



Indonesia

Amnesty International submission to the UN Universal Periodic Review 13th session of the UPR Working Group, May-June 2012

Follow up to the previous review

At the time of its first UPR in April 2008, Indonesia accepted a number of recommendations made by other States, including to undertake human rights education and training;¹ accede to international treaties;² support the work of civil society, including human rights defenders;³ combat impunity;⁴ and finalize the new draft Criminal Code, which includes the crime of torture, in consultation with stakeholders.⁵

While the government has taken some positive steps with respect to signing international treaties and undertaking human rights training of the police, Amnesty International notes that these commitments predate the 2008 review and that progress has been slow in terms of implementation.

Thus, on 27 September 2011 Indonesia signed the UN Convention for the Protection of All Persons from Enforced Disappearance.⁶ The ratification of several other international treaties, including the Rome Statute of the International Criminal Court (which Indonesia had committed to ratify at its UPR), has now been included in Indonesia's 2011-2014 National Human Rights Action Plan.⁷ The authorities have also taken steps to strengthen awareness within the National Police of international human rights law and standards, including by providing human rights training to members of the police. In addition, a new police regulation aimed at protecting and promoting human rights was issued in 2009.⁸ However, continued reports of human rights abuses committed by the police and the lack of accountability for such abuses highlight the need to intensify efforts to ensure that all police officials are familiar with their responsibility to respect human rights and have the necessary knowledge and equipment to apply these principles in their work.

With respect to human rights defenders, the Indonesian Parliament has failed to pass a law to protect human rights defenders, despite it being included in the 2005-2009 National Legislation Programme. It has now been brought into the 2010-2014 National Legislation Programme. However, at the time of writing, a draft bill had yet to be discussed in Parliament. Human rights defenders continue to face intimidation and attacks when carrying out their work.

Other recommendations, however, have not been fully implemented, in particular with respect to combating impunity and revising the Criminal Code. There has been little progress in bringing perpetrators of serious human rights violations to justice. Many cases that were investigated by the National Human Rights Commission (Komnas HAM) have never been fully investigated by the Attorney General's Office or brought to court, leaving perpetrators at large and victims without

access to reparations.⁹ Parliament has yet to debate and pass a revised Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) with specific provisions prohibiting torture. Until then the old Criminal Code remains in force and many of its provisions fail to meet international human rights law and standards or to conform to the provisions set out in the Indonesian Constitution.

Amnesty International regrets that at the time of its UPR in 2008, Indonesia did not indicate its position with regard to the recommendation to address threats to the Ahmadiyya community.¹⁰ Amnesty International's research in the intervening period shows serious ongoing human rights violations against members of the Ahmadiyya community, and some of these concerns are detailed below. Indonesia also failed to indicate its position on a recommendation to abolish the death penalty.¹¹ Amnesty International's concerns in this regard are also detailed below.

Normative and institutional framework of the State

Criminal Code and Criminal Procedure Code

The Criminal Code (KUHP) and the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHAP) have been under revision for many years. There are a number of shortcomings in the Criminal Code, including the lack of a definition of torture consistent with Article 1.1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to which Indonesia is a party. It also retains the death penalty in law; criminalizes some forms of peaceful expression, including in Articles 106 and 110 for "rebellion" against the state (*makar*); and discriminates against women and religious minorities.¹² Although the Criminal Procedure Code (KUHAP) provides some safeguards for the rights of suspects and defendants during arrest and at different stages of investigation and trial, it does not meet the requirements of international human rights law and standards in a number of areas, including the right to legal counsel, the right to challenge the legality of one's detention, and the right to be brought before a judge or other judicial officer without delay.¹³

Impunity

There remains a persistent culture of impunity for past human rights violations committed by the Indonesian security forces, including in Aceh, Papua and Timor-Leste (formerly East Timor). Attempts to bring the alleged perpetrators to justice have been feeble, and many remain at large. The Law on Human Rights Courts (No. 26/2000), established to try cases of gross human rights violations, has very limited scope and has yet to be properly implemented.¹⁴ It has jurisdiction only over acts of genocide and crimes against humanity, and thus war crimes and the vast majority of human rights violations perpetrated in Indonesia fall outside its remit.¹⁵ In 2006 the Indonesian Constitutional Court ruled that the Law on Truth and Reconciliation Commissions (No. 27/2004) was unconstitutional, as it gave powers to recommend amnesties for perpetrators of serious crimes, and struck it down. A new law has been drafted and is scheduled for discussion in Parliament in 2011-2014; however, to date there has been no progress on this.

Human rights and decentralized legislation

As part of the decentralization process and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations. Many of these laws

and regulations do not conform to international human rights law and standards, or to the Indonesian Constitution. For example, in Aceh, judicial caning was introduced in 2003 as a punishment for adultery, consumption of alcohol, being alone with someone of the opposite sex who is not a marriage partner or relative (*khalwat*), and for Muslims found eating or drinking during sunlight hours in the fasting month of Ramadan or providing facilities for other Muslims to do so.

Promotion and protection of human rights on the ground

Human rights violations by the security forces

Amnesty International continues to receive credible reports of human rights violations committed by the police in Indonesia, including torture and other ill-treatment, unnecessary and excessive use of force and firearms when carrying out arrests and public order policing, unlawful killings, and failure to protect victims of human rights abuses. Investigations into reports of police abuses are rare, and police often subject complainants to further intimidation and harassment. Current internal police disciplinary mechanisms are inadequate to deal with criminal offences amounting to human rights violations and are often not known to the public. Furthermore, external police oversight bodies do not have the adequate powers to bring to justice those responsible for human rights abuses.¹⁶

Reports of human rights violations are particularly common in Papua, involving both police and military officers; however, only few perpetrators have been brought to justice. Some military officers charged with human rights-related offences have been tried in military courts. Amnesty International is concerned about the lack of independence and impartiality of these trials, and that military officers suspected of such offences are charged with disciplinary rather than criminal offences.¹⁷ International human rights observers, non-governmental organizations and journalists continue to be severely restricted in their access to Papua.

Maternal health and sexual and reproductive rights

Indonesia has one of the highest maternal mortality ratios in the East Asia and Pacific region with an estimated 228 maternal deaths per 100,000 live births. Women and girls are disproportionately affected by Indonesia's restrictions on sexual and reproductive rights. Laws and policies discriminate on the grounds of marital status and exclude unmarried women and girls from full access to reproductive health services. They further require the husband's consent for married women and girls to access certain reproductive health services. Abortion is criminalized in all circumstances except when the health of the mother or foetus is endangered, or in the case of rape victims.¹⁸ The laws deny women and girls, particularly from poor and marginalized communities, access to the health care they require, putting their health at risk, and put them under threat of criminal punishment where they access abortion care illegally.¹⁹ The government has also failed to eliminate practices which are discriminatory or cruel, inhuman and degrading to women and girls, such as female genital mutilation and early marriage.²⁰

Domestic workers

Domestic workers in Indonesia, the vast majority of whom are women and girls, are not legally recognized as workers. As a result, they are often exploited economically and many live and work in

abusive conditions. A draft law on domestic workers has been on the legislative agenda since 2010; however, at the time of writing there has been no progress on its enactment by Parliament.

Freedom of expression and human rights defenders

The authorities continue to use repressive legislation to criminalize peaceful political activities. Violations of the right to freedom of expression are particularly severe in areas with a history of pro-independence movements, such as Maluku and Papua. There are consistent reports of torture and ill-treatment and unnecessary and excessive use of force during arrest, interrogation and detention of peaceful political activists in these areas.²¹ Amnesty International has documented a significant increase in arrests after the authorities issued Government Regulation No. 77/2007, which prohibits the display of regional logos or flags which are also used by separatist organizations.²² At least 90 people are currently imprisoned for peaceful political protests or for possessing, raising or waving the pro-independence flags of Maluku and Papua.

Most past human rights violations against human rights defenders, including torture and ill-treatment, possible unlawful killings and enforced disappearances, remain unsolved and those responsible have not been brought to justice. Besides continued reports of intimidation and attacks against human rights defenders, they have also been the subject of criminal defamation proceedings due to their work.²³

Discrimination and freedom of religion

In March 2008 a Joint Ministerial Decree was issued to caution members of the Ahmadiyya community to, among other things, cease the propagation of their beliefs.²⁴ While there had been sporadic attacks and harassment against the Ahmadiyya community prior to the issuing of the Decree, the levels of harassment, intimidation and attacks have increased since then. Three Ahmadi were killed in one such incident in Cikeusik, Banten, in February 2011. In July 2011, 12 people were sentenced to between three and six months' imprisonment for their involvement in the incident. However, none were charged with murder, and local human rights groups have raised concerns about the weakness of the prosecution. In addition, since the Decree was issued, at least four provinces have issued new regional regulations restricting Ahmadiyya activities. Other religious minorities face similar attacks and discrimination. For example, Amnesty International continues to receive reports of attacks against Christian churches and property.

The death penalty

Although there have been no executions since 2008, Amnesty International estimates that over 100 prisoners are under sentence of death in Indonesia.²⁵ In some of these cases the trial failed to meet international standards of fairness. Concerns about death sentences are heightened by the amendment of the Clemency Law (No. 22/2002) in August 2010, restricting those sentenced to death to the submission of only one plea for clemency to the President within a year of the verdict.

Recommendations for action by the State under review

Amnesty International calls on the government of Indonesia to:

Normative and institutional framework:

- Revise and enact at the earliest opportunity a new Criminal Code and a new Criminal Procedure Code that comply with international human rights law and standards, and that include provisions explicitly prohibiting acts of torture. The definition of torture in the revised Criminal Code should be consistent with Article 1.1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that the new Criminal Code and Criminal Procedure Code exclude provisions that discriminate against women or religious minorities, or criminalize peaceful dissent;
- Undertake a review of all local legislation and regulations that have been put in place in the last decade to ensure their full conformity with international human rights law and standards;
- Ratify the Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court, and incorporate their provisions into domestic law and implement them in policy and practice;
- Debate, enact and implement, at the earliest opportunity, a new law on truth commissions in line with international law and standards.

Human rights violations by the security forces:

- Ensure prompt, thorough and impartial investigations into allegations of human rights violations by members of the Indonesian security forces, and ensure that those suspected of criminal responsibility are brought to justice in fair trials in an independent, civilian court, and that victims receive reparations;
- Review the current accountability system to deal with suspected human rights violations by police officials and set up an independent police complaints mechanism that can receive and deal with complaints from the public. This mechanism should have the power to submit its findings to the Public Prosecutor.

Maternal health and sexual and reproductive rights:

- Repeal all laws and regulations, at both the central and local levels, that violate sexual and reproductive rights, and ensure women and girls can realize their sexual and reproductive rights free from coercion, discrimination and the threat of criminalization.
- Remove legal and policy provisions on matters related to sexual and reproductive health that discriminate on the grounds of marital status;
- Repeal legal provisions criminalizing abortion in both the Criminal Code and the Health Law. In cases of unwanted pregnancy as a result of rape or where the pregnancy poses a threat to their life or health, ensure that women and girls have access to safe abortion services as currently provided in law.

Domestic workers:

- Enact specific legislation regulating the labour rights of domestic workers which recognizes their status as workers and guarantees their rights in accordance with international law and standards. In particular there should be reasonable limitation on working hours; guarantees of

remuneration for an adequate standard of living; clearly defined weekly rest and leave periods (annual leave, public holidays, sick leave and maternity leave); standards on termination of employment; and access to dispute resolution mechanisms, including courts. The law should also explicitly include legal provisions pertaining to the specific needs of women, in particular during and after pregnancy.

Freedom of expression and human rights defenders:

- Immediately and unconditionally release all prisoners detained or imprisoned solely for the peaceful exercise of their human rights, and in particular freedom of expression and freedom of religion or belief;
- Revoke or amend all laws that criminalize, or are used to criminalize, freedom of expression, in particular Articles 106 and 110 of the Criminal Code and Article 6 of Government Regulation No. 77/2007 which prohibits the display of regional logos or flags which are also used by separatist organizations;
- Take effective steps to ensure that human rights violations committed against human rights defenders are promptly, effectively and impartially investigated and that those responsible are brought to justice in fair trials.

Discrimination and freedom of religion:

- Revoke the 2008 Joint Ministerial Decree and all other regulations that restrict the activities of the Ahmadiyya community in Indonesia or otherwise violate their right to freedom of thought, conscience and religion;
- Take effective steps to protect religious minorities, including the Ahmadiyya and Christians, from attacks and harassment.

The death penalty:

- Take immediate steps towards abolition of the death penalty by declaring an official moratorium on all executions, and commute all death sentences to prison terms.

¹ Report of the Working Group on the Universal Periodic Review of Indonesia, 14 May 2008 (A/HRC/8/23) paragraph 77.1.

² A/HRC/8/23, paragraph 77.2. Indonesia accepted a recommendation to accede to the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography, and the Optional Protocol to the Convention against Torture, and to consider signing the International Convention for the Protection of All Persons from Enforced Disappearance.

³ A/HRC/8/23, paragraph 77.3.

⁴ A/HRC/8/23, paragraph 77.4.

⁵ A/HRC/8/23, paragraph 77.6.

⁶ Signed by Foreign Minister Marty Natalegawa at the United Nations headquarters in New York on 27 September 2011.

⁷ See Indonesia's 2010-2014 National Human Rights Action Plan (Kegiatan RANHAM Indonesia Tahun 2011 – 2014), available at: http://www.depdagri.go.id/media/documents/2011/08/26/fji/-1_1.pdf (accessed 29 October 2011).

⁸ Regulation of the Chief of the National Police regarding the Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police (No. 8/2009).

⁹ There has been no progress by the Attorney General's office on the following cases despite preliminary findings by Komnas HAM of human rights violations: Wasior (2001), Wamena (2003), Talangsari (1989), Trisakti (1998), Semanggi I & II (1998-99), and the enforced disappearance of 13 political activists (1997-1998).

¹⁰ See A/HRC/8/23, paragraph 51.

¹¹ See A/HRC/8/23, paragraph 51.

¹² See Amnesty International, *Indonesia: Open letter to the House of People's Representatives on the reviewing and passing of a new Criminal Code* (Index: ASA 21/022/2009). Further, Article 156(a) of the Criminal Code imposes a five year prison sentence for "defamation of religion" or blasphemy and has been used to criminalize individuals from minority religious groups. The Criminal Code is one of a number of laws in Indonesia which contain provisions that discriminate against women, religious and other minority groups, and which provide for the death penalty.

¹³ See Amnesty International, *Indonesia: Briefing to the UN Committee against Torture* (Index: ASA 21/003/2008) pp 11-16.

¹⁴ Article 45 of Law 26/2000 on Human Rights Courts requires the government to establish four permanent human rights courts in Makassar, Surabaya, Jakarta and Medan. However, to date, only two of the four courts have been set up. Human rights courts have also yet to be established in Aceh and Papua as required by the 2006 Law on Governing Aceh and the 2001 Papuan Special Autonomy Law.

¹⁵ See Amnesty International, *Comments on the Law on Human Rights Courts (Law No. 26/2000)* (Index: ASA 21/005/2001).

¹⁶ For more information see Amnesty International, *Unfinished Business: Police Accountability in Indonesia* (Index: ASA 21/013/2009).

¹⁷ In January 2011 three soldiers who had been filmed kicking and abusing Papuans were sentenced by a military court to between eight and 10 months' imprisonment for disobeying orders. The fact that the victims were not able to testify because of the lack of adequate safety guarantees raised serious concerns about the trial process. See Amnesty International, *Indonesian authorities urged to investigate Papua "torture video"*, and *Indonesian soldiers' sentence for Papua abuse video too light*.

¹⁸ For more information see Amnesty International, *Left Without a Choice: Barriers to Reproductive Health in Indonesia* (Index: ASA 21/013/2011). Amnesty International has highlighted particular concern about the Population and Family Development Law (No. 52/2009); the Health Law (No. 36/2009); and the Marriage Law (No. 1/1974), which contain discriminatory provisions that violate Indonesia's human rights obligations to protect women and girls from discrimination, as well as violations of the right to health, in particular reproductive health.

¹⁹ See *Left Without a Choice*, pp 39-44.

²⁰ See *Left Without a Choice*, pp 15-18.

²¹ For more information see Amnesty International, *Jailed for Waving a Flag: Prisoners of Conscience in Maluku* (Index: ASA 21/008/2009).

²² In December 2007, the Indonesian authorities issued Government Regulation No. 77/2007 on regional flags. Article 6.4 prohibits the display of regional logos or flags which have the same features as those used by "organization[s], groups, institution[s] or separatist movements" in Indonesia. It has led to a ban on the "Morning Star" flag in Papua, the "Benang Raja" flag in Maluku, and the "Crescent Moon" flag in Aceh, and others as they are associated with separatist movements in Indonesia.

²³ See Amnesty International, *Indonesia: Open letter to Minister for Justice and Human Rights: Criminal defamation proceedings against Indonesian human rights defender, Usman Hamid* (Index: ASA 21/019/2009).

²⁴ Joint Decree by the Minister of Religious Affairs, Attorney General and Minister of Internal Affairs of the Republic of Indonesia on the Warning and Instruction to Followers, Members and/or Leaders of the Jemaat Ahmadiyah Indonesia (JAI) and Members of the Community, enacted in Jakarta on 9 June 2008.

²⁵ The death penalty can be imposed for murder with deliberate intent and premeditation; attempting to assassinate the President or Vice-president or render either of them unfit to govern; treason; premeditated murder of the head of state of a friendly state; piracy resulting in death; theft resulting in death; producing, processing, extracting, converting or making available narcotics; crimes against humanity; and "terrorism". See Amnesty International, *Indonesia: Briefing to the UN Committee against Torture* (Index: ASA 21/003/2008).