

Indonesia

*Herlambang P Wiratraman**

Part 1: Overview of Indonesia

A. Country Background

Indonesia Facts	
Geographical size	1,919,440 sq km
Population	237.64 million ¹
Ethnic breakdown ²	Main ethnic groups: Javanese (40.2%) Sudanese (15.5%) Malay (2.3%) Batak (3.6%) Madurese (3%)
Official language	Indonesian (Bahasa Indonesian)
Literacy rate (aged 15 and above)	90.4% ³
Life expectancy	68.9 ⁴
GDP	US\$2,312.4 billion (per capita est US\$9,254) ⁵
Government	A republic with a unitary system of government
Political and social situation	By decentralising political authority, Indonesia's post Suharto regime is more democratic with direct elections choosing the President and Vice-President, as well as local governments. Governmental power is also limited by a newly established Constitutional Court.

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1 Taken from the 2010 Census, available at http://www.bps.go.id/website/pdf_publicasi/watermark%20Kewarganegaraan,%20Suku%20Bangsa,%20Agama%20dan%20Bahasa_281211.pdf, accessed on 15 October 2016.

2 Taken from the 2010 Census, available at http://www.bps.go.id/website/pdf_publicasi/watermark%20Kewarganegaraan,%20Suku%20Bangsa,%20Agama%20dan%20Bahasa_281211.pdf, accessed on 15 October 2016.

3 United Nations Development Program (UNDP), 'Human Development Report 2007/2008' 2007, available at http://hdr.undp.org/sites/default/files/reports/268/hdr_20072008_en_complete.pdf. This means 9.6% of the population were illiterate in 2007.

4 UNDP, 'Human Development Report 2015' available at http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf, accessed on 15 October 2016.

5 UNDP, 'Human Development Report 2015' available at http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf, accessed on 15 October 2016.

The Republic of Indonesia is the world's fifteenth largest country in terms of land mass, and the seventh largest country in terms of combined sea and land area. According to the 2010 national census, the population was 237.64 million, and it is estimated to reach 255.4 million in 2015. Of this number, 58% live on Java, the world's most populous island.

Indonesian or Bahasa Indonesia is the official language and is a standardized register of Malay, an Austronesian language that has been used as a lingua franca in the Indonesian archipelago for centuries. Interestingly, most Indonesians also speak one of more than 700 indigenous languages.

From 2005, GDP in Indonesia averaged about 1.46% but contracted 2.06% in the last quarter of 2014 which amounts to 1.43% of the world economy. GDP in Indonesia averaged US\$214.72 billion from 1967 until 2014.

System of governance

Indonesia is a republic with a unitary system of government led by a president who appoints all members of the cabinet and/or ministers. Following President Suharto's fall in 1998, the executive, judicial, and legislative branches were revamped by four amendments to the 1945 Constitution which expanded it from 37 articles to 73.⁶ As a result, the People's Consultative Assembly (MPR) is now the highest national representative body and comprises two houses: the People's Representative Council (DPR) and the Regional Representative Council (DPD). Moreover, under the third amendment, parliament may even impeach a president through a process stipulated in Art 7A:

The President and/or the Vice-President may be dismissed from his/her position during his/her term of office by the MPR on the proposal of [the DPR], both if it is proven that he/she has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

Further, according to Art 7C of the Constitution, the President may not freeze and/or dissolve the DPR.

The Republic of Indonesia is divided into 34 provinces (provinsi) which are in turn divided into regencies (kabupaten) and municipalities or cities (kota), each of which are governed by separate regional authorities. The State recognises and respects each of

⁶ Harijanti, SD, Lindsey, T, 'Indonesia: general elections test the amended Constitution and the new Constitutional Court' *International Journal of Constitutional Law*, 2006, Vol 4(1), pp 138-150.

these units which are considered special and distinct. However, it must also be noted that the State recognises and respects traditional communities and their customary rights too in so far as they are “still alive” and in accordance with the societal development and principles of the Unitary State of the Republic of Indonesia.⁷

Political and social situation

Following the demise of President Suharto’s authoritarian regime in 1998, Indonesians are now able to directly elect their President and Vice-President (as a pair). Moreover, members of administrative subdivisions in provinces (Provincial House of Representatives or DPRD I), and regencies and municipalities (Regional House of Representatives or DPRD II), are also elected by general elections.

Significantly, the present parliament attempted to alter the process by trying to hold representative elections for each authority of the provinces, regencies and municipalities but after widespread protests and petitions, the House of Representatives ratified into law an emergency government regulation restoring direct regional elections. The 2015 election will herald the introduction of a new system, especially those involving regional and local elections. As such, the Election Committee (KPU) must prepare for some 200 local elections, set to be held simultaneously this year, as nine of the ten factions at the House of Representatives now demand changes as outlined in the newly passed law.

Indonesia holds regular elections every five years; the last presidential election in 2014 saw a contest between Jokowi and Prabowo but was criticised by many human rights groups for the interference of military generals who supported both candidates. The most important issue that emerged related to impunity as Prabowo had long been suspected of playing a key role in the kidnapping of activists in 1997-1998.

Indonesia is a strongly patriarchal society, and although human rights violations are considered part of an important issue, they are frequently bartered as political commodities prior to and during presidential elections. At the local level, political and business elites are often seen as part and parcel of a predatory network, particularly in the excessive exploitation of natural resources. In fact, business elites are often accused of not only using officials to protect their vested interests, but also influencing judicial systems by, e.g. hiring gangsters.

Following an era of limited freedom under Suharto (during which censorship was rife, publications were banned, and news portals were subject to strict licensing regimes), in general, the quality of professional journalism in Indonesia is extremely poor. In particular, the role of the media, either traditional print/broadcast media or electronic, has been significant only in the shaping of political partisanship with individuals using available portals more to push political propaganda than to encourage reasoned debate.

⁷ Second amendment of the 1945 Constitution, Art 18B(2).

B. International Human Rights Commitments and Obligations

Table 1: Ratification Status of International Instruments – Indonesia⁸

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment	23 Oct 1985	28 Oct 1998
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights		23 Feb 2006 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance	27 Sep 2010	
Convention on the Elimination of All Forms of Discrimination against Women	29 Jul 1980	13 Sep 1984
International Convention on the Elimination of All Forms of Racial Discrimination		25 Jun 1999 (a)
International Covenant on Economic, Social and Cultural Rights		23 Feb 2006 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	22 Sep 2004	31 May 2012
Convention on the Rights of the Child	26 Jan 1990	5 Sep 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	24 Sep 2001	24 Sep 2012
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	24 Sep 2001	24 Sep 2012
Convention on the Rights of Persons with Disabilities	30 Mar 2007	30 Nov 2011

⁸ United Nations Human Rights, Office of the High Commissioner, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 1 November 2016.

In addition to the international instruments listed above, several national laws were also introduced to either protect human rights or to enforce international obligations (although these do not necessarily specifically deal with human rights, e.g. the Constitution):

1945 Constitution, Arts 28A-J: essentially follows the Universal Declaration of Human Rights with a particular focus on individual rights, covering fundamental human rights from the right to live (Art 28A) to equality before the law (Art 28D), to an obligation to respect the rights of others (Art 28J(1))⁹

System of Social Security Act, Law No 40/2004 and Social Security Agency Act, Law No 24/2011: contains social security provisions and specific labour rights. Protects health care and workers.

Human Rights Act, Law No 39/1999: contains a long list of internationally recognized breaches of human rights including ‘crimes of omission.’ Human rights courts were also set up to by-pass inadequacies in the Penal Code and overcome delays and poor performance in ordinary courts.¹⁰

Part 2: Outstanding Human Rights Issues

A. National Laws Threatening Human Rights

Electronic Information and Transactions Act (2008)

Several recently enacted laws in Indonesia threaten human rights. An especially serious one relates to freedom of expression. Since the Electronic Information and Transactions Act (EITA) was passed in 2008, 73 cases (most involving cyber defamation) have been filed under its auspices. According to the Institute for Policy Research and Advocacy (ELSAM), criminalization of freedom of expression through EITA, on the one hand, indicates the sophistication of modern technology and the high number of internet users in the country, whilst clearly pointing to an accompanying low public awareness around freedom of expression and rights to privacy.

EITA’s most controversial provisions include Arts 27 and 28 which allow criminal defamation suits to be brought against the public, including journalists. Article 27(3) determines that, “Any person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Records with contents of insult and/or defamation” will be subject to criminal

9 Chapter XA, as introduced by the Second Amendment of 18 August 2000.

10 Eldridge, P, ‘Human rights in post-Suharto Indonesia’ *Brown Journal of World Affairs*, 2002, Vol 9(1), p 127 at 133.

punishment that could, as laid out in Art 45(1), include imprisonment not exceeding six years and/or a fine not exceeding Rp 1,000,000,000.

Likewise, in 2008, the Prita Mulyasari case made clear that the EITA threatened ordinary citizens merely expressing opinions on the internet.¹¹ According to Press Council member, Agus Sudibyo, “the EIT Law is strange. Other countries really wish to regulate cyber-crime, but in Indonesia, the purpose of this law is merely restricting the freedom to information and criminalising citizens.”¹² Thus, it appears clear that online media will have the most to fear from the EITA.

As regards press freedom, 2008 also witnessed the promulgation of other laws introducing new criminal sanctions against the press: the General Election Law (10/2008), the Presidential Election Law (42/2008) and the Pornography Law (44/2008). For example, Art 99(1) of the General Election Law lists the following sanctions for press not providing fair and equal pages and time to all election contestants covering election campaign news: (a) a written warning; (b) temporary suspension of a problematic programme; (c) reducing time and duration of election campaign news, broadcasting, and advertisements; (d) fines; (e) termination of activities regarding election campaign news, broadcasting, and advertisement for a certain period; (f) revoking the broadcasting license or publication permit.

Penal Code

Similarly, the colonial era’s Penal Code has also been applied to the press. The culmination of all these measures effectively results in a muzzled press, either voluntarily or by sanction, which constrains press oversight, directly undermining the vitality of democratic governance. Criminalising the press obviously impacts negatively on press freedom. It could be argued that even if the outcome is favourable, a criminal trial in and of itself is detrimental to journalism. For example, in the Tempo case,¹³ public prosecutor, Bastian Hutabarat, used Art XIV(2) of Law 1/1946 juncto Art 55 (1)-(1) (e) of the Penal Code to indict Tempo’s chief editor, Bambang Harymurti for ‘libel’ and intentionally creating “a chaotic situation in society” for publishing an article questioning Tomy Winata’s involvement in a market fire in the Jarkarta district of Tanah Abang. Originally sentenced to nine years in prison on 16 September 2004, the Central Jakarta District Court re-sentenced the editor to one year, a verdict that was also confirmed by the Jakarta High Court on 14 April 2005. However, the Supreme

11 Wiratraman, HP, ‘New media and human rights: the legal battle of freedom of expression in Indonesia’ paper presented at 11th Annual Student Human Rights Law Conference, Nottingham, 20-21 March 2010. Prita Mulyasari was a 32 year old mother who was imprisoned on criminal charges for writing a private email criticizing medical treatment she had received at a hospital. When the email went viral, she was jailed after losing a civil defamation suit taken by the hospital in 2009.

12 ‘Kebebasan berpendapat janganlah direduksi’ (‘Never reduce freedom of opinion’), Kompas, 4 June 2009.

13 ‘Court orders Tempo to pay Rp500 million to Tommy Wina’ LKBN Antara, 18 March 2004.

Court later overturned the decision on 9 February 2006 on the basis that the Press Law should take precedence over the Penal Code.

An important milestone in favour of press freedom occurred in 2007 when the Constitutional Court decided that *haatzaai artikelen* (hatred sowing articles), i.e. Arts 154 and 155 of the Penal Code which criminalized “public expression of feelings of hostility, hatred or contempt toward the government” and prohibited “the expression of such feelings or views through the public media,” were contradictory to the constitution and, hence, no longer legally binding.¹⁴ Thus, more than 90 years after the enactment of the Penal Code (or *Wetboek van Strafrecht voor Nederlandsch-Indië*) in 1914, this decision abolished a symbolic marker of suppression against freedom of expression and press freedom in Indonesia.

Pornography Law (2008)

Another law/legislative amendment that curbs online freedom of speech can be found in the 2008 Law on Pornography. Article 1.1 defines pornography as:

any pictures, drawings, illustrations, photographs, writings, voices, sounds, moving pictures, animation, cartoons, conversation, bodily movements, or any other form of message through the media of communication and/or demonstrations in public, which depict lewdness or sexual exploitation which violates the moral norms of society.

Not only is this definition highly moralistic, it also sets no clear standard or method for evaluating ‘lewdness.’ Furthermore, it is difficult to establish “the moral norms of society” in such a normatively pluralistic country as Indonesia. For example, depicting some traditional common daily activities such as a painting of someone wearing a *kebaya* (a lace top with a low neckline) in Bali could very well be categorised as pornography on the basis of this law. Such unclear standards lend themselves to arbitrary interpretation by State or non-State actors and can easily be used pressure particular social groups.¹⁵ Moreover, the sanctions of the law are extremely serious and can include no less than six months up to twelve years imprisonment and/or a fine of at least Rp 250,000,000 to a maximum of Rp 6,000,000,000.¹⁶

14 Number 6/PUU-V/2007 (Panji), 17 July 2007.

15 Wiratraman, HP, ‘In search of constitutionality, freedom of expression, and Indonesia’s anti-pornography law’ *Jurnal Ilmu Hukum YURIDIKA*, Fakultas Hukum Universitas Airlangga, 2012, Vol 27(2) Mei-Agustus, pp 111-120.

16 Article 29 reads: “Anyone who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, leases, and provides pornography as stipulated in Article 4, Section 1 shall be punished with imprisonment of no less than 6 months and not exceeding twelve years and/or a fine of at least Rp 250,000,000 (two hundred and fifty million rupiahs) and a maximum of Rp 6,000,000,000 (six billion rupiahs).”

The danger is evident from the conviction of Erwin Arnada (chief editor of Playboy Indonesia) who was convicted for crimes against decency on the basis of Penal Code, Art 282(3).¹⁷ In 2007, despite the Press Council explicitly stating that Playboy Indonesia was not a pornographic magazine according to the Press Law, Arnada was sentenced to two years in prison. Although eventually cleared on appeal in 2010, it can be seen that the far greater leeway offered by the Pornography Law may be deemed dangerous indeed.

B. Recent Court Cases Relating to Human Rights

Since the EITA of 2008 was passed, at least 20 court decisions having permanent legal force (*inkracht*) relating to internet users (under Art 27(3)) have occurred. In 2014, an average of four cases was reported every month, meaning 53% of all cases occurred in 2014 alone. As many as 92% of complaints were reported under defamation articles (either Art 27(3) of the EITA, or Arts 210-311 of the Penal Code). Of these cases, comments made on Facebook were the most targeted; however, messages on SMS and BBM have also been singled out under EITA.

Interestingly, some legal developments (referring to group freedom of expression) have also occurred on the basis of court rulings. Three elements are of particular note.¹⁸

First, the legal reasoning emphasizes that Art 27(3) of the EITA only covers absolute complaint offences meaning that any offence based on it can only be reported or filed by the so-called “direct victims” of the offence in question.¹⁹ As such, the panel of judges declared Mr Ali to be not guilty of any criminal offence because a statement without a direct mention of a name lacks a crucial element of defamation.

The second element relates to legal disputes involving the validation of digital evidence. Article 6 of the EITA stipulates that digital evidence can be considered a legitimate form of evidence, provided it is both accessible and displayable, is of valid integrity (or possesses ‘wholeness,’ i.e. it is undamaged or has not been tampered or modified in any way), and can be accounted for in its entirety.²⁰ As such, the Institute for Criminal Justice Reform (ICJR) noted two cases where the judges displayed a proper thoroughness when examining digital evidence to ensure its validation.

17 ‘The chief editor of Playboy requests review and suspension of his sentence’ *Primair Online*, 6 September 2010; ‘Mantan pemimpin redaksi Playboy dibebaskan’ (‘Former chief editor of Playboy freed’) *Tempo.co.id*, 24 June 2011; ‘Indonesia: court acquits Playboy editor, Erwin Arnada’ *BBC*, 23 June 2011.

18 ‘ITE online defamation law under review’ *Hukum Online*, available at <http://en.hukumonline.com/pages/lt56c1c40791c99/ite-online-defamation-law-under-review>, accessed on 16 February 2016.

19 See Bantul District Court Ruling No 196/Pid.Sus/2014/PN BTL and Raba Bima District Court Ruling No 292/Pid B/2014/PN Rbi Khairudin M Ali.

20 See South Jakarta District Court Ruling No 1832/Pid B/2012/PN Jkt Sel and Makasar District Court Ruling No 390/Pid B/2014/PN Mks.

The third legal element concerns the notion of legal justification (*alasan pembenar*) as stipulated under Art 27(3) through the use of the term “intentional and unlawful (*tanpa hak*).” This issue was raised in Prita Mulyasari's case when she was accused of defaming a hospital and its staff, but because she actually brought the complaint in the public interest, the Supreme Court judges declared that her email did not constitute defamation. Thus, in some cases, the law will allow individuals to lawfully distribute, transmit, and make accessible electronic information, even though the nature of its contents may otherwise be deemed defamatory.

These court rulings are important for defending freedom of expression, since more than 120 victims have been accused of breaching Art 27(3) EITA since its enactment in 2008.

C. Other Human Rights Issues

Religious freedom

In 2015, Indonesians were shocked by two incidents: (1) in Tolikara, Papua, when Muslims who were holding an Idul Fitri prayer service in a local mosque were disrupted by a violent Christian mob affiliated with the Evangelical Church of Indonesia (GIDI); and (2) in Aceh Singkil, when a mob calling itself the Aceh Singkil Islamic Youth Movement, allegedly burned down the HKI Indonesian Christian Church which had allegedly been built without the proper permits. Together, these two incidents have raised serious questions about Indonesia's religious freedom.

As regards the second incident, following a protest on 6 October 2015 in Aceh Singkil, the local administration was called upon to tear down the building. “The burning of the church that has claimed a life should not happen in a country where religious freedom is protected by the law,” Indonesian Communion of Churches (PGI) chairwoman, Henriette Lebang said in the aftermath. She went on to explain that because obtaining building permits for houses of worship was such a complicated issue, some churches were built without them. Of all issues, this seemed to be the most conflict-inducing, leading, in this case, to the shooting death of one of the attackers and other injuries. Indeed, the conflict remains a real one as some 2,500 people fled to North Sumatra as a result of the violence.²¹

21 ‘2500 flee to North Sumatra after church burning in Aceh Singkil’ The Jakarta Post, 14 October 2015, available at <http://www.thejakartapost.com/news/2015/10/14/2500-flee-north-sumatra-after-church-burning-aceh-singkil.html>, accessed on 16 October 2016.

Table 2: Disturbance and Problems at Houses of Worship in Indonesia

Year	Disturbances at Houses of Worship	Number of Violations Related to the Establishment of Houses of Worship
2014	26	10
2013	63	8
2012	47	9
2011	58	12
2010	28	16
2009	28	12
2008	35	1
2007	22	0
Total	307	68

To date, the police are still questioning some 45 people. However, it has had the effect of bringing some religious community groups together in a peace process. For example, the PGI and Nahdlatul Ulama (NU), the country's largest Muslim organization, both said they regretted the incident and lamented the government's inability to anticipate the incident. Indeed, NU chairman, Said Aqil Siradj, said burning down houses of worship was unacceptable, no matter the reason.

The first incident in Tolikara was even more shocking to most Indonesians, since Muslims (the majority faith in Indonesia) were the victims, even though they are a minority in Papua. Unsurprisingly, in predominantly Muslim regions, Christians and other religious minorities are usually the target of such attacks. In this case, members of the Christian GIDI allegedly protesting the use of loudspeakers at the mosque, attacked Muslims celebrating Idul Fitri, leading to the burning of several buildings and a death by shooting.

According to Al Khanif, a researcher in the post-reformasi era, repression of minorities is increasing in Indonesia despite significant development regarding religious freedom in the Constitution, indicating that social norms and cultures have yet to include respect of minorities. Whatever the reason, we must realize that similar incidents have already occurred and will potentially occur in other regions. Until recently, the segregation of intra and inter-religious public spheres in Indonesia often caused social and religious disharmony, usually resulting in the alienation of religious minorities. In conclusion, he observed that minority groups are threatened not only by the State, but also by the social majority that renders minorities vulnerable to significant injustice at the hands of the majority.²²

²² Khanif, A, 'Tolikara: majority-minority ties and its discontent' The Jakarta Post, 25 July 2015.

During President Yudhoyono's administration, Indonesia was repeatedly called "a moderate Muslim democracy." Indeed, on 31 May 2013, Yudhoyono said his government "would not tolerate any act of senseless violence committed by any group in the name of religion." Similarly, on 16 August, he claimed to be "very concerned" about rising religious intolerance and related violence. However, such words seem mere rhetoric while his administration maintains dozens of regulations, including ministerial decrees on building houses of worship and a decree against religious practice by the Ahmadiyah community, which blatantly discriminates against religious minorities and fosters intolerance.²³

As can be seen, many attacks on religious minorities in Indonesia have been orchestrated by many different perpetrators from Sunni militants to the State, while the targets mostly comprise of Christians, Ahmadiyah, Shia, and Sufis. In 2012, the SETARA Institute noted 264 violations against freedom of religion/belief with 371 forms of action, spreading across 28 provinces.²⁴ These events and violations befell four main groups: Christians (50 events), minority religious cults (42 events), Syiah (34 events) and Ahmadiyah (31 events). About 42 individuals also suffered violations of freedom of religion/belief. Furthermore, the institute also noted that 37 houses of worship had been damaged by various attacks: Christian (25), Ahmadiyah (5), Islamic Cult (3), Buddhist (2), Syiah (1), and Konghucu (1).

In 2013, the SETARA Institute issued another report entitled 'Stagnation on Freedom of Religion: The Report of Conditions of Freedom of Religion/Belief in 2013.' This recorded about 222 violations of freedom of religion/belief with 292 forms of action spread across 20 provinces – demonstrating a worrying degree of discrimination and intolerance. Although the increase of events and actions is small compared to previous years, more monitoring may help researchers understand the depths of deeply rooted intolerance in society.

Finally, the 2014 SETARA Institute report noted 134 violation events on freedom of religion/belief with 177 forms of actions spreading into 26 provinces.²⁵

Papua/West Papua

The most outrageous structural violence in the country is confined to Papua which has had to deal with daily occurrences of violence. So much so, the situation has been deemed a "slow motion genocide."²⁶

23 Kine, P, 'Peeling off Indonesia's veneer of tolerance' Human Rights Watch, available at <https://www.hrw.org/news/2013/10/04/peeling-indonesias-veneer-tolerance>, accessed on 16 October 2016.

24 Halili, Naipospos, Bonar Tigor, *From Stagnation to Pick the New Hopes: The Condition of Freedom of Religion/Belief in Indonesia*, SETARA Institute, 2015, Publikasi Masyarakat Setara: Jakarta.

25 Halili, Naipospos, Bonar Tigor, *From Stagnation to Pick the New Hopes: The Condition of Freedom of Religion/Belief in Indonesia*, SETARA Institute, 2015, Publikasi Masyarakat Setara: Jakarta.

26 Elmslie, J, Webb-Gannon, C, 'A slow motion genocide: Indonesian rule in West Papua' *Griffith Journal of Law and Human Dignity*, 2013, Vol 1(2), p 142.

Many continue to report ongoing State brutality in Papua. In addition to a recent spate of killings, a group of young protesters was beaten by police, then had their wounds stitched in hospital without anaesthetic. Similarly, attacks on the West Papua National Committee (KNPB) offices outside Dekai led to the arrest of 66 political prisoners who now languish in Indonesian jails, including Filep Karma who is serving 15 years for simply raising a flag. Another local activist, Areki Wanimbo, was jailed for conspiracy to commit treason merely for talking to French journalists.

In 2013, tensions heightened even further when on February 21, Indonesian military forces were attacked by suspected Free Papua Movement rebels, killing eight soldiers. As a result, many Papuans were imprisoned for peacefully advocating for independence. Despite this, Indonesia denies holding any political prisoners.

Such events led the International Coalition for Papua (ICP) to release an urgent call to action to counteract the violence. On 20 May 2015, four political activists from the West Papua National Committee (Nopinus Humawak or KNPB, also known as Narko Murib) including Alex Nekenem, Maikel Asso and Yoram Magai, were arrested with around 70 others at a peaceful rally in Manokwari, West Papua province. The protest was in support of a pro-independence umbrella group, the United Liberation Movement for West Papua (ULMWP). According to witnesses, dozens of protesters were beaten by police with rifle butts during the rally. While the majority were subsequently released, the four men charged with ‘incitement’ under Art 160 of Indonesia’s Penal Code could face up to six years imprisonment.²⁷

Notwithstanding the above, President Jokowi has promoted the need for press freedom in West Papua/Papua – indeed, during an interview with Victor Mambor, he reiterated his policy of allowing foreign journalists unfettered access to the region. Further, when giving a press conference to a number of print and electronic media journalists in Kampung Wapeko, Kurik District, Merauke, he even stated, “Starting today, Sunday May 10, 2015, the Central Government has opened the widest access to foreign journalists to enter the territory of Papua to conduct their journalistic duties.”²⁸

However, despite the President’s pronouncements, in practice, this policy is restricted by the constant presence of the Indonesian military. According to Armed Forces chief, General Moeldoko, soldiers should accompany foreign journalists covering Papua to

27 ‘Al urgent action: Papuan activists detained and charged’ Human Rights and Peace for Papua, 24 June 2015, available at <http://www.humanrightspapua.org/news/136-ai-urgent-action-papuan-activists-detained-and-charged>, accessed on 10 September 2015.

28 ‘We must have mutual trust as foreign journalists enter Papua, President says’ West Papua Daily, 12 May 2015, available at <http://tabloidjubi.com/eng/we-must-have-mutual-trust-as-foreign-journalists-enter-papua-president-says/>, accessed on 25 August 2015.

protect them from harm. As he told reporters on 23 June, “I consider that the foreign journalists might need guards.”²⁹

The above shows that, compared to other regions in Indonesia, press freedom in Papua is extremely restricted.³⁰ In latest developments, authorities have also begun to restrict the freedom of local journalists. For example, Abeth You, a reporter for the *TabloidJubi.com* website, was bundled into a truck, had his camera seized, and his photos deleted at gunpoint by police on 8 October 2015 while covering a demonstration in Jayapura, West Papua’s biggest city. Organized by Solidarity for Victims of Human Rights Violations in Papua, the attack was obviously designed to silence press coverage of this protest and others like it.

In conclusion, the violence in Papua and West Papua is still at perilous levels and continues from day to day. Increasing numbers of violent attacks show that Papuans are still discriminated against and continue to be controlled by suppressive State apparatuses.

Freedom of expression

On 2 July 2013, Indonesia’s parliament enacted the Law on Mass Organizations (17/2013) that placed a variety of vague obligations and prohibitions on NGO activities, severely limiting their foreign funding,³¹ and forbidding NGOs from espousing “prohibited ideolog[ies] or philosoph[ies]”³² such as atheism, communism, and Marxist-Leninism which are deemed contrary to Pancasila or the five pillars of Indonesian state philosophy. As such, this law infringed on NGOs’ freedom of association, expression, and religion.

Freedom of the press

As regards freedom of the press, it can be said that the situation has not improved. Although the Press Law (40/1999) expanded press freedom and safeguarded freedom of expression by prohibiting censorship and the banning of newspapers and licensing, the facts show otherwise. For example according to the Alliance of Independent Journalists (AJI), 51 journalists were subjected to violence in 2012, dropping slightly to 40 in 2013, and remaining constant at 40 in 2014.³³ The majority of cases were not followed up by the police and most of the perpetrators remain unknown.

On 2 March 2013, Normila Sari Wahyuni of Paser TV was attacked while covering a land dispute in Rantau Panjang village in East Kalimantan. The assailants repeatedly

29 “TNI chief considers enlisting soldiers to guard foreign journalists in Papua” *West Papua Daily*, 23 June 2015, available at <http://tabloidjubi.com/eng/tni-chief-considers-enlisting-soldiers-to-guard-to-foreign-journalists-in-papua/>, accessed on 26 August 2015.

30 Wiratraman, HP, *Press Freedom, Law and Politics: A Socio-Legal Study*, 2014, EM Meijers Institute, Woehrmann: Zutphen.

31 Law on Mass Organizations, Art 59, Sec 3(a).

32 Law on Mass Organizations, Art 59, Secs 3 and 4.

33 Manan, A, *Di Bawah Bayang-Byang Krisis: Laporan Tahunan AJI 2015*, 2015, Aliansi Jurnalis Independen: Jakarta.

kicked her stomach, prompting a miscarriage. On 27 March 2013, supporters of Gorontalo mayor, Adnan Dhambea, burned down the office of the local TV station, TVRI Gorontalo, following his defeat in local elections. Two TVRI journalists were also assaulted during the arson attack. Other cases included threats, anonymous phone calls, harassment, beatings, expulsion, the banning of coverage, destruction of offices and the seizure of cameras.

In a press release, the Chairman of AJI, Suwarjono, revealed that the most prominent case took place in Makassar, South Sulawesi, on 13 November 2014, and concerned coverage of increasing fuel price demonstrations at the State University of Makassar. A number of journalists reported on police attacks against the student demonstrators which led to ten reporters being injured as the police tried to prevent them covering the attack by confiscating their equipment. Although four journalists made police reports, so far no one has been brought to justice.³⁴

In a shock move, on 16 October 2015, the police imposed a banning order on *Lentera*, a student magazine in Salatiga, Central Java. The magazine's editor, Bima Satria Putra, stated that the police asked it be withdrawn from circulation after the magazine published a 50th anniversary report on the massacre of alleged members of the defunct Indonesian Communist Party (PKI) in 1965. After the edition circulated, negative responses from the mayor, police and army led to a police interrogation of the student press leaders on 18 October 2015, following which they were asked to halt distribution and burn all remaining copies.³⁵ It can therefore be seen that despite the Press Law, press censorship and banning is still a common occurrence in Indonesia.

Another important issue relates to the system of impunity in the current government. In one such case, the AJI urged the government to seriously investigate the 1996 death of journalist, Fuad Muhammad Syafruddin (popularly known as 'Udin') after he reported on the alleged corruption of the Regent of Bantul. Although the police deny they are ignoring the case, little progress has been made since the trial of a suspect many believe to be a scapegoat. Eko Maryadi, a chairperson of AJI, said he hoped resolution of the Udin case would help solve seven other cases of murder and violence towards journalists in 2013, but he also worried that if Udin's case were ignored until expiration (August 2014), then the other cases would also be forgotten.³⁶

34 Galhotra, S, 'Mission journal: window of opportunity to advance press freedom in Indonesia' Committee to Protect Journalists, available at <https://www.cpj.org/blog/2014/12/mission-journal-window-of-opportunity-to-advance-p.php>, accessed on 17 October 2016.

35 'Beritakan kasus 1965, majalah *Lentera* ditarik lalu dibakar' *Tempo*, 18 October 2015, available at <http://nasional.tempo.co/read/news/2015/10/18/063710644/beritakan-kasus-1965-majalah-lentera-ditarik-lalu-dibakar>, accessed on 17 October 2016.

36 'Time running out in seeking justice for slain journalist' Southeast Asian Press Alliance, 21 November 2012, available at <https://www.seapa.org/time-running-out-in-seeking-justice-for-slain-journalist-in-indonesia/>, accessed on 17 October 2015.

In conclusion, a scheduled visit by Frank La Rue (the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) in January 2013 might have helped the situation as a visit by a Special Rapporteur is an important means by which to ensure compliance with a country's international obligations, but due to the Indonesian government's unilateral decision to restrict his activities by preventing him from visiting Papua, the visit was postponed. To date, the visit has not been rescheduled.

Part 3: Conclusion

Although President Jokowi's administration seems determined to adopt human rights into the nation's legal system, in practice, little has changed from previous governments. In reality, the government has taken no serious action to promote democratization or prevent violations of freedom of expression. In particular, many are still charged by the notorious cyber defamation articles under EITA. The impact of such attacks on freedom of expression has led to an uncertain situation where individuals may feel reluctant to express dissatisfaction or criticize policies.

In the early days of his government, many were hopeful that Jokowi's presidency would support press freedom. However, problems relating to media ownership and political alliances continue to moderate the news room. At the local level, issues of impunity abound – although often the victim of assaults, journalists rarely see their attackers prosecuted or even brought before the justice system.

As regards Papua, both freedom of expression and the press are easily ignored. Although fundamental to Papuan protest movements where institutional violence is a daily occurrence, the many instances targeted at its people are rarely broadcasted through the national or international media.

Other rights also under serious threat include freedom of religion of which only a weak guarantee exists. In addition, many minority communities have been marginalized, violated or stigmatized in recent years by hardline groups, often accommodated by the State which, by neglecting to prevent or prosecute such activities is by omission, violating the rights of these minorities.

In conclusion, it could be argued that politically and even legally, President Jokowi's regime is falling short of its duty to protect its citizens. Moreover, it appears the government prefers to compromise and cooperate with capital owners and/or business groups rather than meet the needs of the vulnerable. As a result, it can therefore be seen that human rights can be shaped by the configuration of a country's political economy; unsurprisingly, in this context, such rights will more often than not take a back seat.