitations set forth in Article 18(3) and violates Article 18(4).⁷⁸ Thus, Uzbekistan's limitations of the right to Islamic freedom of religion do not conform with the religious freedom standard of the ICCPR.

C. The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. The DRID⁷⁹ constitutes an important human rights instrument recognizing freedom of religion as a norm of international law and as the cornerstone of all human rights.⁸⁰ It is specific

⁷⁴ See *id.* at Art. 18(3) (setting forth the permissive derogations to the right to manifest one's religion).

⁷⁵ See Kolodner, *supra* note 48, at 411 (discussing the vagueness of the possible derogations and how easily a government could manipulate the interpretation); see also Francioni, *supra* note 57, at 480 (arguing that the restrictive concepts entail a wide latitude of discretionary appreciation by national authorities).

⁷⁶ See Country Report, *supra* note 60, at t.ss. "Government limits freedom of religion" and "Fearing the destabilizing influence" (reporting that Karimov's fear of an Islamic challenge to his regime is the primary reason for repressing independent Islam); see also Olcott, *supra* note 4, at 118–19 (arguing that Karimov turned against the Islamic community out of fear of a political turnover); Hunter, *supra* note 5, at 36–37 (positing the various arguments about the actual threat or power of Islam in Uzbekistan and asserting that Islam will not take hold in Uzbekistan as long as the government continues to effectively subordinate Islam to the state).

⁷⁷ See Human Rights Watch, *supra* note 1, at 22, and Helsinki Annual Report 1998, *supra* note 61, at t.s. "restrictive moves undertaken" (mentioning the closure of *madrasas* [religious schools]).

⁷⁸ ICCPR, *supra* note 51, at Art. 18(3) (asserting that the rights set forth in Art. 18 may only be limited as prescribed by law).

⁷⁹ DRID, *supra* note 52.

⁸⁰ See Wood, *supra* note 42, at 491–92 (arguing that with the adoption of the DRID, the U.N. went out of its way to note that religious discrimination must be regarded as an "affront to human dignity," and a "disavowal" of the very principles of the U.N. Charter); see also Kolodner, *supra* note 48, at 413 (stating that the DRID constitutes the first U.N. instrument proclaiming, in comprehensive form, a catalogue of rights, freedoms, and principles related only to religion).

as to religious rights.⁸¹ Article 1 provides for the right to freedom of religion including the right to religious beliefs and to practice one's religious beliefs.⁸² Religious education is protected in Article 5 of the DRID, including the right to access to a religious education.⁸³ Article 6 delineates the religious manifestations protected by the DRID, which are afforded to all people, irrespective of their political affiliations.⁸⁴

Article 1(3) of the DRID authorizes derogation from the freedom to practice one's religion.⁸⁵ The limitations provided in Article 1(3) of the DRID raise problems of governmental interpretation similar to those raised by the

⁸¹ See Kolodner, *supra* note 48, at 413 (explaining that the DRID announces various specific religious rights); see also Artz, *supra* note 42, at 359 (setting forth the specific freedoms the DRID delineates with regard to the right to manifest one's religion).

⁸² DRID, *supra* note 52, at Art. 1 (guaranteeing the right to freedom of religion). "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. to manifest his religion or belief in worship, observance, practice and teaching." *Id.*

⁸³ See *id.* at Art. 5 (declaring that every child shall enjoy the right to have access to a religious education in accordance with the wishes of his parents or guardians).

⁸⁴ See *id.* at Art. 6 (delineating specific protected manifestations of freedom of religion):

[T]he right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes; . . .
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes; . . .
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels. *Id.*

⁸⁵ See *id.* at Art. 1(3) (setting forth the authorized derogations to the freedom of religion): "Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." *Id.*

restrictions authorized in the UDHR and ICCPR.⁸⁶ Restricting the distribution of Islamic religious materials,⁸⁷ controlling the training, appointing, and electing of Islamic religious leaders,⁸⁸ forcing the religious leaders to pass a political test as a prerequisite for employment,⁸⁹ and closing private Islamic religious schools⁹⁰ without legal justification as required by Article 1(3) clearly do not conform with the DRID standards of the right to freedom of religion.⁹¹

The DRID, however, contains explicit language concerning a government's legal obligations in such cases of discrimination or unlawful restrictions.⁹² Article 4(2) directs states to take all appropriate legal measures to

⁸⁶ See Kolodner, *supra* note 48, at 413 (comparing Art. 1 and the enunciated "general welfare" limitations of the DRID with the ICCPR and the UDHR and asserting that the primary difference between the provisions is that Art. 1(3) of the DRID only authorizes derogation from the manifestation of religion, whereas the ICCPR and the UDHR restrict the freedom of religious belief altogether); see also Wood, *supra* note 42, at 493–94 (arguing that the DRID provides freedom of religion with explicit and unequivocal recognition as an inviolable and sacred human right).

⁸⁷ See Country Report 1997, *supra* note 60, at t.s. "freedom of speech and the press" and sec. 2.a, and United States Department of State, *Uzbekistan Country Report on Human Rights Practices for 1998*, Bureau of Democracy, Human Rights, and Labor, 26 Feb. 1999, <http://www.state.gov/www/global/human_rights/1998_hrp_report/uzbekist.html>, at t.s. "a license to publish" (21 Feb. 2000) [hereinafter Country Report 1998] (discussing how the Uzbek government strictly controls access to information and the production and distribution of religious materials).

⁸⁸ See Human Rights Watch, *supra* note 1, at 22 (explaining that only the state-designated Spiritual Directorate may elect or position someone to teach Islam).

⁸⁹ See Country Report 1997, *supra* note 60, at t.s. "imam test" (describing the government-designed "imam test," which includes "questions about political and economic policy outside the traditional sphere of a religious cleric"); see also Human Rights Watch, *supra* note 1, at 23 (stating that the reason for the dismissals of several independent-minded Islamic clerics was that they failed re-qualification tests administered by the government, which are probably used to weed out unwanted clerics).

⁹⁰ See Country Report 1997, *supra* note 60, at t.s. "restrictions have also" (explaining that bureaucratic restrictions have inhibited the free operation of many religious schools).

⁹¹ See Kolodner, *supra* note 48, at 413–14 (stating that the DRID specifically enunciates religious rights in Art. 6 and these rights can only be limited as prescribed by law); see also Francioni, *supra* note 57, at 480–81 (articulating that derogations and restrictions should be transparent, prescribed by law, necessary in a democratic society, and in accordance with the law).

⁹² See Kolodner, *supra* note 48, at 414 (arguing that the legal force of the DRID

prohibit religious discrimination and to combat intolerance, even if it is the state or a state institution perpetrating the discrimination, including upholding constitutional protections of religious freedom, revoking unlawful legislation, and prohibiting discriminatory practices.⁹³

To comply with the DRID and the other international standards of religious freedom, Uzbekistan must make changes at the national level.⁹⁴ Thus, this paper shifts its focus from the international standards of religious freedom to Uzbekistan itself to determine whether Uzbek legislation and official practices should be revoked, amended, or added to so as to comport with the international standards of religious freedom as established by the UDHR, the ICCPR, the DRID, and the Uzbek Constitution.

III. Uzbek Legislation and Policies Regarding Religious Freedom

A. Uzbek Constitutional Provisions. The Uzbek Constitution⁹⁵ establishes the limits of Uzbek religious freedom and human rights in general. The Preamble to the Constitution asserts Uzbekistan's general devotion to human rights and recognizes the primacy of norms of international law.⁹⁶ Article 31 explicitly guarantees freedom of religion,⁹⁷ and protects the right to manifest

derives from the fact that the U.N. General Assembly unanimously adopted it with strong language requiring governments to enact or rescind legislation which fosters discrimination or restricts religious liberties).

⁹³ DRID, *supra* note 52, Art. 4(2) (mandating that States abide by the standards set forth in the DRID): "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter." *Id.* See also Kolodner, *supra* note 48, at 414 (arguing that the strong language as to a government's duty to rescind unlawful religious legislation reflects the binding nature of the DRID); Artz, *supra* note 68, at 359 (explaining that this article requires states to make all necessary legislative efforts to prohibit religious discrimination and to combat intolerance on the grounds of religion).

⁹⁴ See Country Report 1997, *supra* note 60, at t.s. "pace of reform slowed" (asserting the uncertain effectiveness of legislative reform measures).

⁹⁵ See Uzbekistan, *Constitution of the Republic of Uzbekistan*: adopted on December 8, 1992 at the eleventh session of the Supreme Council of the Republic of Uzbekistan, twelfth convocation (Tashkent, 1992) [hereinafter *Uzb. Const.*].

⁹⁶ See *id.* at preamble (asserting that the People of Uzbekistan declare devotion to human rights and recognize the primacy of generally recognized norms of international law).

⁹⁷ See *id.* at § 2, Ch. VII, Art. 31 (guaranteeing freedom of religion): "Freedom of conscience is guaranteed for all. Each person has the right to practice any, or no, religion. Forced imposition of religious views is not permitted." *Id.* See also Country

a religion.⁹⁸ Separation of religion and state is mandated in Article 61.⁹⁹

The Uzbek Constitution, however, also restricts the right to freedom of religion in three articles of the Constitution.¹⁰⁰ First, Article 16 provides that the rights and interests of the Republic of Uzbekistan supersede any provision of the Constitution.¹⁰¹ The meaning and limitation of this restriction is unclear and undermines freedom of religion.¹⁰² Article 16 authorizes the government to limit the right to manifest one's religion in light of *any* rights and interests of the state,¹⁰³ which in this case are political interests.¹⁰⁴

Second, Article 20¹⁰⁵ states that one's exercise of rights and freedoms may not violate the lawful interests, rights, and freedoms of the state or society. Like Article 16,¹⁰⁶ the ambiguity of the language in Article 20 provides an

Report 1997, *supra* note 60, at t.s. "c. Freedom of Religion" (noting that the Uzbek Constitution provides for freedom of religion).

⁹⁸ See Uzb. Const., *supra* note 95, § 2, Ch. VII, Art. 31 (asserting that each person has the right to practice any, or no, religion).

⁹⁹ See *id.* at § 3, Ch. XIII, Art. 61 (mandating separation of religion and State): "Religious organizations and associations are separate from the state and equal before the law. The state does not interfere in the activities of religious associations." *Id.*

¹⁰⁰ See Hunter, *supra* note 5, at 60 (setting forth the various provisions of the Uzbek Constitution that qualify the exercise of basic rights and liberties).

¹⁰¹ See Uzb. Const., *supra* note 95, at § 1, Ch. III, Art. 16 (providing a limitation to the rights and liberties set forth in the Constitution): "No provision of this Constitution may be interpreted to prejudice the rights and interests of the Republic of Uzbekistan." *Id.*

¹⁰² See Hunter, *supra* note 5, at 60 (arguing that it is unclear what is meant by "interests" of the State); see also Kolodner, *supra* note 48, at 422 (discussing the problems with vague constitutional provisions, using the Chinese Constitution as an example).

¹⁰³ See Kolodner, *supra* note 48, at 422 (stating that it is unclear how even a well-intentioned local official could interpret vague terms and confidently determine that any religious activity is protected by the Constitution).

¹⁰⁴ See Hunter, *supra* note 5, at 60 (arguing that the government has interpreted this provision to serve its suppression of the Muslim community); see also Economist, *supra* note 7, at 40 (asserting that the Uzbek government views Muslims as an opposition to the government).

¹⁰⁵ See Uzb. Const., *supra* note 95, at § 2, Ch. V, Art. 20 (providing restrictions to the rights and privileges set forth in the Constitution): "A citizen's exercise of rights and freedoms may not violate the lawful interests, rights, and freedoms of other people, the state, or society." *Id.*

¹⁰⁶ See *id.* at § 1, Ch. III, Art. 16 (setting forth restrictions to the constitutional

additional obstacle for religious adherents because Uzbek officials interpret the words “lawful interests, rights, and freedoms” to suit their own purposes, including suppressing perceived ideological and political opponents.¹⁰⁷

Finally, Article 61, which provides for the separation of religion and state,¹⁰⁸ falls prey to the state’s “rights and interests” and “lawful freedoms” limitations provided in Article 16¹⁰⁹ and Article 20,¹¹⁰ respectively. Thus, Uzbekistan may call itself a secular state,¹¹¹ but the state maintains control over religious life.¹¹² According to Shireen Hunter, a Central Asian scholar, secularism in Uzbekistan means subordination of religion to the state, rather than separation.¹¹³ The state illegitimately subjugates religion to the state apparatus in order to pursue one political goal of eliminating any potential Islamic political power and one personal goal of retaining power at all costs.¹¹⁴

Additionally, there is a systemic issue that further impedes fulfillment of the constitutionally protected right to freedom of religion in Uzbekistan.

provisions).

¹⁰⁷ See Hunter, *supra* note 5, at 60 (asserting that the government abuses the ambiguity of the concept “lawful interests” and abuses it for political purposes); see also Kolodner, *supra* note 48, at 422 (discussing how government officials often misinterpret constitutional provisions to suit their political fiat and ideology).

¹⁰⁸ See Uzb. Const., *supra* note 95, § 3, Ch. XIII, Art. 61 (mandating separation of religion and state).

¹⁰⁹ See *id.* at § 1, Ch. III, Art. 16.

¹¹⁰ See *id.* at § 2, Ch. V, Art. 20.

¹¹¹ See Hunter, *supra* note 5, at 40 (stating that Uzbekistan characterizes its political system as secular and democratic, emphasizing the separation between religion and state).

¹¹² See Olcott, *supra* note 4, at 117–20 (discussing the state-controlled Islam, the Spiritual Directorate, and the powers of the state in controlling Islam); see also Human Rights Watch, *supra* note 1, at 22 (arguing that the state maintains centralized control over religious life through the governmental Spiritual Directorate, which allocates state money for building and renovating religious structures and for religious education).

¹¹³ See Hunter, *supra* note 5, at 60 (describing the Uzbek definition of “secularism”): “In fact, ‘secularism’ in the Uzbek definition has come to mean subordination of religion to the state, rather than their separation.” *Id.*

¹¹⁴ See Country Report 1997, *supra* note 60, from t.s. “suppresses some religious groups” to “mid-1995 and remains closed” (reporting that the Uzbek government violates the separation of religion and state principle by controlling and funding Islamic religious activities in an effort to destabilize any Islamic political power).

There is no true separation of powers¹¹⁵ and no independent judiciary.¹¹⁶ Thus, there is an absence of an independent force to protect the rights of citizens or give independent power to the Uzbek Constitution and its provisions.¹¹⁷

Although the Uzbek Constitution clearly provides for freedom of religion,¹¹⁸ the state distorts and abuses constitutional limitations of this human right for questionable purposes.¹¹⁹ State-sponsored Islam violates the Separation of Religion and State article of the Uzbek Constitution.¹²⁰ Moreover, the lack of a true separation of powers and an independent judiciary undermines the power and meaning of the Uzbek Constitution.¹²¹ The integ-

¹¹⁵ See Uzb. Const., *supra* note 95, at § 1, Ch. II, Art. 11 (providing that the system of state power in Uzbekistan is based on the principle of separation of powers into legislative, executive, and judicial powers); see also *id.* at § 5, Ch. XVIII–XXII (explaining specifically the organization of state power in Uzbekistan, which is based on a separate Parliament, Executive, and Judiciary); see also Country Report 1997, *supra* note 60, beginning (claiming that although the Uzbek Constitution “provides for a presidential system with separation of powers between the executive, legislative, and judicial branches,” Karimov has created a centralized executive branch that dominates all other branches).

¹¹⁶ See Country Report 1997, *supra* note 60, introduction (arguing that “although the Uzbek Constitution provides for an independent judiciary, the judicial branch is heavily influenced by the executive branch in civil and criminal cases,” and that “the judiciary does not always ensure due process and takes its direction from the executive branch”).

¹¹⁷ See Kolodner, *supra* note 48, at 422 (arguing that the absence of an independent judiciary ensures the government’s monopoly over constitutional interpretation, and because the judiciary is not in a position to enforce the constitution against political authority, the government is under no pressure to respect constitutional rights and protections).

¹¹⁸ See Uzb. Const., *supra* note 95, at § 2, Ch. VII, Art. 31 (guaranteeing freedom of religion).

¹¹⁹ See Hunter, *supra* note 5, at 60–61 (discussing how the government interprets the constitutional limitations to restrict the religious rights of Muslims because of a perceived threat of Islamic fundamentalism).

¹²⁰ See *id.* (describing the various ways the State controls Islam and how this is clearly a failure to abide by the separation of religion and state principle set out in the Constitution); see also Country Report 1997, *supra* note 60, at t.s. “c. Freedom of Religion” (asserting that despite the constitutional principle of separation of religion and state, the government clearly suppresses and controls Islam).

¹²¹ See Country Report 1997, *supra* note 60, 1st para. (explaining that the Uzbek executive clearly dominates the legislative and judicial branches, despite the consti-

rity of and respect for this supreme body of law is reportedly threatened by repeated violations of its provisions by the Uzbek government.¹²²

B. Decrees and Laws on Religious Freedom. Another source of law concerning the limits of Uzbek religious freedom is recent, restrictive legislation.¹²³ A brief introduction to the Uzbek legislative process is necessary to understand recent religious laws and decrees.¹²⁴ According to the Uzbek Constitution, the Parliament exercises legislative power.¹²⁵ The Parliament has exclusive jurisdiction over adopting, amending, and adding to the laws of the Republic as well as to the Constitution.¹²⁶ The right to introduce legislation in the Parliament, however, belongs to the President.¹²⁷ Moreover, the President may issue decrees, resolutions, and orders, which have obligatory force throughout Uzbekistan without a vote by Parliament.¹²⁸ The Constitutional Court must determine the compatibility of the Uzbek Constitution with the laws of the Republic of Uzbekistan and the decrees of the Uzbek President.¹²⁹

tutional provision mandating their separation).

¹²² See *id.*, *passim* (setting forth all the constitutional provisions that are being violated by the Uzbek government in support of the conclusion that Uzbek government is authoritarian); see also Hunter, *supra* note 5, at 38 (asserting that because the Uzbek Constitution is not respected, there is no democracy in Uzbekistan).

¹²³ See Country Report 1998, *supra* note 87, at t.s. "On May 1, the Parliament" (reviewing recent legislation that restricts religious freedom).

¹²⁴ See Kolodner, *supra* note 48, at 423 (arguing that in evaluating religion restrictions, it is important to look at the legislative protection of religious freedom).

¹²⁵ See Uzb. Const., *supra* note 95, at § 5, Ch. XVIII, Art. 76 (establishing that the highest state representative agency is the Parliament of Uzbekistan, which exercises the legislative power).

¹²⁶ See *id.* at § 5, Ch. XVIII, Art. 78(1) and (2) (expressing Parliament's exclusive jurisdiction over adopting, amending, and adding laws); see also *id.* at Art. 83 (establishing that the Parliament of Uzbekistan adopts laws, resolutions, and other acts, which requires a majority of the votes of the total number of Parliament deputies).

¹²⁷ See *id.* at Art. 82 (mandating that the right to introduce draft legislation in the Parliament of Uzbekistan belongs to the President of Uzbekistan).

¹²⁸ See *id.* at § 5, Ch. XIX, Art. 94 (establishing that the President of Uzbekistan may issue decrees, resolutions, and orders which have obligatory force over the entire territory of the republic).

¹²⁹ See *id.* at § 5, Ch. XXII, Art. 109(1) (providing that the Constitutional Court of Uzbekistan must determine the compatibility of the Constitution with national laws, other acts adopted by the Parliament, and Presidential decrees).

In practice, however, the President is more powerful than the legislative and judicial branches,¹³⁰ and this is often reflected in the Parliament's votes and the judiciary's decisions or lack thereof.¹³¹ President Karimov utilizes his disproportionate authority to enact legislation in Uzbekistan that represses independent Islamic religious belief and practice.¹³² According to a 1998 Human Rights Watch report,¹³³ the Uzbek government has increased its official legislative restrictions against independent Islamic worship since 1996.¹³⁴

Several recently enacted laws, amendments, and decrees are of particular

¹³⁰ See Commission on Security and Cooperation in Europe (CSCE), *Political Reform and Human Rights in Uzbekistan, Kyrgyzstan and Kazakstan*, Mar. 1998, <<http://www.house.gov/csce/hongkongtxt.htm>>, from t.s. "failures of democratization" to "of sideline criticism" (27 Feb. 1999) (arguing that the general trend of political development throughout Central Asia has been the emergence of presidents far more powerful than the legislative and judicial branches); see also Polat, *supra* note 62, at t.s. "no independent judiciary" (arguing that there is no independent judiciary in Uzbekistan); Country Report 1997, *supra* note 60, beginning, at t.s. "separation of powers" (noting the lack of true separation of powers in Uzbekistan).

¹³¹ See Country Report 1997, *supra* note 60, introduction (asserting that President Karimov and the centralized executive branch that serves him remain the dominant forces in political life, influencing the judicial branch in civil and criminal cases); see also Human Rights Watch, *supra* note 1, at 3–5 (describing how the Uzbek government uses legislation and official action to promote political goals and how there is no independent judiciary to keep this abusive action in check).

¹³² See Human Rights Watch, *supra* note 1, at 22–26 (discussing the government's legislative persecution of independent Islam); see also HRW World Report, *supra* note 61, at t.s. "The Law on Freedom of Conscience and Religious Organizations" (explaining that the legislation sets forth a legal framework for the repression of non-official Islamic worship, marginalizing religious groups perceived as a forum for opposition to Karimov's administration, and criminalizing certain practices of some religious groups in the country); Country Report 1997, *supra* note 60, at t.s. "Muslim leaders have been detained" (explaining that the government uses legislation and official orders to suppress independent Islam); Olcott, *supra* note 4, at 114 (describing Karimov's belief that Uzbekistan must be ruled by a strong hand and that any challenge to that iron fist must be sacrificed for the benefit of stability).

¹³³ See Human Rights Watch, *supra* note 1, at 3 (discussing the Uzbek government's backlash or crackdown against independent Islam).

¹³⁴ See *id.* (arguing that since 1996, the government has reportedly escalated its restrictions on Islam and its more independent adherents); see also Country Report 1997, *supra* note 60, at t.s. "Muslim leaders have been detained" (citing specific examples of government restrictions against independent Islamic worship since 1996).

relevance.¹³⁵ First, in 1997, the government began closing all mosques and Islamic primary and secondary schools¹³⁶ not registered according to the current religious law.¹³⁷ The government does not provide any legal explanation for closing these religious institutions.¹³⁸ Further, on January 8, 1998, the Muslim Board of Uzbekistan, a state-created and controlled institution,¹³⁹ banned loudspeakers at all mosques.¹⁴⁰ The Muslim Board cited “social order” as justification for banning loudspeakers, but it is not clear how this

¹³⁵ See Country Report 1998, *supra* note 87, from t.s. “the Government ordered the removal of loudspeakers” to “signs of conservative Islam”, and Helsinki Annual Report 1998, *supra* note 61, at t.s. “curbs on the use of loudspeakers” (providing specific examples of restrictions, including bans on the use of loudspeakers, steps taken to prevent students from wearing religious clothing, and the closure of independent religious schools and mosques); see also Human Rights Watch, *supra* note 1, at 22–26 (presenting recent legislation and Presidential decrees that affect religious freedom and criminalize religious practice).

¹³⁶ See Human Rights Watch, *supra* note 1, at 22 (definition of *madrasa*).

¹³⁷ See *id.* (explaining that the government closed Mosques and Islamic schools that did not register according to the 1991 religion law).

¹³⁸ See Country Report 1997, *supra* note 60, at t.s. “Bureaucratic restrictions” (citing bureaucratic restrictions as the explanation for the closing of the independent religious institutions).

¹³⁹ See Hunter, *supra* note 5, at 60 (explaining that the government controls the Islamic hierarchy by appointing compliant and submissive individuals to the office of Mufti, or chief religious leader, who leads the Muslim Board of Uzbekistan); see also Olcott, *supra* note 4, at 117–18 (stating that in April 1992, the state office of religious affairs was placed under the control of a nominated spiritual leader and the Muslim Board); Country Report 1997, *supra* note 60, at 9 (referring to the Spiritual Directorate for Muslims—or Muslim Board—as government controlled); Human Rights Watch, *supra* note 1, at 22 (affirming that the state maintains centralized control over religious life through the governmental Spiritual Directorate).

¹⁴⁰ See Human Rights Watch, *supra* note 1, at APPENDIX C: Decree No. 6, Muslim Board of Uzbekistan, Jan. 8, 1998 (banning loudspeakers set up in all mosques throughout Uzbekistan, asserting that it is in the interests of supporting social order):

1. Effective today, to remove all loudspeakers (microphones and radio devices) from all mosques throughout the republic.
2. To put before the next meeting of the Council of the Ulema (Muslim Board) the question of the dismissal of imams (religious leaders) who do not obey this decree.
3. To place responsibility for supervising the enforcement of this decree on the representatives of the Muslim Directorate of Uzbekistan in all *oblasts* (regions) throughout Uzbekistan. *Id.*

interest is served by the ban or, for that matter, how social order was violated or disturbed prior to the ban.¹⁴¹ Second, on May 1, 1998, the Parliament amended the state religion law so that religious associations are required to register with the government and any unregistered religious activity or unofficial religious speech is illegal.¹⁴² Again, the government has not provided any legal justification for imposing these burdensome and arbitrary restrictions, aside from alleged threats of Islamic fanaticism.¹⁴³ Third, the government imposed, by law, a state test that every religious leader must pass for authorization to lead Islamic worship or to teach.¹⁴⁴ There is no legal

¹⁴¹ See *id.* at 24–25 (arguing that it is not clear how social order is being affected by the loudspeakers when the government does not provide specific reasons such as the need to enforce quiet around hospitals or schools).

¹⁴² See HRW World Report 1999, *supra* note 61, at t.s. “The Law on Freedom of Conscience and Religious Organizations” (setting forth the provisions of the 1991 religion law). Article 5 prohibits private teaching of religious principles, Article 14 forbids wearing “ritual” attire in public, where violations of these provisions can result in a fine of five to ten times the amount of the minimum monthly wage or up to fifteen days in jail, and all religious groups face burdensome registration requirements under the law, with penalties of up to five years in jail for failure to register or participation in an unregistered religious group. *Id.* See also Center for Studies on New Religions (CESNUR), *Freedom of Thought, Conscience, Religion or Belief*, US Delegation Statement at OSCE Implementation Review Meeting, 27 Oct. 1998, <http://www.cesnur.org/testi/usgov_oct98.htm>, at t.s. “restrict religious liberty in Uzbekistan” (11 Feb. 2000) (reporting participating states that have enacted legislation restricting religious communities and increasing state control of religious institutions, specifically naming Uzbekistan as an example and referring to the religious legislation of 1998); Human Rights Watch, *supra* note 1, at 22 (discussing the law, passed on May 1, 1998, that sets additional restrictions on the registration of religious congregations); Polat, *supra* note 62, at t.s. “in May of 1998 the authorities” (explaining that the new rules set out in the May 1998 legislation restrict religious organizations, ban activities and education outside of bodies that are officially recognized by the government, and prohibit foreign missionaries).

¹⁴³ See Human Rights Watch, *supra* note 1, at 22 (under heading “Freedom of Religion”) (asserting that the religious legislation proposed to the Uzbek Parliament at the time of writing would probably pass into law without comment because the Uzbek Parliament traditionally supports passage of legislation and concluding that further restrictions would lead to further human rights violations).

¹⁴⁴ See Country Report, *supra* note 60 (under section “Freedom of Religion”) (describing the previously mentioned government-designed “imam test,” which includes questions about political and economic policy); see also Human Rights Watch, *supra* note 1, at 23 (stating that the reason for the dismissals of several independent-minded Islamic clerics was that they failed re-qualification tests admin-

justification, in secular law, for this legislative restriction.¹⁴⁵

Thus, through its legislation, the Uzbek government imposes state-sponsored Islamic observance upon Uzbek citizens and prohibits independent Islamic worship or education.¹⁴⁶ Not only do these legislative acts violate the Uzbek constitutional provision mandating separation of religion and state, but they also inhibit the right to freedom of religion in violation of constitutional guarantees and international standards of religious freedom established by the UDHR, the ICCPR, and the DRID.¹⁴⁷

C. Official Regulation of Religious Activity. In addition to recent legislation restricting independent Islamic worship, the government limits unofficial Islamic activity through official directives.¹⁴⁸ Many government restrictions

istered by the government).

¹⁴⁵ See Country Report 1997, *supra* note 60, at t.s. “imam test” (asserting that the test included questions outside the traditional sphere of a religious cleric); see also Human Rights Watch, *supra* note 1, at 23 (arguing that the test is used to weed out unwanted clerics); Hunter, *supra* note 5, at 60 (arguing that one way the state suppresses independent Islam and ideological opponents is to appoint and admit only compliant and submissive individuals to the role of religious leader).

¹⁴⁶ See Human Rights Watch, *supra* note 1 (concluding that since early 1992, Uzbekistan has tightened its grip, forcing practicing Muslims to choose between official Islam, controlled and funded by the State, and independent Islam, which is not aligned with Uzbekistan’s state-controlled Islamic structures and risks persecution); see also Amnesty International, Annual Report 1999, “Uzbekistan,” (24 Feb. 2000) <<http://www.amnesty.org/ailib/aireport/ar99/eur62.htm>>, at t.s. “strict Islamic sect” (asserting that Karimov introduced “tough” legislative measures to combat the perceived threat of independent Islam).

¹⁴⁷ See Country Report 1997, *supra* note 60, at t.s. “provides for freedom of religion” (asserting that the government suppresses independent Islam in violation of the constitutional provisions mandating freedom of religion and separation of religion and state); see also Human Rights Watch, *supra* note 1, at 22, 23 (arguing that Uzbekistan’s violations and restrictions of religious freedom violate Uzbekistan’s obligation to its Constitution and also international standards).

¹⁴⁸ See Human Rights Watch, *supra* note 1, at 22 (asserting that the government conducted periodic crackdowns against Muslims whose loyalty it questioned, arbitrarily detaining or arresting hundreds of people, dismissing the pious from state employment, impoverishing people by putting them on professional blacklists, closing Islamic education centers, prohibiting certain individuals from teaching Islam, and banning religious materials); see also Country Report, *supra* note 60 (asserting that the government “suppresses some religious groups that defy the authority of state-appointed religious authorities, particularly Islamic dissidents”); Polat, *supra* note 62, at t.s. “Today, there are just a few” (remarking that most Islamic community functions, including Islamic education, have given in to the government’s tight con-

and policies have negatively affected different aspects of religious freedom.¹⁴⁹

First, the government enforces restrictions against activities and expressions of Islamic faith.¹⁵⁰ For instance, the free exercise of Islam includes the right to wear certain types of clothing and to have a beard.¹⁵¹ For Uzbek men, with good authority in Islamic jurisprudence, the wearing of a beard is a sign of piety.¹⁵² Human Rights Watch and other human rights organizations report that Uzbek state police are arbitrarily forcing men who wear beards to shave against their will or suffer severe consequences.¹⁵³ In March 1998,

trol); United Nations Economic and Social Council (UNESCO), Commission on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories*, E/CN.4/1996/NGO/62, 27 Mar. 1996, <<http://www1.umn.edu/humanrts/commission/country52/62-ngo.htm>>, sections 9–12 (11 Feb. 2000) (stating that the Uzbek government “has launched an alarming crackdown against adherents of ‘independent’, as opposed to State-sponsored, Islam, who are perceived as less than loyal to the Government”).

¹⁴⁹ See UNESCO, *supra* note 148 (discussing the various human rights violations that resulted from the state-sponsored crackdown against independent Islamic worship).

¹⁵⁰ See Helsinki Annual Report 1998, *supra* note 61, at t.s. “The Muslim community as a whole” (asserting that the restrictions negatively affect several activities and expressions of independent Islamic practice, including dress, worship, and education).

¹⁵¹ See Human Rights Watch, *supra* note 1, at 15 (stressing that freedom of religion encompasses a variety of manifestations of religious belief including the right to wear certain types of dress or a beard); see also *Uzbek Students Expelled from University for Wearing Islamic Dress*, BBC News, World S/W Asia, 3 Apr. 1998, <<http://news2.thls.bbc.co.uk/hi/english/world/s/w%5Fasia/newsid%5F73000/73176.stm>> (11 Feb. 2000) (remarking that traditional Islamic veils are not illegal in Uzbekistan).

¹⁵² See J. Sadan and A. K. Reinhart, 9 *Encyclopaedia of Islam* art. *Sha‘r* at 312a–b (new ed., Brill, 1997).

¹⁵³ See Human Rights Watch, *supra* note 1, at t.s. “Forcible Shaving Off of Beards” (describing several reports that police in cities in the Fergana Valley coerced Muslims wearing beards to shave against their will and as a precondition for being released). See also Amnesty International, Annual Report 1998, “Uzbekistan,” <<http://www.amnesty.org/ailib/aireport/ar98/eur62.htm>>, at t.s. “detained young men with beards” (27 Feb. 1999) (claiming that in December 1997 police reportedly detained young men with beards arbitrarily, and that all of those detained were reported to have been beaten and ill-treated in detention).

several female students¹⁵⁴ alleged that they were punitively expelled¹⁵⁵ from Tashkent State University¹⁵⁶ for wearing Islamic head scarves.¹⁵⁷ The students received little help from the authorities.¹⁵⁸ The very threat of expulsion, harassment, arrest or possible violence is enough to force submission to the state-imposed Islamic practice and inhibit religious freedom.¹⁵⁹

Second, state officials harass, detain, and arrest independent Islamic leaders and followers on questionable evidence, which limits religious freedom and forces adherence to official Islamic practice.¹⁶⁰ According to the Uzbek Constitution, no one may be subject to arrest or detention other than on legal grounds.¹⁶¹ Moreover, no one has the right to enter a home, conduct searches, or maintain surveillance except by lawful means.¹⁶² In practice,

¹⁵⁴ See Human Rights Watch, *supra* note 1, at 23 (naming the expelled female students).

¹⁵⁵ See *id.* (reporting that the students were allegedly expelled on March 30, 1998, according to their letter to Human Rights Watch in April 1998).

¹⁵⁶ See *id.* (asserting that because Tashkent State University is government owned and funded, any actions taken by the University are sponsored by the government).

¹⁵⁷ See *id.* (explaining that wearing a white head scarf is a sign of piety).

¹⁵⁸ See *id.* (reporting that the students went to several authorities, including the Minister of Education, the Prime Minister, the Dean, the Vice-Dean, and the head of the dormitory, only to be refused a grace period or any legal explanation supporting the decision, and that they were told that the only way they would be readmitted into the University was to remove the head scarves and pay an extremely large fine).

¹⁵⁹ See Human Rights Watch, *supra* note 1, at 23 (asserting that it is crucial to recall that the very threat of expulsion is often enough to coerce students to remove their head scarves or shave their beards); see also Polat, *supra* note 62, at t.s. "Now Muslims are only allowed" (arguing that part of the reason many do not openly practice Islam is reported surveillance, identification checks by police of Muslims, especially young men and women, and a general campaign against the independent Islamic movement).

¹⁶⁰ See Human Rights Watch, *supra* note 1, at 16–22 (presenting the testimony of numerous cases where openly pious Muslims were arrested on falsified charges to curb independent Islamic practice); see also Country Report 1997, *supra* note 60, at t.s. "Police and NSS forces" (asserting that the Uzbek police use torture, harassment, illegal searches, wiretaps, and arbitrary detentions and arrests against activists).

¹⁶¹ See Uzb. Const., *supra* note 95, at § 2, Ch. VII, Art. 25 (asserting that each person has the right to freedom and personal inviolability and that no one may be subject to arrest or detention other than on legal grounds).

¹⁶² See *id.* at § 2, Ch. VII, Art. 27 (mandating that no one has the right to enter a home, conduct searches or surveillance, or violate the privacy of correspondence and

however, officials have detained or arrested pious Muslims on questionable charges and conducted searches of personal property without legal authorization.¹⁶³ Several human rights and government reports assert that many charges against Islamic adherents are falsified.¹⁶⁴ According to the Human Rights Society of Uzbekistan (HRSU),¹⁶⁵ there are at least 120 prisoners of conscience,¹⁶⁶ jailed on questionable charges.¹⁶⁷ The United States Depart-

telephone conversations other than in the circumstances and through the procedures anticipated by law).

¹⁶³ See Country Report 1997, *supra* note 60, at t.s. "Arbitrary arrest and detention" (arguing that the police arbitrarily detain or arrest opposition activists on false charges and that even foreigners are arbitrarily detained or arrested).

¹⁶⁴ See Human Rights Watch, *supra* note 1, at 16 (presenting several cases where openly pious Muslims were arrested on falsified charges that were uncommonly similar, compelling observers to challenge the credibility of the government's case and to assert a pattern of abuse); see also Country Report 1997, *supra* note 60, at t.s. "In practice police" (asserting that police arbitrarily stop and detain individuals without a warrant or just cause and have charged opposition and independent religious figures "with offenses such as drug possession, illegal possession of firearms, and disorderly conduct in an effort to stifle their criticism of government policy").

¹⁶⁵ See Human Rights Watch/Helsinki, *A Letter From Human Rights Watch/Helsinki to Uzbekistan President Karimov*, 27 Aug. 1996, <<http://www.soros.org/uzbkstan/karimov.html>> (11 Feb. 2000) (explaining the history and current status of HRSU, a non-governmental human rights society, whose chair, Abdumannob Polat, is a political refugee in the U.S.); see also Country Report 1998, *supra* note 87, at t.s. "registration to the Human Rights Society" (discussing the problems HRSU experienced in late 1998 trying to register with the government, which cited technical deficiencies, and which in fact declined every application until late 1999).

¹⁶⁶ See Polat, *supra* note 62, at t.s. "It is believed that there are" (reporting that there may be some 120 Muslim prisoners of conscience incarcerated in the Fergana Valley); see also Amnesty International, *supra* note 153 (asserting that by December, 1997, more than 100 people were arbitrarily detained in the eastern town of Namangan following the murder of several police officers and regional officials).

¹⁶⁷ See Amnesty International, *supra* note 153 (asserting that prisoners are jailed on what are likely fabricated charges, such as possession of narcotics and weapons, where police allegedly plant weapons and drugs during searches and arrests); see also Helsinki Annual Report 1998, *supra* note 61, at t.s. "In April an Uzbek court" (using the case of a mullah named Nazarov as an example of arbitrary harassment and arrest): "Nazarov was dismissed from his position as a Mullah at Tashkent's Tokhtoboy mosque in 1995 and then evicted from his flat." *Id.* More on the last case is found in International Helsinki Federation for Human Rights (IHFHR), Annual Report 1999, <<http://www.ihf-hr.org/reports/ar99/ar99uzb.htm>>.

ment of State,¹⁶⁸ while not cited as an unbiased source, reported several cases of arbitrary arrest, detention, or exile, including the conviction of an Islamic teacher¹⁶⁹ on narcotics and ammunition charges,¹⁷⁰ both of which are considered fictitious.¹⁷¹ The threat of detention, arrest, or incarceration, however—even on unconstitutional charges and proof—forces submission to state-sponsored Islamic observance, which splinters Islamic groups and weakens their potential political and ideological power.¹⁷²

Third, the Uzbek Constitution permits the establishment of private, inde-

at t.ss. “Ziyokhonov, accused,” “Nishonov, a student,” and “Leading independent imam” (11 Feb. 2000). See also Country Report 1997, *supra* note 60, at t.s. “imam test” (explaining that Nazarov was fired from his mullah position at a Tashkent mosque for failing a government-designed “imam test” which included political and economic policy questions); Polat, *supra* note 62, at t.s. “Obidhon qori Nazarov” (reporting that in the spring of 1998, Nazarov disappeared and that some believe he was arrested by the security service, while others hope that he was only forced to go into exile).

¹⁶⁸ See Country Report 1997, *supra* note 60, at t.s. “In June authorities resumed these tactics” (providing additional examples of arbitrary harassment, detention, or arrest).

¹⁶⁹ See *id.* at t.s. “convicting Islamic teacher” (citing the example of an Islamic teacher, Rahmatjon Otaqulov/Rakhmat Otakulov, who was arrested on skeptical charges and evidence); see also Amnesty International, *supra* note 153 (discussing the Otakulov case).

¹⁷⁰ See Country Report 1997, *supra* note 60 (describing the facts of the Otakulov case). “Police came to Otaqulov’s home to tell him that his car had been involved in an accident. At the supposed accident scene, police ‘discovered’ narcotics on Otaqulov, in the presence of two people, who reportedly were detained earlier in order to witness the arrest. A subsequent search of Otaqulov’s home supposedly uncovered ammunition.” *Id.*

¹⁷¹ See Amnesty International, *supra* note 153 (asserting that the arresting officers’ evidence, which formed the basis for the charges against Otakulov, was not seriously scrutinized in court, and two civilians enlisted by the police as witnesses to the searches of Otakulov’s car and home gave contradictory evidence under cross-examination); see also Human Rights Watch, *supra* note 1, at 15 (asserting that the Uzbek Constitution guarantees protection against arbitrary arrests and detention, which however often occur when the authorities plant evidence or use unsubstantiated charges).

¹⁷² See Human Rights Watch, *supra* note 1, at 12 (arguing that the use of arbitrary harassment, arrest, or detention serves the government’s greater purpose, which is to force submission to state-controlled Islam and eradicate independent Islamic practice because it poses a political challenge).

pendent religious schools.¹⁷³ The state is not required to provide religious education¹⁷⁴ but, at the same time, may not proscribe religious education. The Uzbek government, however, violates the right to a private, religious education by arbitrarily closing independent religious schools and leaving only state-sponsored religious schools open.¹⁷⁵ The government asserts that closures of independent religious schools are temporary, but offers no legal justification for the official action.¹⁷⁶ Additionally, the Uzbek government prohibits independent religious lessons or sermons,¹⁷⁷ and the government strictly controls the distribution of religious educational materials.¹⁷⁸ In doing so, the government eliminates independent Islamic education, leaving the state-sponsored Islamic education as the only alternative. This action

¹⁷³ See Uzb. Const., *supra* note 95, at § 2, Ch. IX, Art. 41 (guaranteeing the right to a free, general education and silent as to any restrictions with regard to private, religious education); see also *id.* at § 3, Ch. XIII, Art. 61 (stating that the state shall not interfere in the activities of religious associations [which shall include private religious schools]).

¹⁷⁴ See Country Report 1997, *supra* note 60, at t.s. “Religious education” (stating that religious education is becoming more widespread in Uzbekistan, but that it is not included in state schools); see also Uzb. Const., *supra* note 95, at § 3, Ch. XIII, Art. 61 (stating that religious organizations and associations must be separate from the state).

¹⁷⁵ See Country Report, *supra* note 60 at t.s. “Bureaucratic restrictions” (explaining that bureaucratic restrictions have inhibited the free operation of numerous religious schools).

¹⁷⁶ According to the most recent reports out of Uzbekistan, including interviews with people there, the religious schools are still closed as of this writing.

¹⁷⁷ See Polat, *supra* note 62, at t.s. “Now Muslims are only allowed” (asserting that Muslims are only allowed to listen to government-approved speeches at mosques and other public places); see also Country Report 1997, *supra* note 60, at t.s. “imams' sermons” (explaining that the government controls the content of imams' sermons, in an attempt to control the Islamic hierarchy).

¹⁷⁸ See Polat, *supra* note 62, at t.s. “Educational tapes authored” (pointing out that many educational and religious cassettes and other materials authored by the banned or fired imams were very popular); see also Country Report 1997 at t.s. “extent and substance,” *supra* note 60 (asserting that the government has strict control over the extent and substance of published Islamic materials); Human Rights Watch, *supra* note 1, at 22 (stating that the state maintains control of all religious life through the Spiritual Directorate, including religious education, while independent, non-state sponsored individuals are prohibited from teaching Islam and distributing religious materials).

violates the international standards of religious educational freedom as established by the UDHR, the ICCPR, and the DRID, and is, at the same time, in conflict with the Separation of Religion and State article of the Uzbek Constitution.

The restrictive religious legislation and official regulation in Uzbekistan present a grave problem for Uzbekistan's future.¹⁷⁹ Forcing state-sponsored Islam and suppressing independent Islamic practice violates the Uzbek Constitution and the aforementioned international standards governing religious freedom.¹⁸⁰ Uzbekistan's constitutional and international future, accordingly, could well be in peril.¹⁸¹ It is unlikely that the government of Uzbekistan can avoid being considered among the ranks of repressive regimes if it does not conform its current religious legislation and official restrictions of religious freedom to its own constitution and international standards of religious freedom.¹⁸²

IV. A Moment of Opportunity: The Advantages for Uzbekistan of Complying with the Uzbek Constitution and International Standards concerning the Right to Freedom of Religion

From the standpoint of the currently dominant market-economy "world view," Uzbekistan is at a critical point in its progress from authoritarianism to "democracy."¹⁸³ Stable transition has been challenged by human rights violations, disregard for the rule of law, and violence.¹⁸⁴ The February 1999 bombing in Uzbekistan's capital and the subsequent international manhunt for the alleged suspects, which led to twenty-two criminal sentences including six death penalties, has dealt a serious blow to the image of stability

¹⁷⁹ See Polat, *supra* note 62, at t.s. "A continued lack of openness" (arguing that the religious issue in Uzbekistan must be addressed in order to maintain stability and to prevent a future disaster in Uzbekistan).

¹⁸⁰ See Human Rights Watch, *supra* note 1, at 3 (under heading "Legal Obligations").

¹⁸¹ See Hunter, *supra* note 5, at 162 (asserting that the issue of Islam and religious freedom could be tied to international relations, particularly with the United States).

¹⁸² See Human Rights Watch, *supra* note 1, at 3–4 (arguing that Human Rights Watch's primary concern is that Uzbekistan violates religious freedom, and in doing so, violates other fundamental rights and constitutional guarantees).

¹⁸³ See Hunter, *supra* note 5, at 166 (explaining that Uzbekistan's situation is pivotal and fragile).

¹⁸⁴ See Human Rights Watch, *supra* note 1, at 3 (asserting that in recent years, Uzbekistan has faced the most dramatic and worrisome escalation of human rights abuses).

promoted by the current regime and demonstrates that violating the right to freedom of religion provokes the radical and dangerous response that the Uzbek government has vowed to prevent.¹⁸⁵ In light of this, the threshold issue confronting the Uzbek government and concerned international observers is whether or not the stable transition towards democracy and the rule of law (terms used here in the sense generally accepted by the Western political elite and large segments of the academic establishment) can continue and what must be done by all interested parties to ensure this result.¹⁸⁶ To avoid the risk of derailing the transition and finding itself increasingly likened to the repressive regimes of the world, and perhaps war-torn like neighboring Afghanistan, Tajikistan, and currently Russia, the present writer is convinced that Uzbekistan must take advantage of just this moment in its history to create a truly law-based state that protects and promotes religious freedom,¹⁸⁷ in accordance with international standards and the Uzbek Constitution.¹⁸⁸ The substantial benefits of international approbation could well be exceeded by even more tangible benefits locally.

A. *Protection and Promotion of the Right of Freedom of Religion.* Freedom of religion has been declared a fundamental human right.¹⁸⁹ It is considered to form the basis of a constitutional government, a limited state, and a

¹⁸⁵ See *Death Penalties for Tashkent Bombers*, BBC World News, 28 June 1999, <<http://news2.thls.bbc.co.uk/hi/english/world/asia%2Dpacific/newsid%5F380000/380039.stm>> (11 Feb. 2000) (confirming that the Supreme Court of Uzbekistan sentenced six people to death and sixteen others to long prison terms for alleged involvement in a series of bomb attacks in the capital, Tashkent, after several of the suspects had been extradited from Turkey, Ukraine, Kazakhstan, and Kyrgyzstan); see also *More Uzbek Bombing Trials*, BBC World News, 14 July 1999, <<http://news2.thls.bbc.co.uk/hi/english/world/asia%2Dpacific/newsid%5F394000/394455.stm>> (11 Feb. 2000) (reporting that another nineteen people have gone on trial in Uzbekistan in connection with the February 1999 bombing).

¹⁸⁶ See Hunter, *supra* note 5, at 170 (concluding that the future of stability in Uzbekistan is unknown and could be affected by several factors including internal conflict).

¹⁸⁷ See discussion *supra* Part II (on freedom of religion as a fundamental human right).

¹⁸⁸ See Human Rights Watch, *supra* note 1, at 3 (asserting that due to Uzbekistan's serious, wide-scale abuse of the right to freedom of religion, the Uzbek government "makes a travesty of [it's] assertion that the stability born of repression is necessary to achieve democracy").

¹⁸⁹ See discussion *supra* Part II; see also Wood, *supra* note 42, at 489 (asserting that freedom of religion is integral to the advancement of all other human rights because of its grounding in the nature of the human person).

free and democratic society.¹⁹⁰ Uzbekistan's successful promotion and protection of the constitutionally guaranteed right to freedom of religion can be achieved, in the view of this writer, by implementing a number of specific policies.

First, Uzbekistan can only gain by protecting its citizens' right to worship in the manner they choose, to dress in the manner they choose, and to associate with whomever they choose.¹⁹¹ Any student expelled from state institutions because of Islamic dress should be readmitted and any record of the expulsion should be removed from the student's academic record.¹⁹² Additionally, the government should prevent police officials' use of harassment to force men to shave their beards.¹⁹³ Discrimination based on either of these manifestations of religious belief should be punished according to the law.¹⁹⁴ Moreover, the government should lift the ban on the use of loudspeakers unless it can provide legal or more cogent social justification for the ban.¹⁹⁵

¹⁹⁰ See Wood, *supra* note 42, at 484 (arguing that religious freedom is fundamental to the maintenance of a democratic society).

¹⁹¹ See discussion *infra* Parts III.B, III.C (discussing restrictions on freedom of religion); see also Human Rights Watch, *supra* note 1, at 6–7 (recommending that the government of Uzbekistan protect the right to freedom of religion by protecting its citizens' right to pray when, where, and in the manner they choose); see also United Nations Economic and Social Council (UNESCO), Commission on Human Rights, 52nd Session, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Report of the Special Rapporteur, 15 Dec. 1995, <<http://www1.umn.edu/humanrts/commission/thematic52/95-relig.htm>>, at paragraph 62 (11 Feb. 2000) (urging that places of worship should be immune from political tensions and conflicts and that state legislation should provide for the neutrality of places of worship).

¹⁹² See Human Rights Watch, *supra* note 1, at 7 (recommending that the state university readmit those students expelled for wearing Islamic dress and remove any mention of the expulsion from their records); see also *Uzbeks Bring in New Laws on Religion*, BBC News World: S/W Asia, 19 May 1998, <<http://news2.thls.bbc.co.uk/hi/english/world/s/w%5Fasia/newsid%5F96000/96753.stm>> (11 Feb. 18 2000) (reporting that one clause of the new religion law states that anyone wearing religious clothing in a public place will be liable to up to fifteen days imprisonment).

¹⁹³ See Human Rights Watch, *supra* note 1, at 6–7 (recommending that the Uzbek government uphold its obligations to protect individuals from being punished simply because of peaceful expressions of religious belief).

¹⁹⁴ See *id.* (asserting that any prosecution of mistreatment or violations of the law must be in conformity with international standards of due process).

¹⁹⁵ See *id.* at 24–25 (arguing that loudspeakers have been used by all mosques for

It can be argued that one way to influence legislative or political change is from the top down, meaning that direct pressure on a government body, be it economic, political, or diplomatic, from an international or regional source, can encourage a particular legislative result. Adopting this top-down approach, several international and regional bodies, which have a vested (and admittedly not always unbiased) interest in Uzbekistan, including the United Nations,¹⁹⁶ the Organization for Security and Cooperation in Europe (OSCE),¹⁹⁷ the European Union,¹⁹⁸ and the United States Department of State,¹⁹⁹ could conceivably call on the Uzbek government for the immediate cessation of the above-mentioned practices and the return of any expelled students.²⁰⁰ Moreover, international lending organizations such as the World Bank and the International Monetary Fund (IMF) might determine to examine non-humanitarian assistance to Uzbekistan.²⁰¹ If an organization finds that assistance is being used, in any way, to support what it considers abuses, the organization might then choose to suspend non-humanitarian financial assistance until or unless the Uzbek government can demonstrate compliance with the organization's requirements.²⁰²

years without the government noting any harmful effects and the government has not provided any pressing rationale for such an extreme measure).

¹⁹⁶ See Olcott, *supra* note 4, at 173–74 (discussing the prominent peace-keeping role of the United Nations in Uzbekistan).

¹⁹⁷ See *id.* (explaining the peace-keeping role of the OSCE); see also Hunter, *supra* note 5, at 155 (asserting that the OSCE is fundamental to Uzbekistan).

¹⁹⁸ See Hunter, *supra* note 5, at 155–56 (stressing that the EU realizes the need to assist Uzbekistan to reach the EU's greater goals).

¹⁹⁹ See *id.* at 154 (asserting that the U.S. targeted Uzbekistan as a potentially strategic partner in the region).

²⁰⁰ See Human Rights Watch, *supra* note 1, at 7–9 (addressing the UN, OSCE, and the EU, encouraging these international and regional organizations to issue statements to the Uzbek government, suspend discussions with the government, pending prompt, measurable improvements in the country's human rights practices).

²⁰¹ See Hunter, *supra* note 5, at 83–84 (establishing that Uzbekistan received \$76.7 million from the EU after 1994, \$85 million from the Export-Import Bank of Japan, \$900 million from the World Bank, in addition to millions in foreign investment from various international investors); see also Human Rights Watch, World Report 1999, *Uzbekistan: The Role of the International Community*, <<http://www.hrw.org/hrw/worldreport99/europe/uzbekistan3.html>> (27 Feb. 1999) (stating that the U.S. increased non-humanitarian aid to \$36 million for 1999 and that the Export-Import Bank also increased aid).

²⁰² See Human Rights Watch, *supra* note 1, at 7–9 (recommending that foreign

Second, Uzbekistan should re-examine its laws with the aim of identifying and rescinding restrictive religious legislation that does not comply with the international standards of freedom of religion outlined above,²⁰³ and the constitutional guarantees of freedom of religion,²⁰⁴ including separation of religion and state,²⁰⁵ unless the state can provide legitimate reasons for the legislation in question.²⁰⁶ Such justification must comply with the above-mentioned international standards and the Uzbek Constitution.²⁰⁷ The UN²⁰⁸ should facilitate legislative reform by further clarifying and strengthening the limitation provisions of the UDHR, ICCPR, and the DRID.²⁰⁹ If Uzbekistan

aid should be conditioned on the money not benefiting those who commit human rights abuses and that involved aid organizations should monitor the conduct of those who benefit from the assistance); see also Jacques deLisle, *The Role of International Law in the Twenty-First Century: Disquiet on the Eastern Front: Liberal Agendas, Domestic Legal Orders, and the Role of International Law after the Cold War and amid Resurgent Cultural Identities*, 18 *Fordham Int'l L.J.* 1725, 1740–41 (1995) (explaining that the U.S. Code includes numerous provisions imposing sanctions or denying aid on the basis of other states' noncompliance with human rights); see, e.g., 22 U.S.C.S. 2295(a) (1998) (conditioning aid to former Soviet Union countries on respect for freedom of religion and rule of law); but see *Uzbekistan: The Role of the International Community*, supra note 201, at 2 (pointing out that despite Uzbekistan's flagrant human rights abuses and disregard for principles of progress cited by a U.S.-Uzbekistan Joint Commission in 1998, the U.S. increased Uzbekistan's non-humanitarian aid for 1999).

²⁰³ See discussion supra Part II.C (discussing the provision of the DRID that directs states to rescind or amend religious legislation that does not comport with international standards or to enact legislation that does).

²⁰⁴ See supra Part III.A (setting forth the constitutional provisions protecting religious freedom).

²⁰⁵ See supra Part III.B (explaining that some recent restrictive legislation violates the separation of religion and state provision of the Uzbek Constitution); see also UNESCO, supra note 191, at 10 (asserting that the state should adopt and implement legislation that separates places of worship from the state).

²⁰⁶ See UNESCO, supra note 191, at 11 (asserting that the government must submit clarifications or legal explanations in response to allegations of unlawful legislation).

²⁰⁷ See supra Part II.A, II.B, II.C (discussing the derogation clauses found in the international documents that provide the international standard for limitations on religious freedom).

²⁰⁸ See Human Rights Watch, supra note 1, at 7–9 (suggesting that the U.N., and the OSCE, EU, and U.S., assist in human rights reform efforts in Uzbekistan).

²⁰⁹ See supra Parts II.A, II.B, II.C (explaining interpretive problems associated with the ambiguous language in the limitation articles of the international

does not move in this direction on its own, it must anticipate that individual states and regional organizations may attempt to influence reform through statements to President Karimov and the Uzbek Parliament, questioning or condemning restrictive legislation, and calling for, at a minimum, a report providing legal justification for the legislation that comports with the Uzbek Constitution and the international standards of religious freedom established by the UDHR, the ICCPR, and the DRID.²¹⁰ Again, applying the top-down approach, international and regional organizations, including lending organizations, might also inform the Uzbek government that any failure to respond to such a request would result in the suspension of non-humanitarian aid.²¹¹

B. Upholding the Present Uzbek Constitution. In the post-Communist constitutional era, it is clearly in the interest of the Republic of Uzbekistan to acknowledge the importance of an inviolable and honored constitution to a successful, secular, democratic state.²¹² Successfully functioning local institutions are the best guarantee against outside interference. In the view of this writer, Uzbekistan has failed to institute or to implement policies that

agreements).

²¹⁰ See Human Rights Watch, *supra* note 1, at 7–9 (recommending that the international community and intergovernmental organizations request explanations from the government concerning human rights violations); see also Madeleine K. Albright, *Remarks on Religious Freedom at the Columbus School of Law, The Catholic University of America*, 47 *Cath. U. L. Rev.* 361, 362 (1998) (instructing U.S. diplomats to receive and provide reports on the status of religious freedom in the countries to which they are accredited); but see *Uzbekistan: The Role of the International Community*, *supra* note 201, at 2 (stating that U.S. First Lady Hillary Rodham Clinton, in her November 1997 visit to Samarkand, overlooked Uzbekistan's clear violations of religious freedom and the U.S. policy position with regard to Uzbekistan, and praised the country for "religious freedom").

²¹¹ See Human Rights Watch, *supra* note 1, at 7–9 (recommending that non-humanitarian aid be conditioned on compliance with requests for improvement and compliance); see also deLisle, *supra* note 202, at 1740–41 (describing the various mechanisms available for conditioning aid); *Uzbekistan: The Role of the International Community*, *supra* note 201, at 1 (describing recent efforts by the OSCE to provide a strict framework for technical assistance that aids the Uzbek government with human rights issues).

²¹² See Hunter, *supra* note 5, at 38 (asserting that the Uzbek government's disregard for the constitution proves that democracy has not triumphed there); see also *id.* at 60–61 (discussing the various inconsistencies in the Uzbek Constitution and describing the current state of constitutionalism as negative); Human Rights Watch, *supra* note 1, at 4 (addressing the absence of the rule of law in Uzbekistan and the problems that can be expected repeatedly to occur there unless this is remedied).

could provide essential protection of the Uzbek Constitution.

First, Uzbekistan has failed to enforce strictly the separation of religion and state provision of the Constitution,²¹³ whereas strict adherence to this provision would result in a more firmly established secular state ruled by law.²¹⁴ Uzbekistan could accomplish separation by abolishing any and all state-sponsored religious activities, information, programs, or institutions, as well as funding and/or control of the like.²¹⁵ A national committee consisting of religious leaders, citizens, a member of the judiciary—preferably the Constitutional Court or the Ministry of Justice—and a representative of the office of Ombudsman²¹⁶ could support conformity with the Constitution by providing education and training opportunities and independently monitoring government progress.²¹⁷

Likewise, Uzbekistan has failed to address the language in the limitations provided in Article 16 and Article 20 of its Constitution.²¹⁸ The language in these provisions is vague and easily manipulated.²¹⁹ The Constitution should make it clear that any legitimate limits on religious freedom may not be exploited for purposes such as the suppression of political competitors.²²⁰

²¹³ See *supra* Part III.A (discussing violations of the separation of religion and state).

²¹⁴ See UNESCO, *supra* note 191, at 10 (asserting that the state must exclude itself from religious affairs).

²¹⁵ See Hunter, *supra* note 5, at 60 (explaining that by controlling various aspects of Islam, including sermons, education, and Islamic leaders, the government has subordinated religion to the state in violation of its constitution).

²¹⁶ See Country Report 1997, *supra* note 60, at t.s. “ombudsman’s office” (pointing out that in April the Uzbek parliament passed legislation setting up an Ombudsman’s office that could, pending governmental support, play an important role in monitoring human rights abuses).

²¹⁷ See Human Rights Watch, *supra* note 1, at 7–9 (recommending that international and intergovernmental organizations meet with representatives of the Uzbek government); see also Albright, *supra* note 210, at 365 (discussing the importance of getting the various local and regional communities involved, including their religious leaders and government representatives).

²¹⁸ See *supra* Part III.A (setting forth Article 16 and Article 20 of the Constitution).

²¹⁹ See Kolodner, *supra* note 48, at 422 (addressing the inherent problems involved with vague constitutional language and the need for a judiciary to enforce the constitution and its intent over against a high political authority).

²²⁰ See Hunter, *supra* note 5, at 60 (explaining how the Uzbek government interprets the constitutional provisions to serve its illegitimate purpose of subordinating

According to the Uzbek Constitution, the Constitutional Court of Uzbekistan must interpret the meaning and limitations of constitutional provisions.²²¹ The Court's decisions should be considered binding upon the Uzbek government, and until a decision is rendered, additional legislation in the aforementioned area should be held in abeyance.²²²

Moreover, the government has failed to uphold its constitutional obligation to protect individuals from arbitrary arrest.²²³ This obligation includes strict prohibitions against the official use of fabricated evidence or unsubstantiated charges to punish individuals based on their religious beliefs and practices.²²⁴ Any prisoner currently being held on questionable evidence of this kind should be released.²²⁵ The Uzbek government, moreover, should actively pursue all claims by individuals or families against law enforcement officials or other government employees who make illegal arrests or plant incriminating evidence.²²⁶ Further, results of investigations and prosecutions should be made public to the citizens of Uzbekistan and internationally.²²⁷

Islam to the state).

²²¹ See Uzb. Const., *supra* note 95, at § 5, Ch. XXI, Art. 109 (stipulating that the Constitutional Court provides interpretation of the norms of the Constitution).

²²² See *id.* (asserting that decisions of the Constitutional Court enter into force at the moment of publication and that they are final).

²²³ See discussion *supra* Part III.C (setting forth the constitutional provisions protecting individuals against arbitrary arrest or detention and against unlawful searches and seizures).

²²⁴ See *supra* Part III.C (providing examples of arbitrary arrest, detention, or harassment based on religious practice or belief); see also Human Rights Watch, *supra* note 1, at 6–7 (recommending to the Uzbek government to uphold its obligation to protect individuals from arbitrary arrest because of their political opinion or religious belief and practice).

²²⁵ See *supra* Part III.C, especially notes 167, 170, 172–74 (regarding cases of people who have been incarcerated on less than probable cause or skeptical evidence).

²²⁶ See Human Rights Watch, *supra* note 1, at 6–7 (recommending that the Uzbek government investigate in a prompt and impartial manner reports of arbitrary arrests and other abuses and punish those responsible vigorously in accordance with international standards of due process); see also Country Report 1997, *supra* note 60, at t.s. “British citizen” (making it clear that the Ministry of Interior can and does conduct internal investigations and that the government has even issued a written apology for the arbitrary arrest of a British citizen).

²²⁷ See Country Report 1997, *supra* note 60, at t.s. “MVD has yet to announce” (reporting that the Uzbek Interior Ministry had not announced the results of an inter-

To further this goal, international development organizations like the American Bar Association's Central and East European Law Initiative (ABA CEELI) could devise assistance programs in coordination with Uzbek authorities that target criminal law reform issues such as police training programs, outside investigations of incarcerated individuals, and human rights education.²²⁸ Ultimately, if little or no progress in these areas is forthcoming, Uzbekistan must expect that international lending organizations will be made aware of such efforts and programs and that non-humanitarian aid may be conditioned on the Uzbek government's successful participation in them.²²⁹

Finally, Uzbekistan has yet to address effectively the lack of separation of powers,²³⁰ whereas the Constitution explicitly provides for independent judicial, parliamentary, and executive branches,²³¹ and whereas strict implementation of this safeguard would provide the necessary checks and balances that would curb illegitimate or unlawful legislation or practices.²³² Failing sufficient improvement on the Uzbek side in this area, a not unlikely alternative would be for individual states and regional and international development organizations to develop a monitoring committee to meet with

nal investigation of police abuse from 1996).

²²⁸ See Human Rights Watch, *supra* note 1, at 7–9 (recommending that the international community establish police-training programs and human rights education on the condition that it is organized in a manner that goals are set and a strict measuring guideline established); see also Albright, *supra* note 210, at 363 (discussing U.S. foreign policy to sponsor programs and exchanges that foster understanding and implementation); UNESCO, *supra* note 191, at 10 (asserting that it is essential to develop a system of tolerance and implementation through education and training); *Uzbekistan: The Role of the International Community*, *supra* note 201, at 1 (describing recent programs sponsored by the OSCE and the EU in the areas of police training and human rights education and awareness).

²²⁹ See Human Rights Watch, *supra* note 1, at 7–9 (recommending that non-humanitarian aid be conditioned on measurable improvements as a result of participation in sponsored programs).

²³⁰ See *supra* Part III.A (discussing the systemic issue of an authoritarian system with no separation of powers).

²³¹ See Uzb. Const., *supra* note 95, at § 5 (setting forth the organization of state power).

²³² See Country Report 1997, *supra* note 60, introduction (describing the systemic problem with the lack of separation of powers in that there is no system of checks and balances, no independent body to uphold the Constitution and the rights of Uzbek citizens).

the different branches of the Uzbek government to review issues relating to separation of powers.²³³ Representatives of the three branches of the Uzbek government would be asked to make regular reports to the monitoring committee regarding these issues.²³⁴ Failure to meet or report to the monitoring committee could result in a recommendation to international lending organizations for a suspension of non-humanitarian aid.²³⁵

Conclusion

Uzbekistan's violation of the right to freedom of religion, in the view of this writer, represents one of the most serious escalations of human rights abuses since the dissolution of the Soviet Union and threatens Uzbekistan's future as a stable nation ruled by law. The Uzbek government dismisses the crackdown against independent Islamic adherents as necessary to stabilize the country during its transition toward its stated goals of a democratic state and a free-market economy.²³⁶ Additionally, the Uzbek government justifies its strong-hand tactics as necessary to fend off Islamic fundamentalism.²³⁷ It is not clear whether Islamic fundamentalism is a real threat to Uzbekistan or merely a scapegoat or political game, or perhaps all of these. Regardless of the validity of the threat of Islamic fundamentalism, the question of Islam and religious freedom remains essential to Uzbekistan's future as a stable, constitutional state. Confronting this question effectively, in accordance with the country's own constitutional principles and accepted international stan-

²³³ See Human Rights Watch, *supra* note 1, at 7–9 (describing assistance programs that will help the government introduce targeted reform); see also *Uzbekistan: The Role of the International Community*, *supra* note 201 (explaining how the OSCE and the EU have introduced assistance programs in various areas in an attempt to assist the Uzbek government with upholding international commitments).

²³⁴ See Albright, *supra* note 210, at 364–66 (citing examples in which U.S. officials have worked with foreign governments in their reform efforts); but see *Uzbekistan: The Role of the International Community*, *supra* note 201, at 2 (criticizing the U.S. government for increasing aid to Uzbekistan without any reform programs, despite what the document describes as Uzbekistan's appalling human rights record).

²³⁵ See Human Rights Watch, *supra* note 1, at 7–9 (recommending that all reform efforts and assistance programs be tied to non-humanitarian aid).

²³⁶ See *id.* at 3–5 (summarizing Karimov's justifications for recent human rights violations).

²³⁷ See *id.*; see also Lucian Kim, *Uzbeks Try to Blunt Islam's Rise*, *Christian Science Monitor*, 20 Nov. 1998, <<http://www.csmonitor.com/archive/archive.html>>, at WORLD, p. 6 (27 May 1999) (explaining how Karimov justifies his actions because of a perceived fundamentalist movement and including various interviews with persons living in fear of the authorities in the Fergana Valley of Uzbekistan).

dards, may help avoid both an increase in resentment on the part of the Muslim population and intervention in Uzbekistan's internal affairs by foreign states and organizations.