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**INDONESIA**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to freedom of thought, conscience, and religion, the right to freedom of opinion and expression, and Indonesia's efforts in promoting and defending these rights.

### **(a) Right to Freedom of Thought, Conscience, and Religion**

#### *Background*

3. Article 28E of the 1945 Constitution of the Republic of Indonesia<sup>1</sup> (the Constitution) ensures the right to freedom of thought, conscience, and religion:
  - (1) Each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.
  - (2) Each person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.
  - (3) Each person has the right to freely associate, assemble, and express his opinions.
4. Furthermore, the right to freedom of thought, conscience, and religion is protected under Article 28I of the Constitution:
  - (1) The rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance.
5. Article 29(2) of the Constitution states that 'the State guarantees all persons the freedom of worship, each according to his/her own religion or belief.'

#### *Persecution of Christians*

6. In 2010, the population of Indonesia was estimated at 237 million, with 87% of the population Muslim, 7% Protestant, and 3% Roman Catholic.<sup>2</sup> In 2016, Indonesia was ranked 43<sup>rd</sup> on the 2016 World Watch List, which ranks the top 50 countries where Christians are most persecuted.<sup>3</sup> The persecution of Christians is predominantly through terrorism.

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<sup>1</sup> As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002.

<sup>2</sup> Ibid.

<sup>3</sup> Open Doors, 2016 World Watch List, available at <https://www.opendoorsusa.org/christian-persecution/world-watch-list/indonesia/>.

7. Persecution of Christians is increasing.<sup>4</sup> Terrorists were responsible for numerous violent attacks against and intimidation of churches and other places of worship.<sup>5</sup>
8. The main terrorist groups operating in Indonesia are Jemaah Islamiyah, Laskar Jihad, and Darul Islam. Darul Islam and Jemaah Islamiyah aim to establish a pan-Islamic state in Indonesia.<sup>6</sup> Jemaah Islamiyah is also active in other Southeast Asian countries, including Singapore, Malaysia, and the Philippines. Jemaah Islamiyah has been linked to al-Qaeda.<sup>7</sup> Laskar Jihad operates in the Moluccas and Sulawesi Islands and aims to establish an Islamist state by eliminating Christians from the islands.<sup>8</sup> Despite some reports suggesting that Laskar Jihad was disbanded in 2002, Laskar Jihad was connected to attacks in West Papua in 2005.<sup>9</sup>
9. In October 2015, a Christian church was burnt down, followed by a demand of a group of Muslims for 10 unregistered Christian churches to be demolished.<sup>10</sup> Subsequently, another three churches were attacked and destroyed. Following the attacks on Christian churches, over 8,000 Christians became displaced.<sup>11</sup> The persecution of Christians continues and is not limited to sharia law-ruled regions of Indonesia.
10. In addition to persecution of Christians (and other religious minorities) at the hands of terrorists, the right to freedom of thought, conscience, and religion is further limited by domestic legislation and government practices.
11. In Indonesia, six religious groups benefit from official status: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism.<sup>12</sup> The recognized religious groups must comply with ministerial directives, including the Revised Joint Ministerial Decree on the Construction of Houses of Worship (2006), Overseas Aid to Religious Institutions in Indonesia (1978), and Guidelines for the Propagation of Religion (1978).
12. The Revised Joint Ministerial Decree on the Construction of Houses of Worship creates requirements for building places of worship. The decree requires applying religious groups to obtain at least 90 signatures from within the groups, and 60 signatures in support from members of other religious groups.<sup>13</sup> Further approval is also necessary from the Forum Kerukunan Umat Bergama or the Inter-Religious Harmony Forum, a forum consisting of local religious leaders working with the government to ensure interreligious harmony. This may create difficulties for religious minorities to be able to build a place for worship.

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<sup>4</sup> Gatestone Institute, The Indonesian Jihad on Christian Churches, available at: <http://www.gatestoneinstitute.org/6860/indonesian-christian-churches>.

<sup>5</sup> US Department of State, Bureau of Democracy, Human rights, and Labour, 2012 Report on International Religious Freedom, available at: <http://www.state.gov/j/drl/rls/irf/2012/eap/208232.htm>.

<sup>6</sup> Council on Foreign Relations, Jemaah Islamiyah, available at: <http://www.cfr.org/indonesia/jemaah-islamiyah-k-jemaah-islamiyah/p8948>.

<sup>7</sup> Ibid.

<sup>8</sup> Council on Foreign Relations, Terrorism Havens: Indonesia, available at: <http://www.cfr.org/indonesia/terrorism-havens-indonesia/p9361>.

<sup>9</sup> Dennis C. Blair and David L. Phillips, Indonesia Commission: Peace and Progress in Papua (Council on Foreign Relations, New York 2003) 110.

<sup>10</sup> CP World, Jihad, Islamic Extremism Rising Against Indonesian Churches, available at: <http://www.christianpost.com/news/christian-persecution-jihad-islamic-extremism-indonesia-churches-149945/>.

<sup>11</sup> (n 4)

<sup>12</sup> (n 5)

<sup>13</sup> Ibid.

13. Nonetheless, even with the required permit, religious minorities are often prevented from establishing a place of worship. Also in April 2016, a church was forced to close down only weeks after it was opened on 7 March 2016.<sup>14</sup> The Santa Clara Church in Bekasi was built with the permit required by law, but the Islamic Forum Community and other Islamic organisations sealed and demolished the church. The local authorities and police failed to intervene and protect the church that was built in accordance with legal requirements in force.<sup>15</sup>
14. Article 86 of the Child Protection Act of 2002 prohibits conversion of minors through 'tricks' and 'lies.'<sup>16</sup> It was reported that this is often interpreted very broadly. In 2005, Rebekka Zakaria, Eti Pangesti, and Ratna Bangum were sentenced to three years imprisonment for allowing Muslim children to attend a Christian Sunday School, despite the fact that the children's parents consented to their attendance.<sup>17</sup>
15. Some foreign religious workers belonging to religious minorities reported difficulties in obtaining extended visas.<sup>18</sup>
16. Sharia law is implemented in many regions of Indonesia. Established sharia courts implement sharia law. Sharia law used to be traditionally applied only to Muslims. However, in September 2014, the province of Aceh adopted an amendment allowing the application of sharia law to non-Muslims.<sup>19</sup> The province of Aceh has 90,000 non-Muslims.<sup>20</sup> Under the Penal Code in Aceh, buying and carrying alcoholic beverages carries a punishment of '10 strokes of the cane, 10 months in prison, or a maximum fine of 100 grams in gold.'<sup>21</sup>
17. In April 2016, it was reported that a 60-year-old Christian woman was convicted under sharia law. The Christian woman was caned for selling alcohol.<sup>22</sup> This was the first time that sharia law was used on a non-Muslim.

#### *International Law*

18. The right to freedom of thought, conscience, and religion is affirmed in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Also, the Human Rights Committee confirmed in its General Comment No.22:

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<sup>14</sup> Florence Taylor, Indonesia: Christians 'living in fear' as Islamists force church closure, Christian Church, 13 April 2016, available at: <http://www.christiantoday.com/article/indonesia.christians.living.in.fear.as.islamists.force.church.closure/83915.htm>.

<sup>15</sup> *Ibid.*

<sup>16</sup> "Article 86: Every person who uses tricks or lies to persuade, or encourages, a child to convert to another religion against his free will even though the perpetrator knows or should know that the child in question is not sufficiently intellectually developed or responsible enough to make such a choice, shall be subject to a term of imprisonment of not more than five (5) years and/or a maximum fine of one hundred million rupiah (Rp 1 00,000,000)."

<sup>17</sup> Paul Marshall, Lela Gilbert, Nina Shea, *Persecuted: The Global Assault on Christians*, (Thomas Nelson, Nashville 2013) 243.

<sup>18</sup> (fn 5)

<sup>19</sup> Antonio Zambardino, New Islamic law in Indonesia, Aljazeera, 3 December 2014, available at: <http://www.aljazeera.com/indepth/inpictures/2014/11/pictures-new-islamic-law-indon-2014112811847248153.html>.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Rishi Iyengar, A Non-Muslim Has Been Punished Under Sharia Law in Indonesia for the First Time, Time, 13 April 2013, available at: [http://time.com/4291832/indonesia-aceh-christian-muslim-sharia-lawalcohol/?utm\\_content=buffer9a67f&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://time.com/4291832/indonesia-aceh-christian-muslim-sharia-lawalcohol/?utm_content=buffer9a67f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.<sup>23</sup>

19. Despite the fact that the Constitution, in line with international law, guarantees the right to thought, conscience, and religion, some of the government's practices limit that freedom and prevent people from professing and practising their faith freely, as guaranteed under international law. This further violates Articles 2 and 26 of the ICCPR, namely, the guarantee of equal rights and freedom from discrimination on the basis of religion, and Article 27, guaranteeing the rights of religious minorities to profess and practise their faith.
20. 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 protect Christians and other religious minorities from discrimination and persecution. Indonesia must ensure that all such incidents are duly investigated and prosecuted. Indonesia must take steps to combat terrorism.

#### **(b) Freedom of Expression and Freedom of Speech**

21. Freedom of expression and freedom of speech are not fully guaranteed in the Constitution. Article 28 of the Constitution states, 'The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.'
22. Religious speeches are allowed so long as they are directed to individuals belonging to the same religious group.<sup>24</sup> The 1965 Blasphemy Law and the Law Number 1/PNPS/1965 on the Prevention of 'Religious Abuse and/or Defamation' impose various limitations on religious freedom. Under the laws, one can be sentenced up to five years for peacefully exercising his or her right to freedom of thought, conscience, and religion (and freedom of expression). The provisions are very restrictive and incompatible with Indonesia's international law obligations.
23. In 2012, Sebastian Joe was sentenced to five years for a Facebook post which was considered to be insulting to Islam.<sup>25</sup> In June 2012, Alexander An was sentenced to two and a half years and a fine of over \$11,000 for Facebook posts and photographs that were perceived to be insulting to Islam.<sup>26</sup> In 2013, Rusciani, a Christian woman, was imprisoned in Bali for allegedly calling Hindus 'dirty and disgusting.' She was sentenced to 14 months' imprisonment.<sup>27</sup> The same year, Rudi Chairuddin was imprisoned for allegedly claiming to receive a revelation from God and for teaching contrary to Islam. He was sentenced to four years' imprisonment.<sup>28</sup> In 2014, Abraham Sujoko was sentenced to two years' imprisonment for allegedly insulting Islam in a YouTube video saying that the Ka'bah was stone idols.<sup>29</sup>

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<sup>23</sup> UN General Comment No. 22, CCPR/GC/C/22, 1.

<sup>24</sup> Ibid.

<sup>25</sup> Amnesty International, Prosecuting Beliefs. Indonesia's Blasphemy Law, 2014, 39, available at: <https://www.amnesty.nl/nieuwsportaal/rapport/prosecuting-beliefs-indonesias-blasphemy-laws>.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid. 40.

<sup>29</sup> Ibid. 40.

## *Freedom of Opinion and Expression in International Law*

24. Article 19 of the Universal Declaration of Human Rights guarantees, 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' This right is further confirmed in Article 19 of the ICCPR. Article 20 of the ICCPR limits freedom of speech prohibiting propaganda to war, and 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.' However, as indicated by former UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir, 'expressions should only be prohibited under Article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group.'<sup>30</sup> Also, as confirmed in General Comment No. 34, the right to freedom of expression 'should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20.'<sup>31</sup>
25. The Indonesia blasphemy law excessively limits the internationally recognised right to freedom of opinion and expression in breach of its international obligations.

### **(c) Recommendations**

26. In view of the above, ADF International recommends the following:

- Take steps to recognize and follow international obligations to protect the right to freedom of thought, conscience, and religion;
- Ensure that protections of the right to freedom of thought, conscience, and religion meet international law standards in Article 18 of the ICCPR;
- Take steps to protect religious minorities from persecution and discrimination;
- Take steps to combat terrorism;
- Take steps to repeal the law allowing punishment of non-Muslims under sharia law;
- Take steps to recognize and follow international obligations to protect the right to freedom of opinion and expression;
- Take steps to accommodate interreligious dialogue.

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<sup>30</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, 20 September 2006, 47.

<sup>31</sup> UN General Comment No. 34, 12 September 2011, CCPR/C/GC/34, 49.



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