

# Gaming the System: Using Religion to Circumvent the Personal Laws of the Philippines

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## I. RECENT CONTROVERSY

Freddie Aguilar caused quite a stir when he admitted that he was “deeply in love with his 16-year-old girlfriend[.]”<sup>1</sup> Photos surfaced of Aguilar and the

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1. InterAksyon.com, Photos of Freddie Aguilar and young lady who may be 16-year-old girlfriend surface online, available at <http://www.interaksyon.com/entertainment/photos-of-freddie-aguilar-60-and-his-16-year-old-girlfriend-surface-online/> (last accessed Mar. 31, 2014).

young lady physically expressing their affection for one another.<sup>2</sup> These photographs were initially blurred or otherwise altered to make the identity of the child difficult to ascertain.<sup>3</sup> Later, however, the unobscured face of the girl was revealed, and so too her identity.<sup>4</sup> Aguilar claimed that when he began courting the girl, he had no idea how young she was, and in any case, he now has the consent and approval of the parents.<sup>5</sup> He also shrugged off criticism of being a “cradle snatcher”<sup>6</sup> by stating that it would not be the first time that he fell for a minor.<sup>7</sup> Aguilar stated that his third wife was “only 17 [years old] when they first became a couple.”<sup>8</sup> The criticism was exacerbated by an admission that he was already cohabiting with the girl.<sup>9</sup>

This news created much controversy,<sup>10</sup> even prompting a lawyer, who was later joined by two other complainants, to file a criminal case against Aguilar, first for qualified seduction, and then later on amended to child abuse.<sup>11</sup> It was claimed that Aguilar had taken advantage of his popularity,

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2. *Id.*

3. *Id.*

4. See Freddie Aguilar, 16-year-old girlfriend [Photos], available at <http://www.pinoyrapradio.com/forum/discussion/233/freddie-aguilar-16-year-old-girlfriend-photos-/p1> (last accessed Mar. 31, 2014).

5. ABS-CBNnews.com, Freddie Aguilar ready to marry 16-year-old GF, available at <http://www.abs-cbnnews.com/entertainment/10/16/13/freddie-aguilar-ready-marry-16-year-old-gf> (last accessed Mar. 31, 2014).

6. *Id.*

7. *Id.*

8. *Id.*

9. Camille Diola, Freddie faces seduction raps over 16-year-old girlfriend, PHIL. STAR, Oct. 24, 2013, available at <http://www.philstar.com/headlines/2013/10/24/1248941/freddie-faces-seduction-raps-over-16-year-old-girlfriend> (last accessed Mar. 31, 2014).

10. Totel V. de Jesus, Freddie Aguilar courts controversy with 16-year-old girlfriend, PHIL. DAILY INQ., Oct. 18, 2013, available at <http://entertainment.inquirer.net/117155/freddie-aguilar-courts-controversy-with-16-year-old-girlfriend> (last accessed Mar. 31, 2014).

11. Jeannette I. Andrade, Freddie Aguilar charged with child abuse, PHIL. DAILY INQ., Nov. 26, 2013, available at <http://entertainment.inquirer.net/122487/freddie-aguilar-charged-with-child-abuse> (last accessed Mar. 31, 2014). See An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 337 (1932). This Article provides —

Art. 337. *Qualified seduction.* — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education

resulting in undue influence over the minor.<sup>12</sup> The group went so far as to state that the parents would also be liable under the Revised Penal Code (RPC)<sup>13</sup> for corruption of a minor.<sup>14</sup>

Although Aguilar professed his readiness and desire to wed the girl and raise a family,<sup>15</sup> he stated he knew that they would not be allowed to marry because of her age.<sup>16</sup> In a televised appearance, an undeterred Aguilar stated

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or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.

...

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

REVISED PENAL CODE, art. 337.

See also An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992). The law defines child abuse thus —

‘Child abuse’ refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Special Protection of Children Against Abuse, Exploitation and Discrimination Act, § 3 (b).

12. Andrade, *supra* note 11.

13. REVISED PENAL CODE.

14. Andrade, *supra* note 11. See also REVISED PENAL CODE, art. 340. This Article states —

Art. 340. *Corruption of minors.* — Any person who shall promote or facilitate the prostitution or corruption of persons underage to satisfy the lust of another, shall be punished by *prision mayor* and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification.

REVISED PENAL CODE, art. 340.

15. ABS-CBNnews.com, *supra* note 5.

16. *Id.*

that he would “follow what the law states if that [is] what it takes to prove to the world how much he loves his [‘]Bhabe[.]’”<sup>17</sup> On the show, Aguilar acknowledged the fact that she was a minor, but stated that others often thought she was in her 20s, that she did not act like she was 16, and that the age gap did not bother either of them.<sup>18</sup> Aguilar stated that he and his girlfriend would get married once she reached the age of consent, since the girl was already turning 17 near the end of November.<sup>19</sup>

Shortly after this declaration, Aguilar and his 16-year-old girlfriend were married under Islamic rites in Maguindanao.<sup>20</sup> He had indeed kept his promise to follow the law, albeit selecting a law where the couple would not have to wait another year. Aguilar had supposedly converted to Islam, taking the name Abdul Farid six months prior to the marriage.<sup>21</sup> According to Maguindanao Governor Esmael Mangudadatu, Aguilar had confided with him his desire to convert to Islam as early as 2011, even before meeting his new wife.<sup>22</sup> Reports conflict as to who officiated the ceremony, if it was either the Governor<sup>23</sup> or a local cleric named Imam Abdulwahid Sumawang.<sup>24</sup> There is much speculation as to whether Aguilar’s conversion to Islam was for the sake of convenience to circumvent the age restrictions mandated by the law, or a sincere desire to be a member of the Islamic faithful.<sup>25</sup>

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17. Edwin P. Sallan, Freddie Aguilar vows to keep fighting in the name of love but will also follow what the law says, *available at* <http://www.interaksyon.com/entertainment/freddie-aguilar-vows-to-keep-fighting-in-the-name-of-love-but-will-also-follow-what-the-law-says/> (last accessed Mar. 31, 2014).

18. *Id.*

19. Diola, *supra* note 9.

20. ABS-CBNnews.com, PHOTOS: Freddie Aguilar, as Abdul Farid, marries teen GF, *available at* <http://www.abs-cbnnews.com/entertainment/11/22/13/photos-freddie-aguilar-abdul-farid-marries-teen-gf> (last accessed Mar. 31, 2014).

21. Sallan, *supra* note 17.

22. Glaiza Jarloc, Freddie Aguilar converts to Islam, marries 16-year-old girlfriend, SUNSTAR, Nov. 22, 2013, *available at* <http://www.sunstar.com.ph/manila/entertainment/2013/11/22/freddie-aguilar-converts-islam-marries-16-year-old-girlfriend-315059> (last accessed Mar. 31, 2014).

23. MJ Marfori, Freddie Aguilar weds 16-year-old GF in Muslim rites, *available at* <http://www.interaksyon.com/article/75399/video--freddie-aguilar-weds-16-year-old-gf-in-muslim-rites> (last accessed Mar. 31, 2014).

24. John Unson, Muslim Freddie takes teen bride, PHIL. STAR, Nov. 23, 2013, *available at* <http://www.philstar.com/headlines/2013/11/23/1259853/muslim-freddie-takes-teen-bride> (last accessed Mar. 31, 2014).

25. *See* InterAksyon.com, Freddie Aguilar converts to Islam, to marry 16-year-old girlfriend in Muslim rites, *available at* <http://www.interaksyon.com/>

In the Philippines, the general law that regulates persons and family relations is the Family Code of the Philippines.<sup>26</sup> However, there exists a separate law for Filipino Muslims, which is the Code of Muslim Personal Laws (CMPL).<sup>27</sup> This Article discusses the differences between the provisions of the Family Code and the CMPL with regard to marriage, and analyzes how such differences provide an avenue for non-Muslim Filipinos to circumvent the provisions of the Family Code by the mere expedience of changing religious affiliations.

## II. THE FAMILY CODE VERSUS THE CODE OF MUSLIM PERSONAL LAWS

Being a country with a predominantly Catholic population, and also a “vigorous [four] percent Muslim minority,”<sup>28</sup> the Philippines has a personal law system in place. This essentially means that different laws apply to different groups of people, thus —

Personal law systems are legal systems where, in the same country, different bodies of law are applied to different persons according to their ethnic or religious identity. Such systems ordinarily regulate matters of family law, capacity, succession and inheritance[,] and possibly some other specific property matters[,] as well as determination of religious affiliation.<sup>29</sup>

The CMPL was enacted for the benefit of Muslim Filipinos, as seen in the preliminary provisions of the law.<sup>30</sup> This is because the provisions of the

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entertainment/freddie-aguilar-converts-to-islam-to-marry-16-year-old-girlfriend-in-muslim-rites/ (last accessed Mar. 31, 2014).

26. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1987).
27. A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for its Administration and For Other Purposes [CODE OF MUSLIM PERSONAL LAWS], Presidential Decree No. 1083 (1977).
28. Jack Miller, Religion in the Philippines, *available at* <http://asiasociety.org/countries/religions-philosophies/religion-philippines> (last accessed Mar. 31, 2014).
29. Hadas Tagari, *Personal family law systems — a comparative and international human rights analysis*, 8 INT’L J. L. C. 231, 231 (2012).
30. See CODE OF MUSLIM PERSONAL LAWS, art. 2. This Article states —
  - Art. 2. Purpose of Code. — Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that ‘The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies,’ this Code:
    - (a) Recognizes the legal system of the *Muslims in the Philippines* as part of the law of the land and seeks to make *Islamic institutions more effective*;

Civil Code,<sup>31</sup> and now the Family Code, which are applicable to Filipinos in general, fail to take into consideration the customs and traditions of the largest minority group in the Philippines.<sup>32</sup> There was a need to enact a separate law for the Muslim minority because even though they have different customs and traditions, they cannot invoke their religion as a shield for failure to comply with the laws of the land. Indeed, “[t]he Muslims are barred from invoking their Islamic beliefs in the exercise of their civil and family rights, especially when the assertion of their religious beliefs violates the secular principle of the state which prohibits such invoking of religious belief in the exercise of civil and personal rights.”<sup>33</sup>

Naturally, there are a number of key differences between the Family Code and the CMPL with regard to marriage.

#### A. Requisites for Marriage

The requirements for marriage under the CMPL are as follows:

- (1) Legal Capacity of the contracting parties;
- (2) Mutual Consent of the parties freely given;
- (3) Offer (*ijab*) and acceptance (*qabul*) duly witnessed by at least two competent persons after the proper guardian in marriage (*wali*) has given his consent; and
- (4) Stipulation of customary dower (*mahr*) duly witnessed by two competent persons.<sup>34</sup>

According to the CMPL, capacity to contract marriage is acquired by a Muslim male at least 15 years of age<sup>35</sup> and by any Muslim female of the age of puberty or upwards,<sup>36</sup> as long as they do not suffer any impediment under

(b) Codifies Muslim personal laws; and

(c) Provides for an effective administration and enforcement of Muslim personal laws *among Muslims*.

*Id.* (emphasis supplied).

31. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

32. See Anshari Pangaga Ali, *Secularism in the Application of Islamic Family Law in the Philippines* (An Article for the International Islamic University Malaysia) 84, available at <http://lib.iiu.edu.my/mom2/cm/content/view/view.jsp?key=qpzcX3kSFKHHPakEkWw4gUe7OeDmWJe120080910100428531> (last accessed Mar. 31, 2014).

33. *Id.* at 88.

34. CODE OF MUSLIM PERSONAL LAWS, art. 15.

35. *Id.* art. 16 (1).

36. *Id.*

the [CMPL].<sup>37</sup> Furthermore, “[a] female is presumed to have attained puberty upon reaching the age of 15.”<sup>38</sup> The CMPL sets the minimum age of marriage for females at 12, provided she has attained puberty, and upon petition of a proper *wali*.<sup>39</sup> Matthew Stephens says that “[w]hile not common, court records from the Zamboanga *Shari’a* District Court show that the youngest male [to enter into marriage] was [11] years old, with the youngest female only seven.”<sup>40</sup> Although these are perhaps isolated incidents, these demonstrate that the requirements set forth by the CMPL for legal capacity to marry are not always followed, and neither are they strictly enforced.

In contrast, the Family Code provides that the essential requisites of marriage are:

- (1) Legal capacity of the contracting parties, who must be a male and a female; and
- (2) Consent freely given in the presence of the solemnizing officer.<sup>41</sup>

The formal requisites, on the other hand, are —

- (1) Authority of the solemnizing officer;
- (2) A valid marriage license ... ; and
- (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer, and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.<sup>42</sup>

The Family Code explicitly provides that “[a marriage] contracted by any party below [18] years of age[,] even with the consent of parents or guardians [shall be void from the beginning.]”<sup>43</sup>

Given the difference in requisites, a marriage that would otherwise be void under the Family Code because of lack of capacity to contract marriage could be valid under the CMPL. Therefore, even if a person contracting

37. *Id.*

38. *Id.*

39. *Id.* art. 16 (2).

40. Matthew Stephens, *Islamic Law in the Philippines: Between Appeasement and Neglect* (A Part of the Background Paper Series by the ARC Federation Fellowship Islam, Syari’ah and Governance) 8, available at [http://www.law.unimelb.edu.au/files/dmfile/Stephens\\_web2.pdf](http://www.law.unimelb.edu.au/files/dmfile/Stephens_web2.pdf) (last accessed Mar. 31, 2014).

41. FAMILY CODE, art. 2.

42. *Id.* art. 3.

43. *Id.* art. 35, ¶ 1.

marriage under the CMPL did not possess legal capacity at the time of the celebration of the marriage, this would not result in the marriage being null and void from the beginning. At the most it would be subject to “[annulment] upon [ ] petition of either party within four years after attaining the age of puberty, provided no voluntary cohabitation has taken place and the *wali* who contracted the marriage was other than the father or paternal grandfather.”<sup>44</sup>

The CMPL provides that “[i]n case of conflict between any provision of [the CMPL] and the laws of general application, the former shall prevail.”<sup>45</sup> A Muslim is defined as “a person who testifies to the oneness of God and the Prophethood of Muhammad[,] and professes Islam.”<sup>46</sup> Muslim Personal law “includes all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance[,] and property relations between spouses as provided for in [the CMPL].”<sup>47</sup>

There is no requirement of a bona fide intention to convert to Islamic Faith. This potentially opens the door for abuses by those who wish to circumvent the requirements for a valid marriage as set forth in the Family Code.<sup>48</sup>

In fact, the mere registration of a person’s conversion to Islam constitutes *prima facie* proof that he or she professes Islam.<sup>49</sup> It is unknown whether Aguilar and his spouse had registered their respective conversions at the appropriate District or Circuit Registrar. A non-registration would not necessarily mean that the marriage would be void since registration is *prima facie* proof only, and the conversion may be proven in other ways. In order to render the marriage void, it must first be proven that Aguilar or his spouse did not truly convert, in order to show that their marriage does not fall under the purview of the CMPL.

The CMPL provides that it shall only apply to a marriage or divorce where both parties are Muslims, or where only the male party is a Muslim, and the marriage is solemnized in accordance with Muslim law or the CMPL in any part of the Philippines.<sup>50</sup> However, the CMPL does not outline a procedure or action for who may file, where to file, and when to file such a challenge to the *prima facie* proof that a person professes Islam. Since there is no limitation on who has personality to file such an action, it could be any

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44. CODE OF MUSLIM PERSONAL LAWS, art. 16 (3).

45. *Id.* art. 3 (1).

46. *Id.* art. 7 (g).

47. *Id.* art. 7 (i).

48. FAMILY CODE, art. 2.

49. *Id.* art. 176.

50. *Id.* art 13.



person, even one not directly interested in the marriage. Contrast this with the Family Code, where generally only the parties to the marriage, the husband and wife, may contest the validity of a voidable marriage, and only interested parties may assail a marriage deemed void *ab initio*.<sup>51</sup>

The CMPL further provides that “[n]o conversion of a minor below the age of [18] years shall be registered by the District or Circuit Registrar without the written consent or permission of the parents or guardian, except when such minor has been emancipated from parental authority in accordance with law.”<sup>52</sup> It can be seen from this provision that there is no prohibition on minors converting to Islam, as only the permission of the parents is required. Thus, minors who wish to be married, or those of the age of majority who wish to be married to minors, can simply convert to Islam and make use of the provisions of the CMPL. The lack of parental consent to the registration of the conversion would also not affect the validity of the conversion itself, as only the registrability and the status of such registration as *prima facie* proof of conversion to Islam is affected.<sup>53</sup> Consent of the parents is not required when the parties have attained legal capacity as prescribed in the CMPL.<sup>54</sup>

It appears that a marriage between a Muslim woman and a non-Muslim male is not allowed to be governed by the CMPL.<sup>55</sup> Similar to the Family Code, the CMPL does not recognize marriage between members of the same sex.<sup>56</sup>

### *B. Polygamy*

Another key difference between marriages under the Family Code and those under the CMPL is the rule on polygamy, or multiple marriages. Muslim law allows the male to have multiple wives, and the CMPL recognizes this.<sup>57</sup> The law likewise makes an exception to the crime of bigamy. Under the RPC, bigamy is committed by “any person who shall contract a second or

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51. “Only the parties to a voidable marriage can assail it but any proper interested party may attack a void marriage.” *Niñal v. Badayog*, 328 SCRA 122, 134 (2000).

52. CODE OF MUSLIM PERSONAL LAWS, art. 177.

53. *Id.* at 176 (1).

54. *Id.*

55. *Id.* art. 13 (1).

56. *Id.* art. 16 (1).

57. *Id.* art. 27. This Article states that “[n]otwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases.” CODE OF MUSLIM PERSONAL LAWS, art. 27.

subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.”<sup>58</sup> However, the CMPL states that “the crime of bigamy shall not apply to a person married in accordance with the provisions of [the CMPL] or, before its effectivity, under Muslim law.”<sup>59</sup>

It is worth noting that since the CMPL applies only in specific situations, a subsequent conversion to Islam, after having contracted a marriage not falling under the CMPL will not bring the converting person under the CMPL, to wit —

In the Philippines, the conversion to Islam of either spouse does not result in the enjoyment of the privileges granted by the [*Shari’a*], nor does it affect the status of the marriage which was contracted prior to the change of religion. For instance, *if the marriage was originally solemnized according to the civil law, the converted husband is still prohibited from contracting a subsequent marriage, or from dissolving his marriage with his non-Muslim wife.*<sup>60</sup>

However, while this may be true for individuals, the CMPL provides that “[t]he conversion of non-Muslim spouses to Islam shall have the legal effect of ratifying their marriage *as if the same had been performed in accordance with the provisions of [the CMPL] or Muslim law*, provided that there is no legal impediment to the marriage under Muslim law.”<sup>61</sup> Thus, it is theoretically possible for persons with existing marriages under the Family Code to receive the “benefits” of *Shari’a* law, such as multiple marriages or divorce, provided that both spouses convert to Islam jointly.

### C. Divorce

While there is no readily available data pointing to any prevailing trend regarding religious conversions, aside from persons converting to Islam in order to avail of an earlier marrying age, or to be able to marry a minor, people making a religious switch, with or without real religious belief, in order to get out of marriages should likewise be a concern. The lack of a divorce provision in Civil Law might lead others to seek a remedy under the CMPL, due to the desperation of wanting to get out of a marriage.

It has been stated that the Philippines is the only country in the world without divorce.<sup>62</sup> This is not exactly accurate because, even though

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58. REVISED PENAL CODE, art. 349.

59. CODE OF MUSLIM PERSONAL LAWS, art. 180.

60. Ali, *supra* note 32, at 89–90 (emphasis supplied).

61. CODE OF MUSLIM PERSONAL LAWS, art. 178 (emphasis supplied).

62. See Carlos H. Conde, *Philippines Stands All but Alone in Banning Divorce*, N.Y. TIMES, June 17, 2011, available at [http://www.nytimes.com/2011/06/18/world/asia/18iht-philippines18.html?\\_r=0](http://www.nytimes.com/2011/06/18/world/asia/18iht-philippines18.html?_r=0) (last accessed Mar. 31, 2014).

applicable only to marriages solemnized in accordance with the CMPL, the CMPL contains grounds for divorce. Under the CMPL, divorce is defined as “the formal dissolution of the marriage bond in accordance with [the CMPL] to be granted only after exhaustion of all possible means of reconciliation of the spouses.”<sup>63</sup> The various forms that divorce may take are:

- (1) Repudiation of the wife by the husband (*talaq*);
- (2) Vow of abstinence by the husband (*ila*);
- (3) Injurious assimilation of the wife by the husband (*zihar*);
- (4) Acts of imprecation (*li’an*);
- (5) Redemption by the wife (*khul’*);
- (6) Exercise by the wife of the delegated right to repudiate (*tafwid*); or
- (7) Judicial decree (*faskh*).<sup>64</sup>

Although in law both the male and the female are given grounds to petition for divorce, it seems that women do not file for divorce on certain grounds. “The fact that ‘no cases for divorce have been filed on grounds of domestic violence, wife beating[,] or marital rape’ suggests that not all women are comfortable using the court to resolve these issues.”<sup>65</sup> This is rather exacerbated by “research [indicating] that the rate of dismissal of cases filed by women is much higher than those by men.”<sup>66</sup>

In contrast, the Family Code does not recognize absolute divorce. Under the Family Code, a marriage can only be void, voidable, or valid.<sup>67</sup> If it is initially valid, it cannot be subsequently dissolved by a divorce decree, save for the exception provided under Article 26.<sup>68</sup> The Family Code only provides for legal separation or “relative divorce,” which does not dissolve the marriage, but merely provides for bed-and-board separation.<sup>69</sup>

As the name of the law suggests, the CMPL does not cover the entirety of *Shari’a* law — only persons and family relations. Notably, the CMPL does

63. CODE OF MUSLIM PERSONAL LAWS, art. 45.

64. *Id.*

65. Stephens, *supra* note 40, at 17.

66. *Id.*

67. See MELENCIO S. STA. MARIA, JR., PERSONS AND FAMILY RELATIONS LAW 191-93 (5th ed., 2010).

68. FAMILY CODE, art. 26, ¶ 2. This Article provides — “Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.” *Id.*

69. STA. MARIA, *supra* note 67, at 353.

not include Islamic Penal Law,<sup>70</sup> which punishes the act of *riddah* or apostasy.<sup>71</sup> Apostasy is the abandonment of one's religious faith.<sup>72</sup> "Islamic jurisprudence (*fiqh*) prescribes the penalty of death for the crime of *riddah* and the dissolution of the marriage of an apostate with a Muslim spouse, as the existence of the marriage is contrary to the teachings of [*Shari'a*], and the beliefs of the Muslim spouse."<sup>73</sup> This is in accordance with the secular principle enshrined in the Philippine Constitution, to wit —

The secular principle of the state does not allow any state law to penalize a Muslim who converts to Christianity[,] even though accompanied by any kind of argument against Islam[,] because such a penalty may run counter to the right of any Filipino citizen to freedom of religion as enshrined in the Constitution. This means that aside from being [deprived] of its jurisdiction to apply the Islamic penal law, the Muslim law of the Philippines shall have no legal authority to dissolve the marriage of an apostate with a Muslim spouse on the basis of apostasy, because the said penalty is contrary to the secular principle of the state which sets aside the role of religion or religious beliefs in the enforcement of all laws in the country.<sup>74</sup>

Not being embodied in the law, the crime of *riddah* and its penalty of dissolution of marriage have no application in the Philippines. This shows that faith or religious belief, or lack thereof, do not factor into the validity or invalidity of a marriage, at least as far as Philippine law is concerned. Additionally, as stated in the CMPL, "[t]he change of religion by a Muslim shall not have the effect of extinguishing any obligation or liability whatsoever incurred[,] prior to said change."<sup>75</sup>

### III. CIRCUMVENTING THE FAMILY CODE

Even though there is a specific law governing the personal relations of Muslim Filipinos, not all marriages between Muslim Filipinos are governed by the CMPL. Veritably, Muslim Filipinos are free to choose whether their marriage and personal relations are to be governed by the Family Code or the CMPL, to wit —

[There is no] provision [in] the Islamic family law of the Philippines which prevents the Muslims from solemnizing their marriages according to the

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70. Ali, *supra* note 32, at 89.

71. *Id.*

72. Merriam-Webster Official Website, Definition of Apostasy, *available at* <http://www.merriam-webster.com/dictionary/apostasy> (last accessed Mar. 31, 2014).

73. Ali, *supra* note 32, at 89.

74. *Id.*

75. CODE OF MUSLIM PERSONAL LAWS, art. 179.

Family Code of the Philippines. ... [The CMPL] has acknowledged the jurisdiction of the Civil Code over the marital relations of Muslim and non-Muslim spouses whose marriage was solemnized not in accordance with Islamic law. ... [T]he Muslims in the Philippines are ... not prohibited to solemnize their marriages according to the civil laws of the state. This means that Philippine law has ... granted all Filipino citizens the freedom to observe the provisions of the Family Code in the solemnization of their marriages.<sup>76</sup>

While Muslim Filipinos are still free to marry under and be governed by the Family Code, non-Muslim Filipinos cannot choose to be governed by the CMPL. As stated in the applicability clause of the CMPL on marriage, its provisions “shall apply to marriage and divorce wherein *both parties are Muslims*, or wherein *only the male party is a Muslim* and the marriage is solemnized in accordance with Muslim law or [the CMPL] in any part of the Philippines.”<sup>77</sup>

However, there is nothing to prevent non-Muslim Filipinos from converting to Islam prior to marriage, and then solemnizing a marriage subsequently in accordance with the CMPL. Likewise, non-Muslim Filipino spouses may jointly convert to Islam in order to fall under the coverage of the CMPL.<sup>78</sup> No less than the Philippine Constitution sanctions changing of religions, as it provides that “[n]o law shall be made respecting an establishment of religion, or *prohibiting the free exercise thereof*. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.”<sup>79</sup> Part of religious freedom includes the freedom to choose one’s religion, thus —

[A] Muslim is at liberty to profess Islam wholly or partially or renounce it by adopting another faith or disbelief, and the [*Shari’a*] court has no jurisdiction to compel him [or her] to return to Islam[,] since that would be contrary to the freedom of religion as mandated in the Constitution. Also, a non-Muslim is constitutionally free to embrace Islam and practice his [or her] new religion and the [State] has no authority to force him to reconvert to his original religion as it may contradict his [or her] constitutional right.<sup>80</sup>

There being a constitutionally protected right to change one’s religion whenever he or she desires, coupled with the existence of a law whose applicability depends on the religion of the persons involved, the possibility for abuse is readily apparent. Essentially, the situation allows any person to choose which law will be made applicable to him, by the mere expedient of

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76. Ali, *supra* note 32, at 91.

77. CODE OF MUSLIM PERSONAL LAWS, art. 13 (1) (emphasis supplied).

78. See CODE OF MUSLIM PERSONAL LAWS, art. 178.

79. PHIL. CONST. art. III, § 5 (emphasis supplied).

80. Ali, *supra* note 32, at 93.

an ostensible change of religion. Furthermore, this change in religion cannot be inquired into, as “[m]en may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.”<sup>81</sup>

#### IV. A PROBLEM WITHOUT A SOLUTION

The Philippines is not the only country with a law made specifically for a religious minority. Countries such as Lebanon, Israel, Egypt, Algeria, and Morocco likewise have personal law systems in place to cater to their various religious groups.<sup>82</sup> While there are certain legal problems associated with having multiple legal systems governing different people in the same state, such as possible human rights violations and discrimination,<sup>83</sup> the concern regarding religious conversion for the sake of convenience is not deemed as that big of an issue.

This may be due to a number of factors. First, as previously discussed, the right to religious freedom is a universally recognized right, and being able to convert to one’s religion of choice is part of such freedom. Even though a person may convert with motives other than the honest exercise of one’s faith, there is no way to prove such motive, as the state may not question a person’s faith. Thus, even if the state decided to address this issue, it would be difficult, if not impossible, to implement any safeguards.

Second, the idea of a person “using” a certain religion for the sake of convenience may be difficult to accept. Prioritizing convenience over faith is not something the conscience of a god-fearing man or woman would even consider, as any deity or higher-being would presumably know the true intentions of any person. It is easier to accept that conversion to a certain religion was made because it is what the person genuinely believes.

Finally, this issue may not be deemed as problematic simply because it does not happen often enough to merit consideration. The law may be willing to give up occasional abuses so long as it achieves its primary purpose of accommodating the customs and traditions of Muslim Filipinos in the context of Philippine law.

Thus, because it is hard to know a person’s true motive for converting and to ascribe bad faith in such conversion, the issue of converting for the sake of convenience is difficult to discuss in any legal framework. Even the media, in reporting the case of Freddie Aguilar, is careful not to impute outright bad faith, but nevertheless recognizes the issue.<sup>84</sup>

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81. *United States v. Ballard*, 322 U.S. 78, 86 (1944).

82. *See* Tagari, *supra* note 29, at 231.

83. *Id.*

84. *See* InterAksyon.com, *supra* note 25. The report states, “‘It will be his accountability to God,’ [Maguindanao governor] Mangudadatu replied when

Given the impossibility of ascertaining the genuineness of one's religious belief, is a person's conscience the only safeguard against possible abuse of the law? It would appear so.

While this issue may come up only in isolated instances, it is still something which must be kept in mind, if and when laws of this nature are made and implemented in the future. For now, it is up to the religious affiliation involved — in the case of the Philippines, the Muslims — to properly determine whether a person wishing to convert to their faith is a true believer, or just someone who wants to use their religion for his or her own convenience.

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asked if Aguilar ... only became a Muslim for personal convenience." No other mention of the issue is made. InterAksyon.com, *supra* note 25. See also Unson, *supra* note 24. The report mentions that "Aguilar emphasized he has embraced Islam not to escape possible prosecution for marrying a minor, but on realization of the religion's simplicity and profoundness." Unson, *supra* note 24.