

2023

One Choice is No Choice At All: Indonesia is Violating the International Covenant on Civil and Political Rights by Requiring Political Parties to Adhere to Its national Ideology of PANCASILA

Daniel Brezina

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Daniel Brezina (2023) "One Choice is No Choice At All: Indonesia is Violating the International Covenant on Civil and Political Rights by Requiring Political Parties to Adhere to Its national Ideology of PANCASILA," *American University International Law Review*. Vol. 38: Iss. 2, Article 7.
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COMMENTS

ONE CHOICE IS NO CHOICE AT ALL: INDONESIA IS VIOLATING THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS BY REQUIRING POLITICAL PARTIES TO ADHERE TO ITS NATIONAL IDEOLOGY OF *PANCASILA*

DANIEL BREZINA *

This Comment argues that Indonesia is violating Articles 1, 18, 22, 25, and 27 of the International Covenant on Civil and Political Rights by requiring that all political parties adhere to its national ideology of Pancasila. This Comment will introduce the ideology of Pancasila and explain how Indonesia came to require political parties to adhere to the ideology. This Comment will also explain what rights the ICCPR guarantees and introduce the UN Human Rights Committee, which is tasked with monitoring signatories' compliance with the ICCPR. This Comment will explain how Indonesia's requirement violates several Articles of the ICCPR, including how the requirement limits Indonesians' freedom of association and their religious freedom, thus violating their political rights. This Comment then recommends steps that other ICCPR signatories, as well as Indonesia itself, can take to ensure the country's compliance with the ICCPR, as well as steps that interested parties within Indonesia can take to further demonstrate Indonesia's violation of the ICCPR.

* Daniel Brezina is a 2024 JD/MA candidate at American University's Washington College of Law and School of International Service and a 2016 graduate of UMBC, with a double major in Political Science and History. The author would like to thank Jordan Luber and Mikaela Rodriguez, his Note and Comment Editors, and Cortney Muller, the Senior Note and Comment Editor, for their advice, support, and feedback throughout the writing process. The author would finally like to thank his family for always believing in him.

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I. INTRODUCTION

In 1983, Indonesia passed a law requiring all political parties to have the national ideology of *Pancasila* as their sole ideological basis.¹ A few decades later, in 2008 and 2011, the Indonesian parliament, as part of a larger bill and amendment regulating political parties, created a new requirement to ensure that no political parties contradicted the ideology.²

When Indonesia gained its independence in 1945³, it ratified a Constitution for the new state.⁴ The Preamble lays out five principles

1. See Faisal Ismail, *Pancasila as the Sole Basis for All Political Parties and All Mass Organizations: An Account of Muslims' Responses*, 3 *STUDIA ISLAMIKA: INDON. J. FOR ISLAMIC STUD.* 1, 14 (1996) (describing the law passed in the 1980s that required all political parties have *Pancasila* as their sole ideological basis).

2. See Emy Hajar Abra et al., *The Principles of Indonesian Political Parties in Theory of Hierarchical Structure of Legal Norms*, 7 *J. EDUC. & SOC. SCI.* 340, 340 (2017) (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*); Undang-Undang Tentang Partai Politik, Undang, Bab I, Pasal 1, 1–2, (2008) (Indon.) (demonstrating that beyond requiring political parties to not contradict *Pancasila* in their ideologies, the bill also regulated campaign finance, party membership, the party registration process, etc.).

3. See *About Indonesia*, EMBASSY OF THE REPUBLIC OF INDONESIA IN BRUSSELS (Aug. 8, 2021), https://kemlu.go.id/brussels/en/pages/about_indonesia/1601/etc-menu (providing background information on Indonesian history).

4. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.).

which came to be called *Pancasila*.⁵

The International Covenant on Civil and Political Rights (ICCPR) was first ratified in 1966, with Indonesia ratifying it in 2006.⁶ Its Articles lay out fundamental political and civil rights for the citizens of its signatories, as well as the mechanisms for enforcing the rights it creates.⁷

This Comment argues that Indonesia, as an ICCPR signatory, violates several of its Articles by *de facto* and *de jure* requiring political parties to adhere to *Pancasila*, and denies its citizens the exercise of fundamental political rights, including freedom of association, freedom of religion and worship, and freedom to participate in politics and public affairs.

Part II of this Comment introduces the current situation in Indonesia, as well as the ICCPR. First, it introduces *Pancasila*, Indonesia's national ideology, and then explains the history of regulations of political parties regarding their ideological basis in *Pancasila*. Part II also describes how Indonesia treats religious minorities and their religious practices and activities. Part II then introduces the ICCPR, the rights created within its Articles, and the mechanisms it has created for enforcing those rights. Part III analyzes how the Indonesian requirement violates certain ICCPR Articles and examines how the political party requirement is similar to UN bodies' findings of prior violations of the same Articles and rights. Part III also explains that Indonesia cannot derogate from its responsibility to uphold the rights the ICCPR creates. Part IV recommends steps that other countries, UN bodies, and Indonesian citizens could take to ensure that Indonesia's violation of the ICCPR is recognized and remedied. Part V concludes that Indonesia has violated the ICCPR by requiring political parties to adhere to *Pancasila* and suggests that

5. See *id.*, pmb.; Shigeo Nishimura, *The Development of Pancasila Moral Education in Indonesia*, 33 SE. ASIAN. STUD. 303, 308 (1995) (explaining that the five principles laid out in the Preamble that came to be called *Pancasila*).

6. See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; *Ratification Status for Indonesia*, UN TREATY BODY DATABASE (accessed May 21, 2022), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN.

7. See ICCPR, *supra* note 6, art. 3. 18, 22, 25, 27 (demonstrating the rights created by the five Articles analyzed in this Comment).

individuals and/or other countries should step up to help ensure that Indonesia complies with the ICCPR.

II. BACKGROUND

A. INDONESIA'S PANCASILA AND THE REQUIREMENT FOR POLITICAL PARTIES TO ADHERE TO IT

1. *Pancasila principles in the Constitution*

When Indonesia declared its independence in 1945,⁸ it ratified a Constitution which still remains in force.⁹ The Preamble lays out principles it says are for the peoples' sovereignty: belief in the one and only God, just and civilized humanity, unity of the country, democracy, and social justice for all Indonesians.¹⁰ These principles came to be known as *Pancasila*, a term deriving from the Sanskrit words for "five" and "principles."¹¹

2. *History of the Political Party Requirement*

By the early 1980s, Indonesia had long been in a state of civil strife and unrest, including an attempted coup in 1965 by members of the Communist Party, after which the military massacred Communists in retaliation.¹² There had also been a rise in domestic Islamic extremism, while the government was also concerned about Islamic

8. See *About Indonesia*, *supra* note 3.

9. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.) *supra* note 4, pmb1.

10. See *id.*

11. See *About Indonesia*, *supra* note 3 (describing the five principles of the national ideology as being called *Pancasila*); Machful Indra Kurniawan, *Pancasila as a Basis for Nation's Character Education*, 125 ADVANCES SOC. SCI., EDUC., & HUMAN. RSCH. 268, 269 (2017) (explaining the etymology and meaning of the term *Pancasila*).

12. See Ismail, *supra* note 1, at 6 (explaining the occurrence of the attempted communist coup in 1965 and the civil unrest and violence that plagued Indonesia leading to the passage of the original law requiring all political parties to have *Pancasila* as their sole ideological basis); Editorial, *Guilt Trip over 1965 Killings*, JAKARTA POST, Oct. 27, 2021, <https://www.thejakartapost.com/academia/2021/10/26/guilt-trip-over-1965-killings.html> (explaining how the Indonesian government massacred hundreds of thousands of members of the Communist Party, as well as their supporters, in retaliation for the attempted communist coup in 1965).

fundamentalist movements in countries such as Iran.¹³ These concerns led the government, headed by President Suharto, to enact a requirement that all political parties adopt *Pancasila* as their sole ideological basis.¹⁴ One scholar found that Suharto's New Order era-policies excluded political parties from any kind of political participation or decision-making.¹⁵

In 2008 and 2011, the Indonesian parliament passed laws which stated that parties could not contradict *Pancasila* and defined parties as organizations meant to maintain the country based on *Pancasila* and the Constitution.¹⁶ The ideologies that Indonesian law defines as being anti-*Pancasila* are communism, Marxism/Leninism, and atheism, as well as anything meant to replace *Pancasila* or the Constitution.¹⁷

Under the 2008 political party regulation law, the Constitutional

13. See Ismail, *supra* note 1, at 6 (explaining the Suharto-era government's concerns with Islamic fundamentalism leading up to the creation of the 1983 bill requiring all political parties to have *Pancasila* as their sole ideological basis).

14. See *id.* at 14 (explaining the passage of the 1983 law, which required all political parties to have *Pancasila* as their sole ideological basis, as a response to unrest and violence, both by communist and religious groups and by the government).

15. See Paul James Carnegie, *Trade-offs, Compromise and Democratization in a Post-Authoritarian Setting*, 8 ASIAN SOC. SCI. 71, 75 (2012) (quoting RICHARD ROBISON, *INDONESIA: THE RISE OF CAPITAL* 105 (1986)) (explaining how the Suharto-era government severely limited political parties' activities, as the military had authoritarian and centralized power).

16. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*); Nathalina Naibaho et al., *The Urgency to Prevent Illicit Political Party Fundraising through the Anti-Money Laundering Regime in Indonesia*, 1 ASIA-PAC. J. ELECTIONS & DEMOCRACY 19, 20 (2021) (describing how the 2008 and 2011 laws defined political parties as being organizations meant to "maintain" the country and society through *Pancasila*); Oly Viana Agustine & Anna Triningsih, *Dissolution of Political Parties in Keeping Ideology and Security in Indonesia and Germany*, PROC. 3D J. GOV'T & POL. INT'L CONF. 239, 252 (2018) (explaining that under the 2008 and 2011 political party regulation bills, parties are meant to maintain order in society as well as maintaining the country through *Pancasila*).

17. See Fajri Matahati Muhammadin & Nuruddin Al-Akbar, *Coverage of the 'Perppu Ormas' Issue by the Government vs Mainstream Online Media: Defending or Attacking the Pancasila?*, 165 ADVANCES SOC. SCI., EDUC., & HUMAN. RSCH. 37, 37 (2018) [hereinafter Muhammadin & Akbar] (listing the ideologies Indonesia has officially considered to be anti-*Pancasila*).

Court has the sole power to dissolve political parties.¹⁸ The government and the executive have been given the sole power to appeal to the Court to dissolve political parties they feel are contradicting *Pancasila* or the Constitution.¹⁹ Although there are no cases of political parties that have been dissolved by the Constitutional Court for violating *Pancasila*, it is almost certain that the requirement has prevented or discouraged registration of parties that would likely be found to be in violation of the requirement.²⁰ Moreover, these requirements have certainly resulted in local-level action, legally-sanctioned and not, by pro-government forces against civil movements and political organizations which oppose the current system.²¹ Despite falling under regional laws, and not the national *Pancasila* requirement, parties in the Aceh region that do not fully commit to the unity of Indonesia are subject to deregistration and are also subject to the requirement of being committed to *Pancasila*.²²

An example of the system enforcing laws against organizations

18. See Al Araf et al., *The Legal Politics of the Dissolution of Mass Organizations: An Analysis of Government Regulation in Lieu of Law No. 2 of 2017 (Perpu Ormas)*, 17 J. PUB. ADMIN., FIN. & L. 353, 364 (2020) (explaining that the Constitutional Court has been given the sole power to dissolve political parties, as opposed to the government).

19. See Maruarar Siahaan, *Political Parties, Democracy and the Authorities of Constitutional Court: Liquidation of Political Parties in Indonesia*, INT'L SHORT COURSE ON CONST. 2017 70, 74–75 (2017) (explaining the mechanisms by which the Constitutional Court can dissolve political parties and the reasons for doing so, including, but not limited to, contradicting *Pancasila*).

20. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*); see, e.g., Siahaan, *supra* note 19, at 74–75 (explaining the mechanisms by which the Constitutional Court can dissolve political parties and the reasons for doing so, including, but not limited to, contradicting *Pancasila*).

21. *Cf. id.*

22. See Ben Hillman, *Ethnic Politics and Local Political Parties in Indonesia*, 13 ASIAN ETHNICITY 419, 437 (2012) (explaining that parties in the Aceh region of Sumatra that are found not to be committed to Indonesian unity can be subject to deregistration for being contradictory to *Pancasila*); *Qanun of Aceh Number 3 Year 2008 on Local Political Parties Participating in Elections for Members of the People's Representative Council of Aceh (DPRA) and the People's Representative Council in the Cities/Regencies (DPRK)*, 11 AUSTL. J. ASIAN L. 142, 149 (2009) (demonstrating that candidates from political parties in the Sumatran Aceh region are, like national political parties, also subject to the requirement to be committed to *Pancasila*).

found to be contradicting *Pancasila* can be seen through a 2017 law targeting Islamic fundamentalism.²³ This bill was passed in response to the activities of the Islamic State and empowered the government to ban any organization whose goals were contrary to *Pancasila*.²⁴

As a result of laws requiring that mass organizations comply with *Pancasila*, the government has disbanded numerous mass organizations for being contrary to the ideology, including various Islamic organizations the government claimed were trying to “shift” *Pancasila*.²⁵

3. Indonesian Law Regarding Approved Religious Beliefs and Activities

Indonesia has six approved faiths: Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism, meaning that other faiths do not have the same rights and government protections.²⁶ Leaders of “deviant” sects can be prosecuted, and their organizations banned, while individuals who discourage others from practicing religion can also be prosecuted.²⁷ One “deviant” sect is Ahmadiyya Islam, which believes that its founder was the Messiah, a belief that contradicts orthodox Islam.²⁸ With regard to irreligion, atheists are

23. See Rafiqqa Qurrata A'yun, *Religion at the Ballot Box: The Politics of Indonesia's Blasphemy Laws*, 112 INDON. L. REV. 1, 13 (2021) (describing a 2017 law that was passed to allow for the disbandment of Islamic fundamentalist organizations the government considers to be anti-*Pancasila*).

24. See *id.*; Muhammadin & Akbar, *supra* note 17, at 37 (explaining the 2017 mass organization disbandment law).

25. See Hesti Armiwulan et al., *Mass Organization Disbandment in Indonesia: Is Democracy Embattled?*, 87 CROAT. INT'L REL. REV. 178, 179 (2021) (explaining how the Indonesian government has disbanded some mass organizations, including Islamic fundamentalist groups, for allegedly deviating from *Pancasila* in their ideology and in their work).

26. See Alfitri, *Religious Liberty in Indonesia and the Rights of “Deviant” Sects*, 3 ASIAN J. COMPAR. L. 1, 2 (2008) (listing the six officially authorized faiths of Indonesia).

27. See *id.* at 22 (explaining the potential punishments for “deviant” sects and leaders and how Indonesians who discourage others from practicing religion can be subjected to criminal penalties).

28. See *id.* at 3, 21 (explaining how Ahmadiyya Muslims have been targeted in Indonesia as a “deviant” sect, including excommunication, violence, and vandalism of their property, as it is perceived to be an “apostate” sect by Orthodox Muslims because its practitioners consider its founder to be the Messiah).

barred from holding any government office.²⁹

Situations like that of a former Governor of Jakarta, known as Ahok, demonstrate the impact of Indonesia's blasphemy law.³⁰ In 2017, Ahok, an ethnic Chinese Christian, during his term as Governor, said that a Quranic verse was being used to convince Muslims that he could not rule over them.³¹ As a result of his statement, Ahok was arrested and convicted of blasphemy.³² This situation was one of the bases for the passing of a law known as Perppu Ormas, a law targeted at Islamic fundamentalist groups with the goal of disbanding mass organizations the government considered to be in contradiction to Pancasila.³³ Human Rights Watch found that the bill infringed on the rights of freedom of association and expression.³⁴

Finally, there is the situation of Buddhists, who already practice an approved faith.³⁵ Many Indonesian Buddhists profess faith in Sang

29. See Hum. Rts. Council, Report on its Thirty-Sixth Session, U.N. Doc. A/HRC/36/2, at 82, ¶ 597 (2020), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/280/96/PDF/G2028096.pdf> [hereinafter HRC Report] (explaining that Indonesia prohibits atheists from serving in government office).

30. See Meghan Fischer, *Hate Speech Laws and Blasphemy Laws: Parallels Show Problems with the U.N. Strategy and Plan of Action on Hate Speech*, 35 EMORY INT'L L. REV. 177, 181–82 (2021) (explaining how Ahok was subject to arrest and conviction for blasphemy for allegedly insulting the Quran by suggesting that he, as a Christian, could govern Muslims).

31. See *id.* (explaining that Ahok, an ethnic Chinese Christian, was accused of blasphemy for stating that a Quranic verse should not mean that he could not rule over Muslims).

32. See *id.* (explaining how Ahok was arrested and convicted for blasphemy for his statement that a certain Quranic verse did not dictate that he could not govern Muslims as a non-Muslim).

33. See A'yun, *supra* note 23, at 13 (describing a 2017 law passed to allow for the disbandment of Islamic fundamentalist organizations the government considers to be anti-Pancasila and how the bill was also a response to the Ahok blasphemy case).

34. See Andreas Harsono, *Indonesia's Ban of Islamist Group Undermines Rights*, HUM. RTS. WATCH (July 19, 2017), <https://www.hrw.org/news/2017/07/19/indonesias-ban-islamist-group-undermines-rights> (explaining how the 2017 mass organization disbandment bill, passed to limit the activities of Islamic fundamentalist groups, infringed on the freedom of association).

35. See Alfitri, *supra* note 26, at 2 (listing Buddhism as one of the six officially approved faiths); Abdul Syukur, *Theological Debate Among Buddhist Sects in Indonesia*, 78 HTS THEOLOGIESE STUD./THEOLOGICAL STUD. 1, 4–5 (2022) (explaining how the God that many Indonesian Buddhists believe in may have been created to comply with Pancasila's requirement of a belief in one God).

Hyang Adi Buddha, known to some scholars as Indonesian Buddhism's "God."³⁶ Many Buddhist scholars and leaders, however, reject the idea that Buddhism has a God.³⁷ Some scholars definitively believe that Indonesian Buddhists reformed their religion to comply with *Pancasila*'s pillar of belief in one God.³⁸

When it comes to the country's religious identity, there is strong debate over whether the country and its democracy are secular or not, and whether *Pancasila* politics are of a religious nature or a secular nature.³⁹

B. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The ICCPR, first ratified in 1966,⁴⁰ has 74 signatories and 173 state parties⁴¹; Indonesia signed in 2006.⁴² The ACLU considers it to be one of the three documents constituting an International Bill of Rights.⁴³ Because it contains enforcement mechanisms, the Covenant has helped strengthen the Universal Declaration of Human Rights

36. See *id.* at 4 (describing the God many Indonesian Buddhists believe in).

37. See *id.* at 4–5 (explaining how many Buddhist scholars reject the idea that Buddhism has a god).

38. See Abdul Mu'ti & Ahmad Najib Burhani, *The Limits of Religious Freedom in Indonesia: With Reference to the First Pillar Ketuhanan Yang Maha Esa of Pancasila*, 9 *INDON. J. ISLAM & MUSLIM SOC'Y* 111, 121–22 (2019) (explaining how many Indonesian Buddhists, coming from a traditionally non-theistic faith, adapted their belief system to be recognized as an approved faith).

39. See Saiful Mujani & R. William Liddle, *Muslim Indonesia's Secular Democracy*, 49 *ASIAN SURV.* 575, 576, 590 (2009) (claiming that Indonesia's democracy has become a secular one due to the dominance of secular political parties); but see Sinung Mufti Hangabei et al., *The Ideology Of Law: Embodying The Religiosity Of Pancasila In Indonesia Legal Concepts*, 17 *L. REFORM* 77, 90 (2021) (claiming that laws developed under *Pancasila* are meant to practice a faith in God).

40. See ICCPR, *supra* note 6.

41. See *International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en [hereinafter ICCPR Signatories].

42. *Ratification Status for Indonesia*, *supra* note 6.

43. See *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU (Apr. 2019), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (demonstrating the importance of the ICCPR in the context of international human rights treaties).

(UDHR).⁴⁴

1. *The Rights Created Within the ICCPR*

Articles 1, 18, 22, 25, and 27 of the ICCPR lay out fundamental rights related to freedoms of association, religion and worship, the right to participate in public affairs, and self-determination.⁴⁵ Article 1 states that all people have the fundamental right of self-determination.⁴⁶ Article 18 guarantees freedom of religion and the right to manifest a choice of religion, which can only be limited to ensure, e.g., public safety or the rights of others.⁴⁷ Article 22 guarantees freedom of association, which, like freedom of religion, can only be curtailed to protect public health or morals, or to respect the rights of others.⁴⁸ Article 27 guarantees ethnic, religious, and linguistic minorities rights, such as practicing their own religion.⁴⁹ Finally, Article 25 guarantees people the right to take part in public affairs by running for office or electing representatives without

44. Off. of the High Comm'r of Hum Rts., Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights, at 8 (June 1996), <https://www.refworld.org/docid/479477480.html> (accessed July 29, 2022) (demonstrating how the ICCPR has helped to strengthen the Universal Declaration of Human Rights because the ICCPR has measures of implementation).

45. See ICCPR, *supra* note 6, arts. 1, 18, 22, 25, 27.

46. See *id.* art. 1.

47. See *id.* art. 18.

48. See *id.* art. 22; see, e.g. Wang Youcai v. China, Working Group on Arbitrary Detention, Opinion No. 21/1999, U.N. Doc. E/CN.4/2000/4/Add.1 at 85, 85–88 (1999), <https://www.refworld.org/topic,5501506a4,50ffbce58e,3b00f4134,0,,THEMREPORT,.html> [hereinafter Wang Youcai v. China] (finding that China, having arrested the complainant for attempting to register a political party that would have subverted the state's authority, violated his right of freedom of association, because countries cannot reject political party registration if the party's aims do not contradict international norms nor advocate for war, violence, racial or religious hatred, or discrimination).

49. See ICCPR, *supra* note 6, art. 27; Malakhovsky v. Belarus, Communication No. 1207/2003, Human Rights Committee [Hum Rts. Comm.], ¶¶ 2.1–2.7, 7.2–7.6, U.N. Doc. CCPR/C/84/D/1207/2003 (July 26, 2005), <https://digitallibrary.un.org/record/560818?ln=en> [hereinafter Malakhovsky v. Belarus] (finding that Belarus, having denied the complainants' right to register Hare Krishna organizations, denied the complainants of their right to manifest their religion, as under the ICCPR, manifestations of religious belief can only be limited to protect public health, safety, or order).

unreasonable restrictions.⁵⁰

2. *Implementation, Enforcement, and Interpretation of the ICCPR's Rights*

Part IV of the ICCPR lays the foundation for a Human Rights Committee (HRC) tasked with monitoring signatories' compliance with the Covenant.⁵¹ The HRC is meant to assess whether signatories are upholding their ICCPR obligations.⁵²

If a state party to the ICCPR believes that another state party is not upholding its commitment to the Covenant, the ICCPR allows the former to bring the potential non-compliance to the offending country's attention.⁵³ If the offending state party does not respond satisfactorily, the complaining party can bring the matter before the HRC's attention.⁵⁴ For countries that have signed the First Optional Protocol to the ICCPR, individuals can bring cases against those countries for supposed violations of ICCPR rights.⁵⁵ Indonesia, however, has not ratified this protocol, meaning that Indonesian individuals cannot not bring cases to the HRC's attention.⁵⁶

Additionally, despite international treaties allowing their signatories to decide how to implement the rights created by those treaties, states must still effectively implement those rights.⁵⁷ Jurist

50. See ICCPR, *supra* note 6, art. 25; Sudalenko v. Belarus, Communication No. 1354/2005, Human Rights Committee [Hum Rts. Comm], ¶¶ 2.2–2.10, 6.2–6.7, U.N. Doc. CCPR/C/100/D/1354/2005 (Nov. 1, 2010), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/100/D/1354/2005&Lang=E> [hereinafter *Sudalenko v. Belarus*] (finding that Belarus, having denied the complainant of the right to register and run for political office because of his political opinions, violated Article 25 of the ICCPR, because it guarantees to citizens of signatories the right to run for and be elected to political office without unreasonable restrictions on political opinions).

51. See ICCPR, *supra* note 6, arts. 28–45.

52. See *id.* arts. 41–42.

53. See *id.* art. 41.

54. See *id.* art. 42.

55. See Optional Protocol to the International Covenant on Civil and Political Rights, art. 1, Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>.

56. *Ratification Status for Indonesia*, *supra* note 6.

57. See Int'l L. Comm'n, Report on the Work of Its Fifty-First Session, U.N. Doc. A/54/10, Supp. No. 10, at 60, ¶ 160 (1999), <https://legal.un.org/ilc>

and European Court of Human Rights Judge, Anja Seibert-Fohr, has noted that this means that signatories to the ICCPR have flexibility in deciding how to implement the rights it guarantees, but the signatories must still ensure that they implement those rights.⁵⁸

3. *Restrictions on ICCPR Rights*

The ICCPR allows signatories to make “reservations” on certain Articles, meaning that they do not have to fully guarantee every right those Articles normally guarantee.⁵⁹ For example, Bahrain has reserved Articles 3 and 18 to ensure its implementation of Shariah, a set of laws and precepts that govern the daily lives of Muslim people, is not affected.⁶⁰ When a signatory makes a reservation, other signatories can lodge objections, indicating their belief that the reserving country is not committed to implementing the rights guaranteed in the Articles they are reserving.⁶¹ Indonesia has only ever “reserved” Article 1, a reservation it made to state that the right to self-determination would not be one that could apply to people within a sovereign state.⁶²

Additionally, signatories can derogate from their ICCPR

/documentation/english/reports/a_54_10.pdf (explaining that generally, signatories to international treaties have flexibility in complying with those treaties but must still comply).

58. See Anja Seibert-Fohr, *Domestic Implementation of the International Covenant on Civil and Political Rights Pursuant to Its Article 2 para. 2*, 5 MAX PLANCK Y.B. U.N. L. 399, 403–04 (2001) (explaining that while ICCPR signatories have some flexibility in deciding how to implement rights the Covenant creates, they are still required to implement those rights).

59. See Hum. Rts. Comm., General Comment 24 (52) 1/, 52nd Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.6, at 1, ¶ 1 (Nov. 11, 1994), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/21/Rev.1/Add.6&Lang=E> [hereinafter General Comment 24] (explaining how ICCPR signatories can reserve ICCPR Articles, and how the state parties making those reservations are thus allowed to avoid implementing the rights those Articles create).

60. See ICCPR Signatories, *supra* note 41 (demonstrating the kinds of reservations other ICCPR signatories have made, and the reasons for making them).

61. See *id.* (demonstrating how other signatories can question whether a reserving signatory is committed to upholding ICCPR rights).

62. See *id.* (demonstrating that the only reservation Indonesia has made to the ICCPR was to Article 1, to state that the right to self-determination did not apply to people within a sovereign state and could not be construed as allowing activities that would impair the territorial integrity of sovereign or independent states).

responsibilities in case of emergency, but that derogation must be temporary and can only occur in exceptional cases.⁶³ Even during times of war, signatories can only derogate if the situation threatens the life of the nation.⁶⁴

Article 22 states that restrictions on the freedom of association can only be those which are necessary in a democratic society.⁶⁵ Human Rights Watch has found that limitations on political parties are unnecessary in democratic societies, because democracy is developed when political parties are free to contest elections.⁶⁶ Additionally, restrictions on freedom of association must be based upon, e.g., the values of tolerance, pluralism, and open-mindedness.⁶⁷ Finally, restrictions on the freedom of association should not deprive the right of its essence.⁶⁸

HRC General Comment 25 states that restrictions on candidates' right to stand for political office, when they are otherwise eligible, should not be subject to unreasonable restrictions, such as political affiliation.⁶⁹

63. See Hum. Rts. Comm. General Comment 29, States of Emergency, 72nd Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.11, at 2–3, ¶ 1–5 (Aug. 31, 2001), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/21/Rev.1/Add.11&Lang=E> [hereinafter General Comment 29] (explaining how if an ICCPR signatory derogates from its Covenant responsibilities in times of claimed national emergency, the derogation can only be a temporary one).

64. See *id.* (demonstrating how even in times of war, an ICCPR state party's derogation from its responsibilities under the Covenant is unacceptable unless the life of the nation of that state party is threatened).

65. See ICCPR, *supra* note 6, art. 22.

66. See Hum. Rts. Watch, *Uganda's Obligations under International Law* (1999), <https://www.hrw.org/reports/1999/uganda/Uganweb-05.htm> (finding that restrictions on political parties are not necessary in democratic societies, because democracy itself is built upon political parties being able to freely contest elections).

67. See *id.* (citing MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 386 (Kehl: N.P. Engel ed., 1993)) [hereinafter Nowak] (finding that restrictions on the freedom of association must be based on ideas such as tolerance and pluralism).

68. See Venice Comm'n, *Joint Guidelines on Freedom of Association*, CDL-AD (2014) 046, at 16, ¶ 24, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)046-e) [hereinafter Venice Commission] (explaining how the freedom of association cannot be so curtailed that it loses its essence).

69. See Hum. Rts. Comm., General Comment 25 (57), 57th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.7, at 5, ¶ 15 (Aug. 27, 1996), <https://daccess-ods.un.org>

4. *United Nations Jurisprudence and Other Rulings on ICCPR Rights*

Several UN bodies, in cases submitted by individual complainants against ICCPR parties, have interpreted the ICCPR to see whether those countries have complied with its assertions of fundamental human rights.⁷⁰ For example, one case involved China's denial of the complainant's attempt to register a political party.⁷¹ The UN body found that under the ICCPR, a country cannot deny the right to register a political party if the party's aims are not contrary to international norms or basic rights, such as those guaranteed by the UDHR.⁷² In a ruling concerning The Gambia, the HRC found that countries must treat political parties equally and give them equal opportunities to pursue legitimate activities.⁷³

Regarding manifestations of religious belief, the HRC has found that the freedom to manifest one's own religious beliefs can only be subjected to restrictions as necessary to protect public health, safety, or order.⁷⁴

[/access.nsf/Get?OpenAgent&DS=CCPR/C/21/Rev.1/Add.7&Lang=E](#) [hereinafter General Comment 25] (explaining that under ICCPR Article 25, the right to run for political office for those who are otherwise eligible should not be denied on the basis of individuals' political affiliation).

70. *See, e.g.* Wang Youcai v. China, Working Group on Arbitrary Detention, Opinion No. 21/1999, U.N. Doc. E/CN.4/2000/4/Add.1 at 85, 85–88 (1999), <https://www.refworld.org/topic,5501506a4,50ffbce58e,3b00f4134,0,,THEMREPO RT,.html> (finding that China, having arrested the complainant for attempting to register a political party that would have subverted the state's authority, violated his right of freedom of association, because countries cannot reject political party registration if the party's aims do not contradict international norms nor advocate for war, violence, racial or religious hatred, or discrimination).

71. *See id.*

72. *See id.*

73. *See* Hum. Rts. Comm., Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: The Gambia, U.N. Doc. CCPR/CO/75/GMB, ¶ 23 (Aug. 12, 2004), <https://www.refworld.org/country,,,CONCOBSERVATIONS,GMB,,42ce6c004,0.html> [hereinafter *The Gambia*] (noting that The Gambia, despite having abrogated a law banning political parties, still discriminated against political parties that opposed the government and thus needed to do additional work to ensure that political parties had equal opportunities to pursue legitimate activities).

74. *See* Malakhovsky v. Belarus, Communication No. 1207/2003, Human Rights Committee [Hum Rts. Comm.], ¶¶ 2.1–2.7, 7.2–7.6, U.N. Doc. CCPR/C/84/D/1207/2003 (July 26, 2005), <https://digitalibrary.un.org/record>

Another case involved the dissolution of a political party in Djibouti for allegedly encouraging Eritrea to invade.⁷⁵ The HRC found that Djibouti could not demonstrate that it dissolved the party to resolve a threat to its national security.⁷⁶ In the Djibouti case, the HRC found that political parties are a form of association which is essential to the functioning of democracy.⁷⁷ As such, and given the lack of a verifiable threat, the HRC found that the dissolution of the political party interfered with the complainant's freedom of association.⁷⁸

Regarding running for political office, the HRC has found that every person has the right to be elected without restrictions on political opinion.⁷⁹ This came from a case in which Belarus interfered with a potential candidate's efforts to collect enough signatures to appear on a ballot.⁸⁰

In one General Comment, the HRC noted that political parties play a significant role in public affairs and the election process, and that the

/560818?ln=en (finding that Belarus, having denied the complainants' right to register Hare Krishna organizations, denied the complainants of their right to manifest their religion, as under the ICCPR, manifestations of religious belief can only be limited to protect public health, safety, or order).

75. See *Farah v. Djibouti*, Communication No. 3593/2019, Human Rights Committee [Hum. Rts. Comm.], ¶¶ 2.1–2.2, 7.2–7.4, U.N. Doc. CCPR/C/130/D/3593/2019 (Jan. 15, 2021), <https://undocs.org/en/CCPR/C/130/D/3593/2019> [hereinafter *Farah v. Djibouti*].

76. See *id.* (finding that Djibouti, having dissolved the complainant's political party for allegedly inviting the head of state of a neighboring country to invade Djibouti, violated the complainant's right to freedom of association, as political parties are essential to the functioning of democracy, even political parties that promote views that are not favorable to the government or accepted by society, or even political party's with aims that only hypothetically threaten the country's national security).

77. See *id.*

78. See *id.* (finding that dissolving the complainant's political party, when the country could not demonstrate that it posed a threat, violated the complainant's freedom of association).

79. See *Sudalenko v. Belarus*, Communication No. 1354/2005, Human Rights Committee [Hum. Rts. Comm.], ¶¶ 2.2–2.10, 6.2–6.7, U.N. Doc. CCPR/C/100/D/1354/2005 (Nov. 1, 2010), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/100/D/1354/2005&Lang=E> (finding that Belarus, having denied the complainant of the right to register and run for political office because of his political opinions, violated Article 25 of the ICCPR, because it guarantees to citizens of signatories the right to run for and be elected to political office without unreasonable restrictions on political opinions).

80. See *id.*

freedom to participate in public affairs as part of political parties was essential to enjoying the rights guaranteed under ICCPR Article 25.⁸¹

The United Nations Special Rapporteur brought attention to a trial in Thailand where the Thai government attempted to dissolve a political party that was allegedly advocating to overthrow the monarchy.⁸² The Special Rapporteur was concerned that dissolving the party for that reason would violate Article 22 of the ICCPR, which guarantees the freedom of association.⁸³

In 1984, the UN Human Rights Commission, the predecessor to the modern UN Human Rights Council,⁸⁴ published the Siracusa principles after a gathering of jurists.⁸⁵ The Siracusa Principles declared that ICCPR signatories can only derogate from their responsibilities under the Covenant if there is a “threat to the life of the nation.”⁸⁶ Such threats must affect the population or territory of the state or the basic functioning its institutions.⁸⁷

81. See General Comment 25, *supra* note 69, at 5, ¶ 15 (explaining how the right to participate in political affairs as a part of a political party is an essential right under the ICCPR, one which should not be denied to a person seeking to run for office simply because of their political affiliation).

82. See David Kaye & Clement Nyaletsossi Voule (Special Rapporteurs), *Mandates of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, U.N. Doc. AL THA 1/2020, at 1–2 (January 28, 2020), spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25037 [hereinafter *Mandates of the Special Rapporteur*] (finding that the Thai government’s attempt, through the courts, to dissolve a political party for allegedly wanting to overthrow the monarchy, in itself, even if the party was not actually dissolved, violated the party members’ political rights, as it had the potential to deter members of other parties from speaking out about the role of the military and the monarchy in Thailand).

83. See *id.*

84. *UN Creates New Human Rights Body*, BBC NEWS (Mar. 15, 2006), <http://news.bbc.co.uk/2/hi/europe/4810538.stm> (showing how the UN’s Human Rights Commission became the Human Rights Council).

85. See U.N., Econ. & Soc. Council, Comm’n on Hum. Rts., *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, at 1 (1984), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/CN.4/1985/4&Lang=E> [hereinafter *Siracusa Principles*].

86. See *id.* (showing how the Human Rights Commission established these Principles to ensure that the ICCPR’s clauses were interpreted and applied in a manner consistent with the Covenant’s objects and purposes).

87. See *id.*, at Annex, 7–8 (explaining that derogations from ICCPR

These cases and declarations demonstrate how seriously the United Nations takes allegations of restrictions on ICCPR rights.⁸⁸

III. ANALYSIS

By ratifying the ICCPR, Indonesia became bound to uphold the rights the Covenant creates and must not interfere with the enjoyment of human rights.⁸⁹ Additionally, as it has not met the conditions for derogation from its ICCPR responsibilities, Indonesia necessarily cannot derogate from enforcing the rights created in the aforementioned Articles.⁹⁰ Indonesia claims to be a democracy, and one of *Pancasila*'s principles states that the peoples' sovereignty is to be built upon the wisdom arising out of deliberations of the peoples' representatives.⁹¹ However, Indonesia's actions show that it has a long way to go before it can say that its government truly represents the will of the people.⁹²

Indonesia's requirement that political parties not contradict *Pancasila* fundamentally denies its citizens fundamental rights that the ICCPR guarantees, such as self-determination, freedom to pursue political activities, freedom of association, and freedom of religion and worship.⁹³ The most fundamental violation is of Article 1, which

responsibilities can only occur when the life of the nation is sufficiently threatened).

88. See ICCPR, *supra* note 6, art. 28–45 (laying out the Human Rights Committee's structure and its role in ensuring that ICCPR signatories are actually implementing the rights the Covenant creates).

89. See Off. of the High Comm'r for Hum. Rts., International Human Rights Law, (accessed June 20, 2022), <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (explaining that countries are bound to implement the international treaties they sign).

90. See, e.g., Siracusa Principles, *supra* note 85, at 7–8 (explaining that derogations from ICCPR responsibilities can only occur when the life of the nation is sufficiently threatened).

91. See Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, *President Jokowi: Indonesia Upholds Harmony in Diversity* (2018), <https://setkab.go.id/en/president-jokowi-indonesia-upholds-harmony-in-diversity/> (claiming that Indonesia is a democracy); Mu'ti & Burhani, *supra* note 38, at 116 (demonstrating that democracy guided by wisdom in deliberations of the peoples' representatives is one of the pillars of *Pancasila*).

92. See generally Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

93. See ICCPR, *supra* note 6, art. 1, 18, 22, 25, 27; see also Abra, *supra* note 2,

states that all people should have the right of self-determination to determine their political status.⁹⁴

By requiring political parties to act in such a way that they do not contradict the national ideology, Indonesia denies its citizens, members of active political parties, and those who seek to create new political parties, the right to fully participate in political affairs.⁹⁵ Indonesia's treatment of religious minorities, in combination with its enforcement of *Pancasila* upon political parties, especially the principle of recognizing that there is a one and only God, further denies its citizens of ICCPR rights by denying them the right to express their religious views through their politics and other activities.⁹⁶

A. INDONESIA CANNOT DEROGATE FROM ITS RESPONSIBILITIES UNDER THE ICCPR

1. Indonesia Has Only Made a Reservation to Article 1 of the ICCPR and thus It Cannot Derogate from Its Responsibilities Under the Other Articles To Guarantee Full Access to All Political Parties

The ICCPR allows signatories to make “reservations” to any number of its Articles, meaning that those signatories are not bound to fully enforce or implement the rights these Articles create.⁹⁷ Indonesia has only made one reservation, to Article 1, meaning that it is bound to guarantee and protect all other rights in the treaty, including the rights created in Articles 18, the right to freedom of religion, 22, the right of freedom of association, 25, the freedom to participate in the

at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

94. See ICCPR, *supra* note 6, art. 1 (stating that the right of self-determination allows people to pursue their economic, social, and cultural development, and requiring state parties to promote the realization of this right).

95. See *id.* art. 22, 25; see also *Abra*, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

96. See ICCPR, *supra* note 6, art. 18 (guaranteeing the freedom to choose a religion and to manifest their belief in worship and in practice).

97. See General Comment 24, *supra* note 58, at 1, ¶ 1 (explaining how ICCPR signatories can “reserve” certain Articles, meaning that they are no longer bound to enforce the rights those Articles create).

political process, and 27, the protection of religion or ethnic minorities.⁹⁸ Indonesia's failure to make reservations to any of these Articles means that it must fully commit to the rights they create unless it decides to make reservations in the future.⁹⁹

Additionally, Indonesia's failure to reserve the relevant Articles means that a UN body could find it responsible for failing to uphold its duties under those Articles.¹⁰⁰ This means that if a UN body finds that Indonesia has violated any of the relevant Articles, the country cannot claim that it was not in fact bound to enforce the rights within.¹⁰¹ Thus, Indonesia can be compelled to comply, although such a ruling could not be enforced.¹⁰²

As jurist Anja Seibert-Fohr has noted, while ICCPR signatories have flexibility in deciding how to implement their responsibilities, they cannot decide not to implement the rights the treaty creates.¹⁰³ Thus, Indonesia can be flexible, crafting its legislation and policy in a way in which it complies with the ICCPR, and it could even make some decisions bordering on violations, while still substantially complying.¹⁰⁴ However, because signatories must still implement ICCPR rights, Indonesia cannot simply decide that the policies it has

98. ICCPR Signatories, *supra* note 41 (demonstrating Indonesia's sole reservation, of Article 1); ICCPR, *supra* note 6, arts. 1, 18, 22, 25, 27; *International Human Rights Law*, *supra* note 89 (explaining that countries are bound to implement the international treaties they sign).

99. *See* General Comment 24, *supra* note 58, at 1, ¶ 1 (explaining that ICCPR signatories are allowed to make reservations to certain Articles of the Covenant at any time. These reservations allow those signatories to refrain from implementing the rights guaranteed in the Articles).

100. *See id.* (explaining how ICCPR signatories can reserve ICCPR Articles and how reserving states can thus avoid implementing the rights those Articles create); ICCPR, *supra* note 6, art. 28–45 (laying out the Human Rights Committee's task to ensure that ICCPR signatories are upholding the rights the Covenant creates).

101. *See International Human Rights Law*, *supra* note 89 (explaining that countries are bound to implement the international treaties they sign).

102. *See, e.g.,* Alan Brudner, *The Domestic Enforcement of International Covenants on Human Rights: A Theoretical Framework*, 35 U. TORONTO L.J. 219, 220–21 (1985) (explaining that while state parties should be bound to respect the HRC's decisions, the body has no enforcement power).

103. *See* Seibert-Fohr, *supra* note 58, at 403–04 (2001) (explaining that while ICCPR signatories have some flexibility in deciding how to implement rights the Covenant creates, they are still required to implement those rights).

104. *Cf. id.*

created actually satisfy its ICCPR responsibilities.¹⁰⁵

2. *Indonesia's Requirement No Longer Falls Under the Exceptions the ICCPR Creates*

Indonesia's failure to uphold its duties under the ICCPR can be seen by applying the findings of the Siracusa Principles, in which the UN Economic and Social Council declared that ICCPR signatories could only derogate from their Covenant responsibilities if there was a threat to the life of the nation.¹⁰⁶ As Indonesia was undergoing great unrest when the original requirement was passed, a UN body interpreting and applying the Siracusa Principles likely would have considered that situation a threat to the life of the nation.¹⁰⁷ As such, if another ICCPR state party had brought a case against Indonesia at that time, it is quite possible that a UN body would have found that Indonesia was in a state of emergency, and thus was not wrongfully derogating from its responsibility to uphold the rights the ICCPR guarantees.¹⁰⁸

When compared to General Comment 29, which states that a derogation in times of emergency must be only temporary, Indonesia's derogation certainly has not been.¹⁰⁹ By the time of the passing of the

105. See *id.*; see, e.g., Amber Dufseth, *Indonesia's 1999 Political Laws: The Right of Association in Aceh and Papua*, 11 PAC. RIM L. & POL'Y J. 613, 637 (2002) (explaining how the requirement that political parties adhere to *Pancasila* violates the freedom of association, as only being able to create a political party that adheres to the national ideology is not freedom or a right to freely associate).

106. See Siracusa Principles, *supra* note 85, at Annex, 7–8 (explaining that derogations from ICCPR responsibilities can only occur when the life of the nation is sufficiently threatened).

107. See *id.*; Ismail, *supra* note 1, at 6–10 (explaining the occurrence of the attempted communist coup in 1965 and the civil unrest and violence that plagued Indonesia leading to the passage of the original law requiring all political parties to have *Pancasila* as their sole ideological basis).

108. See Siracusa Principles, *supra* note 85, at Annex, 7–8 (explaining that derogations from ICCPR responsibilities can only occur when the life of the nation is sufficiently threatened); Ismail, *supra* note 1, at 1 (explaining the occurrence of the attempted communist coup in 1965 and the civil unrest and violence that plagued Indonesia leading to the passage of the original law requiring all political parties to have *Pancasila* as their sole ideological basis).

109. See General Comment 29, *supra* note 63, at 2, ¶ 1–2 (explaining how if an ICCPR signatory derogates from its Covenant responsibilities in times of claimed national emergency, the derogation can only be a temporary one).

2008 and 2011 requirements,¹¹⁰ the same strife that led to the first requirement in 1983, almost 40 years ago, was no longer a threat to Indonesia's stability or national security.¹¹¹ As such, the new requirement would likely be found to contravene the Siracusa Principles, especially considering the principles state that internal conflict and unrest not constituting a grave and imminent threat to the life of the nation cannot be used as justifications for derogations.¹¹²

Indonesia has continued to see some religiously motivated violence, but not at a level sufficient to constitute a threat to the life of the nation that would justify denying fundamental political rights by requiring political parties to adhere to *Pancasila*.¹¹³ Only if Indonesia was invaded, could derogation be acceptable.¹¹⁴

The Indonesian requirement can be compared to the Djibouti HRC case, in which a political party had been deregistered after its leader was accused of inviting the leader of a neighboring country to invade Djibouti.¹¹⁵ In the Djibouti case, the HRC found insufficient evidence

110. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

111. See Patrick Barron et al., *When Large Conflicts Subside: The Ebbs and Flows of Violence in Post-Suharto Indonesia*, 16 J. EAST ASIAN STUD. 191, 195 (2016) (explaining how by 2004, the level of violence in the country had declined significantly from the Suharto era).

112. See Siracusa Principles, *supra* note 85, at Annex, 7–8 (explaining that derogations from ICCPR responsibilities can only occur when the life of the nation is sufficiently threatened).

113. See *id.*; Asia Foundation, *Indonesia: State of Conflict and Violence* 70 (2019) (describing some of the religiously motivated violence that still occurs in Indonesia); see also General Comment 29, *supra* note 63, at 2, ¶ 1–2 (demonstrating how even in times of war, a state party's derogation from its ICCPR responsibilities is unacceptable unless the life of the nation of that state party is threatened).

114. *Cf.* Ignatius Yordan Nugraha, *Human Rights Derogation During Coup Situations*, 22 INT'L J. HUM. RTS. 194, 197 (2018) (suggesting that internal conflicts are insufficient to constitute threats to the life of the nation to allow a country to derogate from its ICCPR responsibilities).

115. See Farah v. Djibouti, Communication No. 3593/2019, Human Rights Committee [Hum. Rts. Comm.], ¶¶ 2.1–2.2, 7.2–7.4, U.N. Doc. CCPR/C/130/D/3593/2019 (Jan. 15, 2021), <https://undocs.org/en/CCPR/C/130/D/3593/2019> (finding that Djibouti, having dissolved the complainant's political party for allegedly inviting the head of state of a neighboring country to invade Djibouti, violated the complainant's right to freedom of association, as political parties are essential to the functioning of democracy, even those that promote views

of a threat to the life of the nation, so that the restriction on the complainant's party was improper, just as any claimed threat to the life of the nation in Indonesia would be found insufficient.¹¹⁶ Compared to Farah, the existence and activities of a party that does not support Indonesian unity would probably not be a sufficient threat to justify the *Pancasila* requirement.¹¹⁷

B. INDONESIA'S REQUIREMENT THAT POLITICAL PARTIES NOT CONTRADICT *PANCASILA* VIOLATES ITS CITIZENS' FUNDAMENTAL RIGHT OF SELF-DETERMINATION AND FREEDOM OF ASSOCIATION

Comparing Indonesia's requirement to the ICCPR and UN jurisprudence, it can be demonstrated that Indonesia's requirement violates multiple Articles of the Covenant.¹¹⁸ Most fundamentally, the

that are not favorable to the government or accepted by society, or even when the political party's aims only hypothetically threaten the country's national security); *Abra*, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

116. See *Farah*, ¶¶ 2.1–2.2, 7.2–7.4 (finding that Djibouti, having dissolved the complainant's political party for allegedly inviting the head of state of a neighboring country to invade Djibouti, violated the complainant's right to freedom of association, as political parties are essential to the functioning of democracy, even those that promote views that are not favorable to the government or even accepted by society, or even when the political party's aims only hypothetically threaten the country's national security); see *Barron*, *supra* note 111, at 195 (explaining how by 2004, the level of violence in the country had declined significantly from the Suharto era).

117. See *Farah*, ¶¶ 2.1–2.2, 7.2–7.4 (finding that Djibouti, having dissolved the complainant's political party for allegedly inviting the head of state of a neighboring country to invade Djibouti, violated the complainant's right to freedom of association, as political parties are essential to the functioning of democracy, even those that promote views that are not favorable to the government or even accepted by society, or even when the political party's aims only hypothetically threaten the country's national security); *Abra*, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

118. See, e.g., *Wang Youcai v. China*, Working Group on Arbitrary Detention, Opinion No. 21/1999, U.N. Doc. E/CN.4/2000/4/Add.1 at 85, 85–88 (1999), <https://www.refworld.org/topic,5501506a4,50ffbce58e,3b00f4134,0,,THEMREPO RT,.html> (finding that China, having arrested the complainant for attempting to register a political party that would have subverted the state's authority, violated his right of freedom of association, because countries cannot reject political party registration if the party's aims do not contradict international norms nor advocate

Pancasila political party requirement deprives Indonesians of their fundamental rights to self-determination that are guaranteed in Article 1.¹¹⁹ Considering that Article 1 states that this right is meant to ensure that people can determine their own political status, the fact that Indonesia has created such an artificial and arbitrary limitation on political affairs erodes this right, such that the country is determining people's status for them rather than the people deciding for themselves.¹²⁰

1. Indonesia's Requirement Denies Its People of Their Right of Freedom of Association

The 2008 and 2011 *Pancasila* requirements, defining political parties as being organized to maintain the country through *Pancasila*, means that political parties have to maintain a specific ideological basis predetermined by the government.¹²¹ This means that the full range of ideologies and views is not represented in Indonesian politics.¹²² Thus, Indonesia is violating Article 22 of the ICCPR, which guarantees freedom of association, considering that such a freedom cannot be fully realized if there are artificial and arbitrary restrictions on the kinds of organizations that can exist.¹²³

For example, the restriction on ideologies such as communism, Leninism, and Marxism are unreasonable restrictions on the rights of people to establish political parties based on those ideologies, given that ideologies by themselves are not inherently dangerous, and only become so in certain contexts.¹²⁴ As such, the fundamental right of

for war, violence, racial or religious hatred, or discrimination).

119. See ICCPR, *supra* note 6, art. 1 (stating that the right of self-determination allows people to pursue their economic, social, and cultural development, and requiring state parties to promote the realization of this right).

120. See *id.*

121. See Naibaho et al., *supra* note 16, at 20 (describing how the 2008 and 2011 laws defined political parties as being meant to maintain the country through *Pancasila*).

122. See *id.*

123. See ICCPR, *supra* note 6, art. 25; Naibaho, *supra* note 16, at 20 (describing how the 2008 and 2011 laws defined political parties as being meant to maintain the country through *Pancasila*).

124. See ICCPR, *supra* note 6, art. 22 (guaranteeing the freedom of association); Muhammadin & Akbar, *supra* note 17, at 37 (2018) (listing some of the ideologies considered to be anti-*Pancasila*); Gur Bligh, *Defending Democracy: A New*

associating with fellow communists, for example, is violated.¹²⁵

Restrictions on political parties must be viewed suspiciously given the importance of the freedom of association.¹²⁶ This is especially true considering that the freedom of association is a right that can only be restricted when the restrictions are based on ideas of tolerance and open-mindedness.¹²⁷ While Indonesia might be a diverse society, its restrictions on the freedom of association do not suggest it respects the ideas of tolerance or open-mindedness given that it has created such an artificial restriction on the kinds of political parties that can exist, or the ideologies they can put forth.¹²⁸ Indonesia's restrictions deprive the freedom of association of its essence, such that, while political parties can still form, even in such a way that the majority of potential ideologies can be represented, they still do not reflect the full ideological spectrum.¹²⁹

The prohibition on ideologies such as communism, which means that candidates and political parties espousing those views cannot participate in politics, certainly constitutes an unreasonable restriction on those parties' and candidates' rights to participate in political affairs, simply on account of their political affiliation.¹³⁰ The

Understanding of the Party-Banning Phenomenon, 46 VAND. J. TRANSNAT'L L. 1321, 1332 (2013) (suggesting that parties that might appear to threaten democracy should not be banned unless there is a real threat that they will come to power and actually abolish democracy).

125. See ICCPR, *supra* note 6, art. 22.

126. See *Uganda's Obligations under International Law*, *supra* note 66 (finding that restrictions on political parties must be scrutinized to ensure that the right of freedom of association is not being curtailed).

127. *Id.* (citing Nowak, *supra* note 67, at 386) (finding that restrictions on the freedom of association must be based on ideas such as tolerance and pluralism).

128. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*); *Uganda's Obligations under International Law*, (citing Nowak, *supra* note 67, at 386 (finding that restrictions on the freedom of association must be based on ideas such as tolerance and pluralism)).

129. See Venice Commission, *supra* note 68, at 16, ¶ 24 (explaining how the freedom of association cannot be so curtailed that it loses its essence); Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

130. See General Comment 25, *supra* note 69, at 5, ¶ 15 (explaining that under ICCPR Article 25, the right to run for political office for those who are otherwise

restriction on communist parties is made more troubling by the history of violent repression of communists, which would only make members of such potential parties even more afraid of attempting to register political parties under such an ideology.¹³¹ By only allowing political parties that adhere to its national ideology, Indonesia violates Article 22's guarantee of freedom of association.¹³² This violation of the freedom of association occurs because if the only political parties that can form are those which do not contradict *Pancasila*, then potential party members and politicians whose ideological bases do not align with the ideology are unreasonably prevented from associating with each other.¹³³

Indonesia cannot demonstrate that its restrictions on political parties are necessary for a democratic society.¹³⁴ The freedom of association is one of the most fundamental rights that underpins democracy itself, and so if this freedom is curtailed, democracy itself is curtailed as well.¹³⁵

Indonesia cannot argue that all political parties whose values do not align with *Pancasila* violate international norms, or basic human

eligible should not be denied on the basis of individuals' political affiliation).

131. See *Guilt Trip over 1965 Killings*, *supra* note 12 (explaining how the Indonesian government massacred hundreds of thousands of members of the Communist Party, as well as their supporters, in retaliation for the attempted communist coup in 1965); see also *What Do a Fisherman, a Soccer Fan, and Missing Cattle Have to Do with Free Expression?*, ACCESS NOW (June 28, 2016), <https://www.accessnow.org/fisherman-soccer-cattle-malaysia-tanzania-censorship> (arguing that punishing people for exercising their rights makes others afraid of exercising that very same right).

132. See ICCPR, *supra* note 6, art. 22; Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

133. See ICCPR, *supra* note 6, art. 22; see also Dufseth, *supra* note 105, at 637 (explaining how the requirement that political parties adhere to *Pancasila* violates the freedom of association, as only being able to create a political party that adheres to the national ideology is not freedom or a right to freely associate).

134. See ICCPR, *supra* note 6, art. 22 (stating that restrictions on the freedom of association must be necessary for a democratic society).

135. *C.f.* Maina Kiai (Special Rapporteur), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, UN Doc. A/HRC/20/27, at 5, 14, 19 (May 21, 2012), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/20/27&Lang=E> (explaining that the freedom of association is one of the most fundamental rights underpinning democracy).

rights, given the wide range of possibilities for ideologies that might, for example, conflict with the principle of belief in the unity of the country.¹³⁶ Like in the *Wang Youcai* case involving China, Indonesia's requirement imposes an unreasonable restriction on all political parties, especially when considering that there could be political parties that have a principle, such as not believing in God, which would conflict with one of the five *Pancasila* principles.¹³⁷

Specifically, in the *Wang Youcai* case, the UN body had found that country could not deny the right to register a political party whose aims were compatible with such conventions as the UDHR.¹³⁸ Given that non-compliance with *Pancasila*, such as not accepting that there is one God, does not in itself contradict norms such as those found in the UDHR, the HRC would almost certainly find that the requirement is arbitrary in the same way that China's actions were.¹³⁹ Political parties that represent views other than those already prescribed cannot be found to violate international principles just because they dissent from a national ideology.¹⁴⁰

The situation of political parties in regions such as Aceh

136. See *Wang Youcai v. China*, Working Group on Arbitrary Detention, Opinion No. 21/1999, U.N. Doc. E/CN.4/2000/4/Add.1 at 85, 85–88 (1999), <https://www.refworld.org/topic,5501506a4,50ffbce58e,3b00f4134,0,,THEMREPORT.html> (finding that China, having arrested the complainant for attempting to register a political party that would have subverted the state's authority, violated his right of freedom of association, because countries cannot reject political party registration if the party's aims do not contradict international norms nor advocate for war, violence, racial or religious hatred, or discrimination).

137. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.), *supra* note 4, pmb.; *Wang Youcai*, at 85–88 (finding that China, having arrested the complainant for attempting to register a political party that would have subverted the state's authority, violated his right of freedom of association, because countries cannot reject political party registration if the party's aims do not contradict international norms nor advocate for war, violence, racial or religious hatred, or discrimination).

138. See *Wang Youcai*, at 85–88.

139. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.), *supra* note 4, pmb.; *Wang Youcai*, at 85–88 (finding that China, having arrested the complainant for attempting to register a political party that would have subverted the state's authority, violated his right of freedom of association, because countries cannot reject political party registration if the party's aims do not contradict international norms nor advocate for war, violence, racial or religious hatred, or discrimination).

140. See *Wang Youcai*, at 85–88.

demonstrates how Indonesia is violating Articles 22 and 25.¹⁴¹ Parties that do not advocate for national unity do not pose a sufficient threat to the country's stability or security, as simply advocating for autonomy or independence for a certain region do not constitute a grave and immediate threat to the country as a whole.¹⁴²

Another case that can be compared to the situation in Indonesia is one that involved The Gambia, as the HRC found that under the ICCPR, state parties had to treat political parties equally and give them the right to pursue legitimate activities.¹⁴³ Indonesia's requirement, in contrast to the HRC's declaration, ensures that only parties whose platforms and ideologies adhere in some way to *Pancasila* can be formed or participate in politics, instead of allowing the full range of possible ideologies to be represented.¹⁴⁴ If there are unreasonable and arbitrary restrictions on the kinds of political parties that can form, then the same principle that led the HRC to find that Gambia unreasonably denied political parties of the ability to participate in legitimate activities would likely also be found here.¹⁴⁵

The existence of the enforcement mechanism is problematic, even if it has not been used before.¹⁴⁶ Much as regulations and mechanisms

141. See Hillman, *supra* note 22, at 437 (explaining that parties in the Aceh region of Sumatra that are found not to be committed to Indonesian unity can be subject to deregistration for being contradictory to *Pancasila*).

142. See Siracusa Principles, *supra* note 85 (explaining that derogations from ICCPR responsibilities can only occur when the life of the nation is sufficiently threatened).

143. See Hum. Rts. Comm., Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: The Gambia, U.N. Doc. CCPR/CO/75/GMB, ¶ 23 (Aug. 12, 2004), <https://www.refworld.org/country,,,CONCOBSERVATIONS,GMB,,42ce6c004,0.html> (noting that The Gambia, despite having abrogated a law banning political parties, still discriminated against political parties that opposed the government and thus needed to do more work to ensure that political parties had equal opportunities to pursue legitimate activities).

144. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

145. See *The Gambia*, ¶ 23 (noting that The Gambia, despite having abrogated a law banning political parties, still discriminated against political parties that opposed the government and thus needed to do more work to ensure that political parties had equal opportunities to pursue legitimate activities).

146. See Araf, *supra* note 18, at 364 (explaining that the Constitutional Court has

that can be used to punish speech chill free speech, even if those regulations or mechanisms do not end up being used to punish free speech, the fact that Indonesia has a system under which the Constitutional Court can dissolve political parties for being anti-*Pancasila* deters the formation of those political parties in the first place.¹⁴⁷

As the Constitutional Court has the power of dissolving political parties, and has dissolved other organizations for supposedly being contrary to *Pancasila*, the existence of this mechanism violates the freedom of association the ICCPR guarantees.¹⁴⁸ A UN Special Rapporteur had found that a Thai court's attempt to dissolve a political party for allegedly overthrowing the monarchy was, in fact, an attempt to silence the opposition.¹⁴⁹ Much as the Thai court dissolving a political party for allegedly wanting to overthrow the Thai monarchy would have been a violation of ICCPR Article 22, a UN body would likely find that an Indonesian court dissolving political parties, or even threatening to do so, for contradicting *Pancasila* would also violate Article 22.¹⁵⁰ If wanting to overthrow the government did not qualify

the sole power to dissolve political parties, as opposed to the government).

147. See David L. Hudson, Jr., *Chilling Effect Overview*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION (Feb. 15, 2017), <https://www.thefire.org/chilling-effect> (explaining how the existence of an enforcement mechanism that can silence a right can achieve the desired result even without activating the mechanism against the exercise of that right); Araf, *supra* note 18, at 364 (explaining that the Constitutional Court has the sole power to dissolve political parties, as opposed to the government).

148. See ICCPR, *supra* note 6, art. 22; see Araf, *supra* note 18, at 364 (explaining the Constitutional Court's power to dissolve political parties); Armiwulan et al., *supra* note 24, at 179 (explaining how the Indonesian government has disbanded some mass organizations, including Islamic fundamentalist groups, for allegedly deviating from *Pancasila* in their ideology and in their work).

149. See Mandates of the Special Rapporteur, *supra* note 82, at 1–2 (finding that the Thai government's attempt, through the courts, to dissolve a political party for allegedly wanting to overthrow the monarchy, in itself, even if the party was not actually dissolved, violated the party members' political rights, as it had the potential to deter members of other parties from speaking out about the role of the military and the monarchy in Thailand).

150. See Araf, *supra* note 18, at 364 (explaining that the Constitutional Court has the sole power to dissolve political parties, as opposed to the government); Mandates of the Special Rapporteur, *supra* note 82, at 1–2 (finding that the Thai government's attempt, through the courts, to dissolve a political party for allegedly wanting to overthrow the monarchy, in itself, even if the party was not actually dissolved, violated the party members' political rights, as it had the potential to deter members

as a threat to the life of the nation in Thailand, then having beliefs not fully aligned with the ruling party in Indonesia certainly does not either.¹⁵¹

C. INDONESIA'S PANCASILA POLITICAL PARTY REQUIREMENT PREVENTS RELIGIOUS MINORITIES FROM EXERCISING THEIR FULL POLITICAL RIGHTS

Indonesia's treatment of certain religious minorities, especially its restrictions upon the activities of "deviant" sects, and its limitations on discouragement of religion, violates Articles 18 and 27 of the ICCPR, and thus additionally violates Articles 22 and 25.¹⁵² As Articles 18 and 27 guarantee the right to pursue chosen religious beliefs and also the right to manifest belief in any form, Indonesians whose religious beliefs and practices contradict *Pancasila's* "one God" principle are unreasonably denied the right to pursue political activities based upon their religious beliefs.¹⁵³

Not only are conventional religious beliefs protected by the ICCPR, but also the right not to believe in a God at all.¹⁵⁴ This would apply not only to atheists, but to Buddhists as well.¹⁵⁵ While Buddhists generally do not believe in a God,¹⁵⁶ many Indonesian Buddhists do, with some scholars believing that they have done so to comply with *Pancasila* in

of other parties from speaking out about the role of the military and the monarchy in Thailand).

151. See Mandates of the Special Rapporteur, *supra* note 82, at 1–2.

152. See ICCPR, *supra* note 6, art. 18, 27 (guaranteeing to citizens of ICCPR signatories the right to adopt a religion of their choice and to manifest religious belief, as well as guaranteeing this freedom to religious minorities); see, e.g., Alfitri, *supra* note 25, at 22 (explaining how Indonesians who discourage others from practicing religion can be subjected to criminal penalties).

153. See ICCPR, *supra* note 6, art. 18, 22, 25, 27.

154. See Hum. Rts. Comm., General Comment 22 (48) (art. 18), 48th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.4, at 1, ¶ 2 (Sept. 27, 1993), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/21/Rev.1/Add.4&Lang=E> (demonstrating how atheism is a protected religious belief under the ICCPR).

155. See *id.* (demonstrating how atheism, as well as religions that do not believe in a god, are protected religious beliefs under the ICCPR); Mu'ti & Burhani, *supra* note 38, at 121 (explaining how many Indonesian Buddhists, coming from a traditionally non-theistic faith, adapted their belief system so that Buddhism could be recognized as an approved faith).

156. Mu'ti & Burhani, *supra* note 38, at 121 (explaining how Buddhism is traditionally a non-theistic faith).

order to be recognized as an officially-approved religion.¹⁵⁷ Such an effect clearly demonstrates how enforcement of the “belief in one God” principle of Pancasila has forced an involuntary change in religious beliefs and created an oppressive atmosphere for all religious minorities.¹⁵⁸

Religious freedom is a political right.¹⁵⁹ If religious minorities cannot profess their faiths or create organizations based on their faiths, then they cannot fully participate in politics and are denied their political rights.¹⁶⁰ Thus, Indonesia’s restrictions on religious minorities create an additional restriction on the fundamental political rights of its citizens.¹⁶¹

157. See *id.* at 121–22 (explaining how many Indonesian Buddhists, coming from a traditionally non-theistic faith, adapted their belief system to be recognized as an approved faith).

158. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.), *supra* note 4, pmbi.; Andreas Harsono, *Religious Minorities in Indonesia Face Discrimination*, NEW MANDALA, (Dec. 24, 2020), <https://www.newmandala.org/religious-minorities-in-indonesia-face-blasphemy-prosecutions-intimidation-denial-of-service/> (finding that religious minorities are subject to religious discrimination in Indonesia).

159. See Rafael Domingo, *Restoring Freedom of Conscience*, 30 J. L. & RELIGION 176, 193 (2015) (describing religious freedom as a political right guaranteeing citizens protection against political intrusion into religious matters).

160. See ICCPR, *supra* note 6, art. 1, 18, 22, 25, 27; see, e.g. Alfriti, *supra* note 26, at 22 (explaining how Indonesians who discourage others from practicing religion can be subjected to criminal penalties); see also Domingo, *supra* note 159, at 193 (describing religious freedom as a political right guaranteeing citizens against political intrusion into religious matters).

161. See ICCPR, *supra* note 6, art. 18, 22, 25, 27; Malakhovsky v. Belarus, Communication No. 1207/2003, Human Rights Committee [Hum Rts. Comm.], ¶¶ 2.1–2.7, 7.2–7.6, U.N. Doc. CCPR/C/84/D/1207/2003 (July 26, 2005), <https://digitallibrary.un.org/record/560818?ln=en> (finding that Belarus, having denied the complainants’ right to register Hare Krishna organizations, denied the complainants of their right to manifest their religion, as under the ICCPR, manifestations of religious belief can only be limited to protect public health, safety, or order); Sudalenko v. Belarus, Communication No. 1354/2005, Human Rights Committee [Hum Rts. Comm.], ¶¶ 2.2–2.10, 6.2–6.7, U.N. Doc. CCPR/C/100/D/1354/2005 (Nov. 1, 2010), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/100/D/1354/2005&Lang=E> (finding that Belarus, having denied the complainant of the right to register and run for political office because of his political opinions, violated Article 25 of the ICCPR, because the article guarantees to citizens of signatories the right to run for and be elected to political office without unreasonable restrictions on political opinions); Domingo, *supra* note 159, at 193 (describing religious freedom as a political right protecting

Banning political parties and their potential members from participation in politics, simply for contradicting the official ideology regarding religion, denies those organizations and individuals of their right of freedom of association, the fundamental right to political participation, and the right to full self-determination.¹⁶²

The example of Ahok demonstrates how the requirement, especially as it involves the belief in one God, violates Articles 18 and 27 of the ICCPR, despite Ahok being a member of an officially-approved religion.¹⁶³ Ahok's conviction for blasphemy suggests that even people who espouse approved religious beliefs, but run afoul of religious authorities, or are accused of blasphemy, end up being subject to unnecessary and arbitrary restrictions on their religious beliefs and on manifestations of those beliefs.¹⁶⁴

The *Malakhovsky* and *Sudalenko* HRC cases can also be applied to show how Indonesia's restrictions on manifestation of religion affect political rights.¹⁶⁵ The *Malakhovsky* case had established that manifestations of religious belief could only be limited to protect

citizens from political intrusion into religious matters).

162. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.), *supra* note 4, pmb.; ICCPR, *supra* note 6, art. 18, 22, 25, 27; Alfitri, *supra* note 25, at 3, 21 (explaining how Ahmadiyya Muslims have been targeted in Indonesia as a “deviant” sect, including excommunication, violence, and vandalism of their property, as the religious sect is perceived to be an “apostate” sect by Orthodox Muslims because its practitioners consider its founder to be the Messiah); HRC Report, *supra* note 29, at 82, ¶ 597 (demonstrating that atheists are barred from holding public office).

163. See ICCPR, *supra* note 6, art. 18, 27 (guaranteeing the right to choose a religion and practice it); Fischer, *supra* note 30, at 181–82 (explaining how Ahok was subject to arrest and conviction for blasphemy for allegedly insulting the Quran for suggesting that he, as a Christian, could not govern Muslims); Alfitri, *supra* note 26, at 2 (2008) (listing the officially approved religions of Indonesia).

164. See, e.g., *id.* at 22 (explaining how Indonesians who discourage others from practicing religion can be subjected to criminal penalties).

165. See *Malakhovsky*, ¶¶ 2.1–2.7, 7.2–7.6 (finding that Belarus, having denied the complainants' right to register Hare Krishna organizations, denied the complainants of their right to manifest their religion, as under the ICCPR, manifestations of religious belief can only be limited to protect public health, safety, or order); *Sudalenko*, ¶¶ 2.2–2.10, 6.2–6.7 (finding that Belarus, having denied the complainant of the right to register and run for political office because of his political opinions, violated Article 25 of the ICCPR, because it guarantees to citizens of signatories the right to run for and be elected to political office without unreasonable restrictions on political opinions).

public safety or order, while the *Sudalenko* case had found that all people had the right to run for and be elected to public office without unreasonable restrictions on political opinions.¹⁶⁶

Ahok's situation, while not identical, is similar to that of the complainant in the *Sudalenko* HRC case, in regard to the unreasonable restriction on someone wishing to hold political office.¹⁶⁷ Ahok's situation, therefore, not only indicates a violation of Articles 18 and 27, guaranteeing freedom of religion and manifestation of belief, but also, as an unreasonable restriction on a person seeking to hold political office, violates Article 25.¹⁶⁸ Thus, with regard to religious belief of candidates, requiring political parties, usually made up of people seeking office, to adhere to *Pancasila* violates Articles 18, 25, and 27.¹⁶⁹

The treatment of the Ahmadiyya community also shows how the requirement violates Articles 18, 22, and 27.¹⁷⁰ *Pancasila* requires

166. See *Malakhovsky*, ¶¶ 2.1–2.7, 7.2–7.6 (finding that Belarus, having denied the complainants' right to register Hare Krishna organizations, denied the complainants of their right to manifest their religion, as under the ICCPR, manifestations of religious belief can only be limited to protect public health, safety, or order); *Sudalenko*, ¶¶ 2.2–2.10, 6.2–6.7 (finding that Belarus, having denied the complainant of the right to register and run for political office because of his political opinions, violated Article 25 of the ICCPR, because it guarantees to citizens of signatories the right to run for and be elected to political office without unreasonable restrictions on political opinions); Fischer, *supra* note 30, at 181–82 (explaining how Ahok was subject to arrest and conviction for blasphemy for allegedly insulting the Quran for suggesting that he, as a Christian, could not govern Muslims).

167. See *Sudalenko*, ¶¶ 2.2–2.10, 6.2–6.7 (finding that Belarus, having denied the complainant of the right to register and run for political office because of his political opinions, violated Article 25 of the ICCPR, because it guarantees to citizens of signatories the right to run for and be elected to political office without unreasonable restrictions on political opinions); Fischer, *supra* note 30, at 181–82 (explaining how Ahok was subject to arrest and conviction for blasphemy for allegedly insulting the Quran for suggesting that he, as a Christian, could govern Muslims).

168. See ICCPR, *supra* note 6, art. 25 (guaranteeing the right to run for office without unreasonable restrictions); Fischer, *supra* note 30, at 181–82 (explaining how Ahok was subject to arrest and conviction for blasphemy for allegedly insulting the Quran for suggesting that he, as a Christian, could govern Muslims).

169. See ICCPR, *supra* note 6, art. 18, 25, 27.

170. See *id.* art. 18, 22, 27; Alfitri, *supra* note 26, at 3, 21 (2008) (explaining how Ahmadiyya Muslims have been targeted in Indonesia as a “deviant” sect, including excommunication, violence, and vandalism of their property, as it is perceived to be an “apostate” sect by Orthodox Muslims because its practitioners consider its founder to be the Messiah).

belief in one God, while the Ahmadiyya believe that their founder was the Messiah, a belief which contradicts orthodox Islam and is therefore considered blasphemous.¹⁷¹ This belief means that a potential Ahmadiyya candidate wishing to run for political office would contravene *Pancasila* and therefore be unable able to join or create a political party.¹⁷²

The situations of the Ahmadiyya, Ahok, and atheists also demonstrate how Indonesia's treatment of religious minorities violates Article 25.¹⁷³ Compared to the *Sudalenko* case, where the HRC found that all people had the right to run for and be elected to political office without unreasonable restrictions on political opinions, religious minorities' limited access to politics is an unreasonable restriction on their right to run for political office, simply because their religious beliefs contradict the official prescriptions for expressions of faith.¹⁷⁴ The prohibition on atheists serving in political office is a particularly good example, considering that the first tenet of *Pancasila*, that there is one God, combined with the enforcement of the ideology on political parties, means that believing in God becomes a political act.¹⁷⁵ As such, disbelief in God also becomes a political act, one that

171. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.), *supra* note 4, pmb1.; Alfitri, *supra* note 26, at 2 (explaining how Ahmadiyya Muslims' belief that their founder was the Messiah contradicts orthodox Islam).

172. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*); Alfitri, *supra* note 26, at 3 (explaining how Ahmadiyya Muslims' belief that their founder was the Messiah contradicts orthodox Islam).

173. See ICCPR, *supra* note 6, art. 25 (guaranteeing full access to political affairs, such as running for office).

174. See *id.*, art. 18, 22, 27; Malakhovsky v. Belarus, Communication No. 1207/2003, Human Rights Committee [Hum Rts. Comm.], ¶¶ 2.1–2.7, 7.2–7.6, U.N. Doc. CCPR/C/84/D/1207/2003 (July 26, 2005), <https://digitallibrary.un.org/record/560818?ln=en> (finding that Belarus, having denied the complainants' right to register Hare Krishna organizations, denied the complainants of their right to manifest their religion, as under the ICCPR, manifestations of religious belief can only be limited to protect public health, safety, or order).

175. See UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945 [UUD 1945] [CONSTITUTION] 1945 (Indon.), *supra* note 4, pmb1.; Human Rights Council, *supra* note 28, at 93 (explaining that Indonesia prohibits atheists from serving in public office); Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

prohibits political activity, meaning that atheists are denied their fundamental political rights, such as freedom of association, simply because they do not believe in God.¹⁷⁶

IV. RECOMMENDATIONS

A. ANOTHER SIGNATORY TO THE ICCPR SHOULD REQUEST THAT THE HUMAN RIGHTS COMMITTEE ANALYZE INDONESIA'S COMPLIANCE WITH THE ICCPR

Unfortunately, as Indonesia has not ratified the First Optional Protocol to the ICCPR, Indonesian individuals cannot bring cases to the HRC's attention, meaning that specific violations will be harder for the HRC to review.¹⁷⁷ However, the ICCPR allows state parties to bring to another party's attention any perceived failure to uphold its commitment to implement rights the Covenant creates.¹⁷⁸ Thus, another state party should activate the Covenant's enforcement mechanism as a way to bring Indonesia into compliance.¹⁷⁹ Given how long Indonesia has had *Pancasila* political party requirements, it would not be surprising to see the country ignore such a move, if not actively claim that it is in fact complying.

If the complaining state party is not satisfied with Indonesia's response, it could then bring the matter to the attention of the HRC.¹⁸⁰ This would allow the HRC to assess Indonesia's compliance with any of the ICCPR's Articles, especially Articles 1, 18, 22, 25, and 27.¹⁸¹ As allowed in the HRC's investigatory process, human rights organizations such as Amnesty International could contribute to such an investigation, as they have done before.¹⁸²

176. See ICCPR, *supra* note 6, art. 18, 22, 27; HRC Report, *supra* note 29, at 82, ¶ 597 (explaining that Indonesia prohibits atheists from serving in public office).

177. See *Ratification Status for Indonesia*, *supra* note 6 (showing how Indonesia has not ratified the First Optional Protocol); *Optional Protocol*, *supra* note 54 (showing how individuals from First Optional Protocol signatories can bring cases to the Human Rights Committee).

178. See ICCPR, *supra* note 6, art. 41.

179. See *id.* art. 28–45.

180. See *id.* art. 41.

181. See *id.* art. 41–42.

182. See Hum. Rts. Comm., *The Relationship of the Human Rights Committee with Nongovernmental Organizations*, U.N. Doc. CCPR/C/104/3, 1–2 (June 4,

Indonesia may be free to ignore any conclusions the HRC makes, but having an adverse finding made against it could still have a positive impact on Indonesian human rights. One reason to be hopeful for a positive impact is that the country may be keen to avoid being perceived as a violator of human rights given the history of political violence by the state.¹⁸³ Thus, this is the most important and consequential step that outside actors can take to ensure Indonesia ceases violating its obligations under the Covenant.

B. INDONESIA SHOULD AMEND ITS 2008 AND 2011 LAWS TO STATE THAT POLITICAL PARTIES SHOULD HONOR *PANCASILA* BUT DO NOT HAVE TO SPECIFICALLY ADHERE TO IT

The existence of *Pancasila* itself, simply being an ideology laid out in the Constitution, is not an issue worth exploring. However, the laws regulating political parties can and must be changed so that *Pancasila* may serve, but is not required to serve, as the basis for party ideology. This is especially true as the current law is not the original one, but rather an amendment to a bill that itself modified the original requirement.¹⁸⁴

Currently, the law states that political parties are, among other things, organizations meant to maintain *Pancasila*.¹⁸⁵ The law can simply be amended to exclude this language and the requirement,

2012), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/104/3&Lang=E> (showing how NGOs can contribute to the HRC's decision-making process); Amnesty Int'l, *Hong Kong: Submission to the UN Human Rights Committee 135th Session* AI Index ASA 7/5663/2022 (2022), <https://www.amnesty.org/en/wp-content/uploads/2022/05/ASA1756632022ENGLISH.pdf> (exemplifying the kind of report that an NGO can submit to the HRC regarding potential violations of the ICCPR).

183. See *Guilt Trip over 1965 Killings*, *supra* note 12 (explaining how the Indonesian government massacred hundreds of thousands of members of the Communist Party, as well as their supporters, in retaliation for the attempted communist coup in 1965).

184. See Ismail, *supra* note 1, at 14–15 (describing the original requirement that all political parties have *Pancasila* as their sole ideological basis); Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

185. See Naibaho, *supra* note 16, at 20 (describing how the 2008 and 2011 laws defined political parties as being meant to maintain the country through *Pancasila*).

while leaving in other non-ideological requirements.¹⁸⁶

Indonesia must also modify the mechanisms it has created that allow it to dissolve political parties that it perceives as being anti-*Pancasila*.

C. INDONESIA CAN MAKE RESERVATIONS TO CERTAIN ICCPR ARTICLES TO ENSURE THAT ITS REQUIREMENT DOES NOT VIOLATE THEM

While it is the least desirable option from a fundamental-rights perspective, Indonesia could make reservations to the ICCPR Articles relating to political activities and religious freedom.¹⁸⁷ This would allow it to derogate from having to fully respect the rights guaranteed by Articles such as 18, 22, 25, and 27.¹⁸⁸ However, other signatories could object to such a reservation, as the ICCPR states that objecting countries may make the claim that countries making reservations are not fully committed to implementing ICCPR rights.¹⁸⁹ As jurist Anja Seibert-Fohr states, countries may have flexibility in deciding how to implement ICCPR rights but must still implement them. Thus, countries lodging objections can demonstrate that the reserving country is attempting to avoid implementation entirely.¹⁹⁰

186. See Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

187. See General Comment 24, *supra* note 59, at 1, ¶ 1 (explaining how ICCPR signatories can make reservations to ICCPR Articles and how reserving states can thus avoid implementing the rights those Articles create).

188. See ICCPR, *supra* note 6, art. 18, 22, 25, 27; General Comment 24, *supra* note 59, at 1, ¶ 1 (explaining how ICCPR signatories can reserve ICCPR Articles and how reserving states can thus avoid implementing the rights those Articles create).

189. See *International Covenant on Civil and Political Rights*, UNITED NATIONS (May 6, 2022), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (demonstrating how other ICCPR signatories, in objecting to a signatory's reservation, can question whether the reservation indicates that the reserving country is truly committed to upholding the rights the Covenant creates).

190. See Seibert-Fohr, *supra* note 58, at 403–04 (explaining that while ICCPR signatories have flexibility, they are still required to implement the rights the treaty creates).

D. MEMBERS OF TARGETED RELIGIOUS GROUPS AND THOSE WITH
NON-PANCASILA IDEOLOGIES SHOULD REGISTER POLITICAL
PARTIES TO TRIGGER INDONESIA'S ENFORCEMENT MECHANISMS

Given the persecution of groups such as the Ahmadiyya, the ban on atheists holding public office, and the prohibition on ideologies such as communism, Marxism, and Leninism, members of these religious and ideological groups should register political parties with their views as the parties' ideological bases and Indonesia should permit this.¹⁹¹ While Indonesia has not yet dissolved political parties for being anti-*Pancasila*, it is reasonable to believe that the requirement has prevented the registration of certain potential political parties.¹⁹² This could be either due to a direct denial of registration or perhaps a decision not to even try to register such political parties, due to the likelihood they would be denied.¹⁹³

An even bolder and more daring strategy would be for a member of an active political party to undertake political activities that the Constitutional Court would consider to be anti-*Pancasila*, once again in an attempt to trigger the enforcement mechanism.¹⁹⁴ While such an attempt would likely lead to internal political party discipline, if such a move came from a respected and veteran politician, it would be more likely to succeed. If such an attempt were successful, it could lead to

191. See Alfitri, *supra* note 26, at 3, 21 (explaining how Ahmadiyya Muslims have been targeted in Indonesia as a “deviant” sect, including excommunication, violence, and vandalism of their property, as it is perceived to be an “apostate” sect by Orthodox Muslims because its practitioners consider its founder to be the Messiah); HRC Report, *supra* note 29, at 82, ¶ 597 (demonstrating that atheists in Indonesia are barred from holding public office); Muhammadin & Akbar, *supra* note 17, at 37 (2018) (listing some of the ideologies Indonesia has officially considered to be anti-*Pancasila*).

192. See Siahaan, *supra* note 19, at 74–75 (explaining the mechanisms by which the Constitutional Court can dissolve political parties and the reasons for doing so, including, but not limited to, contradicting *Pancasila*).

193. See Hudson, *supra* note 147 (explaining how the existence of an enforcement mechanism that has the power to silence a right can achieve the desired result without even being active).

194. See Siahaan, *supra* note 19, at 74–75 (explaining the mechanisms by which the Constitutional Court can dissolve political parties and the reasons for doing so, including, but not limited to, contradicting *Pancasila*); Abra, *supra* note 2, at 340 (explaining the current requirement, from 2008 and 2011 bills regulating political parties, that political parties' ideologies not contradict *Pancasila*).

the unofficial, but functional, death of the requirement, and a liberalization of actual practices.

V. CONCLUSION

Indonesia's requirement that political parties not contradict *Pancasila* strips its citizens of their full political rights. This requirement means that citizens, while in a democracy, still do not have full freedom of association, given that the only political parties they may choose from are those who must adhere to a single national ideology, even if parties with varying primary ideological bases can comply with this ideology.

Indonesia has made considerable progress on human rights since the Suharto New Order era, where all political parties had one sole ideological basis in *Pancasila*. However, the full ideological spectrum must be represented in its political parties, even if some of those parties have no chance of being elected.

Pancasila itself seems like a positive ideology, promoting common values, especially a desire for social justice, democracy, and equality. However, it is the first principle, belief in one God, and unity of the country that become problematic. While unity of the country seems like a good idea, banning all political parties that do not believe in this tenet means that dissent on the topic is not tolerated, all while dissent is one of the cornerstones of democracy.

The enforcement of the religious tenet is also problematic. While it is not used to create a national religion, there are many belief systems that do not have any gods, or which have multiple gods. Indonesia's system discriminates against those with these religious views. Particularly, as belief in God becomes a requirement for political parties, this means that any person or political party that does not adhere to the belief in one God is denied their right to participate in politics, and to elect people who share their views. Indonesia could maintain *Pancasila* as an ideal for all to strive for, but it must cease to enforce this ideology as a basis for political parties' ability to participate in politics.