

**IN THE CONSTITUTIONAL COURT**  
**OF INDONESIA**

**JUDICIAL REVIEW**  
**OF LAW NUMBER 1/PNPS/1965 CONCERNING THE PREVENTION OF**  
**RELIGIOUS ABUSE AND/OR DEFAMATION**

Case number 140/PUU-VII/2009

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**PUBLIC**  
**AMICUS BRIEF BY**

**ARTICLE 19: Global Campaign For Free Expression**  
**Amnesty International**  
**Cairo Institute for Human Rights Studies**  
**Egyptian Initiative for Personal Rights**

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**ARTICLE 19**

Free Word Centre  
60 Farringdon Road  
London EC1R 3GA  
United Kingdom  
Tel: +44 207 324 2500  
Fax: +44 207 490 0566  
Web: [www.article19.org](http://www.article19.org)

**Amnesty International**

1 Easton Street  
London WC1X 0DW  
United Kingdom  
Tel: +44 207 413 5500  
Fax: +44 207 956 1157  
Web: [www.amnesty.org](http://www.amnesty.org)

**Egyptian Initiative for Personal Rights**

8 Mohamed Ali Jinnah Street, Flat #9  
Garden City  
Cairo  
Egypt  
Tel: +20 22796 2682  
Fax: +20 22794 3606  
Web: [www.eipr.org](http://www.eipr.org)

**Cairo Institute for Human Rights Studies**

21 Abd El-Megid El-Remaly St,  
7th Floor, Flat no. 71  
Bab El Louk  
P.O. Box 117 Maglis El- Shaab  
Cairo  
Egypt  
Phone: +202-27951112/ +202- 27963757  
Fax: +202-27921913  
Web Site: [www.cihrs.org](http://www.cihrs.org)

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## **I. INTRODUCTION**

1. This amicus brief is submitted on behalf of ARTICLE 19, the Global Campaign for Free Expression, Amnesty International, the Cairo Institute for Human Rights Studies, and the Egyptian Initiative for Personal Rights (“the Amici”) in accordance with the permission to intervene in this case granted by the Constitutional Court of Indonesia. Brief details of each of these organisations are set out immediately below.
2. ARTICLE 19: Global Campaign for Free Expression (“ARTICLE 19”), is an international human rights organisation, independent of all ideologies and governments. It takes its name and mandate from the nineteenth article of the Universal Declaration of Human Rights which proclaims the right to freedom of expression, including the right to receive and impart information and ideas. ARTICLE 19 seeks to develop and strengthen international standards which protect freedom of expression by, among other methods, making submissions to international, regional and domestic tribunals and human rights bodies and convening consultations of experts on free speech issues. ARTICLE 19 is a registered UK charity (No.32741) with headquarters in London, and field offices in Kenya, Senegal, Bangladesh, Mexico and Brazil.
3. Amnesty International is a worldwide movement of people working for respect and protection of internationally-recognized human rights principles. Founded in 1961, the organization has over 2.2 million members and supporters in more than 150 countries and territories and is independent of any government, political ideology, economic interest or religion. It bases its work on the international human rights instruments adopted by the United Nations as well as those adopted by regional bodies such as the Organization of American States. It also has consultative status before the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization and the Council of Europe, has working relations with the Inter-Parliamentary Union and the African Union, and is also properly registered as a civil society organization with the Organization of American States enabling it to participate in its activities.
4. The Cairo Institute for Human Rights Studies (“CIHRS”) is an independent regional non-governmental organization founded in 1993. It aims at promoting respect for the principles of human rights and democracy, analyzing the difficulties facing the application of International Human Rights Law and disseminating Human Rights Culture in the Arab Region as well as engaging in dialogue between cultures in respect to the various International Human Rights treaties and Declarations. CIHRS seeks to attain this objective through the developing, proposing and promoting policies, legislations and Constitutional amendments. CIHRS works on human rights advocacy in national, regional and international human rights mechanisms, research and

human rights education -both for youth and ongoing professional development for Human Rights Defenders. CIHRS is a major publisher of information, a magazine, an academic quarterly, and scores of books concerning human rights. A key part of CIHRS' mandate is to help shape the understanding of the most pressing human rights issues within the region and then to coordinate and mobilize the key players and NGOs from across the Arab world to work together to raise the public awareness about these issues and to reach solutions in line with the international human rights law.

5. The Egyptian Initiative for Personal Rights (“EIPR”) is a Cairo-based independent and non-profit human rights organization established in 2002. Using research, advocacy and strategic litigation, the EIPR seeks to defend and promote the rights to freedom of religion and belief, privacy, health and bodily integrity. The EIPR has argued cases of freedom of religion and belief before Egyptian Courts, the UN Working Group on Arbitrary detention and the African Commission on Human and Peoples’ Rights.
6. The Amici submit that laws that seek to prevent discussion and debate on religion including defamation of religions and blasphemy laws (regardless of the exact term used) are fundamentally incompatible with Indonesia’s obligations under international human rights law. In particular, these laws violate legally binding provisions on freedom of expression, freedom of thought, conscience and religion, equality before the law and freedom from discrimination (“equality”). Such laws should therefore be repealed.
7. More specifically, the Amici submit that the *Law Number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation* (“the Presidential Decision”)<sup>1</sup> is in contravention of international human rights law on freedom of expression, freedom of religion and equality. The Amici further submit that Article 156(a) of the Criminal Code, created by the Presidential Decision (Article 4), and the *Joint Decree by the Minister of Religious Affairs, Attorney General and Minister of Internal Affairs of the Republic of Indonesia on the Warning and Instruction to Followers, Members and/or Leaders of the Jemaat Ahmadiyah Indonesia (JAI) and Members of the Community* (“the Joint Decree”)<sup>2</sup>, adopted pursuant to the Article 2 of the Presidential Decision, are also in conflict with these internationally recognized human rights. In our opinion, if the Presidential Decision is upheld by the Indonesian Constitutional Court, the irreconcilable conflict between Indonesia’s international obligations in this regard, on the one hand, and the domestic law of the state, on the other, will remain.

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<sup>1</sup> Law No 3, 1965, Abuse and/or defamation of religion prevention (Explanation in the Supplement to the State Gazette of the Republic of Indonesia No 2726).

<sup>2</sup> Enacted in Jakarta, on 9 June 2008.

8. The decision of the Amici to intervene in this case is motivated by a serious concern about the human rights of individuals belonging to religious minorities in Indonesia who have been targeted for a range of human rights abuses by state and non-state actors over the years. The Presidential Decision has been previously used and continues to be used to imprison people for long periods of time, simply because they have exercised their right to freedom of expression and/or their right to freedom of religion.
9. More generally, the decision is motivated by a grave concern about the undermining of international human rights law on the respect and protection of freedom of expression, freedom of thought, conscience and religion and equality through national laws prohibiting and punishing defamation of religions and blasphemy. The Amici are concerned that such laws restrict legitimate debates and discussions of ideas, often on important matters of public interest. The Amici therefore submit that if the Constitutional Court upholds the Presidential Decision, this would negatively impact human rights in Indonesia, and possibly beyond.
10. On the other hand, if the Constitutional Court decides that the Presidential Decision is in breach of Indonesia's international legal obligations, as we submit, and therefore contrary to Indonesian law, it would be an important positive step for human rights and the rule of law in Indonesia. In particular, it would uphold the rights of minority religious groups, who as emphasised above, are often targeted for abuses. It would also be in line with the landmark decisions made by the Court in December 2006 and July 2007 pertaining to freedom of expression<sup>3</sup> as well as recent developments in other states that have abolished their own laws on religious insult or blasphemy in recent years, or where such laws have fallen into disuse.<sup>4</sup>
11. Part II of this brief summarises the Indonesian laws concerning the so-called abuse or defamation of religions in Indonesia. Part III then sets forth the international legal arguments against the

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<sup>3</sup> The Constitutional Court of Indonesia decided on 6 December 2006 to repeal Articles 134, 136 and 137 of the country's Criminal Code which penalised "insulting the President or Vice-President," imposing punishments of up to six years' imprisonment. Judgment Number 013-022/PUU-IV/2006. In July 2007, the Court ruled unconstitutional Articles 154 and 155 of the Criminal Code commonly known as the "hate sowing" offences. Judgment Number 4/PUU-V/2007 dated June 19, 2007. Also see Judgement Number 14/PUU-VI/2008.

<sup>4</sup> For example, in the UK, the abolition of blasphemy in England and Wales entered into force on 8 July 2008. See Article 79 of the Criminal Justice and Immigration Act 2008 (c 4). In Europe, blasphemy is an offence in a minority of states (Austria, Denmark, Finland, Greece, Ireland, Italy, Liechtenstein, the Netherlands, San Marino) and is rarely prosecuted where it remains an offence. See European Commission for Democracy through Law ("the Venice Commission"), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, Adopted by the Venice Commission at its 76th Plenary Session, CDL-AD(2008)026, 23 October 2008; see paragraphs 24 and 26. Blasphemy has been abolished in some Australian jurisdictions and the Crown has not prosecuted anyone for blasphemy since 1919. Blasphemy is obsolete as a crime in Canada where the last prosecution was in 1935.

Presidential Decision in particular, focussing on Indonesia's legal obligations in relation to freedom of expression, freedom of religion and equality. Part III also identifies some of the potential effects of the Presidential Decision which are counterproductive to the achievement of the purported objectives of the law.

## **II. SUMMARY OF LAWS CONCERNING ABUSE OR DEFAMATION OF RELIGIONS IN INDONESIA**

12. Article 1 of the Presidential Decision prohibits “[e]very individual ... in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion”. The Presidential Decision also creates a new provision, Article 156(a) of the Criminal Code which imposes a five year prison sentence “for whosoever in public intentionally express their views or engage in actions: a. that in principle incite hostilities and considered as abuse or defamation of a religion embraced in Indonesia.”
13. In 2008, the Minister of Religious Affairs, Attorney General and Minister for Internal Affairs issued a Joint Decree that cautioned members of the Jemaat Ahmadiyah Indonesia (JAI) against committing the offences indicated in Article 1 of the Presidential Decision. In addition, it “warn[s] and instruct[s] the followers, members and/or leaders of the ... (JAI), provided that they profess to being believers of Islam, to cease the propagation of interpretations and activities in deviation of the teachings of Islam, that involves the propagation of an ideology that believes in the presence of a prophet along with his teachings after the Prophet Muhammad” (Article 3). Furthermore, it seeks “to warn and instruct members of the community to maintain and safeguard harmony among believers of different religions as well as unity in public order within a community by not engaging in violation of the law against the followers, members and/or leaders of the ... (JAI)” (Article 4). Failure to comply with these provisions would result in sanctions according to the Criminal Code.
14. The Amici note that at the international level there is no agreed definition of the term “defamation of religions” and it is often used differently in different contexts and sometimes alongside or interchangeably with other concepts, such as blasphemy.<sup>5</sup> The Amici further note that the

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<sup>5</sup> “For Mauritius, the criminal code outlaws ‘outrage on religious worship’ and ‘outrage against public and religious morality’, while for Turkey it is an offence under the penal code to ‘attack’ or ‘impugn’ a person’s

Presidential Decision at issue in this case does not define the term “religious abuse and/or defamation”.

### III. SUBMISSIONS

#### i. Summary of submissions

15. **The Amici submit that the Presidential Decision is fundamentally incompatible with Indonesia’s international human rights obligations on freedom of expression, freedom of thought, conscience and religion and equality.** The International Covenant on Civil and Political Rights (“ICCPR”)<sup>6</sup> provides the principal legal framework for Indonesia’s international obligations in relation to these rights which are protected by Article 19 (freedom of opinion and expression), Article 18 (freedom of thought, conscience and religion or belief) and Articles 2, 26 and 27 (equality before the law and the prohibition of discrimination).<sup>7</sup> Indonesia acceded to the ICCPR on 23 February 2006, and is therefore bound by that Covenant. Indonesia is required, both under the ICCPR itself and under general international law, to enact legislation to give domestic effect to its provisions and to bring domestic laws into line with the ICCPR.<sup>8</sup> Indonesia has made no reservations or declarations in relation to the ICCPR’s provisions on the rights at issue in this case and therefore must fully meet the obligations which flow from them. The Amici recall that Article 27 of the Vienna Convention on the Law of Treaties provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.
16. The Human Rights Committee, the UN treaty body charged under the ICCPR with supervising its implementation, has explained that:

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‘honour, dignity or prestige’ on, inter alia, a matter that is deemed ‘sacred to that person’s religion’, or to publicly ‘degrade’ the religious values of a section of the public on the grounds of religion, social class, gender, and so on. In the case of Egypt, with regard to State-approved religions, it is an offence under the penal code to print and publish distorted religious texts or to publicly ‘mock and ridicule’ religious ceremonies”, Report of the UN High Commissioner for Human Rights on the Implementation of Human Rights Council Resolution 7/19 entitled “combating defamation of religions”, 12 September 2008 A/HRC/9/7 12 September 2008.

<sup>6</sup> International Covenant on Civil and Political Rights adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

<sup>7</sup> The equality principle is protected by, inter alia, Articles 2 and 26 of the ICCPR. Article 2(1) states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 26 of the ICCPR states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>8</sup> Article 2(2) of the ICCPR; Articles 2(1)(b) and 15 Vienna Convention on the Law of Treaties 1969.

**[a]ll branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level... are in a position to engage the responsibility of the State Party.**

17. The Committee further clarifies that states parties are required to:

**take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article... domestic law or practice [must] be changed to meet the standards imposed by the Covenant's substantive guarantees.<sup>9</sup>**

18. In addition, according to section 7(2) of Indonesia's Law No 39/1999 on Human Rights, provisions of international treaties which concern human rights and which have been ratified by Indonesia become automatically part of domestic law.

19. **The Amici submit that the Presidential Decision is not only contrary to international human rights law pertaining to freedom of expression, freedom of religion and equality, but also goes against regional human rights standards and relevant comparative jurisprudence.**

20. Accordingly, the following paragraphs setting forth the Amici's submissions rely on: (a) provisions of international human rights treaties and authoritative interpretation by international and regional human rights bodies and mechanisms, including UN thematic mandate-holders appointed to examine, monitor, advise and publicly report on violations of freedom of expression and freedom of religion<sup>10</sup>; (b) relevant comparative authorities and jurisprudence.<sup>11</sup>

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<sup>9</sup> Human Rights Committee, General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras 4 and 13 respectively.

<sup>10</sup> See UN Human Rights Council Resolution 7/36: Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Resolution 6/37: Elimination of all forms of intolerance and of discrimination based on religion or belief.

<sup>11</sup> Furthermore, it should be noted that a range of prominent non-governmental organisations, including the Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights, have advanced similar arguments in criticising efforts to include the concept of defamation of religions in international law over recent years. See ARTICLE 19, "Statement, Human Rights Council: Article 19 Calls on HRC Members to Vote Against Proposed Resolution on Defamation of Religions" 25 March 2009; ARTICLE 19, Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights, "Joint Written Statement to the Human Rights Council Ninth Session" 11 September 2008.

ii. **Freedom of expression**

21. The Amici submit that the Presidential Decision violates Indonesia's international legal obligations to respect and protect freedom of expression.

22. The right to freedom of expression is protected by Article 19 of the ICCPR which provides:

**1. Everyone shall have the right to hold opinions without interference.**

**2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**

**3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: for respect of the rights or reputations of others; for the protection of national security or of public order (ordre public), or of public health or morals”.**

23. The Amici make a number of specific submissions in relation to freedom of expression.

24. **First, the ICCPR and human rights treaties do not allow restrictions to be placed on the exercise of the right to freedom of expression for the purposes of ensuring respect for religions or protecting them from “defamation”.**

25. The ICCPR, like other international human rights treaties, protects the rights of individual persons and, in some instances, of groups and persons, but does not protect abstract entities such as religions, beliefs, ideas or symbols. As noted, Article 19(3) of the ICCPR only allows restrictions to be placed on the exercise of the right to freedom of expression only as provided by law and when necessary “for the respect of the rights and reputations of others, for the protection of national security or public order, or of public health or morals”, which does not include protection of religions.<sup>12</sup> The ICCPR and regional human rights instruments do not support the notion that religions or beliefs as such can be the subject of a defamatory attack.

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<sup>12</sup> See also Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 4 November 1950, entered into force 3 September 1953; Article 13(2) of the American Convention on Human Rights, OAS Treaty Series No 36, 1144, adopted at San Jose, Costa Rica, on 22 November 1969, entered into force 18 July 1978; Article 9 of the African Charter on Human and Peoples' Rights, OAU Doc CAB/LEG/67/3 rev. 5 adopted 27 June 1981, entered into force 21 October 1986.



26. The UN Human Rights Committee has never recognised such a notion either or held that defamation of religions could be a legitimate ground for restrictions on the exercise of freedom of expression. It has held, however, that the right to freedom of expression is of paramount importance in any society, and any restrictions on the exercise of this right must meet a strict test of justification.<sup>13</sup> Moreover, the UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion has stated that limitations on the right to freedom of expression were “designed in order to protect individuals against direct violations of their rights” and “are not designed to protect belief systems from external or internal criticism.”<sup>14</sup>

27. Restrictions on the right to freedom of expression must be narrowly construed: they must be provided in law, serve a purpose stipulated in Article 19(3) of the ICCPR and be necessary for that purpose. The Human Rights Committee has stated that:

**any restrictions ... must be permissible under the relevant provisions of the Covenant. ... States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.**<sup>15</sup>

28. Likewise, regional human rights instruments do not permit placing restrictions on the exercise of freedom of speech in order to prevent criticism of religions.<sup>16</sup> The European Court of Human Rights has held that a conviction of “defamation of nation, race and belief”, which the state had sought to justify on the grounds that the speech concerned offended religious believers, was in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms’ provision for freedom of expression, given that it neither corresponded to a pressing social need, nor was proportionate to the legitimate aim pursued, namely, the rights of others whose religious feelings had been offended.<sup>17</sup> The European Court of Human Rights has repeatedly asserted that speech that “offends, shocks or disturbs” is protected.<sup>18</sup>

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<sup>13</sup> See inter alia *Kim v the Republic of Korea*, Communication No 574/1994 views adopted on 3 November 1998 and *Park v the Republic of Korea*, Communication No 628/1995 views adopted on 20 October 1998.

<sup>14</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to the Human Rights Council, 28 February 2008 A/HRC/7/14 paragraph 85.

<sup>15</sup> Human Rights Committee, General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 6.

<sup>16</sup> See also Article 10(2) of the European Convention on Human Rights; Article 32(2) of the Arab Charter on Human Rights; Article 13(5) of the American Convention on Human Rights.

<sup>17</sup> *Klein v Slovakia*, Application 72208/01 judgment of 31 October 2006.

<sup>18</sup> *Handyside v United Kingdom*, Application No 5493/72, judgment of 7 December 1976, Series A no 24, 1 EHRR 737.

29. The position of the Presidential Decision is also contrary to the jurisprudence of other countries in the region which follows the approach of the ICCPR that freedom of expression includes the freedom to criticise religions and beliefs.
30. In 1997 the South Korean Supreme Court rejected the defamation claim brought by one branch of the Christian church against another which had published a book criticizing the former. In its decision of 29 August 1997, the South Korean Supreme Court stated: “In the freedom of religion, the freedom to spread the religion is included, and in the freedom to spread religion, the freedom to criticize other religions ... is included. Therefore, the freedom to criticize other religions is protected by freedom of religion as a form of religious expression, and since the provision on freedom of religion (section 20(1) of the constitution) is a special provision to provision on freedom of expression (section 21(1) of the constitution), religious expression is protected more highly than other forms of expression.”<sup>19</sup>
31. In R V Bhasin v State of Maharashtra and Marine Drive Police Station, which was decided in January 2010, the Bombay High Court emphasised that the right to freedom of expression covers the freedom to criticise religions.<sup>20</sup> It stated: “everything is open to criticism and religion is no exception to it. Every religion, whether it is Islam, Hinduism, Christianity or any other religion, can be criticized. Freedom of speech and expression covers criticism of a religion and no person can be sensitive about it. Healthy criticism provokes thought, encourages debate and helps us to evolve... The author has undoubtedly a right to be wrong”.<sup>21</sup> It went on: “an author has a right to put forth a perspective that a particular religion is not secular. This is a view point which one has a right to assert.”<sup>22</sup>
32. **Second, the Presidential Decision’s prohibition of the “public endorsement of a deviation from the basic teachings” of certain religions of the people of Indonesia violates freedom of expression.** International human rights bodies have clearly stated that freedom of expression cannot be curtailed to suppress dissenting or critical beliefs. Recently, the UN Working Group on Arbitrary Detention has held that the criminal conviction of Egyptian blogger, Kareem Amer, for insulting the religious Al Azhar Institute and Head of State, was in violation of Article 19 ICCPR. In doing so, the UN Working Group stated: “[i]nternational law does not permit restrictions on the expression of opinions or beliefs which diverge from the religious beliefs of the majority of the

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<sup>19</sup> Supreme Court of Korea, decision of 29 August 1997, 97da19755 (unofficial translation).

<sup>20</sup> CR P C Sections 95 and 92 Criminal Application No 1421 of 2007, judgment of 6 January 2010.

<sup>21</sup> Para 54.

<sup>22</sup> Para 56.

population or from the State prescribed one”.<sup>23</sup> Such restrictions can have a chilling effect within society by dissuading individuals from commenting upon religious ideas, symbols, institutions or practices which should be subject to critical engagement and scrutiny in any state upholding human rights and the rule of law including Indonesia’s.

33. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also stated that permissible limitations in Article 19(3) of the ICCPR “are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements”.<sup>24</sup>
34. Jurisprudence from other countries in Asia supports the international legal position that the exercise of freedom of expression cannot be restricted to prevent criticism of religions or beliefs as such.
35. In a libel case brought against an individual by a Protestant religious group, the Seoul South District Court recognized that “religious analysis only forms ‘opinions’ and does not constitute ‘facts’ which are needed for defamation to occur”. It went on to state that the “constitution requires in article 20(2) the neutrality of the nation in religious matters, the government cannot interfere with religious matters and declare which religions or doctrines are right and those criticisms to such religions and doctrines which are wrong”.<sup>25</sup>
36. In Anant Dighe v the State of Maharashtra the High Court of Bombay emphasised “.... it is important to realise that there are eternal values on which the Constitution of a democracy is founded. Tolerance of a diversity of viewpoints and the acceptance of the freedom to express of those whose thinking may not accord with the mainstream are cardinal values which lie at the very foundation of a democratic form of Government”.<sup>26</sup>
37. Egypt’s Supreme Constitutional Court defined freedom of religion and belief in a similar manner: “Freedom of belief, in principle, means for the individual not to be forced to adopt a belief he does not believe in, or to drop one that he had accepted, or to declare it, or to side with one belief in a manner that would be prejudicial to another by denying, belittling or ridiculing it. Rather all

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<sup>23</sup> UN Working Group on Arbitrary Detention, Opinion No 35/2008 (Egypt), Communication addressed to the Government on 6 December 2008 at paragraph 38.

<sup>24</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to the Human Rights Council, 28 February 2008 A/HRC/7/14 paragraph 85.

<sup>25</sup> Seoul South District Court, decision of 4 April 1996, 95kahap4745 (unofficial translation).

<sup>26</sup> Writ Petition No 3184 of 2000, judgment of 9 October 2001.

religions should be tolerant and respectful of each other. In addition, according to the right definition of freedom of belief, [the state] does not have the right to punish those who adopt a belief that it has not chosen.”<sup>27</sup>

38. **Third, while states can and should prohibit the advocacy of religious hatred, that is not the subject of the Presidential Decision.** International human rights law requires states to prohibit advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, (often called “hate speech”) as provided in Article 20(2) of the ICCPR.<sup>28</sup> This provision states:

**Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

39. Therefore, while restrictions on freedom of expression intended to prevent and even punish “hate speech” are necessary and should be imposed, they need to be strictly limited in their scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (and to war propaganda, as provided for in Article 20(1) of the ICCPR). Such restrictions on freedom of expression do not include the prohibition of defamation, insult or criticism of religions, beliefs, symbols or institutions as such. This position was reaffirmed in 2008 in a Joint Statement of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. The experts stated, *inter alia*:

**Restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.**<sup>29</sup>

40. European bodies have taken a similar position. Notably, in its Recommendation 1805(2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion, the Parliamentary Assembly of the Council of Europe considered that “national law should only penalise expressions about religious matters which intentionally and severely disturb public order

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<sup>27</sup> Supreme Constitutional Court of Egypt, Appeal no. 8, Judicial Year 17, Session dated 18 May 1996.

<sup>28</sup> See also similarly Article 13(5) of the American Convention on Human Rights (prohibiting, *inter alia*, “any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence”).

<sup>29</sup> Joint statement from 10 December 2008 available at <http://www.article19.org/pdfs/other/joint-declaration-on-defamation-of-religions-and-anti-terrorism-and-anti-ext.pdf>

and call for public violence”.<sup>30</sup> The Council of Europe’s Venice Commission subsequently recommended *inter alia* that “a) incitement to hatred, including religious hatred, should be the object of criminal sanctions as is the case in almost all European States ... b) That it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component [and] c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced”.<sup>31</sup>

41. In a similar vein, the *Camden Principles on Freedom of Expression and Equality*, prepared by ARTICLE 19 on the basis of discussions involving a group of high-level UN officials and international experts on freedom of expression and equality issues in 2009, highlight the principle that “states should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions”, unless such expression constitutes incitement to discrimination hostility or violence.<sup>32</sup>

### **iii. Freedom of Religion or Belief**

42. The Amici submit that the Presidential Decision contravenes international human rights law on freedom of religion or belief.

43. Freedom of religion or belief is protected by Article 18 of the ICCPR which provides:

**1. 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 and private, to manifest his religion or belief in worship, observance, practice and teaching.**

**2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.**

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<sup>30</sup> Council of Europe, Parliamentary Assembly, Recommendation 1805 (2007), Blasphemy, religious insults and hate speech against persons on grounds of their religion, adopted on 29 June 2007 (27th Sitting), para 15.

<sup>31</sup> European Commission for Democracy through Law (“the Venice Commission”), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, Adopted by the Venice Commission at its 76th Plenary Session, CDL-AD(2008)026, 23 October 2008 para 89.

<sup>32</sup> ARTICLE 19, *The Camden Principles on Freedom of Expression and Equality*, April 2009, para 12.3 <http://www.article19.org/advocacy/campaigns/camden-principles/index.html>

**3. Freedom to manifest one's religion or beliefs 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.**

**4. 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.**

44. Article 18 of the ICCPR thus protects an individual's right to freedom of thought, conscience and religion, including the right to manifest his or her religion or belief in worship, practice and teaching. The Amici make several specific submissions about how the Presidential Decision conflicts with freedom of religion or belief.

45. **First, freedom of religion under Article 18 of the ICCPR protect the rights of individuals rather than religions or beliefs, religious ideas, symbols or personalities.** The fundamental purpose of Article 18 of the ICCPR is to protect an individual's right to freedom of thought, conscience and religion and to manifest his or her religion or belief in worship, observance, practice and teaching.

46. The UN Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have emphasised that that "the right to freedom of religion protects primarily the individual and, to some extent, the collective rights of the community concerned, but it does not protect the religions or beliefs per se".<sup>33</sup> The UN Special Rapporteur on freedom of religion has recently emphasised that "the right to freedom of religion or belief does not include the right to have a religion or belief that is free from criticism or ridicule".<sup>34</sup>

47. The UN Working Group on Arbitrary Detention has also recognised that while "defamation of religions may offend people and hurt their feelings ... it does not directly result in a violation of their rights to freedom of religion".<sup>35</sup>

48. Comparative case-law also supports the position that freedom of religion or belief does not include the right to have a religion or belief free from ridicule. In Browne v Canwest TV Works

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<sup>33</sup> Report to the Second Session of the HRC A/HRC/2/3, 20 September 2006, paragraph 38.

<sup>34</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 21 December 2009 A/HRC/13/40 para 39.

<sup>35</sup> UN Working Group on Arbitrary Detention, Opinion No 35/2008 (Egypt), Communication addressed to the Government on 6 December 2008 at paragraph 38.

Ltd, the New Zealand High Court affirmed that “a right to protection of religious feelings ... cannot be derived from the right to freedom of religion, which in effect includes a right to express views of the religious opinions of others”.<sup>36</sup>

49. **Second, the stated purposes for the Presidential Decision do not meet the criteria for restrictions on the right to freedom of religion or belief under Article 18 of the ICCPR.**

Article 18(3) sets out that any restrictions must be “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. The Presidential Decision does not expressly adopt any of these restrictions. The Decision proposes two justifications – the preservation of national unity and the fostering of religious harmony.

50. The preservation of national unity is not a legitimate justification for a limitation on freedom of religion or belief under Article 18(3) of the ICCPR which covers only the protection of “public safety, order, health, or morals or the fundamental rights and freedoms of others”. The Human Rights Committee has emphasised that Article 18(3) of the ICCPR should be strictly interpreted. In General Comment 22 on Article 18 the committee stated: “restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security”.<sup>37</sup>

51. It is arguable that the fostering of religious harmony, the other justification for the Presidential Decision, serves to protect the “fundamental rights and freedoms of others”, which is a legitimate reason for placing restrictions under Article 18(3). However, to be justified under international human rights law, the restriction imposed by the law must also be necessary and proportionate to a specific need. In highlighting this point, the Human Rights Committee has also stated that “[l]imitations may be applied only for those purposes for which they were prescribed and must be *directly related and proportionate to the specific need* on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner” (emphasis added).<sup>38</sup>

52. **Third, freedom of religion or belief prohibits the ban on diverse interpretations of religious concepts, as provided for by the Presidential Decision.**

The Decision prohibits forms of expression and activities which are “in deviation of the basic teachings” of a “certain religion embraced by the people of Indonesia”. This prohibition seriously conflicts with the right of

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<sup>36</sup> [2008] 1 NZLR 654 para 50.

<sup>37</sup> Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion (Article 18), UN Doc CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 8.

<sup>38</sup> *Ibid.*

freedom of religion or belief. Freedom of religion or belief necessarily covers the protection of individuals with diverse interpretations of religions.

53. The UN Special Rapporteur on freedom of religion or belief has emphasised that “the terms ‘religion’ and ‘belief’ are to be interpreted in a broad sense and that human rights protection is not limited to members of traditional religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The contents of a religion or belief should be defined by the worshippers themselves”.<sup>39</sup> Furthermore, as the Human Rights Committee has clarified, the “freedom from coercion to have or to adopt a religion or belief ... cannot be restricted”.<sup>40</sup> Therefore, laws that, because they induce a fear of prosecution, in effect coerce a person or a group to adopt a religion or belief different from that which they would freely choose are contrary to Article 18 of the ICCPR.
54. This has been recognized in various national courts in the region. In Catch the Fire Ministries Inc, Daniel Nalliah and Daniel Scot v Islamic Council of Victoria Inc and Attorney-General for the State of Victoria, a case decided by the Court of Appeal of Victoria, Australia in 2006, Nettle JA held: “People are free to follow the religion of their choice, even if it is averse to other codes ... Equally people are free to attempt to persuade other people to adopt their point of view... that is the nature of religion... It is essential to keep the distinction between the hatred of beliefs and the hatred of their adherents steadily in view.”<sup>41</sup> He went on: “In any event, who is to say what is accurate or balanced about religious beliefs? In point of fact, the most that could ever be said is that a given point of view may diverge to a greater or lesser degree from the mainstream of generally accepted views on the subject.”<sup>42</sup>
55. The Seoul South District Court cited above stated that “our constitution requires in article 20(2) the neutrality of the nation in religious matters, the government cannot interfere with religious matters and declare which religions or doctrines are right and those criticisms to such religions and doctrines which are wrong”.<sup>43</sup>
56. **Fourth, the Presidential Decision discriminates against religious believers and non-believers who are not mentioned in its provisions, in violation of freedom of religion or belief.** The

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<sup>39</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 17 July 2009 A/HRC/64/159 para 31.

<sup>40</sup> Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion, UN Doc CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 8.

<sup>41</sup> *Catch the Fire Ministries Inc, Daniel Nalliah and Daniel Scot v Islamic Council of Victoria Inc and Attorney-General for the State of Victoria* [2006] VSCA 284 judgment 14 December 2006 para 34.

<sup>42</sup> Para 38.

<sup>43</sup> Seoul South District Court, decision of 4 April 1996, 95kahap4745. Unofficial translation.



effect of the Presidential Decision is to discriminate against individuals who subscribe to minority religions, faiths and opinions, as manifested, for instance, by the Joint Decree against the Ahmadiyya.

57. The right to freedom of religion or belief itself requires that individuals belonging to *any* religion or beliefs should be protected. Observing that “dissenting or dispassionate believers are being marginalized and face interreligious or intra-religious problems”, the UN Special Rapporteur on freedom of religion or belief has criticised “laws that openly discriminate against individuals on the basis of religion or belief or the perceived lack of religious fervour” (emphasis added).<sup>44</sup> She has also emphasised that states have positive obligations to “create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their ... religion”.<sup>45</sup>
58. Furthermore, freedom of religion and belief entails freedom to hold or *not* to hold religious beliefs and to practise or not to practise a religion. As the European Court of Human Rights said in Kokkanikis v Greece, freedom of religion or belief is also “a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it”.<sup>46</sup> Additionally, freedom of religion entails a right not to be obliged to disclose one’s religion or to act in a manner that might enable conclusions to be drawn as whether or not one holds such beliefs.<sup>47</sup>

#### **iv. The Right to Equality**

59. The right to equality before the law and the protection of all persons against discrimination including on the basis of religion, is at the heart of human rights. It is expressly provided for in the UN Charter which repeatedly calls for “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.<sup>48</sup> This principle runs through international human right law and is reiterated, in one form or another, in all human rights treaties, including those to which Indonesia is a state party, as detailed below.

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<sup>44</sup> Human Rights Council Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 21 December 2009 A/HRC/13/40 para 34.

<sup>45</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 17 July 2009 A/HRC/64/159 para 30.

<sup>46</sup> Judgment of the European Court of Human Rights, Application No 14307/88, 25 May 1993.

<sup>47</sup> *Sinan Isik v Turkey* Judgment of the European Court of Human Rights, Application No 21924/05 judgment of 2 February 2010.

<sup>48</sup> Charter of the United Nations, adopted and signed on 26 June 1945, entered into force 24 October 1945, Article 1(3). See similarly Articles 13(1)(b), 55(c) and 76(c).

60. The equality principle is protected by, *inter alia*, Articles 2, 26 and 27 of the ICCPR. Article 2(1) provides:

**Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

61. Article 26 of the ICCPR provides:

**All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

62. Article 27 of the ICCPR provides:

**In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.**

63. The Amici submit that the Presidential Decision violates the right to equality contained in these provisions.

64. **The Presidential Decision discriminates against individuals who express or wish to express religious views “in deviation of the basic teachings” of “a certain religion embraced by the people of Indonesia”, as well as individuals of other religions or beliefs or non-belief.** Such individuals are in constant danger of falling foul of the Presidential Decision if they express diverging interpretations about any of the religions identified in the law in contravention of Article 1 of the Presidential Decision.<sup>49</sup> In this way, such individuals are discriminated against in the exercise of their freedom of religion or belief.

65. Furthermore, the Presidential Decision appears to provide for differential treatment of particular religions. The Explanation of the Presidential Decision indicates that “the religions embraced by

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<sup>49</sup> 1945 Constitution of Indonesia.

the people of Indonesia” encompass “Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucian” [sic]. In a later paragraph, the explanation indicates that Judaism, Zoroastrianism, Shintoism and Taoism “shall be left alone providing that provisions found in this ruling and other laws are not violated”. The Presidential Decision indicates that government shall steer “mystical sects” on the other hand “toward a healthy way of thinking and believing in the one and only God”.

66. As recently stated by the UN Durban Review Conference Outcome Document “persons belonging to (religious) minorities should be treated equally and enjoy human rights without discrimination of any kind”.<sup>50</sup>
67. The UN Special Rapporteur on freedom of religion or belief has expressed concern about laws which prohibit blasphemy and afford different levels of protection to different religions, by for example protecting only the prevailing religion in the State concerned, or being applied in a discriminatory sense. She has observed worrying trends towards applying such domestic provisions in a discriminatory manner and noted that they often disproportionately punish members of religious minorities, dissenting believers and non-theists or atheists.<sup>51</sup> The Special Rapporteur has in particular expressed concern that religious minorities and new religious movements face various forms of discrimination and intolerance, both from policies, legislation and State practice.<sup>52</sup> The Human Rights Committee also has expressed concern about “any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community”.<sup>53</sup>
68. In addition, the Amici submit that the Presidential Decision is contrary to the non-discrimination principles contained within the Charter of the Association of South East Asian Nations (ASEAN), of which Indonesia is a Member State, in particular the respect for “different cultures, languages and religions of the people of ASEAN, while emphasising their common values in the spirit of unity in diversity.”<sup>54</sup> Furthermore, the Terms of Reference for the ASEAN Intergovernmental

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<sup>50</sup> Outcome document of Durban Review Conference, 24 April, para 82.

<sup>51</sup> Interim report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, submitted in accordance with General Assembly resolution 61/161, UN Doc A/62/280, 20 August 2007, paras 70 and 76.

<sup>52</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, UN Doc. A/HRC/4/21, 26 December 2006, para. 43.

<sup>53</sup> Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion (Article 18), UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 2.

<sup>54</sup> Charter of the Association of Southeast Asian Nations, adopted 12 November 2007, came into force on 15 December 2008. Article 2(2) of the ASEAN Charter also provides that ASEAN Member States shall act in accordance with principles including respect for “fundamental freedoms, the promotion and protection of human rights” and the UN Charter.

Commission on Human Rights (AICHR) indicate that the AICHR shall be guided by the principle of “[r]espect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicisation.”

**v. Interdependence and Indivisibility of human rights**

69. Furthermore, the Amici submit that **freedom of expression, freedom of religion or belief and the right to equality are interdependent and indivisible human rights that need to be respected and protected.** All international human rights treaties are based on the interdependence and indivisibility of human rights, as emphasised by the Vienna Declaration and Programme of Action of 1993.<sup>55</sup>
70. More specifically, the right to freedom of expression constitutes an essential aspect of the right to freedom of religion or belief and is essential to creating an environment in which open discussion of ideas, including about religion, can be held. As the Special Rapporteur on freedom of religion or belief has indicated: “the right to freedom of expression is as valuable as the right to freedom of religion or belief. Freedom of expression and freedom of religion or belief are two essential fundamental human rights that should be equally respected and protected”.<sup>56</sup>
71. In Iglesia Ni Cristo (Inc) v The Honorable Court Of Appeals, Board Of Review For Moving Pictures And Television And Honorable Henrietta S Mendoza, the Supreme Court of the Philippines affirmed the importance of freedom of expression and freedom of religion and held that these fundamental rights cannot be overridden through legislation or a decree. The Supreme Court stated: “The rights of free expression and free exercise of religion occupy a unique and special place in our constellation of civil rights. The primacy our society accords these freedoms determines the mode it chooses to regulate their expression. But the idea that an ordinary statute

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<sup>55</sup> UN Vienna Declaration and Programme of Action, 25 June 1993, World Conference on Human Rights (1993) [5], UN Doc A/CONF. 157/23.

<sup>56</sup> The UN Special Rapporteur continued: “Limitations permitted by the relevant human rights instruments have to be applied strictly and the right balance has to be struck, keeping in view the provisions of article 8 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, according to which ‘nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights’”. Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 20 December 2004, UN Doc E/CN.4/2005/61 para 72.

or decree could, by its effects, nullify both the freedom of religion and the freedom of expression puts an ominous gloss on these liberties.”<sup>57</sup>

vi. **Counterproductive effects of law**

72. The Amici submit that the Presidential Decision is counterproductive to its apparent aims – the promotion of national unity and religious harmony<sup>58</sup> – in various ways.

73. **First, the Presidential Decision has been utilised by state authorities to penalise individuals expressing minority and dissenting religious views and criticisms, as indicated above, wholly in the name of securing national unity and religious harmony.**<sup>59</sup> The Presidential Decision and the Joint Decree are having a seriously negative impact on the right to freedom of expression and freedom of religion of individuals belonging to religious minorities, who are already highly vulnerable to restrictions of their right to practice the religion or belief of their choice.

74. **Second, the penalising of defamation of religions is likely to have negative social consequences “since it may create an atmosphere of intolerance and fear and may even increase the chances of a backlash” as the UN Special Rapporteur on freedom of religion and belief has recognized.**<sup>60</sup> Where the state does not protect individuals from abuse by others, including by protecting the right to practice their religion, such individuals may be at risk. Under international law and standards, states have an obligation to protect all those under their jurisdiction from human rights abuses without discrimination.

75. Furthermore, as the UN Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have

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<sup>57</sup> *Iglesia Ni Cristo (Inc) v The Honorable Court Of Appeals, Board Of Review For Moving Pictures And Television And Honorable Henrietta S. Mendoza*, GR No 119673 July 26, 1996.

<sup>58</sup> Supplement to the State Gazette, No 2726 (Explanation of State Gazette Year 1965 No 3) paras 2-4.

<sup>59</sup> It is noted that at least eight people may be currently in jail having been sentenced to terms of imprisonment of between two and eight years for, in whole or in part, violating provisions in the Criminal Code pertaining to blasphemy (Article 156). These include Frans Manumpil (sentenced to eight years imprisonment in July 2002, while it is not known whether he has been released earlier than planned. In theory he is due to be released in July 2010); Lia Eden (sentenced to two years and a half imprisonment in June 2009); Wahyu Andito Putro Wibosono (sentenced to two years imprisonment in June 2009); Dedi Priadi (sentenced to three years imprisonment in May 2008); Gerry Lufthi Yudistira (sentenced to three years imprisonment in May 2008); Agus Imam Solihin (sentenced to two years and a half in July 2009); Agus Imam Solihin (sentenced to four years imprisonment in April 2008); and Ishak Suhendra (sentenced to four years imprisonment in October 2008). According to information available to the Amici, they were all sentenced in whole or in part for blasphemy. See also, Alfritri, “Religious Liberty in Indonesia and the Rights of ‘Deviant’ Sects”, *Asia Journal of Comparative Law*, Volume 3, Issue 1, 2008.

<sup>60</sup> Interim Report of the Special Rapporteur on freedom of religion or belief to the UN General Assembly, UN Doc A/62/280 20 August 2007 at paragraph 77.

pointed out: “criminalizing defamation of religions ... can also limit scholarship on religious issues and may asphyxiate honest debate or research...”<sup>61</sup>

76. **Third, and more generally, the Presidential Decision has been used to prevent critical inter-religious and intercultural understanding and debate.** Such discussions can justifiably claim to be the best remedy against religious discrimination, hatred and social division within a society. As the Special Rapporteur on freedom of religion or belief has recently stated: “[i]nterreligious dialogue constitutes one of the principal means of countering sectarian attitudes and enhancing religious tolerance worldwide. It is a precious tool for preventing misunderstanding and violations in the area of freedom of religion or belief ...”<sup>62</sup> This statement supports international standards on minority rights requiring states to “take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs.”<sup>63</sup>

#### IV. CONCLUSION

77. For all the above reasons, it is respectfully submitted that the Presidential Decision, the Joint Decree and Article 156a are all incompatible with Indonesia’s international legal obligations.
78. This is the opinion of ARTICLE 19, Amnesty International, the Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights prepared by the undersigned, and is subject to the decision of this Court.

Sejal Parmar, Senior Legal Officer, and David Banisar, Senior Legal Counsel, ARTICLE 19  
Widney Brown, Senior Director for Law and Policy, Amnesty International  
Moataz El Fegiery, Executive Director, Cairo Institute for Human Rights Studies  
Hossam Bahgat, Executive Director, Egyptian Initiative for Personal Rights

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<sup>61</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, UN Doc A/HRC/2/3 20 September 2006, para 42.

<sup>62</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Tenth Session of the Human Rights Council UN Doc A/HRC/10/8, 6 January 2009 at paragraph 18.

<sup>63</sup> UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992, para 4(2).