



**UPR Submission
Indonesia
November 2011**

Summary of Main Issues of Concern

Although Indonesia has made great strides in consolidating a stable, democratic government with a strong civil society and independent media since the previous UPR in 2008, serious human rights concerns remain. While senior officials pay lip service to protecting human rights, they seem unwilling to take the steps necessary to ensure compliance by the security forces with international human rights and to appropriately punish those responsible for abuses. Violence by various groups continued to rack the provinces of Papua and West Papua, with few effective police investigations to hold the perpetrators accountable.

1. Religious Freedom

In its Adoption of the 2008 UPR outcome report, the Indonesian government addressed a recommendation on the Ahmadiyah – a religious minority that considers itself Muslim, but that some Muslims consider heretical – by stating that freedom of religion and the practices linked to religious belief are guaranteed under the Indonesian Constitution. In its voluntary pledges as a new UN Human Rights Council member, Indonesia said that the country is “underpinned by the principle of religious freedom and tolerance” and is “living proof that democracy and Islam can coexist peacefully, harmoniously and productively.”

However, Indonesia has failed to live up to these pledges and its own constitution since the previous UPR in 2008: the situation for religious minorities has worsened significantly. Longstanding impunity for religious violence in Indonesia has fostered larger and more brutal attacks by Islamist militants against religious minorities, particularly against Christians and the Ahmadiyah. Short prison terms for a handful of offenders did nothing to dissuade mob violence. For instance, in July 2011 a court sentenced 12 individuals to sentences of between three to six months for their involvement in the killing of three Ahmadiyah in Cikeusik, Banten province, in western Java.ⁱ According to the Setara Institute, which monitors religious freedom, religious attacks have increased from 135 incidents in 2007, to 216 incidents in 2010, and 184 incidents for the first nine months in 2011.ⁱⁱ

Laws and policies often contribute to this violence through criminalizing the practice of religion that is deemed to deviate from the central tenets of one of the country’s six officially protected religions under the 1965 Blasphemy Law. In April 2010, Indonesia’s Constitutional Court upheld a law broadly and ambiguously prohibiting “blasphemy.”ⁱⁱⁱ It ruled that the 1965 blasphemy law is a lawful protection of six major religions because it allows for the maintenance of public order. However, the blasphemy law has been used to prosecute and imprison members of religious minorities and traditional religions, and has emboldened militants to have a legal basis on which to violently attack religious minorities. In February 2011, Islamist militants also attacked three churches in Temanggung, Central Java, after the district court convicted a controversial preacher, Antonius Bawareng, of blasphemy. The court sentenced him to the maximum penalty for blasphemy, five years in prison, but Islamists called for him to be executed. The Semarang district court later convicted eight of the Islamist militants involved in the attack, sentencing them to between five months and one year in prison.

The government has failed to overturn several decrees that discriminate between religions and foster intolerance. Minority congregations reported that local government officials arbitrarily refused to issue them permits required under a 2006 decree on building houses of worship. Those who attempt to worship without a permit face harassment and violence.^{iv} In 2008, the government passed a national decree that prohibits public propagation of the Ahmadiyah faith.^v Since then, at least 16 provinces and regencies of Indonesia have followed suit.^{vi}

2. Accountability for Abuses by Military Forces, especially in Papua

During the previous UPR in 2008, Indonesia accepted a recommendation reaffirming its commitment to combat impunity and encouraging the country to continue efforts in this regard. However, despite significant reforms to the military in recent years, members of Indonesia's security forces—in particular Detachment 88 and the special forces, Kopassus—continue to engage in serious abuses with near-total impunity.

Human Rights Watch research has revealed a pattern of arbitrary detention and ill-treatment—particularly in the provinces of Papua and West Papua—and the failure of military courts to investigate adequately or to prosecute alleged serious human rights abuses by military personnel. In the few military trials for which information is publicly available, military prosecutors brought relatively insignificant charges, and any sentences handed down by military judges have been extremely lenient.

For instance, in January 2011, despite video evidence of torture, a military tribunal in Jayapura, Papua, convicted three Battalion 753 soldiers solely on disciplinary charges and sentenced them to between eight to twelve months' imprisonment.^{vii} The soldiers have not been discharged. In August 2011, a Jayapura military tribunal convicted another three soldiers from Battalion 753 regarding an incident in which soldiers shot and killed Reverend Kinderman Gire on the suspicion he was a separatist. The tribunal convicted them of disciplinary charges and sentenced them to six, seven and fifteen months in prison.

In October, security forces used excessive force when arresting more than 300 Papuans involved in a Papuan Peace Congress.^{viii} At least three activists were killed and more than 90 were injured. Six Papuan leaders were charged with treason. Senior government officials have sought to justify the force used by security forces.

Access to Papua in 2011 remains tightly controlled. Foreign journalists and nongovernmental organizations are restricted from visiting most of Papua unless they obtain special permission, which is difficult to obtain and means their activities are closely monitored. The restrictions to access inhibit free information flow, making it difficult to independently verify and confirm incidents of human rights violations and track progress in investigations and prosecutions.^{ix}

The armed forces retain extensive business holdings despite a law requiring the government to shut down these businesses or take them over by October 2009.

Indonesia implemented the recommendation during the 2008 UPR to “consider signing the International Convention on the Protection of All Persons from Enforced Disappearance.” Indonesia took the important step to sign the convention in September 2010, but it has yet to ratify the convention. Moreover, the government has not resolved a number of enforced disappearances going back to the Suharto years. Despite parliament's recommendation in September 2009, President Yudhoyono failed in 2010 to authorize an ad hoc court to investigate the 1997-98 enforced disappearances of student activists. In 1999 a military court convicted 11 military personnel of kidnapping nine of the activists who were later found alive, but the court did not at that time examine the issue of enforced disappearances in the cases of the other 13 students.

There has been no progress in re-opening the investigation into the 2004 murder of Munir bin Thalib, a leading human rights lawyer. A special National Human Rights Commission team examined the conduct of police, prosecutors and judges in conducting the 2008 trial of a senior security official acquitted of Munir's killing. In February 2010, the team found that all three institutions had performed their tasks poorly and recommended renewed efforts to establish responsibility for the murder.^x

3. Freedom of Expression

In its voluntary commitments made in its candidature to the UN Human Rights Council in 2011, Indonesia pledged to continue "to strengthen its effort to further promote and protect the human rights and fundamental freedoms of its people."

In the years immediately after Suharto was forced to step down from power in 1998, Indonesia made huge strides in opening space for free expression and the media. But recent years have seen some troubling developments. Indonesian officials continue to enforce a number of laws that criminalize the peaceful expression of political, religious, and other views. These laws include offenses in Indonesia's criminal code such as treason (*makar*) and "inciting hatred" (*haatzai artikelen*), which have been used repeatedly against peaceful political activists, including those from the Moluccas and Papua.^{xi} Indonesia has imprisoned more than 100 activists from the Moluccas and Papua for "rebellion" for peacefully voicing political views, holding demonstrations, and raising separatist flags. Current political detainees include Papuan former civil servant Filep Karma (15-year prison term) and Ruben Saiya (20-year prison term).

Indonesia's criminal libel, slander, and "insult" laws prohibit deliberately "insulting" a public official and intentionally publicizing statements that harm another person's reputation, often even if those statements are true.^{xii} Criminal defamation charges have been filed against individuals after they held public demonstrations protesting corruption, wrote letters to the editor complaining about fraud, registered formal complaints with the authorities, and published news reports about sensitive subjects. For instance, Bersihar Lubis, a veteran journalist, was convicted of defamation and given a suspended prison sentence for writing an opinion column criticizing the attorney general's decision to ban a high school history textbook.

4. Domestic Workers

Millions of Indonesian women and girls work as caregivers and housecleaners in private homes in Indonesia or as migrants in the Middle East, Malaysia, and Singapore. Indonesia's labor law excludes domestic workers from basic protections such as a minimum wage, limits to hours of work, and weekly rest days. Poor monitoring of recruitment agencies has led to prospective migrant domestic workers being deceived about work abroad, getting locked in training centers for extended periods, and becoming deeply indebted from excessive recruitment fees. Hundreds of thousands of Indonesian children begin domestic work at young ages and with little ability to continue their schooling. Whether at home or abroad, domestic workers often face months or years of unpaid wages; long work hours without rest; confinement in the workplace; psychological, physical, and sexual abuse; and in some cases forced labor and trafficking.

Indonesia's diplomatic efforts to address abuse of migrants abroad, such as bans on sending domestic workers to Malaysia, Jordan, Kuwait, and Saudi Arabia have been largely ineffective. In 2011, Indonesia revised a Memorandum of Understanding with Malaysia with improvements for a weekly day off for domestic workers and the ability to hold on to their passports, but which lacked other key labor and monitoring protections.

5. Intelligence Law

The 2011 Law on State Intelligence passed by the House of Representatives contains vague and overbroad language that could facilitate abuse.^{xiii} The new law also contains provisions that could be used to violate freedom of speech and the press. Articles 44 and 45 broadly state that “anyone” who deliberately or even negligently leaks confidential information about intelligence activities is subject to imprisonment. This language could easily be used to prosecute journalists, political opposition members, or human rights activists who publish information in the public interest about government abuses.

6. Arbitrary and Discriminatory Enforcement of Sharia Law in Aceh

Aceh's provincial government implements repressive Sharia-inspired dress codes and a law on "seclusion"-banning association between unmarried men and women in "isolated" places. Enforcement is primarily through a Sharia police force that harasses, intimidates, and arbitrarily arrests and detains women and men. Local community groups also forcibly enter homes and assault and publicly humiliate couples they suspect to be committing "seclusion." Police make little effort to deter such behavior. In January 2010, three Sharia police officers raped a young woman they had detained overnight on suspicion of "seclusion." Officials replaced the head of the local Sharia police and two of the perpetrators were tried and sentenced to imprisonment for eight years, but authorities declined to implement broader remedial measures.^{xiv}

Aceh's Sharia regime appears to be influencing other government officials in Indonesia; a 2009 report by Indonesia's National Commission on Violence against Women found that a number of local governments throughout the country had looked to Aceh's laws in implementing dress and conduct regulations purportedly based on Islam, which impermissibly restricted women's rights.

Recommendations:

On Religious Freedom:

- Revoke the national anti-Ahmadiyah 2008 decree, which bars public propagation of the Ahmadiyah faith;
- Void provincial decrees that ban activities by the Ahmadiyah religious community, and act to block similar laws in the future;
- Take all necessary measures to stop violence and discrimination against the Ahmadiyah and other religious minorities;
- Hold to account the perpetrators of threats and violence against the Ahmadiyah and other religious minorities.
- Accept the pending request and facilitate without delay the visit of the UN Special Rapporteur on freedom of religion or belief.

Accountability for Abuses by Military Forces:

- Ensure that those members of the Indonesian military implicated in serious human rights violations—including those involving command responsibility—are credibly and impartially investigated and disciplined or prosecuted as appropriate;
- Revive a bill proposed in parliament that would provide civilian criminal court jurisdiction over military personnel responsible for offenses against civilians;
- Implement parliament's 2009 recommendation to open an investigation into the emblematic case of the enforced disappearance of 13 students in the late-1990s;
- Re-open investigation into the masterminds behind the 2004 killing of human rights lawyer, Munir bin Thalib;

- Remove restrictions on access to all regions of Papua by foreign journalists and nongovernmental organizations;
- Accept the pending requests and facilitate without delay the visits of the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on enforced or involuntary disappearances.

On Freedom of Expression:

- Amend or repeal laws that criminalize peaceful political expression, including articles 106 and 110 of the Criminal Code on treason;
- Repeal laws that criminalize defamation and "insulting" public officials;
- Release all political prisoners immediately and unconditionally;
- Revoke article 6 of Government Regulation No. 77/2007, which prohibits the display of separatist logos or flags, or bring it into compliance with international human rights standards and the Indonesian constitution;
- Accept the pending requests and facilitate without delay the visits of the Special Rapporteur on freedom of expression and of the Special Rapporteur on freedom of association and assembly.

On Domestic Workers:

- Align draft legislation on domestic work with ILO Convention 189 Concerning Decent Work for Domestic Workers, adopt it, and create a national plan to publicize and enforce its protections.
- Revise the 2004 Migration law to strengthen oversight and monitoring of recruitment agencies, including recruitment fees, inspections, and substantial penalties for violations.
- Strictly enforce 15 as the minimum age of employment for all employment sectors, including domestic work. Prioritize underage domestic workers for removal and recovery assistance.
- Strengthen bilateral and regional cooperation to ensure minimum standards protecting migrant domestic workers and to avoid unhealthy competition with other labor-sending countries that weakens protections.

On the Intelligence Law:

- Repeal or amend the 2011 Intelligence Law to meet international human rights standards.

Arbitrary and Discriminatory Enforcement of Sharia Law in Aceh

- Repeal or reform of Aceh's Seclusion Law and restrictions on dress on grounds that the laws, as implemented, are incompatible with Indonesia's human rights obligations and constitutional guarantees of freedom of religion, expression, and association;
- Order the authorities to investigate and prosecute private actor violence against those suspected of violating Sharia laws;
- Direct the minister of home affairs to review all local laws that specifically aim to promote morality, and to invalidate or petition the Supreme Court to review those that conflict with the constitution or national laws.

Annex

Endnotes:

- ⁱ Human Rights Watch, “Verdicts a Setback for Religious Freedom,” July 28, 2011 (<http://www.hrw.org/news/2011/07/28/indonesia-verdicts-setback-religious-freedom>)
- ⁱⁱ Setara Institute, “Grafik: Laporan Pelanggaran Kebebasan Beragama/Berkeyakinan 2007-2010,” undated graphics (<http://setara-institute.org/en/content/grafik-laporan-pelanggaran-kebebasan-beragamaberkeyakinan-2007-2010>)
- ⁱⁱⁱ Human Rights Watch, “Court Ruling a Setback for Religious Freedom,” April 19, 2010 (<http://www.hrw.org/news/2010/04/19/indonesia-court-ruling-setback-religious-freedom>)
- ^{iv} It is a reference to the 2006 Joint Decree of Minister of Religions and Minister of Home Affairs on Constructing Houses of Worship, signed on March 21, 2006 (www.depdagri.go.id/.../permen-no.08-2006.doc). One of the most well-known closure cases concerns the Gereja Kristen Indonesia (GKI) Yasmin, a Presbyterian church in Bogor, outside Jakarta, that was closed because of protests by Islamist groups. The church secured the required permits and brought successful lawsuits, but the Bogor mayor refused to reopen the church. The Communion of Churches in Indonesia has a website dedicated to the list of churches closed under the 2006 decree: “Penutupan, Perusakan Gereja, dan Pelarangan Beribadah” (<http://pgi.or.id/page/36694/penutupan-gereja.html>)
- ^v Human Rights Watch, “Reverse Ban on Ahmadiyah Sect,” June 20, 2008 (<http://www.hrw.org/news/2008/06/09/indonesia-reverse-ban-ahmadiyah-sect>)
- ^{vi} Human Rights Watch, “Revoke Provincial Decrees to Ban a Faith,” March 15, 2011 (<http://www.hrw.org/news/2011/03/15/indonesia-revoke-provincial-decrees-ban-faith>)
- ^{vii} Human Rights Watch, “Hold Abusers From Military Accountable,” January 24, 2011 (<http://www.hrw.org/news/2011/01/24/indonesia-hold-abusers-military-accountable>)
- ^{viii} Human Rights Watch, “Independent Investigation Needed Into Papua Violence,” Oct. 27, 2011 (<http://www.hrw.org/news/2011/10/28/indonesia-independent-investigation-needed-papua-violence>)
- ^{ix} An open letter to President Susilo Bambang Yudhoyono signed by 12 academics and writers on Papua, Sydney University, February 24, 2011 (http://sydney.edu.au/arts/peace_conflict/docs/Letter_SBY.pdf)
- ^x Human Rights Watch, “Reopen Inquiry Into Activist’s Murder,” February 11, 2010 (<http://www.hrw.org/news/2010/02/11/indonesia-reopen-inquiry-activist-s-murder>)
- ^{xi} Human Rights Watch, *Prosecuting Political Aspiration: Indonesia’s Political Prisoners*, New York, June 2010.
- ^{xii} Human Rights Watch, *Turning Critics into Criminals: The Human Rights Consequences of Criminal Defamation Law in Indonesia*, New York, May 2010.
- ^{xiii} Human Rights Watch, “Repeal New Intelligence Law,” October 26, 2011 (<http://www.hrw.org/news/2011/10/26/indonesia-repeal-new-intelligence-law>)
- ^{xiv} Human Rights Watch, *Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia*, December 2010.