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The Equal Rights Trust (ERT)

Stakeholder Submission to the:

Universal Periodic Review of the Republic of Indonesia, 2011

1. The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. ERT works from the unified perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome the fragmentation of the field of equality law and policies.
2. Since November 2010, ERT has been working in partnership with the Indonesian Legal Aid Foundation (YLBHI) and the Institute for Policy Research and Advocacy (ELSAM) on a project entitled “Empowering civil society to use non-discrimination law to combat religious discrimination and promote religious freedom”. In the course of this project, ERT has gathered substantial evidence – including through interviews and meetings with victims and their representatives – of an increasing trend of discrimination and violence against members of religious minorities. Our research indicates that this treatment arises for a number of reasons, including (i) the existence of discriminatory laws; (ii) discriminatory practice by state actors; (iii) failure by the state to effectively protect the rights to non-discrimination on grounds of religion or belief and to freedom of thought, conscience and religion; and (iv) failure by the state to effectively protect religious minorities from discriminatory violence.
3. ERT's research indicates that there is a strong connection between the continued existence of laws which restrict religious freedom and discriminate against religious minorities, and the rising influence of extremist factions which promote and engage in discrimination and violence against religious minorities. The increasing influence of these extremist factions has resulted in a number of acts of discriminatory violence against other groups, including women, LGBTI and ethnic minorities. However, in compliance with length limitations, this submission focuses on the treatment religious minorities, as this problem is felt to be both amongst the most widespread and the most representative of the wider trend.
4. ERT notes that concerns about the effective protection of religious minorities were raised during Indonesia's previous review under the UPR process. In response to recommendations from the United Kingdom that it take steps to protect one religious minority – the Ahmadiyah – Indonesia stated that it would respond in due time.¹ We are not aware of any steps taken, and indeed our research indicates that since this review, the situation facing religious minorities in Indonesia has worsened.
5. In this submission, ERT highlights some examples of discrimination and discriminatory violence against religious minority communities, which we believe indicate possible violations of Indonesia's international legal obligations, including in particular the obligations to respect, protect and fulfil:
 - The right to freedom of conscience, thought and religion (Article 18, ICCPR);
 - The right to non-discrimination on grounds of religion and belief (Articles 2 and 26, ICCPR);
 - The right of religious minorities to practice their religion (Article 27, ICCPR).

International Law obligations

6. Under the International Covenant on Civil and Political Rights (ICCPR), Indonesia has obligations to protect the right to freedom of conscience, thought and religion. This includes the right to manifest one's religion² and to protection from coercion which would impair an individual's freedom of religion.³ Article 20 requires that states prohibit “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.⁴ Article 27 requires that states take

1 UN Human Rights Council, *Universal Periodic Review: Indonesia*, A/HRC/8/23, 2008, Paras 51 and 78, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/134/21/PDF/G0813421.pdf?OpenElement>

2 International Covenant on Civil and Political Rights, Article 18(1).

3 *Ibid.*, Article 18(2).

4 *Ibid.*, Article 20(2).

measures to protect religious minorities, providing that these groups “shall not be denied the right [...] to profess and practice their own religion [...]”⁵ Article 2 requires states to ensure the enjoyment of the rights contained in the Covenant “without distinction of any kind” on grounds including religion and belief. Article 26 requires states to protect the right to non-discrimination as an autonomous, stand-alone right.⁶

7. The Human Rights Committee has examined the intersection between the right to freedom of religion and the right to non-discrimination in its General Comment 22, which stated that discriminatory measures in areas such as government services and economic privileges are contrary to the prohibition of discrimination on grounds of religion or belief under Article 26.⁷ It also emphasised the importance of Article 20(2) in providing additional protection from incitement to discrimination, hostility or violence for religious minority groups.⁸

Existence of Discriminatory Laws

8. A number of laws exist in Indonesia which discriminate, either directly or indirectly, against adherents of minority religions or beliefs, and which, in many cases, constitute violations of these groups' right to freedom of conscience, thought and religion.
9. Arguably, the most far-ranging of these laws is *Law No. 1/PNPS/1965 Concerning the Prevention of Religious Abuse and/or Defamation* (the Blasphemy Act) which was adopted by Presidential decree in 1965.⁹ Article 1 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.”¹⁰ The Act states that the “religions embraced in Indonesia” are Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Thus, Article 1 does not prohibit the actions of those believing in religions such as Judaism which are clearly distinct from the recognised faiths. Rather, it impacts against those – including most prominently the Ahmadiyya sect of Islam – who practice alternative forms of the specified religions. Article 2 requires that those violating Article 1 will initially be instructed to cease their activities. Article 3 states that failure to cease will result in the banning or dissolution of the group and may result in a maximum imprisonment of 5 years. Article 4 prohibits the expression of views or commission of acts which have the intent of discouraging others from adhering to any monotheistic religion, in effect criminalising the actions of those adhering to traditional belief systems (*penghayat*). Article 156 of the Criminal Code defines an offence in line with the requirements of Article 3 of the Blasphemy Act, for those whose words or actions “incite hostilities [...] considered as abuse or defamation of a religion embraced in Indonesia.”¹¹ In 2010, the Indonesian Constitutional Court, in a judicial review of the Blasphemy Act brought by a number of NGOs, rejected arguments made by human rights groups that the Law was unconstitutional.¹² The Court ruled that the Act is still “very necessary to prevent any misleading practice of worship” and is vital for religious harmony and the maintenance of public order.¹³
10. In 2008, pursuant to Article 2 of the Blasphemy Act, the *Joint Decree by the Minister of Religious Affairs, Attorney General and Minister of Internal Affairs of the Republic of Indonesia on the Warning*

5 *Ibid.*, Article 27.

6 UN Human Rights Committee, *General Comment 18: Non-Discrimination*, 1989, Para 12.

7 U.N. Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, Para 9.

8 *Ibid.*

9 Law Number 1/PNPS/1965.

10 *Ibid.*, Article 1.

11 Criminal Code, Article 156(a).

12 Case number 140/PUUVII/2009.

13 Case number 140/PUUVII/2009, reported in The Wahid Institute, *Monthly Report*, 29 April 2010, p2, available at:

<http://www.wahidinstitute.org/files/docs/29-APRIL-ENG.pdf>

and Instruction to Followers, Members and/or Leaders of the Jemaat Ahmadiyah Indonesia (JAI) and Members of the Community (the Joint Decree on the Ahmadiyah) was issued.¹⁴ The Decree “warn[s] and instruct[s] the followers, members and/or leaders of the [...] Jemaat Ahmadiyah Indonesia, 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”.¹⁵ Violations of the Decree are punishable in line with the Criminal Code.

11. In addition to the Blasphemy Act and the Joint Decree, a number of laws exist to regulate the practice of religion, some of which impose conditions which will be difficult for members of minority religions to adhere to. Among these are the Regulation on Building Houses of Worship;¹⁶ the Guidelines for the Propagation of Religion;¹⁷ Overseas Aid to Religious Institutions in Indonesia;¹⁸ and Proselytizing Guidelines.¹⁹
12. ERT is concerned that these laws – in addition to restricting religious freedom – directly or indirectly discriminate against members of religious minorities, on the basis of their religion or belief. The Blasphemy Act discriminates against all those with heterodox beliefs, including notably the Ahmadiyya. The Joint Decree directly discriminates against the Ahmadiyya, imposing restrictions and penalties on them solely because of their religion. Laws such as the Regulation on Building Houses of Worship, which requires faith groups to collect a specified number of signatures before establishing a place of worship, have a disproportionate impact on minority religious groups, and their application may therefore constitute indirect discrimination.

Discrimination and discriminatory violence against religious minorities

13. ERT is concerned that the continued existence of these directly and indirectly discriminatory laws contributes to a climate where discrimination, harassment and, in some cases, serious violence against religious minorities is tolerated. In recent months, ERT has interviewed representatives of a number of minority religious communities who had experienced discrimination or violence.
14. In February 2011, ERT interviewed members of the Board of the Ahmadiyya Indonesia, shortly after an attack on a group of Ahmadi persons which resulted in three deaths. The Board members informed ERT that on the 6 February 2011, a mob of around 1500 people attacked a house in Umbulan Village, Cikuesik in which 20 Ahmadi had gathered. The mob burned down the house and cars surrounding the building. Three Ahmadi men were forced to strip naked and beaten to death with sticks and machetes. Horrifying footage of the attack was subsequently posted on the internet.²⁰ This footage shows that police were in the vicinity of the house when the attack occurred but failed to prevent the violence, most simply looking on. A number of persons were arrested in relation to this incident, and on 28 July 2011, a court in Serang District, Banten, sentenced 13 people to short three and six month sentences, despite the severity of the crime and the tragic outcome.²¹
15. Also in February 2011, ERT met with a representative of the Huria Kristen Batak Protestan (Batak Christian Protestant Church - HKBP) church. The group has been repeatedly forced to relocate their place of worship by local administrations in different areas as public opinion has turned against their presence. In mid-2010, the community moved their place of worship to Ciketing, near Jakarta. Despite

14 Joint Decree KEP-033/A/JA/6/2008.

15 Ibid., Article 3.

16 Joint Ministerial Decree No. 1/1969.

17 Ministerial Decision No. 70/1978.

18 Ministerial Decision No. 20/1978.

19 Ministerial Decision No. 77/1978.

20 Footage available online here: www.youtube.com/watch?v=6uXhx0Mc_pA.

21 The Wahid Institute, *Monthly Report*, 29 April 2010, p2, available at: <http://www.wahidinstitute.org/files/docs/29-APRIL-ENG.pdf>.

difficulties, the group succeeded in securing the number of signatures required under the Regulation on Building Houses of Worship. On 8 August 2010, after repeated protests by the local community, a number of members of the HKBP were beaten. On 12 September, the army was forced to step in as the community was surrounded by an estimated 3,000 protestors. The community is now under government protection.

16. In July 2011, ERT spoke with lawyers acting on behalf of two men of the Baha'i faith who are currently imprisoned following prosecution on charges of attempting to convert minors to another faith. The two men were prosecuted under the Law of Child Protection 23-2002 which provides a criminal penalty for anyone who "converts or attempts to convert children to other religion" and section 156 of the Criminal Code. According to their lawyers, the charges related to classes in "morals and ethics" which the two men were providing at one man's home for his son and the son's friends. Their arrest followed statements by some of the children that the men had been defaming prophets Abraham, Moses, Jesus and Muhammad. The men denied both accusations. The men's lawyers stated that they were threatened with physical violence at the hands of the local community in an attempt to force their renunciation of their chosen religion and their conversion to Islam, and that this incident was not properly investigated by the police. They further stated that charges were laid against them following a refusal to recant their religion at the invitation of the police.
17. ERT research suggests that these three cases are indicative of a general pattern of discrimination, harassment and violence directed against religious minorities. Indeed, reports published in 2010 and 2011 indicate that the number of such incidents is increasing. The Moderate Muslim Society reported that there were 81 cases of religious intolerance in 2010, while the Wahid Institute recorded 133 challenges to religious freedom in 13 different provinces.²² Reports from 2011 confirm the continuation of this pattern of discrimination, harassment and violence directed against religious minorities. According to the Human Rights Working Group (HRWG), following the aforementioned Cikeusik attack, a number of regional governments issued regulations banning the Ahmadi, leading to an escalation of violence in these areas.²³ Amnesty International recently reported two further attacks on Ahmadi persons, including one case in Makassar, South Sulawesi in August 2011 where hundreds of members of the Front Pembela Islam (FPI, Islamic Defenders Front) allegedly attacked ten Ahmadi with machetes and bamboo sticks.²⁴ A number of Christian news agencies reported attacks on Christian places of worship in February 2011, following the sentencing of a Catholic man under the Blasphemy Act.²⁵ Following the verdict, an estimated 1,500 Muslims destroyed three churches before attacking an orphanage and hospital while protesting the court's decision not to sentence Mr Bawengan to death. Other reports indicate that some Muslims are also vulnerable to attack: Asia News reported in February 2011 that a mob of 100 people attacked a Shia boarding school in Pasuruan, East Java, with three students suffering serious head injuries as a result.²⁶
18. Evidence from these reports substantiates testimony provided to ERT to the effect that state actors failed in their obligations to prevent violence against religious minorities. Those interviewed by ERT stated that law enforcement services were at best passive in the face of violence against religious minorities, and in some cases allegations of collusion between the police and perpetrators were

22 The Moderate Muslim Society, *Vigilantes Top Lists of Religious Intolerance*, 22 December 2010, available at: http://www.moderatemuslim.net/mms/index.php?option=com_content&task=view&id=57&Itemid=1%E2%8C%A9=en.

23 Human Rights Working Group Briefing Document *Crimes Against Humanity towards Ahmadiyya Community in Indonesia*, March 2011, p. 2.

24 Amnesty International, *Open letter on human rights violations against the Ahmadiyya in West Java*, 14 October 2011, available at: <http://amnesty.org/en/library/asset/ASA21/032/2011/en/544b4f9a-5dd7-47ff-a896-38c1c48de647/asa210322011en.html>.

25 "Churches Burned over Indonesia's Blasphemy Case", The Christian Post, 8 February 2011, available at:

<http://www.christianpost.com/news/churches-burned-over-indonesias-blasphemy-case-48890/>; and "Indonesian Muslim mob attacks priest, burns three churches", The Catholic News Agency, 9 February 2011, available at: <http://www.catholicnewsagency.com/news/indonesian-muslim-mob-attacks-priest-burns-three-churches/>.

26 "Another mob attack breaks out as Indonesian president calls for peace", Asia News Network, 16 February 2011, available at: <http://www.asianewsnet.net/home/news.php?sec=1&id=17458>.

made. Moreover, the response of both the judiciary and the government to the Cikeusik murders poses serious questions about the state's response to acts of discriminatory violence. These concerns are amplified by statements by government officials, including for example the Religious Affairs Minister, who has called for the Ahmadiyya to be banned, which directly conflict with the state's obligations to prohibit incitement to discrimination or violence.²⁷

19. Research conducted by ERT's partners YLBHI and ELSAM indicates that societal prejudice, discrimination and fear prevent members of minority religions from participating in all areas of life on an equal basis with others. In particular, ELSAM states that those practicing unrecognised religions or beliefs – such as those adhering to traditional belief systems (*penghayat*) – are unable to identify their religion on the *Kartu Tanda Penduduk* (KTP, official identity card). Despite legislation providing that individuals in this situation can leave the relevant part of the KTP form blank, evidence collected by ELSAM suggests that this is often not adhered to in practice. In addition to the discrimination inherent in denial of identity documents on the basis of religion, ELSAM states that absence of a KTP has a serious impact on individuals' participation in a range of areas of civil, political, social, economic and cultural life.

Conclusions and Recommendations

20. ERT believes that there is thus compelling evidence of discrimination and discriminatory violence against religious minority communities in Indonesia. In particular, we are concerned that:
 - The existence of the Blasphemy Act and the Joint Decree on the Ahmadiyyah constitute a violation of the right to religious freedom (Article 18 ICCPR) and the right to non-discrimination in the exercise of this right (Article 2 ICCPR);
 - The application of regulations which impose conditions which disproportionately disadvantage minority religious groups constitutes indirect discrimination (violating Article 26 ICCPR) and impacts on the exercise of religious freedom (violating Article 18 ICCPR);
 - The failure to protect religious minorities from violence perpetrated by private individuals, the failure to adequately investigate such incidents, the lenient sentences given to those found guilty of such acts and the absence of condemnatory responses by state actors raises issues under Articles 18, 20, 26 and 27 ICCPR;
 - The failure to protect religious minorities from discrimination in access to citizenship documents and in other areas of life constitutes discrimination on grounds of religion or belief (Article 26 ICCPR).
21. ERT therefore urges Indonesia to:
 - Repeal the Blasphemy Act and the Joint Decree on the Ahmadiyyah, with immediate effect;
 - Audit all regulations pertaining to the exercise and manifestation of religion or belief to establish the extent to which such regulations discriminate, directly or indirectly, on grounds of religion or belief, and amend such laws accordingly;
 - Condemn all acts of discrimination and discriminatory violence against religious minorities, and take steps to effectively prevent incitement to discrimination or violence;
 - Review police procedure and publish guidance to ensure that the police response to violence against religious minorities is adequate;
 - Takes steps to ensure the better enforcement of existing legislation providing protection from discrimination on grounds of religion or belief, including notably the Human Rights Act.²⁸

²⁷ "Light Cikeusik sentencing highlights legal discrimination: Rights group", The Jakarta Post, 29 July 2011, available at: <http://www.thejakartapost.com/news/2011/07/29/light-cikeusik-sentencing-highlight-legal-discrimination-rights-group.html>.
²⁸ Law Number 39/1999.