

COUNTRIES AT THE CROSSROADS

Countries at the Crossroads 2012: Indonesia

Introduction

With more than 237 million inhabitants, Indonesia is the world's third-largest democracy after India and the United States. The implosion of the so-called New Order dictatorship in 1998 triggered a broad range of institutional reforms, such as the introduction of elections and various constitutional changes. This improvement of formal institutions has made further progress since 2009. In reality, however, a lack of political will means that enforcement of reform laws is weak and the quality of democracy remains low. In addition, there is no comprehensive agenda for how to address Indonesia's many political and socioeconomic challenges. Instead, most political elites rely on vote-buying and other forms of political corruption to garner political support and influence. The image in both domestic and foreign media of President Susilo Bambang Yudhoyono as an honest broker and committed reformer is highly exaggerated.^[1] Recently, there have been indications of a democratic roll-back.^[2]

Indonesia is 85 percent Muslim, with a majority Sunni population. There are approximately one million Shia and various Sufi communities in the country, as well as other religious minorities. Indonesia has been considered a prime example of the compatibility of Islam and democracy and a success story for peaceful coexistence of different religions within a secular state.^[3] However, inter- and intrareligious tensions have increased significantly in recent years. The Indonesian government has failed to provide protection to the most vulnerable religious groups and has occasionally even actively obstructed autonomous religious worship.^[4] In the months immediately after the collapse of the New Order, deadly clashes took place between ethnic groups in certain parts of the archipelago. Throughout the past decade, however, the political salience of ethnicity subsided in the context of democratic consolidation, turning Indonesia into a "weakly ethnicized polity."^[5]

Foreign direct investment remains low, especially in the manufacturing sector, due to a poor business environment, inefficient government institutions, low levels of education, and a crumbling infrastructure.^[6] In September 2012, the World Economic Forum lowered Indonesia's economic competitiveness rating in the global competitiveness index to 50 from 114 nations, from 46 out of 142 nations in 2011.^[7] Rising inequality^[8] and the country's dismal performance on a range of social indicators—an Indonesian child, for instance, was nearly three times as likely as a Vietnamese child to die before its fifth birthday at the time of writing—qualify the optimism about Indonesia's development trajectory.^[9]

Accountability and Public Voice

The implementation of executive and legislative elections at the national and local levels has been the most profound change in Indonesian politics over the past decade. Since 2004, the government has been comprised of a directly elected president and vice president, a 550-member

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House of Representatives, and a senate-like Regional Representatives Assembly (DPD). Presidents, vice presidents, and legislators serve five-year terms, with the president and vice president limited to two terms. Parliaments at the provincial, district, and municipal levels are also elected, and district heads, mayors, and governors throughout the archipelago are limited to two terms.[\[10\]](#) Every Indonesian citizen who is 17 years or older is allowed to vote, with the exception of members of the armed forces. A debate over whether military members should be given the right to vote in the 2014 elections was ongoing at the time of writing, with President Yudhoyono, the military, and most political parties supporting the motion. Human rights groups rejected the proposal.[\[11\]](#)

The third legislative election of the post-Suharto era took place in April 2009, and a presidential election took place in July. Direct elections for district heads and mayors were held in hundreds of districts and dozens of provinces between 2009 and 2012. Violent incidents during legislative and executive elections are uncommon and usually end quickly.[\[12\]](#) Assassinations of candidates are so far unknown in Indonesia and intimidation of the electorate through “goons-for-hire” has become rare.[\[13\]](#)

Prior to the 2009 legislative elections, the parliament passed a series of laws to make the electoral system more transparent and accountable. The most important change was to give voters the option to vote for an individual candidate *or* a party, allowing the candidate with the most votes to win a seat regardless of rank on the party candidate list. An Election Supervisory Board tasked with monitoring campaign and election rule violations was also established, with increased powers compared to its predecessor, the Election Supervisory Committee. While the 2009 regulatory framework strengthened democratic institutions, the open-party list system did not eradicate political corruption. In fact, increased amounts of money circulated during the 2009 election period compared to previous elections, suggesting that campaign costs have risen dramatically. Open-party list systems have shifted incentives toward vote-buying, as opposed to internal payments within the party to ensure a high position on party lists.[\[14\]](#)

In April 2012, Parliament passed a Legislative Election Law that raised the vote threshold to 3.5 percent compared to 2.5 percent in the 2009 law. The slightly higher threshold does not significantly reduce the range of choices available to voters.[\[15\]](#)

The reformed Law 2/2011 on Political Parties includes a requirement for new parties to demonstrate regional structures in all 33 provinces, 75 percent of the districts in those provinces, and 50 percent of the subdistricts in those districts in order to be recognized as legal entities for participation in the 2014 legislative elections. Parties that had been recognized as legal entities prior to the 2009 elections need to have branches in 60 percent of provinces, in 50 percent of districts in these provinces, and in 25 percent of subdistricts in these districts to qualify for the 2014 contest.[\[16\]](#) The new law thus favors incumbent parties, many of which are tainted by corruption and low voter popularity. Furthermore, in September 2011 the minister of home affairs submitted a new bill on regional governance to the Parliament that would eliminate direct gubernatorial elections, although no decision on adoption had been reached at the time of writing.[\[17\]](#) National politicians also debated whether to abolish direct elections for district heads and mayors.[\[18\]](#) In spite of the shortcomings of the current direct elections, their abolishment would undermine accountability and mark a reversal in the country’s path toward

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democratization.[\[19\]](#) It would also disregard the will of the people, around 66 percent of whom favor direct elections.[\[20\]](#)

Though still considered free and fair, the quality of the 2009 elections was lower than in 2004, a decline some observers attributed to reduced logistical support from foreign donors.[\[21\]](#) Several nongovernmental organizations (NGOs) expressed concern and filed civil lawsuits against the government over millions of unregistered voters, the chaotic distribution of voting materials to polling stations, and inadequately trained election officials.

The 38 parties that successfully registered had equal campaigning opportunities in 2009. Campaign finance regulations have figured prominently in all election laws since 1999 but have evolved considerably over time. The most recent stipulations, outlined in Law 10/2008, established more realistic regulations on financial contributions compared to previous laws and eliminated various legal loopholes with regard to local legislative elections. They significantly increased the limit on campaign contributions to parties. In addition, the law requires political parties and DPD candidates to submit campaign funding reports that include bank account numbers and the opening balance seven days *prior* to the first rally. Law 10/2008 also outlines sanctions for vote-buying and the intentional falsification of campaign funding reports. The previous regulations, Law 12/2003 on General Elections, stipulated that qualified political parties and DPD candidates had to file a report only *after* the elections. In addition, the report only had to include data on campaign funds received in the time between admission to compete in elections and two days before Election Day.[\[22\]](#) Campaign funding regulations for governors, district heads, and mayors are outlined in Law 32/2004 on Local Government. As in the case of local legislative elections, public accounting companies are required to scrutinize both campaign donation and expense reports of local executive election participants.[\[23\]](#) The law lists sanctions for transgressions, though such sanctions have rarely been applied in practice. [\[24\]](#)

Moreover, campaign finance regulations contain various legal loopholes. For example, they impose income limitations but fail to regulate campaign expenditure.[\[25\]](#) Discrepancies between campaign donations and expenses are therefore difficult to detect. Furthermore, the laws are vague about violations of existing campaign financing regulations.

The local election commissions (KPUDs) have no investigative authority beyond the analysis of the information that candidates and parties provide. Hence, compliance with campaign finance laws means only that reports have to be submitted. KPUDs cannot sanction candidates who provide false, inaccurate, or incomplete information; this task falls under the responsibility of the Indonesian police and the judiciary, both of which are corrupt. There is also a lack of coordination between the General Elections Commission (KPU) and the Election Supervisory Body (Bawaslu) in overseeing campaign finance. In one report, the Financial Transaction Reports Analysis Center (PPATK) saw an increase in suspicious financial transactions during the 2009 campaign, which may have been used to fund political parties. All major parties refused to display their annual financial report prior to the 2009 elections.[\[26\]](#)

Despite the number of parties, there is limited ideological diversity. Most parties are linked to well-known politicians and there is little campaigning based on programmatic platforms. The main opposition in previous elections such as the Islamic Prosperous Justice Party has moved to

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the center of the political system.[\[27\]](#) This moderation has essentially narrowed electoral choice as voters now have fewer alternatives. Most candidates are from within the bureaucracy and are deeply entrenched in networks rooted in the state. Given this limited choice of candidates, many of whom have been entangled in corruption scandals, local elections are often more a “rotation of rascals” than a turnover of political interests.[\[28\]](#)

The Indonesian Constitution stipulates the separation of power, but horizontal accountability is low at both the national and local levels.[\[29\]](#) In May 2010, Sri Mulyani Indrawati, the country’s foremost reformer and internationally respected finance minister, resigned, issuing a scathing indictment of the marriage of political and business interests, where business figures in government manipulate policymaking to their own advantage “with no compunction.”[\[30\]](#)

The Constitutional Court has repeatedly ruled against the government, thereby strengthening the separation of power between the executive, legislative, and judiciary.[\[31\]](#) However, the court’s ability to enforce executive accountability throughout the country remains limited as it is confined to reviewing laws passed by the national parliament. Regional legislation and regulations adopted by national or regional governments are subject to review by the less authoritative Supreme Court. In January 2011, a Constitutional Court verdict made easier the ability of Parliament to issue a statement of opinion, which is a precursor to impeachment proceedings. The verdict, however, does not affect rules for the impeachment process itself, which remains onerous and politically unrealistic during the tenure of the current Parliament, which lasts until 2014.[\[32\]](#)

At the local level, various regulations have been introduced in recent years limiting legislative oversight functions. Local parliaments no longer have the power to impeach governors, district heads, or mayors; appoint regional secretaries; or screen electoral candidates.[\[33\]](#)

Certain power groups from the New Order era, such as the military and the police, are less engaged in politics today because they were granted concessions and incorporated into the democratic system.[\[34\]](#) Re-invigorated conglomerates that were established during the New Order are the new dominant players and have turned Indonesia into a “state of capital.”[\[35\]](#) The oligarchs that own these conglomerates dominate vast swathes of the political arena[\[36\]](#) and the law bends in their direction, prompting legal experts to refer to Indonesia as a “criminal democracy.”[\[37\]](#)

The bureaucracy remains largely unchanged despite more than a decade of reform efforts. The Law 25/2009 on Public Services was adopted in July 2009 to increase citizen leverage over the civil service. It introduced regulations for public service providers and expanded the responsibilities of the Ombudsman’s office while calling for the establishment of citizen committees to monitor public service delivery. The various requests of the law, however, aim beyond the capacity of the current political and legal system given weak auxiliary institutions such as the Ombudsman’s office and corrupt law enforcement bodies.[\[38\]](#) Open competition for bureaucratic posts and merit-based promotions are rare, and incompetent bureaucrats are seldom dismissed.[\[39\]](#) Young Indonesians that want to join the civil service have to pay exorbitant bribes to secure a post, and a lack of coordination among overlapping national ministries, and between central and local authorities, further reduces efficiency and increases opportunities for

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corruption. In September 2011, a ministerial decree put in place a moratorium on hiring new civil servants until December 2012. The decree also required all institutions and regional administrations to form five-year placement plans until December 2011. These plans met fierce resistance from different party members and local politicians, who often profit from selling bureaucratic positions.[\[40\]](#)

Indonesia's democratic transition has widened the space for civil society, and civic groups frequently comment on pending legislation. Their ability to influence the legislative process remains limited, however.[\[41\]](#) Political space and freedom that civil society enjoyed in the years immediately after the New Order collapse are increasingly challenged by bureaucrats and other political elites.[\[42\]](#) Because 90 percent of NGOs are foreign funded, they are often perceived as instruments of externally supported government reforms and are thereby subject to attack.[\[43\]](#) Furthermore, most NGOs are insufficiently organized and lack capacity, often failing to promote citizens' interests effectively and suffering from negative public perceptions. There are no legal barriers to the formation of NGOs, but civic groups are required to register with the Ministry of Law and Human Rights. Unregistered civic groups are allowed to operate without legal recognition but cannot open a bank account and can be dissolved by the government. A law on social organizations stipulates that civic groups can be dissolved for receiving funds without government approval; however, this has never been enforced. Foreign organizations operating in Indonesia must partner with Indonesian organizations, have at least one Indonesian citizen on the executive board, and undergo regular audits.[\[44\]](#) In September 2010, the government planned to reform the law on social organizations allegedly to curb the growth and activities of militant organizations, but no decision had been reached at the time of writing.[\[45\]](#)

Various laws are intended to protect journalists and media freedom, but weak compliance, nonexistent law enforcement, and poor overall protection have led to a rising number of attacks against journalists since 2009.[\[46\]](#) Violence against journalists increased to 47 incidents in 2010, compared to 37 in 2009 and 27 in 2008.[\[47\]](#) Several journalists were killed and dozens of reporters received death threats. The government does not protect journalists from extralegal intimidation, and law enforcement agencies are unresponsive. In addition, fear of legal harassment remains a key obstacle and is one of the main reasons Indonesia slipped down in the 2010 World Press Freedom Ranking.[\[48\]](#) For example, in November 2009, Usman, the coordinator of Indonesia's Commission for Disappeared and Victims of Violence (KontraS), was charged with defamation. He had questioned the acquittal of a senior intelligence agency official, whom he said evidence proved guilty of murdering human rights campaigner Munir bin Thalib.[\[49\]](#) The use of onerous libel laws in the country has triggered national and international outrage. Such defamation provisions under the criminal code, combined with the restrictive Information and Electronic Transaction (ITE) Law and a poorly defined Anti-Pornography Law, continue to jeopardize press freedom and protect public officials over ordinary citizens. The legal environment also encourages self-censorship in coverage of sensitive subjects.[\[50\]](#)

In June 2010, Communications and Information Technology Minister Tifatul Sembiring linked pornography to natural disasters and the country's rising rates of HIV/AIDS.[\[51\]](#) Despite strong criticism from experts, the national press board, and the chair of the Constitutional Court, who pointed out that the anti-pornography regulation is in violation of existing laws,[\[52\]](#) the Indonesian government started to block offensive websites a month later.[\[53\]](#) Glitches in the

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filtering system subsequently created access problems for several news outlets that are not pornographic.[\[54\]](#) Furthermore, in response to the Arab Spring, Tifatul Sembiring proposed in July 2011 to control social networking sites, such as Facebook and Twitter, due to their potential to destabilize governments.[\[55\]](#)

Indonesia has a large independent media that offers diverse perspectives. No major media outlet is under the total control of the state, and Indonesia continues to have the most independent and vibrant media landscape in Southeast Asia.[\[56\]](#) However, an increasing number of prominent politicians and businessmen have acquired newspapers over the past years, resulting in biased reporting. For instance, Aburizal Bakrie, a politician and business tycoon, bought the *Surabaya Post* in order to change reporting on an environmental disaster caused by one of his companies in East Java, where the newspaper is published.[\[57\]](#) In June 2011, the media and banking tycoon Chaerul Tanjung acquired *detikcom*, Indonesia's first and most influential internet news portal. Because Tanjung has close political links to the president, the acquisition was widely seen as an end to the independent journalistic orientation of the website.[\[58\]](#) Local elites affiliated with the state also try to influence media content; newspapers and radio stations have become important campaign instruments for direct elections for governors and district heads.[\[59\]](#)

Civil Liberties

Torture and human rights abuses remain widespread in Indonesia. Legal provisions in the existing and draft revised criminal procedure codes do not sufficiently guard against abuse, and while officials pay lip service to human rights protection, state representatives exhibit a lack of will to ensure compliance with national and international human rights laws. The government reacts selectively to human rights abuses. Security forces usually enjoy impunity for human rights violations, and torture of detainees is routine. Convicted human rights offenders remain in the military, and some senior officials linked to human rights violations have even been promoted. Around 100 people were on death row at the time of writing, although no one has been sent to the firing squad, Indonesia's only method of execution, since 2008.[\[60\]](#) Caning continues to be applied and a new local regulation introduced stoning and flogging to Aceh province's penal code in 2009.

Prison conditions are dismal. Beatings, torture, mistreatment, and denial of medical care are rampant. Indonesia's Rehabilitation Law No. 12/1995 specifies procedures for prisoners to petition mistreatment, but government action is rare.[\[61\]](#)

The government's recently adopted hardline approach to drug abuse, partially funded by donors including the United States and the United Nations, mandates that drug users be punished as harshly as drug dealers, resulting in an explosion in the number of HIV-positive inmates. The aggressive policy has also exacerbated overcrowding.[\[62\]](#) Senior officials pledged to rewrite rules for managing prisons in November 2010, but no action had been taken as of the time of writing.[\[63\]](#)

Attacks on and harassment of human rights and anticorruption activists are on the rise. In July 2010, an unknown individual attacked a member of Indonesia Corruption Watch (ICW) with a

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machete.[\[64\]](#) The same month, police arrested activists in West Java during a press conference about the harmful impact of coal plants.[\[65\]](#) At the local level, the growing influence of conservative pressure groups has led to attacks on minorities. In March 2010, the police ordered the cancellation of the International Lesbian and Gay Association (ILGA) in Eastern Indonesia in response to pressure from Islamist groups.[\[66\]](#) Other discussions deemed inappropriate were also frequently shut down. For example, when a German foundation hosted an event in 2011 on the massacres against Communists and Chinese in 1965, Islamist groups staged demonstrations and the police demanded the passports of foreign participants.[\[67\]](#) The government does not follow up on most such incidents. In rare cases, exceedingly light sentences have been handed down to attackers that violated the law.[\[68\]](#) Arbitrary arrest is common and police personnel are rarely held responsible for such transgressions.[\[69\]](#)

In contrast, Indonesian authorities have responded to the terrorist attacks that have occurred since 2009 in an effective and largely even-handed manner. The Indonesian government has avoided detaining members of Islamist terror organizations without trial and instead prosecuted under the law, and it has implemented programs to deradicalize suspects. A 15-year sentence for the militant cleric Abu Bakar Ba'asyir in June 2011 raised minimal adverse public reaction, and seemingly validated Indonesia's criminal justice approach to domestic terrorism. Still, the Anti-Terror Unit Densus 88's high kill-to-capture ratio (one suspect killed for every four arrested) and conduct during operations since 2009 have raised human rights concerns. There are also reports of extrajudicial executions of suspected terrorists and credible accusations of human rights abuses by Densus 88 in Ambon.[\[70\]](#) Indonesia's much vaunted deradicalization program has also been criticized for producing repeat offenders.[\[71\]](#)

The government has recently introduced some counterterrorism measures that risk undermining civil liberties.[\[72\]](#) Following the July 2009 bombings, the government proposed extending the limit for holding suspects without charge from seven days to two years, with the possibility of renewal for an unlimited period. Furthermore, Parliament passed a controversial Law on Intelligence in October 2011, which empowers the State Intelligence Agency to eavesdrop domestically. The new law also applies sentences of up to 10 years for the leakage of secrets. Poorly written, the law includes vagaries that may indeed be subject to abuse.[\[73\]](#)

Petty crime such as pick-pocketing and other forms of robbery are widespread, especially in urban areas. Criminal gangs, often organized under the banner of Islam, have become more active.[\[74\]](#) However, the most serious crimes are committed by members of the state apparatus such as bureaucrats, police officers, and politicians, since embezzlement of state funds, bribe solicitation, and police harassment go unpunished or are treated with lenience.[\[75\]](#)

A comprehensive 2007 anti-human trafficking law criminalized debt bondage, labor and sexual exploitation, as well as international and internal trafficking. The U.S. State Department Trafficking in Persons report placed Indonesia in Tier 2 in both 2010 and 2011,[\[76\]](#) suggesting that Jakarta's anti-trafficking efforts have been insufficient. In April 2011, the government adopted a new immigration law that improves the legal provisions for combating cross-border human trafficking in and out of the country. The new law recognizes the non-refoulement principle that protects refugees from being returned to their home countries if their lives or freedoms are threatened. Furthermore, the government is now obliged to hand trafficked people

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over to the UN High Commissioner for Refugees and the International Organization for Migration. Finally, the law assigned the Law and Human Rights Ministry a stronger role in immigration matters.[\[77\]](#)

Ordinary Indonesians have few means of redress if their rights are violated. Courts in Indonesia are chronically corrupt and favor the rich and powerful.[\[78\]](#) Judges frequently rule against the interests of victims. This was the case with Deden Sudjani, a member of the minority Muslim sect Ahmadiyah, who was attacked by a mob in February 2011 but received a jail sentence that was harsher than those of his assailants.[\[79\]](#) Lawyers defending attackers regularly and openly intimidate witnesses from religious minority groups in court without interference from judges.[\[80\]](#)

An Ombudsman was established in Indonesia in 2000 to curb corruption and defend the right of citizens to high-quality public service delivery. In September 2008, the parliament passed Law 37/2008 on the Ombudsman, which strengthened the legal basis for the institution. With the enactment of this law, the Ombudsman became an official state institution much like the Corruption Eradication Commission, responsible to the national parliament and the president. Recently, branch offices have been established in the provinces of Central Java and North Sumatra, in addition to the head office in Jakarta. However, the Ombudsman can only recommend sanctions, with enforcement the responsibility of government agencies such as the police and the judiciary, both of which are crippled by endemic corruption. The past decade has shown that corruption and abuse of power by public officials continues to go unpunished, indicating a weak commitment by enforcement agencies to react to complaints forwarded by the Ombudsman.[\[81\]](#)

Women are guaranteed equality under the Constitution and the government has policies that counter violence against women and discrimination in the workplace. In April 2008, the parliament established a quota of 30 percent for women's participation as candidates and board members in all political parties. The 2009 legislative elections resulted in election of the largest number of female parliamentarians to date.[\[82\]](#) However, the number of female governors, district heads, and mayors remains low.[\[83\]](#) A new law on gender equality was being drafted in 2011 to ensure that all government policies are gender-sensitive.[\[84\]](#) Indonesia ranked 83rd out of 134 countries in the 2010 Global Gender Gap Index, a slight improvement over the 2006 ranking.[\[85\]](#) Still, the new ranking reflects serious challenges related to economic participation, educational attainment, and health.

Multiple laws related to family, marriage, divorce, property ownership, and inheritance discriminate against women. In recent years, local sharia regulations infringing on women's constitutional rights have been adopted in more than 20 percent of provinces and around 10 percent of districts, mostly by secular parties for political ends.[\[86\]](#)

Indonesia has established various laws to protect the physical integrity of women, but these are rarely enforced.[\[87\]](#) Despite the Ministry of Health's ban on female genital mutilation (FGM) in April 2006, the ministry issued guidelines on how to perform FGM in June 2011. Muslim groups, including relatively moderate organizations such as Nahdlatul Ulama, welcomed the new guidelines.[\[88\]](#)

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The number of reported cases of domestic violence increased by more than 260 percent between 2009 and 2010, mainly due to increased data gathering efforts by the National Commission on Violence against Women.^[89] In addition, discrimination in employment remains institutionalized, with women's participation in the labor force dampened by lack of education, discrimination in wages and promotions, harassment in the workplace, and societal expectations related to balancing work and family life. Although 50 percent of Indonesian women are economically active, their level of protection within the economy remains limited.^[90] Domestic workers in particular are not sufficiently protected by the state.^[91]

Indonesia is one of the most ethnically diverse countries in the world: 42 percent of the population is Javanese and 15 percent Sundanese, while the remaining 43 percent is divided among more than 300 other ethnic groups.^[92] Indonesia ratified the International Convention on the Elimination of All Forms of Discrimination in 1999. In October 2008, the parliament adopted an antidiscrimination law.^[93] Certain minority groups that have been excluded from political life in the past have made inroads into the political arena in recent years. The number of Chinese-Indonesian candidates in the legislative elections increased from 100 in 2004 to 214 in 2009 spread across all major parties.^[94]

Ethnic discrimination persists, however. Chinese-Indonesians continue to encounter difficulties obtaining identity cards and other personal documents from the government. Chinese-Indonesians are also subject to predatory taxes and license fees when dealing with local bureaucrats due to their alleged affluence.^[95] Although the police extort from nearly all victims who come in contact with them, they extort from the Chinese even more intensely. As a result, there is a vicious cycle in which this minority has unusually low rates of reporting of hate crimes and violence, which in turn makes them more targeted because an attacker can expect to get away with it.

Religious freedom has expanded since the end of the New Order and Indonesia officially recognizes Islam, Protestantism, Roman Catholicism, Hinduism, Buddhism, and Confucianism. Restrictions on religions not sanctioned by the government and minority groups continue to exist, including administrative difficulties during civil registration of marriages and birth or the issuance of identity cards.

National survey data published in September 2010 showed that intolerance is on the rise. For instance, the proportion of Muslims who do not accept the construction of churches and other non-Muslim religious buildings in 2010 was 57.8 percent, compared to 40.5 percent in 2001.^[96] There was a 30 percent increase in documented acts of intolerance and discrimination between 2009 and 2010 alone, including attacks on minority Islamic groups. Houses of worship including Christian churches came under attack^[97] and incitement of hatred through public statements against minority religions became more common.^[98] This trend continued unabated in 2011. Under pressure from influential Muslim organizations, the national government issued a decree that warned Ahmadiyah, a heterodox Islamic group, against propagating its tenets in public. Some local authorities have used the decree to justify outright bans on the sects, in violation of the Indonesian Constitution.^[99]

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The government has failed to prevent violent incidents and lacks a coherent strategy for managing relations between and within religious groups. The state officially refrains from involvement in the appointment of religious or spiritual leaders and in the internal activities of faith-related organizations. However, the administration has sent equivocal messages about its stance on religious violence and has frequently abandoned its constitutionally neutral position in religious matters by issuing statements on what it considers “deviant” religious practices. On April 19, 2010, the Constitutional Court upheld the harsh 1965 Blasphemy Law, holding that the government had power to impose limitations on religious freedoms based upon security considerations. The law has on several occasions been used to harass religious minorities, and human rights groups had asked for it to be overturned.[\[100\]](#) The government-financed Indonesian Ulema Council (MUI) has published several religious edicts (*fatwa*) that curb religious freedom and directly contravene Indonesian law.[\[101\]](#) Furthermore, local governments have curbed religious freedom in past years and there have been dozens of incidents of church closings throughout the archipelago since 2009.[\[102\]](#) Such incidents show that the rising tide of religious intolerance is often state approved. A few discriminated groups have filed lawsuits against the state and have occasionally won.[\[103\]](#)

Homophobia appears to be increasing.[\[104\]](#) Indonesia has no law on lesbian, gay, bisexual, and transgender (LGBT) rights, which has led to the denial of benefits to LGBT employees such as income tax cuts, shared health insurance, and retirement benefits. Many companies have also addressed the rights of LGBT employees in a lackluster manner in the absence of state guidelines.[\[105\]](#) Workplace discrimination against people living with HIV/AIDS is common as well.[\[106\]](#)

The law prohibits discrimination against persons with physical and mental disabilities in employment, education, access to health care, and the provision of other state services. The law also mandates accessibility of public facilities to persons with disabilities. However, the government does not enforce such provisions.[\[107\]](#) Legislation on the composition of legislative bodies stipulates that parliamentary candidates and other elected officials should be able to read and write in the Roman alphabet, thereby discriminating against the blind.[\[108\]](#) Government departments continue to refer to an outdated health ministry regulation that requires civil servant candidates to be mentally and physically healthy as well.[\[109\]](#) Although companies with more than 100 employees are required to provide 1 percent of their jobs to the disabled, the law is not enforced, and few companies actually employ disabled persons.[\[110\]](#)

Freedom of assembly is guaranteed under Indonesia’s Constitution. Demonstrations and rallies have become a popular means for expressing discontent with the government, and labor protests seem to have become more tolerated and effective.[\[111\]](#) In conflict regions such as Papua, official permission for political demonstrations is often refused, however. Indonesia has imprisoned more than 100 activists from the Moluccas and Papua for “rebellion” after they peacefully voiced political views, held demonstrations, or raised separatist flags, all in clear violation of the freedom of association law.[\[112\]](#) Public protests have on occasion been met with excessive force.[\[113\]](#)

Indonesian workers have the right to join independent unions, bargain collectively, and, except for civil servants, stage strikes. In December 2010, Parliament removed a proposed revision of

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the 2003 Labor Law from the list of prioritized legislation for 2011, claiming that it would hurt workers.^[114] Workers have also won several court battles in recent years. However, various obstacles remain. Private sector workers are free to form unions but in order to register, a union must represent or receive the support of more than 50 percent of the total workforce in the establishment. Anti-union discrimination, the formation of yellow unions, refusal to recognize unions, the dismissal of union officers, and refusal to negotiate in good faith with unions all occur frequently.^[115] Unions must also keep the government informed of changes in governing bodies, and failure to do so can result in loss of official recognition. All these obstacles undermine the right to strike. Overall, labor “has been inhibited as an effective social force by the lingering [New Order] legacy of repression and rigid controls.”^[116]

Rule of Law

Indonesia has a civil law system based on Dutch, French, and German models. Judicial candidates are proposed by the Judicial Commission to the national parliament for approval and then confirmed by the president. Nine judges comprise the Constitutional Court, three of whom are nominated by the Supreme Court, three by the national parliament, and three by the president. The Constitutional Court has continually asserted its independence over recent years, issuing multiple decisions on controversial and important issues. Partly as a result, it has been exposed to criticism from a variety of political actors, including leaders of major political parties and prominent members of civil society.

In a comprehensive national survey conducted by the Corruption Eradication Commission in February 2009, the judiciary rated among the most corrupt government branches, highlighting the woeful image of the court system.^[117] The Attorney General’s Office suffers from chronic mismanagement and leadership failure. An ICW report showed that the Office of the Attorney General handed down unusually light sentences in many anticorruption trials under its responsibility. In addition, the Attorney General’s Office adopted a controversial policy of not detaining graft suspects if they agreed to return the stolen money.^[118]

Misconduct and unprofessional behavior by judges are rarely investigated. In December 2010, parliamentarians delivered a major setback to judicial reform by appointing Supreme Court Justice Abbas Said to the Judicial Commission. Said is linked to various business tycoons and has instigated attacks against the Corruption Eradication Commission in the past.^[119] In August 2011, a draft law that would give the Judicial Commission the authority to sanction judges who commit misconduct met with stiff resistance from the Supreme Court.^[120]

During the New Order, the executive interfered regularly in the course of justice through personnel, budget, and administrative decisions. In response to this experience, the judiciary pushed for a one-roof system after 1998, which means self-management in financial, administrative, and personnel terms. Hence, the judiciary in present-day Indonesia is much more independent in formal terms than in other countries. Giving an unreformed judiciary such wide budgetary and other controls, however, has lowered outside reform leverage considerably and is arguably the main reason for Indonesia’s slow progress in judicial reform.

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Corruption prevails in the judiciary and is thoroughly pervasive. The judiciary can be a prompter of corruption but is often at the receiving end of pressures from powerful outside interests, such as politicians and entrepreneurs as well as lawyers acting on their behalf.[\[121\]](#) In December 2010, the president's Task Force on Combating Legal Mafia announced the establishment of a new interdepartmental team consisting of oversight officials from the Supreme Court, the Attorney General's Office, the police, and the Justice Ministry's Directorate-General for Penitentiaries.[\[122\]](#) The task force has exerted some symbolic actions but has failed to address the root causes of corruption within the judiciary.[\[123\]](#) In January 2012, President Yudhoyono refused to renew the mandate of the task force, a decision that contributed to his crumbling image as a reformer.[\[124\]](#)

Court decisions command little respect even with government agencies. All branches of government are reluctant to enforce court orders.[\[125\]](#) In May 2011, the president issued a detailed instruction (*Inpres*) on preventing corruption, which featured long-overdue directives for transparency in the recruitment of law enforcement personnel, as well as prohibitions on off-site meetings between prosecutors and lawyers. Presidential instructions are nonbinding and the new measure is likely to lack support from senior law enforcers.[\[126\]](#)

The quality of formal legal training for judges is poor; the emphasis is on memorizing facts rather than developing professional skills. Many professors at Indonesian law faculties are absent as they engage in advising of governmental and donor agencies due to their low salaries. There is no reform momentum for the legal education system.[\[127\]](#) Recruitment is carried out mechanically and rarely based on need.[\[128\]](#)

The Indonesian legal system grants accused criminals the presumption of innocence. However, critics have alleged that the Indonesian police has charged certain individuals with links to terrorist organizations without sufficient supporting evidence. Human rights experts also fear that the Law on Intelligence adopted in October 2011 may violate the presumption of innocence.[\[129\]](#) Religious and customary laws play an important role in Indonesian courts, but ordinary citizens struggle to gain access to justice under all three law systems.[\[130\]](#) Although hearings are generally public, fairness and impartiality are often lacking, and it can take months for prisoners to be brought before a judge.

Defendants have the right to legal counsel of their choice at every stage of an investigation. Court officials will provide free legal counsel to persons charged with offenses that carry a death penalty or imprisonment of 15 years or more, or to destitute defendants facing charges that carry a penalty of five years or more. According to recent estimates, however, only 10–17 percent of poor Indonesians have the ability to bring their cases to the courts.[\[131\]](#) Access to defense counsel is frequently denied during investigations, as is access to legal assistance from voluntary defense organizations. Political activists in Papua, for instance, are regularly imprisoned and subsequently denied access to lawyers.[\[132\]](#)

Trials are rarely used to get rid of political opponents, but political direction and control over prosecutors is common. Powerful corrupt actors, for instance, are regularly freed of charges in the court system.[\[133\]](#) Well-connected military and police personnel as well as bureaucrats regularly go unpunished for crimes committed. Prosecutors drafting accusation letters and

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preparing for trial also often experience interference from their superiors.[\[134\]](#) The prosecution of public officials is addressing symptoms rather than causes of the abuse of power and to date is largely symbolic. Corruption remains rife within the Attorney General's Office.

In the years just prior to the collapse of the New Order, civilian authorities made progress in increasing democratic control over the military and removing it from the commanding heights of the political system. In addition, the most severe communal conflicts have stopped, as has the separatist insurgency in Aceh, which nullified the pretext of "preventing national disintegration" that had been used to justify the military's political autonomy. In October 2009, Gamawan Fauzi became the first nonmilitary home affairs minister in 43 years. However, core military prerogatives have remained untouched, such as a culture of impunity for human rights abuses and involvement in illegal economic activities. The military and the police continue to exercise significant control over lucrative sectors of the illegal economy.[\[135\]](#) In addition, institutional reforms that would have eliminated remaining reserve domains of military power have not occurred, such as civilianizing the defense bureaucracy. The military is no longer an important direct player in politics but it retains "the institutional capacity and the mindset that could allow it to intervene in the future."[\[136\]](#)

The security apparatus is at the heart of Indonesia's corruption and the rule of law does not apply to most members of the military and the police, especially in the higher echelons.[\[137\]](#) The police openly attacked members of the Corruption Eradication Commission after the latter started an investigation into secret bank accounts affiliated with police personnel.[\[138\]](#) Fabricated evidence against Corruption Eradication Commission personnel led to the arrest of several police officers in May 2010.[\[139\]](#)

In October 2009, Yudhoyono signed a decree on the takeover of business activities of the military forces. However, the team overseeing this takeover consists primarily of military members operating without guidelines for transparency and accountability. Nor is the flawed law enforced.[\[140\]](#)

Indonesia still does not credibly investigate most allegations of serious human rights abuse by security forces. In 2010, President Yudhoyono failed to authorize an ad hoc court to investigate the 1997–98 enforced disappearance of political activists. The government also has made no progress since 2009 on a bill that would give civilian courts jurisdiction to try security personnel accused of committing abuses against civilians.[\[141\]](#) Under Indonesian law, members of the military are to be tried in civilian courts for nonmilitary crimes. In 2010, news about security force involvement in torture emerged, but military tribunals have frequently offered lenient treatment to military personnel accused of human rights abuses, thereby fostering a culture of impunity.[\[142\]](#) In July 2009, Army General Muchdi Purwopranjono, the alleged mastermind of the murder of human rights activist Munir, was acquitted by the Supreme Court.[\[143\]](#)

Indonesian law protects the right of every citizen to own property, although foreigners are not permitted to own land. Various efforts have been made in recent years to expand property rights protections for both foreigners and locals, but a lack of clear land titles limits such reforms. In October 2010, the government commenced a long-awaited land reform program, which transfers

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abandoned or underutilized land areas to individual families, while providing secure legal titles.[\[144\]](#)

The adoption of the Land Acquisition Procedures for Public Interest Development Law in December 2012, which allows the government to appropriate land for public interest, triggered heated debate. The government deems this law crucial for mitigating infrastructure bottlenecks and attracting foreign investment. Activists and NGOs have registered opposition to the document, claiming that it will legalize land seizures and forced evictions for the benefit of political elites.[\[145\]](#) Corruption and weak capacity in the judiciary, including commercial courts, hinder the provision of adequate legal recourse related to property disputes.[\[146\]](#) Judges have ignored internationally binding contracts and ruled against foreigners in commercial disputes. In May 2011, for instance, Indonesian courts transferred lucrative mining licenses in East Kutai Kartanegara owned by London-based Churchill Mining to Nusantara Group, a conglomerate controlled by Prabowo Subianto, the former son-in law of late-dictator Suharto.[\[147\]](#)

Enforcement of property rights for indigenous and rural communities remains equally weak. Business interests close to the ruling elites frequently ignore indigenous property rights, with mining and forestry among the sectors in which conflict is common. Agricultural land is often claimed by multiple owners; with a corrupt judiciary and poor land ownership records, there are few avenues for arbitrating such disputes.[\[148\]](#)

Anti-Corruption and Transparency

In May 2010 the bureaucracy officially consisted of more than 4.7 million civil servants, many of whom are underemployed. The deputy director of the Ministry of Administrative Reform, CerdasKaban, estimated in 2010 that there were around 30–40 percent more bureaucrats on the state’s payroll than the government actually had work for. In many provinces, the bureaucracy has developed into a “state-qua-state,” with administrative expenses amounting up to 70 percent of the local budget.[\[149\]](#) Overall, the bureaucracy continues to be characterized by “non-transparent processes, underfunded institutions, an inadequately skilled public workforce and institutionalized corruption, reflecting a self-serving and opaque administration.”[\[150\]](#)

The International Financial Corporation (IFC), the investment arm of the World Bank, downgraded Indonesia’s ranking on the ease of doing business in 2012, putting the country below all major economies in the region except the Philippines and Cambodia. The lower ranking is partly a result of neighboring countries reforming faster. Red tape and bureaucratic regulations remain a major problem, as are corruption, predatory taxes, and illegal levies.[\[151\]](#) In July 2011, a parliamentarian introduced a bill, which is still being debated, on State Civil Servants as a replacement for the 1974 State Personnel Law with the intention to reform civil service posts, rights and responsibilities, institutionalization of the civil service, management of civil servants, as well as recruitment and appointment procedures.[\[152\]](#)

There were around 139 state-owned enterprises at the time of writing and the government administers prices on several basic goods, including fuel, rice, and electricity. The Law 25/2009 on Public Services introduced sanctions for state officials who simultaneously serve as board

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members in state-owned enterprises, as state officials frequently abused the power of such dual postings for private gain. While the regulation is laudable, the number of such double postings is small and therefore sanctions will not have a major impact on the overall course of corruption eradication in the country.[\[153\]](#) Moreover, the president himself disregarded the law during the appointment of key figures to the state-owned oil company Pertamina in May 2010.[\[154\]](#)

Vested political interests also impede the reform of fuel subsidies, which currently account for 18 percent of the annual budget. The government's position is that fuel prices have to be kept at below-market rates to avoid tensions within the population because in the past, subsidy cuts led to social unrest. The main beneficiaries are wealthier households that own vehicles and motorbikes and not the poor population, however. Mismanagement of fuel subsidies is endemic. Approximately 15 percent of subsidized fuel is sold to industries illegally, primarily in the mining and plantations sectors, which are owned by financial backers of the current government.[\[155\]](#)

In August 2009, Parliament passed a new regional taxation bill in an attempt to neutralize a plethora of local taxes and user charges that were issued by regional government following the devolution of powers in 2001. Many of these taxes and user charges were unrelated to the fiscal needs of the governments concerned, and were nothing more than a money grab. The revised regional taxation law states that revenues generated must be used to finance activities to the benefit of taxpayers. The success of these laudable earmarking mechanisms is jeopardized, however, by endemic corruption. Recent investigations by the Corruption Eradication Commission exposed widespread practices of arbitrary and predatory tax collection at the local level. In a 2009 report, the Indonesian State Audit Agency showed that it is common practice among regional officials to divert tax revenues for personal use. Governors, district, and subdistrict government heads seem to be the main beneficiaries of such practices, while the Ministry of Home Affairs is also alleged to have profited. In 2009, the Corruption Eradication Commission estimated the total amount of embezzled tax proceeds to have reached 1.3 trillion rupiah (1 billion USD) in 2005–2007 alone. In short, it remains doubtful that the local revenues generated will be used to the benefit of the Indonesian people.[\[156\]](#)

The government has not addressed the root causes of systemic corruption within the bureaucracy. The civil service remains a career-based rather than a position-based system. The bureaucracy's structure emphasizes organizational symmetries instead of considering the actual workload of bureaucratic units or cost efficiency. Attempts to separate public office from the personal interests of officeholders are conducted in an ad hoc manner.[\[157\]](#)

Politicians regularly ignore existing financial disclosure requirements. In 2010, for instance, 127 out of 560 parliamentarians did not report their assets to the Corruption Eradication Commission, in clear violation of existing regulations. They could not be punished, however, because anticorruption laws do not include sanctions for such transgressions.[\[158\]](#)

There are several independent investigative and auditing bodies in Indonesia, most of which are ineffective. The Ombudsman Commission processes complaints about the quality of public services, but in practice it has been less effective than many had hoped due to a lack of government funding and support.[\[159\]](#) The Supreme Audit Agency (BPK), with offices in every

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province, supervises the state budget. It is independent, with its head elected by its members in order to avoid the appointment of government cronies. However, the BPK is also politicized and often sympathetic to the interests of influential business figures.[\[160\]](#) In November 2011, Parliament passed the Financial Services Authority Bill, which will merge various existing financial sector regulators into one independent regulator that will begin operations in 2013.[\[161\]](#)

The Corruption Eradication Commission is considered the most effective investigative body in Indonesia and has delivered a number of high-profile convictions. In November 2010, the commission established three provincial-level branches.[\[162\]](#) Its overall influence over corrupt practices in the country remains modest, however, as it handles only between 12 and 30 percent of all corruption cases. The bulk of cases are handled by prosecutorial offices across the country, which are often themselves corrupt. Moreover, the commission has faced many challenges. False allegations of corruption are regularly made against members of the Corruption Eradication Commission, with high-ranking members of the police providing fabricated evidence. Parties across the political spectrum have also attacked and sabotaged the work of the Corruption Eradication Commission in past years.[\[163\]](#) In September 2009 the national parliament passed a Corruption Eradication Court Law that significantly weakened the Corruption Eradication Commission. The new law authorizes the heads of regular courts to alter the composition of judicial panels on the Corruption Eradication Court. Career judges, rather than ad hoc ones, may comprise the majority of such panels in the future. The ad hoc judges are perceived as more independent because they are recruited from outside the graft-ridden Indonesian judiciary.[\[164\]](#)

In addition to the Corruption Eradication Commission, vice-president Boediono announced in November 2010 the creation of an independent Oversight Team and a Quality Assurance Team to set priorities and provide input for bureaucratic reform and corruption eradication.[\[165\]](#) The impact of this initiative remains unclear.

Courts have upheld some jail sentences for prominent individuals convicted of bribing state officials. However, both the legislative and executive branches have refrained from holding members of the political establishment accountable, the Attorney General's Office has repeatedly cut off investigations of blatant violations of the law, and courts have been criticized for handing down insufficiently severe punishments.[\[166\]](#) In August 2011, the Corruption Eradication Commission chair called on the government to cease granting sentence reductions to those convicted of corruption, following remissions that resulted in the release of 21 such convicts on Indonesia's Independence Day under a 2002 clemency law. In September 2011, the president granted sentence reductions to another 253 corrupt individuals despite an earlier public outcry over the practice.[\[167\]](#) Overall, the pattern of fighting corruption is very much one of more cases (giving the appearance of more corruption being dealt with), while the logic of who is and who is not pursued for corruption continues to be mapped politically. This does not strengthen the rule of law, despite what appears at first glance to be a more aggressive anti-corruption agenda. Some observers have also raised concerns that the Yudhoyono administration's aggressive anticorruption rhetoric has had the unintended effect of exacerbating an atmosphere of uncertainty and perceived risk for state decision makers.[\[168\]](#)

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Law 13/2006 on Witness Protection established a witness and victim protection agency, but the law includes a narrow understanding of who is considered a witness, an unclear definition of what constitutes a threat, and a failure to stipulate how the state should protect witnesses, including whistle-blowers. Owing to its poor formulation, this law is rarely put into practice.[\[169\]](#) Ironically, Indonesian bureaucrats have discovered that the Law on Witness Protection can be used as a means to evade corruption investigations. In past months, state officials have repeatedly sought the help of the Witness and Victim Protection Agency to avoid interrogation and potential arrest by the Corruption Eradication Commission.[\[170\]](#)

The state theoretically provides victims of corruption with mechanisms to pursue their rights. However, due to endemic corruption within the court system, litigation in 2012 was 50 percent lower than in 1950.[\[171\]](#)

Corruption is also rampant in Indonesia's education sector, ranging from bribes needed to obtain a kindergarten permit at the Ministry of Education to arbitrary increases of university tuition fees.[\[172\]](#) Although the government has taken steps to address endemic graft—for instance through increasing teacher salaries in 2009—the problem remains deeply entrenched. The BPK has uncovered the embezzlement of funds in school operation aid (BOS) and the special allocation fund (DAK), both designed to guarantee free schooling for all.[\[173\]](#) The situation has worsened since May 2010, when the government conceded to demands from parliamentarians that the BOS program should conform to conventional spending mechanisms and be channeled through corrupt district-level governments. Parents are also frequently forced to pay for school services that have already been financed by the state.[\[174\]](#)

In July 2010, the Supreme Court chief justice instructed all courts in the regular judicial system to publish case information, including verdicts, to uphold Public Information Law 14/2008. It remains to be seen whether judges will comply with this instruction, thereby improving clean governance.[\[175\]](#)

In April 2010, the Open Public Information Law came into effect requiring all institutions funded by taxpayer money to make regular public disclosures of their operations. The law applies to information that is produced, stored, managed, sent, or received by a public agency. State-owned enterprises and the judiciary must comply with the law as well. The law has been criticized for containing exceptions pertaining to intelligence, as well as language that could criminalize certain journalistic work. Concerns have also been raised that the ostensibly independent Information Commission, created under the law to arbitrate disputes regarding disclosure requests, will fall under government influence because it is funded from a ministerial budget.[\[176\]](#)

Closed-door meetings of the national parliament limit the ability of the press and public to monitor its proceedings. Parliamentary oversight of the budget remains problematic as well. Although opposition parties have become more involved in scrutinizing the executive budget-making process, parliamentarians have also chosen to hold closed budget meetings. A parliamentary internal performance-enhancement team concluded in a 2010 report that corruption was rampant during the budget process.[\[177\]](#) In December 2010, the BPK and the

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Finance Ministry ordered several Indonesian NGOs to withdraw most of their request to obtain the budget implementation documents of 69 ministries and other government bodies.[\[178\]](#)

Indonesia's score in the International Open Budget Index, which measures the relative transparency of a country's budget process, declined slightly in 2010. It is still higher than the average score for Southeast Asia overall, but Indonesia's position shows that the government provides the public with only some information on the central government's budget and financial activities during the course of the budget year. This makes it challenging for citizens to hold the government accountable for its management of the public's money.[\[179\]](#)

There is considerable variance in transparency of expenditure reporting at the local level, where only some governments have adopted reform regulations to increase expenditure transparency. Tracking local expenditure of revenues from oil, gas, and mining remains impossible. Indonesia announced its intent to implement the Extractive Industries Transparency Initiative (EITI) in 2009 but does not have to undergo validation until 2013. It remains unclear whether the EITI will make Indonesia's byzantine local expenditure system more transparent.[\[180\]](#)

Public procurement remains one of the most corruption-ridden sectors in Indonesia, with little prospects of meaningful reform due to the political interests involved. Institutions to oversee procurement practices remain weak, and low staffing levels, overlapping responsibilities, and endemic corruption in the auditing bodies ensure that little is uncovered. Contradictory regulations, an expression of fierce battles within the Indonesian bureaucracy, create an environment that undermines procurement reform.[\[181\]](#)

Foreign assistance continues to be prone to abuse and embezzlement, partly due to reluctance from those in the development industry to carry out rigorous monitoring and evaluation. There were efforts under way in 2010 to harmonize foreign assistance in order to increase aid effectiveness,[\[182\]](#) but it is not clear how successful these efforts have been.

Recommendations:

- In order to curb the influence of “money politics” in both executive and legislative elections, the government should substantially increase public party financing.
- The government should expand already initiated pilot projects on civil service reforms, including the introduction of merit-based pay systems for the entire Indonesian bureaucracy.
- The government should shift its corruption eradication strategy from punishing corrupt actors to creating incentives for civil service personnel that comply with the law.
- The government needs to show more determination in addressing the root causes of religiously motivated violence, including erratic state policies, impunity for vigilante groups, and discriminatory local regulations.

Author

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