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RELIGIOUS FREEDOM IN THE REPUBLIC OF INDONESIA

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RELIGIOUS FREEDOM IN THE REPUBLIC OF INDONESIA

SECTION 1: LEGAL FRAMEWORK

1. Following decades of authoritarian rule in the Republic of Indonesia, free democratic elections were held in 1999.¹ Indonesia's current president, Susilo Bambang Yudhoyono, was elected on 20 October 2004.² Indonesia is currently the world's third largest democracy and is home to the nation's largest Muslim population.³ Indonesia acceded to the International Covenant on Civil and Political Rights (ICCPR) on 23 February 2006;⁴ however, it has not yet ratified the Optional Protocol, which would recognize the Human Rights Committee's competence to hear complaints regarding violations of the ICCPR.⁵ Indonesia has failed to fulfill its obligations under the ICCPR.

Population

2. According to the last official census conducted in 2000, 88 percent of the population professes a belief in Islam; 6 percent Protestant Christianity; 3 percent Roman Catholicism; 2 percent Hinduism; and the last 1 percent a mixture of Buddhism, Judaism, or traditional indigenous religions.⁶

Constitutional Provisions

3. Although Indonesia mandates religious freedom in its amended constitution,⁷ the government severely restricts religious activity—"particularly among unrecognized religious groups and 'deviant' sects of recognized religious groups."⁸ The six officially recognized religions are Islam, Protestant Christianity, Catholic Christianity, Hinduism, Buddhism, and Confucianism.⁹ According to the preamble of the constitution, "[the] Republic of Indonesia . . . is based on the belief in the One and Only God."¹⁰ Article 29 of the constitution provides that the Indonesian government "guarantees all persons the freedom of worship, each according to his/her own religion or belief."¹¹ Article 28E of the constitution provides the following religious

¹U.S. CENT. INTELLIGENCE AGENCY, *The World Factbook – Indonesia* (Introduction/Background), <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> (last visited 7 Nov. 2011).

²*Id.* (Government).

³*Id.* (Introduction).

⁴*Status of Treaties, Ch. IV Human Rights, 4. ICCPR Status*, UNITED NATIONS TREATY COLLECTION, (11 Nov. 2011 4:12 pm), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁵Optional Protocol to the International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶U.S. DEP'T OF STATE, *July-December, 2010 International Religious Freedom Report—Indonesia* § I, at 2 (13 Sept. 2011) [hereinafter *July-December, 2010 Int'l Religious Freedom Report*], <http://www.state.gov/documents/organization/171653.pdf>.

⁷INDON. CONST. 1945, as amended through 2002 (unofficial English translation), available at <http://www.embassyofindonesia.org/about/pdf/IndonesianConstitution.pdf>.

⁸*July-December, 2010 Int'l Religious Freedom Report*, *supra* note 6, § 2, at 4.

⁹*Id.*

¹⁰INDON. CONST., *supra* note 7, pmbl.

¹¹*Id.* art. 29.

freedoms:

(1) Every person shall be free to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person shall have the right to the freedom to believe his/her faith (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.¹²

4. Article 28I, Section (1) guarantees, in pertinent part, the right to life, freedom from torture, freedom of thought and conscience, and freedom of religion.¹³ Although the text states that Article 28I rights “cannot be limited under any circumstances,”¹⁴ in practice all of these constitutional rights have been abrogated and violated through government inaction against Islamic extremist groups, as well as through discrimination by government officials.¹⁵

5. Extreme Islamic groups hold significant influence and pressure government officials and judges.¹⁶ These groups attack Ahmadiyah, Christian, Shia, and Hindu places of worship with impunity; their efforts have resulted in laws that target minority beliefs.¹⁷ Also, extremists often use violence to intimidate all who oppose “religious militancy, terrorism, and religious freedom violations.”¹⁸

Statutory Provisions

6. Indonesia's Penal Code restricts freedom of religion and expression by criminalizing speech against the government and against religion. Deliberately insulting the President or Vice President carries a maximum punishment of six years in prison, a 300 Rupiah fine, or both.¹⁹ Article 156 of the Penal Code states that “[any] person who publicly gives expression to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia, shall be punished by a maximum imprisonment of four years or a maximum fine of 300 Rupiahs.”²⁰ It has been documented that the government has enforced Article 156 as recently as February 2011.²¹

¹² *Id.* art. 28(E)(1)-(3).

¹³ *Id.* art. 28I(1).

¹⁴ *Id.*

¹⁵ See Section 2 herein, discussing specific instances of persecution and discrimination.

¹⁶ U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2011, Country Chapters: The Commission's Watch List—Indonesia, at 262 (28 Apr. 2011) [hereinafter ANNUAL REPORT 2011], available at <http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf>.

¹⁷ *Id.* at 266.

¹⁸ *Id.* at 262.

¹⁹ PENAL CODE OF INDONESIA, book II, ch. II, art. 134 (27 Feb. 1982) (amended 1999), available at <http://www.unhcr.org/refworld/docid/3ffc09ae2.html>.

²⁰ *Id.* book II, ch. V, art. 156.

²¹ ANNUAL REPORT 2011, *supra* note 16, at 268.

7. The Penal Code continues to incorporate anti-blasphemy and anti-conversion provisions, which undermine Article 28E of the Indonesian constitution and Indonesia's commitment to harmonize its laws with the principles of the ICCPR.²² The government has enforced these provisions through Article 156(a), which restricts freedom of religious expression and prescribes five-years imprisonment for any person who “deliberately in public gives expression to feelings or commits an act” that “have the character of being at enmity [*sic*] with, *abusing or staining a religion*, adhered to in Indonesia.”²³ This section also prohibits expression or acts that are intended to prevent someone from adhering “to any religion based on the belief of the almighty God.”²⁴

8. According to two Indonesian think-tanks, the government's use of anti-blasphemy law has increased over the past decade.²⁵ Over 150 people have been detained for alleged blasphemous expression since 2003.²⁶ In April 2011, the United States Commission on International Religious Freedom recommended, among other things, that the United States government “urge the Indonesian government to amend or repeal Article 156(a) of the Penal Code, release anyone sentenced for ‘deviancy,’ ‘denigrating religion,’ or ‘blasphemy,’ and provide clear guidelines to local governments on ending prosecutions of those detained under Article 156(a) of the Penal Code.”²⁷

9. In April 2010, Indonesia's Constitutional Court upheld the 1965 blasphemy law.²⁸ The court reasoned that the government has authority to criminalize religious expression to maintain security.²⁹

Fatwas and Local Decrees

10. Much of the country's religious policy is enacted and enforced at the regional and local levels. In July 2005, the Indonesian Ulema Council (MUI) issued a fatwa expressly condemning the Ahmadiyya faith as a heretical sect of Islam.³⁰ While fatwas are not legally binding, they are considered “moral guiding principles for Muslims” and influence governmental decisions.³¹ Even though Indonesia's National Commission of the Human Rights (Komnas-HAM) declared that the fatwa decree was unconstitutional,³² many local municipalities have passed ordinances banning the Ahmadiyya faith.³³ For example, in 2005, West Nusa Tenggara upheld a ban on 13 religious groups including the Ahmadiyya, and “[o]n May 6, 2008, the Mayor of Cimahi, West

²² See Rep. of the Working Group on the Universal Periodic Review—Indonesia, U.N. Doc. A/HRC/8/23; HRC, 8th Sess., ¶ 16 (14 May 2008), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/134/21/PDF/G0813421.pdf?OpenElement>.

²³ PENAL CODE OF INDONESIA, *supra* note 19, book II, ch. V, art. 156(a) (emphasis added).

²⁴ *Id.*

²⁵ ANNUAL REPORT 2011, *supra* note 16, at 267.

²⁶ *Id.*

²⁷ *Id.* at 275.

²⁸ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 6, § 2, at 5.

²⁹ *Id.*

³⁰ ANNUAL REPORT 2011, *supra* note 16, at 266.

³¹ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 6, § 2, at 5.

³² ANNUAL REPORT 2011, *supra* note 16, at 266.

³³ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 6, § 2, at 13.

Java, issued an order banning the Ahmadis.³⁴ The government has not yet rejected the 2005 fatwa or other local bans,³⁵ and many officials support further restrictions on the Ahmadiyya community.³⁶ Over the past year, local governments have also banned al-Qiyadah al-Islamiyah and other minority Islamic sects.³⁷

11. Moreover, the government issued a joint ministerial decree regarding the Ahmadiyya community in 2008.³⁸ While the decree did not expressly prohibit the Ahmadiyah faith, it proscribed Ahmadis from worshipping in public and proselytizing.³⁹ In 2008, the United States Commission on International Religious Freedom issued a statement condemning the decree because “[it] contradicts Indonesia’s constitutional guarantees of religious freedom and violates religious freedom protections in international human rights instruments to which Indonesia is a party, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”⁴⁰ The Commission noted that Ahmadis face increasing hardship through mob violence and local legal restrictions.⁴¹

12. Since 2009, 49 Ahmadiyya mosques have been vandalized, and 34 Ahmadiyya mosques and meeting places have been forcibly closed.⁴² In certain parts of the country, extremists pressure local officials to close mosques or places of worship, because they regard any visible Ahmadiyya activity as proselytizing, which violates the 2008 ministerial decree.⁴³ Thus, in West Java, South Sulawesi, East Java, and Lombok provinces, Ahmadis are banned from public expressions of any kind.⁴⁴ Some Ahmadis remain internally displaced (IDPs) in Transito Camp (Mataram, Lombok) after they were forced by a mob from their homes in 2006; without a physical address, many of these IDPs are denied identity cards, free health care, and the right to vote.⁴⁵ The government also stopped supplying them with a rice subsidy, water, and electricity; requests for compensation are still pending.⁴⁶

SECTION 2: REPORTS AND INSTANCES OF RELIGIOUS PERSECUTION AND DISCRIMINATION

13. The Indonesian government has implicitly condoned actions taken by extremist groups by failing to take action against them. According to reports, violations of religious freedoms

³⁴ *International Religious Freedom Report 2009—Indonesia*, U.S. DEP’T OF STATE, § 2, Legal/Policy Framework (26 Oct. 2009), <http://www.state.gov/g/drl/rls/irf/2009/127271.htm>.

³⁵ *July-December, 2010 Int’l Religious Freedom Report*, *supra* note 6, § 2, at 13.

³⁶ ANNUAL REPORT 2011, *supra* note 16, at 263.

³⁷ *July-December, 2010 Int’l Religious Freedom Report*, *supra* note 6, § 2, at 10.

³⁸ ANNUAL REPORT 2011, *supra* note 16, at 266.

³⁹ *Id.*

⁴⁰ Press Release, U.S. Comm’n on Int’l Religious Freedom, Indonesia: USCIRF Concerned Over Decree Curtailing Religious Practice of Amadiyah Community (11 June 2008), *available at* http://www.uscirf.gov/index.php?option=com_content&task=view&id=2207&Itemid=46.

⁴¹ *Id.*

⁴² ANNUAL REPORT 2011, *supra* note 16, at 266.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *July-December, 2010 Int’l Religious Freedom Report*, *supra* note 6, § 2, at 13.

⁴⁶ *Id.*

increased in 2010;⁴⁷ there were approximately 75 incidents, including violent attacks, against the Christian community in 2010.⁴⁸ Two particular Islamist extremist groups have been identified as being chiefly responsible for persecution against Christians in the country: the Islamic Defenders Front (FPI) and the Forum Betawi Rempung (FBR), both of which legally exist in the country.⁴⁹ Moreover, the government sealed many churches and denied building permits.⁵⁰ Animists, Bahai, and members of other non-recognized religious groups reported that the government impeded their ability to register births or marriages.⁵¹ Following are several examples of religious persecution in Indonesia.

14. **25 October 2011:** A clash occurred between Indonesian Christian Church members and police in the Yasmin area of Bogor, West Java over the church's right to meet on the street. The Church's building had been sealed by the local mayor in defiance of a Supreme Court order, and members had been meeting outside the building despite the local mayor's ban on street meetings.⁵² Additionally, there are current reports that the Ministry of Religious Affairs is considering a new "Religious Tolerance Bill" that would dramatically reduce religious freedom; some have said that the bill would "simply legitimize existing discriminatory regulations in the 1965 Anti-Blasphemy Law as well as those in the 2006 Joint Ministerial Decree . . . [, and would] place[] more stringent limits on proselytizing, constructing places of worship and religious education."⁵³

15. **6 February 2011:** A mob of more than 1,000 angry villagers attacked the home of an Ahmadiyya leader and killed several people in Banten province. Police did nothing to protect the Ahmadiyya or to prevent the attack even though they were warned days before the attack. According to reports, a video recording showed the mob stoning their victims to death and then beating the corpses as police watched.⁵⁴

16. **12 December 2010:** Islamic extremist organizations disrupted and forcefully evacuated people from seven house church services. The house churches allegedly violated a local building administration regulation. One pastor explained that a building permit is impossible to obtain, especially under pressure exerted by hard-line Muslim groups, because it requires approval by 60 community members and the village head, and the church must have at least 90 members.⁵⁵

⁴⁷ 'Unchecked Extremism' behind Attacks on Churches in Indonesia, COMPASS DIRECT NEWS, 17 Aug. 2011, <http://www.compassdirect.org/english/country/indonesia/24391>.

⁴⁸ *Why Is Islamic Extremism Growing in Indonesia?*, COMPASS DIRECT NEWS, 3 Oct. 2011, http://www.compassdirect.org/english/country/indonesia/article_121316.html.

⁴⁹ 'Unchecked Extremism' behind Attacks on Churches in Indonesia, *supra* note 47.

⁵⁰ *Id.*

⁵¹ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 6, § 2, at 10-12.

⁵² *Indonesian Church Denied Site as New Bill Threatens Freedoms*, COMPASS DIRECT NEWS, 25 Oct. 2011, http://www.compassdirect.org/english/country/indonesia/article_122315.html.

⁵³ *Id.*

⁵⁴ *Blasphemy Laws Exposed: The Consequences of Criminalizing "Defamation of Religions,"* Human Rights First (updated Oct. 2011), at 11, http://www.humanrightsfirst.org/wp-content/uploads/Blasphemy_Cases.pdf; *see also* ANNUAL REPORT 2011, *supra* note 16, at 266.

⁵⁵ *Islamists Raid House Churches in West Java*, COMPASS DIRECT NEWS, 18 Dec. 2010, <http://www.compassdirect.org/english/country/indonesia/29983>.

17. **February 2009:** A schoolteacher was sentenced to one-year imprisonment for blasphemy. The teacher was rumored to have insulted Islam in a private tutoring session.⁵⁶ After the Muslim student complained to his parents, 500 protestors assembled near the local education agency office. A riot ensued in which the protestors burned down dozens of homes and a church. The teacher was released on 10 December 2009.⁵⁷

⁵⁶ ANNUAL REPORT 2011, *supra* note 16, at 264; *Policing Belief: Indonesia, Right to Due Process*, FREEDOM HOUSE (10 Oct. 2011), <http://www.freedomhouse.org/template.cfm?page=574>.

⁵⁷ ANNUAL REPORT 2011, *supra* note 16, at 264.