

Country Briefing on Freedom of Religion and Belief in the Universal Periodic Review Process - Indonesia

Key points

An examination of the Universal Periodic Review (UPR) of Indonesia across three cycles (2008, 2012 and 2017) reveals:

- Serious challenges to freedom of religion and belief (FoRB) in Indonesia amidst efforts by the Government to bring Indonesian law and practices in line with international standards,
- Indonesia has seen an upswing in religious intolerance and violence in the past few years, and
- Indonesia continues to experience discrimination against minority religions, in particular against Ahmadis and Christians, despite constitutional guarantees and the Pancasila ideology that together stipulate the right to FoRB as one of the fundamental human rights.

Key UPR recommendations on FoRB

The following recommendations were made consistently on FoRB across the three cycles, and supported by Indonesia:

- Review existing laws that restrict FoRB and make them compatible with freedom of religion and belief. Specific recommendations related to a review of blasphemy laws and elimination of blasphemy from the criminal code,
- Take further measures through legislation and bills,
- Accept a visit from the special rapporteur as a way of improving the human rights situation for religious groups,
- Continue in efforts to protect religious rights, and
- Investigate allegations of discrimination and prosecute violators.

Follow-up action for parliamentarians

Whereas the Indonesian Government has noted its efforts to bring FoRB related legislation in compliance with international standards, *Parliamentarians must follow-up in order to:*

- Ensure that laws on blasphemy and the Criminal Code are properly reviewed and updated in accordance with international standards,
- Ensure that investigations of violations are launched by the authorities and national human rights institutions on allegations of violations of FoRB, especially in relation to minority groups such as Ahmadi and Christians, and
- Facilitate visits and fact-finding by the Special Rapporteur.

The situation of FoRB in Indonesia as revealed in the UPR is outlined hereafter.

Background

What is the UPR?

The UPR of the United Nations Human Rights Council (HRC) is a peer-review process to foster dialogue on human rights and to improve adherence to universal standards and best practices .

It was launched in 2007 through UN General Assembly Resolution 60/251.

Every 4.5 years each Member State's human rights record is examined by peers.

A number of key documents are submitted:

- National Reports from Member State concerned,
- Information from UN bodies and treaty-based rights mechanisms, and
- Information provided by relevant stakeholders, including civil society and think-tanks.

The State under review (SUR) is evaluated on its compliance with the international human rights standards and best practices.

Demographics

1. Indonesia's population of over 257 million is spread over 17,508 islands that encompass some 33 provinces. It is composed of Javanese (40.1%), Sundanese (15.5%), Malay (3.7%) Batak (3.6%), Madurese (3%) and smaller groups including the Betawi (2.9%), Minangkabau (2.7%), Buginese (2.7%), Bantenese (2%), Banjarese (1.7%), Balinese (1.7%), Acehese (1.4%), Dayak (1.4%), Sasak (1.3%), Chinese (1.2%), other 15% (CIA *World Factbook*, 2017)

The religious mix

2. Indonesia is a secular, democratic country that has a Muslim-majority population. As of 2010, approximately 87.18 % of Indonesian were Muslim (Sunnis were more than 99 %, Shias 0.5 % and Ahmadis 0.2 %). The rest were Protestant (6.96 %), Catholic (2.91 %), as Hindu (1.69 %), Buddhist (0.72 %), Confucianism (0.05 %), other (0.13 %), and unstated (0.38 %). Given this diversity, Indonesia recognized freedom of religion and belief as a fundamental right. (CIA *World Factbook*, 2017)

Legal Provisions on FoRB

3. The Indonesian Constitution guarantees freedom of religion and belief in Articles 28E, 28I and 29. The Constitution stipulates that the state shall be based upon the belief in "the one and only God". This condition also forms the first principle of the Pancasila, the Indonesian state philosophy introduced by President Soekarno in 1945. Article 28J imposes a limitation: each person has the obligation to respect the fundamental human rights of others while partaking in the life of the community, the nation, and the state.
4. Related articles concern the right to freedom of thought and conscience under Article 4, to free speech under Article 25 and to hold, impart and disseminate one's beliefs orally or in writing "taking into consideration religious values, morals, law and order, the public interest and national unity" under article 23. Since 1993, national action plans on human rights have been adopted for successive 5-year periods. Indonesia noted that it takes its obligations under ICCPR seriously, notably Article 18 on freedom of thought, conscience and religion.

Indonesian government submissions

5. In its submissions to the UPR over three cycles, the Indonesian government emphasized that it: provides constitutional guarantees for FoRB, allows all religions to flourish and has introduced many policy and legislative initiatives to foster FoRB. In relation to the Ahmadiyah community, it noted that the challenge here was how to maintain harmony in society.
6. The government submitted that FoRB is guaranteed by the Constitution. Its exercise cannot be limited otherwise than by law. It is also protected under Law No. 39 of 1999 on Human Rights. The correct perception of Law No. 1 of 1965, recognizing major religions, is that it does not provide 'official recognition' to any religion, but merely reaffirmed the existence of those religions in Indonesia. It noted that many initiatives had been introduced at the community level based on research done by a prominent think-tank (2006-2007) on pluralist dynamics in the country. The Government noted Indonesia's respect for individual beliefs. As it engaged with the Third Cycle in 2017 it reiterated its continued commitment to protecting the legitimate rights of all of its diverse communities and to take

efforts to end discrimination and violence related to the violation of those rights. A draft Law on the Protection of Religious Followers to reflect Indonesia's commitment to pluralism, including in the freedom of religion and belief, was already included in the 2015-2019 National Legislation Program.

7. With regard to the Ahmadiyah and Law No. 1/PNPS/1965, it noted that the Law provided the basis for maintaining public order in the community in terms of religious issues. It argued that the law, which underwent a judicial review process at the Constitutional Court (a process that itself faced intimidation tactics by fundamentalist groups), only regulates the proselytisation of the religion. It does not prohibit the Ahmadiyah from professing and practicing their religion, instead it protects them by allowing them to do such activities. It noted the Government's view that the Ahmadiyah issue is not simply a question of freedom of religion. On the one hand, the Government is responsible for promoting a harmonious life amongst religions and their believers. On the other hand, the Government is mandated to uphold law and order and committed to eradicate extremism and radicalism.
8. It called attention to legislative action aimed at revising the criminal code. The concept of 'crimes relating to religion and belief' was included in the new Criminal Code Bill to bring the code in line with international standards. It noted eight articles on crimes related to religion and belief had been incorporated into the Bill. Marriage laws were also being updated.
9. Generally, it noted the creation of spaces for dialogue between religious groups had been established, including the Religious Harmony Forum (Forum Kerukunan Umat Beragama/FKUB), which are present at national and sub-national levels. Efforts were being made to improve the awareness of officials at all levels to respect and protect the freedom of religion and other rights of members of religious groups. The Government had also approached religious leaders and held several trainings on human rights for them since 2015. Indonesia continued to promote religion, democracy, and pluralism as mutually reinforcing foundation for healthy and prosperous society, as reflected in the main theme of the latest 9th Bali Democracy Forum in 2016.

Stakeholder submissions across three UPR Cycles

10. National Human Rights Institutions (NHRIS), civil society and United Nations agencies have noted a range of challenges, including the rise in fundamentalism and extremism, the preferential treatment given to official religions, contradictions between various laws, the worsening situation of religious minorities, the situation of Ahmadiyah and Christian communities and discrimination against women.
11. Civil society stakeholders noted increased fundamentalism, extremism and violence over the two cycles. For example, Human Rights Watch reported that attacks increased from 135 incidents in 2007, to 216 in 2010 and 184 for the first nine months of 2011. Other groups pointed to the number of incidents of violations of religious freedom, which rose to 91 in 2010 of which at least 75 were committed against Christians. This compared to just 12 incidents affecting Christians in 2009. Gender based violence against Ahmadiyah women included threats of rape and sexual violence resulting in prolonged depression and

reproductive disorders. In this vein, it was noted that an Islamic Criminal Legal Code in Aceh legalized marital rape, according to the Special Rapporteur on FoRB in 2008.

12. Whereas the Constitution guarantees of FoRB, Presidential Regulation No. 1/PNPS/1965 regulated which religion or belief is acknowledged or not. It was argued by stakeholders that Indonesia had institutionalised inequality and hierarchy between religious beliefs, with religious minorities at the bottom.
13. The preferential treatment given to the six officially recognized religions were manifested in the regulations governing marriage and education. Despite the enactment of Law No. 23/2006 on Population Administration, enabling believers outside professed religions to register their marriages at the Civil Registrars (Article 64(2)), there were still cases where followers of certain beliefs in the country had not yet fully enjoyed this right to have their marriage formally registered. The Committee on the Rights of the Child (CRC) noted in cycle three that it was deeply concerned that children were obliged to attend religious instruction in school in one of the six religions listed in Law No. 1/1965 and urged Indonesia to amend its legislation. The CRC recommended the education curricula to promote religious diversity and ensure that the preferences of both believers and non-believers were accommodated.
14. Contradictions in laws related to FoRB were noted. Article 29 of the Constitution, which guarantees the freedom of every citizen to observe each of their own religions and practice in accordance to those religions and beliefs, is impacted by a 1965 law (1/PNPS/1965) concerning the prevention of religious abuse and/or defamation. This law prohibits “interpretation and activities that are in deviation of the basic teachings” of “a religion adhered to in Indonesia”, which includes some faiths with followers in the country but not others. This article was adopted in the Indonesian Criminal Code (KUHP) Article 156 A on Blasphemies that gives the State the authority to criminalize any religions or beliefs that are declared to be deviant.
15. The harsh nature of laws seeking to prevent “abuse or defamation of religions” were highlighted. In 2010, during a judicial review of the 1965 law a joint amicus curiae brief pointing out the harshness of the law submitted to the Indonesian Constitutional Court by ARTICLE 19, Amnesty International, the Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights to the Indonesian Constitutional Court on 11 March 2010, argued that it was contrary to international standards. Others expressed concern about the application of the 1965 Blasphemy Law, which restricted the right of certain groups to hold a religion or belief and was being used to fuel religiously-motivated violence. They noted the February 2011 incident when a large mob gathered outside the courthouse in Temnanggung, Central Java calling for the death of the Roman Catholic Antonius Richmond Bawenggan, after he was sentenced to five years in prison for blasphemy. Despite this being the maximum sentence under the law, radical Islamists decried this “leniency” and a mob of 1,000 people burned vehicles, two churches and a church-run school.
16. The situation for religious minorities had significantly worsened since 2008, according to stakeholders. Equal Rights Trust’s research demonstrated a strong connection between laws which restricted religious freedom, and the rising influence of extremist factions which promote and engage in discrimination and violence against religious minorities. HRW stressed at the start of Cycle 3 that discrimination against religious minorities was

deeply entrenched in the state bureaucracy, fueled by discriminatory laws and regulations, including a blasphemy law that recognizes only six religions, and house of worship decrees that give local majority populations significant leverage over religious minority communities. The Committee Against Torture (CAT) recommended in the second cycle that Indonesia should ensure prompt, impartial and effective investigations into ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of those acts.

17. Stakeholders noted serious discrimination against the Ahmadiyah due to their beliefs since their founding and the alleged “deviant” nature of their beliefs. The Human Rights Committee regretted in the third cycle that Law No. 1/1965 on defamation of religion and other laws unduly restricted freedom of religion and expression of religious minorities such as the Ahmadiyah. In 2012, attention was called to attacks on Jemaah Ahmadiyah followers in Cikeusik and the deterrence of Jemaah Christians from Worshipping in the Church of Yasmin, Bogor.
18. Stakeholders emphasized that Indonesia must ensure that Christians and other religious minorities can freely exercise their right to freedom of thought, conscience and religion in their worship, observance, practice and teaching. Indonesia must also protect Christians and other religious minorities from discrimination and persecution.
19. Restrictions against the ability to have a place of worship were noted. Laws require that any religious community desirous of having a place of worship need to have at least 60 % approval from the people who are living in the local area in question. CSOs expressed continued concern about the violations of freedom of religion or belief arising from the 2006 Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs No. 8 and 9/2006, on the construction of places of worship, the 2008 Joint Decree of the Minister of Religious Affairs, the Attorney General and the Minister of Home Affairs restricting the activities of the Ahmadiyah community, and the 1965 blasphemy law, set out in Articles 156 and 156 (a) of the Criminal Code and in Presidential Decree No. 1/PNPS/1965.

Observations by other states

20. During the Working Group phase of the UPR, delegations generally commending Indonesia’s efforts to improve FoRB included Bangladesh, Ecuador, Qatar, ROK, Russia, Saudi Arabia and The Netherlands.
21. Better compliance with international obligations was called for (New Zealand), training and awareness campaigns for provincial and municipal officials on rule of law and FoRB (USA), guarantees for minorities (France, Italy Japan), better treatment of the Ahmadiyah families following a fatwa banning them (UK), review of the Blasphemy Act and other discriminatory laws (Canada, Denmark), eliminating blasphemy from the criminal code

(Spain) and acceptance of a visit by the Special Rapporteur on FoRB (UK, Netherlands, Norway).

References

General references

CIA, *World Factbook* 2017

Constitution of Indonesia

References on Indonesia

Documents on the UPR of Southeast Asian States are available on the websites of UPR Info and of the OCHR. They consist of National Reports, Stakeholder Submissions and Recommendations by Peers. For Indonesia all documents are available as follows:

UPR Info: <https://www.upr-info.org/en/review>

OHCHR: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

UPR First Cycle 2008

1. National report submitted in accordance with paragraph 15(a) of the annex to human rights council resolution 5/1. A/hrc/wg.6/1/idn/1 11 march 2008.
2. Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (C) Of The Annex To Human Rights Council Resolution 5/1*. Document A/HRC/WG.6/1/IDN/3 6 March 2008
3. Compilation Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15(B) Of The Annex To Human Rights Council Resolution 5/1
4. Report Of The Working Group On The Universal Periodic Review, A/HRC/WG.6/1/IDN/4 15 April 2008

UPR Second Cycle 2012

5. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Document A/HRC/WG.6/13/IDN/1
6. Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Document A/HRC/WG.6/13/IDN/2
7. Draft report of the Working Group on the Universal Periodic Review. Document A/HRC/WG.6/13/L.5.

UPR Third Cycle 2017

8. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution. Document 16/21. A/HRC/WG.6/27/IDN/1. 20 February 2017.
9. Compilation on Indonesia Report of the Office of the United Nations High Commissioner for Human Rights. Document A/HRC/WG.6/27/IDN/2. 20 February 2017
10. Summary of stakeholders' submissions on Indonesia. Document A/HRC/WG.6/27/IDN/3. 20 February 2017