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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Blasphemy law should be repealed to show Indonesia's commitment to the protection of freedom of expression

The Asian Legal Resource Centre (ALRC) wishes to bring the attention of the Human Rights Council (HRC) to violations of the right to the freedom of expression and opinion that are being engendered through the use of Indonesia's legal provisions prohibiting blasphemy.

Religious blasphemy is prohibited in Indonesia under Law No. 1/PNPS/1965, with such provisions also being later adopted within the Penal Code (KUHP) under Article 156a. Paragraph (a) of this article uses vague language, which opens the door to abusive uses of this provision, to prohibit any acts and expression of views considered to be blasphemous, and carries a maximum punishment of five years imprisonment. A similar maximum punishment is also carried by paragraph (b) of the article, which prohibits any acts and expression of views calling for others to embrace atheism.

Alexander Aan is an atheist currently undergoing a trial at the Muaro Sijunjung District Court, West Sumatra. According to his lawyers from LBH Padang, Alex has been charged under paragraphs (a) and (b) of Article 156a. He is being charged with blasphemy for allegedly posting a note stating that "The Prophet Muhammad was attracted to his own daughter-in-law," and a comic entitled "The Prophet Muhammad had been sleeping with his wife's maid," which have been deemed insults to the Prophet as well as to Islam. His Facebook status update that reads "if you believe in god, then please show him to me," as well as the fact that he is an atheist and a member of a Facebook group, Minang Atheists, have led to him being charged concerning dissemination of atheism prohibited under KUHP Article 156a paragraph (b).

Alex was caught by an angry mob who visited him in his office after learning that he had put the "insulting" posts on Facebook. He was threatened by the mob and risked being lynched before the police took him to a nearby police station for his own safety. The police, however, have failed to take any measures against those who intimidated and threatened Alex.

As atheism is a form of belief protected under Article 18 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a State Party, atheists enjoy protection under the ICCPR. The propagation of atheism, therefore, should not be seen as a criminal act but, rather, an expression or manifestation of opinion by individuals who do not embrace the theistic belief. This is not only protected by the right to freedom of religion but also the right to freedom of expression enshrined in Article 12 paragraph (2) of the ICCPR. The article protects the right to freedom of expression in any form, including electronic and internet-based modes of expression.

Although freedom of expression is not an absolute right, restrictions imposed on it should meet the cumulative requirements established by Article 19 paragraph (3) of the ICCPR. The restriction should be prescribed by law which is compatible with the aims and objectives of the ICCPR, formulated clearly, and issued by the legislative body of a state. Moreover, freedom of expression should only be restricted when there is a threat to posed by it to the rights or reputations of others, national security, public order, health or morals. Propagation of atheism, as allegedly carried out by Alexander Aan, does not pose a threat to any of these. Criminal punishment should therefore clearly not be imposed as a result. The criminalisation of atheism, as stipulated under Article 156a paragraph (b) of the KUHP, is therefore an illegitimate, arbitrary and disproportionate restriction, not only to the freedom of religion, but also to the right to freedom of expression.

In addition to the case cited above, Tajul Muluk, the leader of an Islamic Shia boarding school (*pesantren*), is being tried for religious blasphemy. He is being tried by Sampang District Court, East Java, having been charged with religious blasphemy for asserting that the current version of disseminated Quran is not the original one. In his indictment, the prosecutor also highlighted the difference of Shia Islam with the Sunni tradition (which is embraced by most Muslims in Indonesia) concerning the five pillars of Islam (*rukun Islam*) and six pillars of Islamic faith (*rukun iman*) and has labelled what Tajul has taught as being “wrong”.

Previously, in December 2009, an anti-Shia group burned Tajul’s *pesantren* in Sampang and its Shia members also received death threats. Despite the fact that the arson and threats were carried out by a group of persons, the police named only one person, known as Musrikah, as a suspect in the case. He was later tried by Sampang District Court, which sentenced him to 3 months and 10 days imprisonment. The sentence given by the Court matched the duration of Musrikah’s detention, and he was therefore immediately released after the Court pronounced him guilty.

The use of legislation prohibiting blasphemy is in itself flawed, and prosecutions and punishments under it are resulting in violations of persons’ procedural and fundamental rights, including those concerning deprivation of liberty and the freedoms of expression, opinion and belief. The legislation is also enabling the issuing of discriminatory decrees against minority groups. Joint Decree No. 3 of 2008, issued by the Minister of Religious Affairs, the Home Minister and the Attorney General, which prohibits the religious activities of members of the Ahmadiyah faith in Indonesia, for instance, refers to both Article 156a of KUHP and Law No. 1/PNPS/1965. A similar reference can also be found in the West Java Governor Regulation No. 12, of 2011, concerning the prohibition of religious activities of the Ahmadiyah in West Java. Although the law and decrees do not actually overtly encourage attacks or intimidation against the members of religious minority groups, they are misinterpreted by several mainstream religious groups as legitimising their persecution. Before attacking the Ahmadiyah Baitul Rahim Mosque in Singaparna, for instance, a leader of the Islamic Defender Front (FPI) stated that the act that they were about to carry out was in accordance with the aforementioned decrees.

In 2010, several human rights organisations in Indonesia requested that the Constitutional Court review and repeal the religious blasphemy law, arguing that it is in violation of the 1945 Constitution, which guarantees and protects the rights to the freedom of expression and religion, as well as the right to be protected from discrimination. However, the Court refused their arguments and stated that: “the Indonesian Constitution does not give any room for the freedom to encourage people not to have a religion, to promote anti-religion and to insult or stain religious teachings or books which are the sources of religious faith or to stain God’s name. This element is what distinguishes the main difference between Indonesia’s concept of state law and the Western one.”

A Joint Declaration on Defamation of Religions, and Anti-Terrorism, and Anti-Extremist Legislation issued in 2008 by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representatives on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, establishes that the concept of religious blasphemy is not in accordance with international human rights standards. The Joint Declaration further asserts that religious blasphemy is an illegitimate restriction of freedom of expression which should only be limited in scope to the protection of overriding individual rights and social interests. Views expressed in the Joint Declaration have also been reiterated by the Special Rapporteur on the protection and promotion of freedom of opinion

and expression in his joint report with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in 2006.¹

The issue of discriminatory laws, decrees and by-laws in Indonesia was raised by several states during Indonesia's recent Universal Periodic Review, on May 23, 2012. New Zealand explicitly recommended that the Indonesian government "Review existing laws and policies and repeal or amend where necessary to ensure their compatibility with the right to freedom of religion or belief, in line with Indonesia's Constitution and its international obligations." A similar recommendation was made by Norway, which called on Indonesia to "ensure that all ministerial decrees regulating religious life, as well as all local religiously founded bylaws, are in conformity with international human rights law." Switzerland also called on the Indonesian government to "review laws and decrees currently in force restricting the freedoms of religion, opinion, and of expression, in order to prevent any risk of discrimination." The Indonesian government accepted these recommendations, and the ALRC urges the government to immediately begin taking steps to ensure that these are implemented.

Indonesia also accepted a recommendation made by the Republic of Korea concerning the need to facilitate a country visit by the UN Special Rapporteur on freedom of expression and opinion, and the ALRC urges the government to ensure that this visit can take place without delay or obstruction.

The ALRC is, however, disappointed that the government of Indonesia did not accept a specific recommendation by the government of Denmark, which, if implemented, would likely have a concrete, positive effect on the protection of the freedoms of expression and religion. This recommendation calls on the government of Indonesia to "amend or revoke laws and decrees that limit the right to freedom of thought, conscience and religion, including the 1965 Blasphemy Law, the 1969 and 2006 ministerial decrees on building houses of worship and religious harmony and the 2008 Joint Ministerial Decree on Ahmadiyah to bring these laws into line with international human rights standards."

Given the above, the Asian Legal Resource Centre requests the intervention of the members of the Human Rights Council as well as its Special Procedures, notably the Special Rapporteur on the promotion and protection of freedom of expression and the Special Rapporteur on freedom of religion or belief, with the government of Indonesia, in order to urge it to:

- Comply with its international obligations, notably under the ICCPR, concerning freedom of expression, by revoking Article 156a of the KUHP as well as Law No.1/PNPS/1965, which criminalise religious blasphemy and the dissemination of atheism, as well as by putting an immediate halt to all prosecutions against individuals and members of religious minority groups under these provisions;
- Ensure effective, impartial and prompt investigations into all allegations of threats, acts of intimidation and attacks against members of religious minority groups, and ensure the prosecution of those responsible and adequate reparation to victims, in line with international laws and standards;
- Ensure full and effective cooperation with the Human Rights Council's Special Procedures, including by issuing a standing invitation to all its mandates and

¹ 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 Diene, para. 36, UN Doc. A/HRC/2/3, 20 September 2006, available on <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/139/90/PDF/G0613990.pdf?OpenElement>

enabling a country visit by the Special Rapporteur on the promotion and protection of freedom of expression as a priority;

- Ensure immediate action to begin the implementation of recommendations concerning the freedoms of expression and religion that were accepted during Indonesia's second cycle of the Universal Periodic Review, notably those made by New Zealand, Norway and Switzerland;
 - Accept without delay and ensure the swift implementation of the recommendation made by Denmark during the UPR, concerning the need to amend or revoke laws and decrees that limit the right to freedom of thought, conscience and religion, including the 1965 Blasphemy Law, the 1969 and 2006 ministerial decrees on building houses of worship and religious harmony and the 2008 Joint Ministerial Decree on Ahmadiyah, to bring these laws into line with international human rights standards.
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