

## Universal Periodic Review (41<sup>st</sup> session)

### Contribution of UNESCO

#### Indonesia

#### I. Background and framework

<i>Title</i>	<i>Date of ratification, accession, acceptance, or succession</i>	<i>Declarations /Reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
Convention against Discrimination in Education 1960	Acceptance on 10/01/1967	Reservation to this Convention shall not be permitted		Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	Acceptance on 6 July 1989 Committee Member (1989-1995 ; 2015-2019)			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage (2003)	Acceptance on 15 October 2007 Committee Member (2010-2014)			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	Accession on 12 January 2012 Committee Member (2015-2019)			Right to take part in cultural life

#### II. Promotion and protection of human rights on the ground

## A. Education

1. The **Constitution of Indonesia of 1945** as last amended in 2002<sup>1</sup>, article 31, provides that “every citizen has the right to an education”, and that “every citizen is obliged to follow elementary education and the government has the duty to fund this”. Article 28C adds that “every person has the right to self-realization through [...] the right to education”. Article 27 states “all citizens shall be equal before the law and the government [...]”.
2. The **Law n°20 of 2003 concerning the National Education System**<sup>2</sup>, article 4, ensures that “education is conducted democratically, equally and non-discriminatory based on human rights, religious values, cultural values and national pluralism”. Article 5 states that “every citizen has the same right to obtain quality education”. Article 6 provides that “every citizen aged seven to fifteen is required to attend basic education” and article 34(2) guarantees nine years of free basic education. Article 9(2) of the **Government regulation n° 47 of 2008**<sup>3</sup> **concerning compulsory education**, states that “Indonesian citizens aged six years can participate in the compulsory education program”, and article 1 states that “compulsory education is a minimum educational program that must be followed by Indonesian citizens”.

## B. Freedom of opinion and expression

### Constitutional and Legislative Framework:

3. The freedom to gather and express opinions, verbally and in writing, as well as to express views and thoughts, and to communicate, obtain and convey information, is granted in the 1945 Constitution (amended in 2002) Article 28, Article 28E (2, 3) and Article 28F.<sup>4</sup> Freedom of expression is limited by Article 28J (2), where it is stated that such freedoms are limited by the “restrictions established by law” to guarantee the respect of the rights and freedom of others and that it should be in accordance with

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<sup>1</sup> <http://www.unesco.org/education/edurights/media/docs/b1ba8608010ce0c48966911957392ea8cda405d8.pdf>

<sup>2</sup> <http://www.unesco.org/education/edurights/media/docs/c0ccdc320b597cf906ae9c3019b412d2f5c5d1a2.pdf>

<sup>3</sup> <http://www.unesco.org/education/edurights/media/docs/c8dff455a08d26af3750b7f316d851f36283e42d.pdf>

<sup>4</sup> [https://www.constituteproject.org/constitution/Indonesia\\_2002?lang=en](https://www.constituteproject.org/constitution/Indonesia_2002?lang=en)

moral considerations, religious values, security and public order.

4. Indonesia adopted the Public Information Disclosure Act (Law No. 14/2008) in April 2008.<sup>5</sup> The Indonesian Information Committee is the independent implementing agency of the Public Information Disclosure Act and has the authority of settling disputes in public information (Article 1).<sup>6</sup>
5. The State Intelligence Law (SIL), passed in 2011, may conflict with the abovementioned 2008 law. SIL Articles 25 and 26 prohibit individuals or legal entities from revealing or communicating state secrets (“Intelligence Secret”), with penalties of up to 10 years in prison and fines exceeding the equivalent of \$10,000 in rupiahs. The “state secrets” are vaguely defined by the law.
6. Article 8 of the Indonesian Press Law<sup>7</sup> states that journalists are protected by law in carrying out their professional duties. The legally binding *Journalism Code of Ethics*<sup>8</sup> establishes in its Article 7 that a journalist has the right to refuse to disclose the identity of the source.
7. Defamation is considered as a criminal offense by the Indonesian Penal Code<sup>9</sup> (Article 310-321). Article 310(1-2) provides for a maximum imprisonment of nine months or monetary fine, and if the defamation is disseminated by means of writings or portraits, the sentence can be a maximum of one year and four months or monetary fine. Furthermore, according to Indonesian Electronic Information and Transactions Law (Art. 45(1))<sup>10</sup>, defamation through online media can be punished with imprisonment for a maximum of four years (since the 2016 amendment, see below) and/or a monetary fine.
8. The Information and Electronic Transaction Law (the ITE Law) was passed in 2008 and amended in 2016. The law includes problematic provisions including the criminalization of contents against propriety, defamation, and hate speech (Art. 27, 28, 29).<sup>11</sup> The 2016 Amendment to the ITE Law<sup>12</sup> did not appoint a designated independent regulatory body to regulate internet usage, but rather the role of the

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<sup>5</sup> [https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Indonesia\\_Public\\_Information\\_Disclosure\\_Act\\_2008\\_EN.pdf](https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Indonesia_Public_Information_Disclosure_Act_2008_EN.pdf)

<sup>6</sup> Idem.

<sup>7</sup> [http://www.law-democracy.org/wp-content/uploads/2010/07/Indo.prs\\_.99.pdf](http://www.law-democracy.org/wp-content/uploads/2010/07/Indo.prs_.99.pdf)

<sup>8</sup> <https://accountablejournalism.org/ethics-codes/indonesian-press-council-journalism-code-of-ethics>

<sup>9</sup> [http://www.oit.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=73932](http://www.oit.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=73932)

<sup>10</sup> [http://www.flevin.com/id/lgs0/translations/JICA%20Mirror/english/4846\\_UU\\_11\\_2008\\_e.html#:~:text=In%20this%20Law%2C%20what%20is%20meant%20by%3A&text=Electronic%20Transaction%20is%20a%20legal%2C%20and%20For%20disseminate%20information.](http://www.flevin.com/id/lgs0/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html#:~:text=In%20this%20Law%2C%20what%20is%20meant%20by%3A&text=Electronic%20Transaction%20is%20a%20legal%2C%20and%20For%20disseminate%20information.)

<sup>11</sup> Idem.

<sup>12</sup> <https://www.global-regulation.com/translation/indonesia/8999766/act-no.-19-year-2016.html>

government increased, including in the provisions of Article 40 which accord the right to prevent dissemination of, and block access to, online documents. The changes to the Law also include an expanded definition of defamation and libel, in Article 27 (3), and foresee that those convicted of defamation might now be sentenced to up to four years of imprisonment, and/or a fine not exceeding 750 million rupiah. Contents against propriety are penalized with prison not exceeding 6 (six) years and/or a fine not exceeding Rp1,000,000,000 (one billion rupiah).

#### Implementation of the law:

9. The current Indonesian Press Council<sup>13</sup> was established under the Press Law (Law No. 40 1999, Art. 15) which refers to “a Board of the Press”. Members of the Press Council are elected every three years, consisting of journalists, representatives of the media companies, and relevant public or community leaders (Press Law, Art. 15(3-6)). Its task is to develop the freedom of the press in the country, and to “expand the existence of national press”. The Press Council enacts the Journalism Code of Ethics which is legally binding on all Indonesian journalists (Press Law, Art.7).
10. Broadcast media must obtain a license by the Ministry of Communication and Information Technology and the Indonesian Broadcasting Commission (KPI). The KPI, founded by Broadcasting law of 2002, is an independent regulatory body.<sup>14</sup>

#### Safety of journalists:

11. As of 17 February 2022, UNESCO has recorded the killing of eight journalists in Indonesia since 2006 when systematic monitoring by the Organization began.<sup>15</sup> The government has systematically responded to UNESCO’s requests for information on judicial follow-up. Five of these cases are considered as resolved by UNESCO according to information provided by the Indonesian government.
12. Additionally, the Indonesian Committee of Safety of Journalists (Komite Keselamatan Jurnalis Indonesia), established in 2019, is mandated to promote the safety of journalists in Indonesia. The Committee consists of 10 national organizations working for the protection of journalists.

### **III. Review and specific recommendations**

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<sup>13</sup> <https://dewanpers.or.id/>

<sup>14</sup> <http://www.kpi.go.id/>

<sup>15</sup> <https://ru.unesco.org/themes/safety-journalists/observatory/country/223725>

## A. Education

### Legislative, regulatory and policy framework:

- Strategic Plan: Ministry of Education and Culture 2020-2024<sup>16</sup>, focuses on achieving the 2020-2024 Medium-Term National Development Plan (RPJMN). It will take into account global trends related to rapid technological advances, socio-cultural shifts, environmental changes, and differences in the future world of work in the field of education at every level and cultural field.
- Strategic Plan of Universitas Negeri Surabaya 2020-2024<sup>17</sup> aims to increase access to quality higher education and the quantity and quality of literacy in the academic community.
- Regulation No. 36/2020 concerning Development of Work Competency Through the Pre-employment Card Program, 2020,<sup>18</sup> aims to expand employment opportunities, increase productivity and competitiveness for the workforce. It develops work competences by implementing the “Pre-Employment Card Program” which refers to a work competency development program for job seekers, workers affected by termination of employment and workers who need competency improvement. It consists of a Card which should be used to benefit from training and specific incentives.

### Free education

- According to the Law n°20 of 2003 concerning the National Education System, Indonesia provides nine years of free education, which is not aligned with the Education 2030 Framework for Action that requires States to ensure at least 12 years of free education.

### Pre-primary education

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<sup>16</sup>

[https://planipolis.iiep.unesco.org/sites/default/files/ressources/indonesia\\_education\\_strategic\\_plan\\_2020-2024.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/indonesia_education_strategic_plan_2020-2024.pdf) [In Indonesian]

<sup>17</sup>

<https://www.unesa.ac.id/files/b2331e4eab6cf716cdb5c5e077498e22/Strategic%20Plan%20of%20Unesa%202020-2024.pdf>

<sup>18</sup>[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=110262&p\\_country=IDN&p\\_count=592&p\\_classification=09&p\\_classcount=24](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110262&p_country=IDN&p_count=592&p_classification=09&p_classcount=24)

- No legal provision has been identified relating to free or compulsory pre-primary education, which is not in line with the Education 2030 Framework for Action that requires States to ensure at least one year of free and compulsory pre-primary education.

#### Corporal punishment within educational institutions

- In response to recommendation N° 139.134 of the last UPR cycle, Indonesia stepped up its efforts to protect children from violence. In this regard, the legislation provides protection from all kinds of violence including physical and sexual violence in educational institutions but does not explicitly prohibit corporal punishment.

#### Girls and women's right to education

- According to the Marriage law of 1974 as amended by the Law Number 16 of 2019, the minimum age of marriage for both men and women is 21 years. Marriage is allowed from the age of 19 with the consent of the parents while it could also be authorized by virtue of judicial exceptions. However, in the latter case no minimum age is specified. By not specifying the absolute minimum age of marriage, children could be married below the age of 16 which is the threshold established by international human rights law, with detrimental effects on their right to education.
- No legal provision has been identified relating to the right to education of pregnant and parenting girls.

#### Financing education

- Indonesia has dedicated 2.8%<sup>19</sup> of its GDP on education in 2019, which is not aligned with the Education 2030 Framework for Action that requires States to allocate 4 to 6% of GDP on education. Nevertheless, Indonesia has allocated 17.3% of its total government expenditure on education in 2020. This is in line with the 2030 Education Framework for Action which requires States to allocate “at least 15% to 20% of public expenditure to education” (para. 105).

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<sup>19</sup> <http://uis.unesco.org/en/country/id>

## Digital education and COVID-19

- UNESCO's Initiative on the Evolving Right to Education emphasizes the need for digital skills of learners and teachers. In Indonesia, the Ministry of Education and Culture led a process of developing the Learning From Home Guidelines.<sup>20</sup> By 15 May 2020, the Guidelines were circulated to all education offices in 34 provinces and 514 districts and were made available online. The Guidelines set out how Learning From Home should be implemented and specify the roles of the sub-national education office, teachers, parents and students. There are two websites which provide COVID-19 specific information, and the guidelines also describe the options for both online and offline learning approaches, along with links to related websites. This program included a range of resources available online, as well as portals with learning resources for each level of education, including videos, books, multimedia resources, resources on equality and on parenting and family education and on Early Childhood Education, but also teacher courses and sharing portals, learning Management Systems for assessment, educational TV and Radio links. Notably, the Program planned the provision of devices and internet data, offline training materials, home visits, flexibility in use of school funds to address equity issues such as additional resources for disabled children.

### **Specific recommendations:**

13. Indonesia should be encouraged to:

- Consider aligning legislation with the Education 2030 Framework for Action by ensuring at least 12 years of free primary and secondary education, and at least one year of free and compulsory pre-primary education.
- Consider revising the legislation to explicitly prohibit corporal punishment in educational institutions.
- Establish the absolute minimum age of marriage which should not fall under the age of 16 years, in order to protect the right to education of girls.
- Introduce a legal protection for the right to education of parenting and pregnant women.
- Submit regularly comprehensive national reports for the periodic consultations on UNESCO's education-related standard-setting instruments, and notably on the

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<sup>20</sup> <https://www.unicef.org/eap/media/9326/file/Sit%20An%20-%20Indonesia%20case%20study.pdf>

Convention against Discrimination in Education.

- Share with UNESCO any relevant information to update its country profile on UNESCO's [Observatory on the Right to Education](#) and [Her Atlas : Monitoring of the right to education for girls and women](#).

## **B. Freedom of opinion and expression**

14. It is recommended that Indonesia decriminalize defamation and place it within a Civil Code that is in accordance with international standards.<sup>21</sup>
15. It is recommended that the government revise the Information and Electronic Transaction Law (the ITE Law) passed in 2008, and amended in 2016, to bring it in line with international standards granting freedom of expression free from undue interference.
16. The Government is urged to continue to investigate the cases of killed journalists and report on the judicial inquiry to UNESCO's Observatory of Killed Journalists.<sup>22</sup> The Government may wish to consider taking advantage of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity as a mean to strengthen the protection of journalists and freedom of expression.

## **C. Cultural Rights**

17. As a State Party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Indonesia is encouraged to fully implement the relevant provisions that promote access to and participation in cultural heritage and creative expressions which are conducive to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In

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<sup>21</sup> See for example, General Comments No 34. of the International Covenant on Civil and Political Rights (ICCPR), 2006 Recommendation of the 87<sup>th</sup> Session Human Rights Committee, the recommendations of the UN Special Rapporteurs on the Right to Freedom of Opinion and Expression, and Resolution 1577 (2007) of the Parliamentary Assembly of the Council of Europe.

<sup>22</sup> <https://en.unesco.org/themes/safety-journalists/observatory/>

doing so, Indonesia is encouraged to give due consideration to the participation of communities, practitioners, cultural actors and civil society organizations as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.

#### **D. Freedom of scientific research and the right to benefit from scientific progress and its applications**

18. Indonesia did not submit its National Report on the implementation of the Recommendation on Science and Scientific Researchers (2017) for the consultation period from 2018 to 2021. Therefore, Indonesia is encouraged to report to UNESCO on its implementation actions, especially noting legislative or other measures adopted by it with the aim to ensure application of these norms and standards in national law, policy and practice paying particular attention to the legal provisions and regulatory frameworks which ensure the implementation of human rights of scientific researchers themselves (rights of association, freedom of research, expression and publication, etc.) as well as human rights obligations related to the practice of science generally; the human rights related to access to and uses of scientific knowledge through education; the principle of non-discrimination, requiring, in this case, active promotion of women and girls entering scientific careers, as well as protections for human rights of human subjects of research. Indonesia is encouraged to include information about issues covered by the 2017 Recommendation in its national report to the UPR allowing thereby a dedicated discussion at the Human Rights Council and the formulation of specific recommendations. Additionally, Indonesia is urged to consider expanding the scope of application of freedom of expression to include scientists and scientific researchers.