INDONESIA

NGO assessment of the follow-up actions of the State party in implementing UN Human Rights Committee's recommendations

The ***1st periodic report of Indonesia*** on the State's compliance with the International Covenant on Civil and Political Rights (ICCPR) was ***reviewed by the UN Human Rights Committee*** (the Committee) at the Committee's 108th session in ***July 2013***. As the result of the review, the Committee issued its ***Concluding Observations (CCPR/C/IDN/CO/1)*** with 26 recommendations to the State party. The Concluding Observation also states in paragraph 32 that "*In accordance with rule 71, paragraph 5, of the Committee's rules of procedure,* ***the State party should provide***, ***within one year***, *relevant information on its implementation of the Committee's* ***recommendations made in paragraphs 8, 10, 12 and 25***".

The recommendations made in these four paragraphs are selected by the Committee for its follow-up procedure ("***follow-up recommendations***"), as they are ***implementable within a year*** and/or ***require immediate attention***. Information provided by the State party on the implementation of the follow-up recommendations (was ***due in July 2014***) will be further assessed by the Committee, whereby grades are also given to the action / reply of the State party.

This assessment form was developed by the Centre for Civil and Political Rights (CCPR) in order to facilitate civil society assessment of the implementation of follow-up recommendations by the State party and more effectively contribute to the Committee's follow-up procedure. The ***State party has submitted*** with delay its ***follow-up report on 4 March 2015***.

Assessment was jointly carried out by the below-listed organisations, coordinated by the **Human Rights Working Group (HRWG)** *with the support of the* **Centre for Civil and Political Rights (CCPR)**:

Asia Justice and Rights (AJAR) Indonesia; Coalition for Justice and Truth (KKPK); ALDP Papua; IKOHI; Elsam; imparsial; the Commision for the Disappeared and Victims of Violence (KontraS); the Indonesian Planned Parenthood Association (IPPA); Kalyanamitra; Institut Perempuan; Lembaga Bantuan Hukum (LBH, "Legal Aid Foundation) Bandung; LBH Jogjakarta; Center for Marginalized Communities Studies (CMARs) Surabaya; Solidaritas Korban Pelanggaran Kebebasan Beragama & Berkeyakinan (Sobat KBB); the Wahid Institute; and Franciscans International

Assessment submitted to the Committee on 1 April 2015

Summary of the NGO Grades for the follow-up Action of the State party[1]:

A: Action largely satisfactory; **B1**: Substantive action taken, but further action desirable; **B2**: Initial steps taken, but substantial action required;

C1: Some actions taken, but recommendations are not really implemented; **C2**: No action taken; **E**: measures taken are contrary to the recommendations

Recommendations by the Committee	NGO Grades	Summary of the NGO assessment
Paragraph 8: *The State party should: as a matter of urgency, address the impasse between Komnas HAM and the Attorney General; expedite the establishment of a court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament; effectively prosecute cases involving past human rights violations, such as the murder of prominent human rights defender Munir Said Thalib on 7 September 2004, and provide adequate redress to victims or members of their families*.	**C2**	No substantive action was taken by the State party so far, while the release of the convicted murder of the Munir case is regarded as a step backward concerning the issue of impunity. The impasse between Komnas HAM and the Attorney General seems to continue as no action has been taken yet by the latter regarding the recommendations of the former. Clarity or redress to the victims have not been brought to the cases of enforced disappearance between 1997-98, the Munir case as well as the past human rights abuses.
Paragraph 10: *The State party should: reinstate the de facto moratorium on the death penalty and should consider abolishing the death penalty by ratifying the Second Optional Protocol to the Covenant; ensure that, if the death penalty is maintained, it is only for the most serious crimes; review its legislation to ensure that crimes involving narcotics are not amenable to the death penalty; and consider commuting all sentences of death imposed on persons convicted for drug crimes.*	**E**	No action was taken, but contrary one by the State party. Execution of 6 death row inmates was carried out on 18 January 2015 and execution of further 10 death row inmates is planned in February / March 2015, while the planned execution is not yet carried out at the time of the submission of this assessment. No change has been made in the legislation concerning imposition of death row on drug crimes. The president of Indonesia publicly declared the rejection of all the clemency submitted by death row inmates convicted of drug crimes.
Paragraph 12: *The State party should: repeal Ministry of Health Regulation No. 1636 of 2010, which authorizes the performance of FGM by medical practitioners (medicalization of FGM); enact a law that prohibits any form of FGM and ensure that it provides adequate penalties that reflect the gravity of this offence; make efforts to prevent and eradicate harmful traditional practices, including FGM, by strengthening its awareness-raising and education programmes; and the national-level team established to develop a common perception on the issue of FGM should ensure that communities where the practice is widespread are targeted in order to bring a change in mindset*.	**C1**	The Ministry of Health Regulation No. 1636 was repealed by another Regulation of the Ministry, No. 6 of 2014. While the said Regulation No.6 indicates that FGM must not be performed, it is not a law and does not provide any penalty to the perpetrators. No law is made yet to prohibit FGM and punish perpetrators. Awareness-raising and education programme are yet to be undertaken, as certain forms of FGM are still carried out under the term of "female circumcision", which is perceived as necessary cultural or religious practice.
Paragraph 25: *Notwithstanding the decision of the Constitutional Court upholding Law No. 1 of 1965 on defamation of religion, the Committee is of the view that the said law is inconsistent with the provisions of the Covenant and that it should be repealed forthwith.*	**C2**	No action has been taken. The law concerned is still existing, while there are other laws, such as the Article 156a of the Criminal Code and local regulations that are applied in defamation cases. New law on Protection of Freedom of Religion is currently being drafted, in which substance of the blasphemy law seems to be integrated. The exact content of the new law is yet unclear, while the defamation law might remain unchanged and violence against religious minority appear to be continuing in law and practice.

[1] The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Paragraph 8: "*The Committee regrets the failure by the State party to implement article 43 of Law 26 of 2000 in order to establish a court to investigate cases of enforced disappearance committed between 1997 and 1998 as also recommended by Komnas HAM and the Indonesian Parliament. The Committee particularly regrets the impasse between the Attorney General and Komnas HAM with regard to the threshold of evidence that should be satisfied by Komnas HAM before the Attorney General can take action. The Committee further regrets the prevailing climate of impunity and lack of redress for victims of past human rights violations, particularly those involving the military (art. 2)*"…

NGO Assessment of the Action of the State party on the Recommendations made by the Committee[2]

Recommendation by the Committee	*The State party should, as a matter of urgency, address the impasse between Komnas HAM and the Attorney General.*
Actions taken by the State party (if any) and current situation	**Since July 2013, no substantial action taken.** In 2014, the Attorney General returned another dossier from the Komnas HAM regarding the latest inquiry completed in July 2012 on serious crimes committed in 1965, in which Komnas HAM found that there is sufficient evidence that crimes against humanity were committed. To date, in total of 6 cases have been recommended by Komnas HAM to the Attorney General to investigate as serious crimes (crimes against humanity or genocide). However, no positive action has been taken by the Attorney General so far. The newly appointed Attorney General (appointed in November 2014) has not taken any concrete action to address the impasse between Komnas HAM and him/his office. In the meantime, Komnas HAM has initiated an investigation on 5 cases of human rights violations committed during martial law period in 2002-2005 in Aceh. As these cases are not retroactive, Attorney General does not require any parliamentary recommendation to take any action, but the recommendation from Komnas HAM is enough. However, Attorney General so far has not taken any action. Due to the lack of action by the State as well as negative actions taken by the Attorney General, impunity is still prevalent and deep-rooted. The lack of action by the Attorney General regarding the pending six cases of human rights violations that are recommended by the Komnas HAM has caused uncertainty in the resolution of these cases.
Other Comments and actions immediately required from the State	Similar to the previous government, addressing past human rights violations does not seem to be the priority in the agenda of the new government. The State party should urge the Attorney General to follow-up the cases recommended by the Komnas HAM.
Recommendation by the Committee	*(The State party) should expedite the establishment of a court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament.*
Actions taken by the State party (if any) and current situation	**Since July 2013,** no significant action has been taken by the Government, except some reformulation efforts to draft the new Commission for Truth and Reconciliation (TRC) Law. Although the TRC Law is urgently needed, the legislation process has not been completed yet. At the same time, the Government of Indonesia tried to inhibit the initiative of the Local Regulation (Perda—*Qanun*) No. 17/2013 adopted by the Parliament of Aceh (*Dewan Perwakilan Rakyat Aceh—DPRA*) to create the Commission for Truth and Reconciliation in Aceh, based on the argument that such initiative has to follow the process at national level. **On 1 April 2014**, the Indonesian Government through the Ministry of Home Affairs has rejected to give the approval to the draft TRC Law at the National Level, arguing that the Draft TRC Law was considered to be contrary to the 1945 Constitution by the Constitutional Court. **In December 2014**, the revised Draft TRC law has been submitted by the Ministry of Law and Human Rights to the House of Representatives,

[2] Carried out by: Asia Justice and Rights (AJAR) Indonesia; Coalition for Justice and Truth (KKPK); ALDP Papua; Human Rights Working Group (HRWG) and IKOHI

	the Legislative Body, to be discussed in 2015. **As of 9 February 2015**, the Draft TRC Law is identified as one of the 37 priority draft laws, for which the legislation process should be completed in 2015, in the National Legislation Program (Prolegnas) 2015-2019 approved by the Indonesian Government, the Regional Representative Council (DPD) and the House of Representatives, in which in total of 159 draft laws are listed. In addition, the Draft TRC Law has also been identified as a priority in the new Action Plan on Human Rights (RANHAM) of the Indonesian Government, in which the TRC Secretariat is planned to be established under the Directorate General of Human Rights, Ministry of Law and Human Rights of Indonesia. The President Joko Widodo has made promises during his campaign to address past abuses, which he also reiterated during his 2014 human rights day speech. However, so far, no action is taken by the President in this regard.
Other Comments and actions immediately required from the State	The family members of the disappeared during 1997-1998 have not received any certainty yet regarding their cases i.e. whereabouts of the disappeared whereby in Indonesian legal system, children of the victims of enforced disappearances are having difficulties in registering for school and marriage due to the unclear status of the guardian (father) whether alive or dead.
Recommendation by the Committee	*(T)he State party should effectively prosecute cases involving past human rights violations, such as the murder of prominent human rights defender Munir Said Thalib on 7 September 2004, and provide adequate redress to victims or members of their families.*
Actions taken by the State party (if any) and current situation	On **Munir case**, the previous president has consistently given remission to convicted murder of the case, Pollycarpus. **In November 2014**, he was released after having served 8 years of his initial 19-years sentence. The release of Pollycarpus increased the concern among civil society over the impunity of actors who allegedly ordered the murder. They remain influential in the State machinery and in close proximity to the highest State office holders. At the same time, the President Joko Widodo has appointed a former general as the Minister of Defence, overturning a post-reformation tradition of appointing civilians. The new Minister of Defence has publicly defended the killing of Theys Eluay (Papuan leader in 2003) by members of the special forces and was a commander during the military action under Aceh's Martial Law. On **redress for victims,** the national agency for victim and witness protection, LPSK, has provided medical assistance to hundreds of victims and is now conducting consultations on the establishment of a trust fund for victims. The Coalition for Justice and Truth (KKPK, a coalition of 50 NGOs, www.kkpk.org) has conducted civil society-led truth process with its members including NGOs from Aceh and Papua, holding 10 public hearings and collating information on human rights abuses committed between 1965-2005. Since 2012, the KKPK has been collecting the results of documentation carried out by NGOs, which focused on gross violations of human rights. The final report of this process, which provided space for the victims to reveal the truth about the systematic violence that has occurred in Indonesia, was launched in October 2014 with some key recommendations to the State institutions (the Government, House of Representatives, and other relevant institutions). This report was also given to the President Joko Widodo by Komnas HAM on 10 December 2014. The report is in Bahasa Indonesia, while an English version is planned to be published early 2015 at KKPK's website.
Other Comments and actions immediately required from the State	**On the Munir case:** The President Joko Widodo should publish the result of a presidential inquiry (TGPF, 2005) into Munir's murder. The inquiry report was supposed to be made public, but was never made so. Further investigations, focusing on those who conspired and ordered the murder, should also be carried out. The President should also urge Attorney General to immediately apply for a review of the decision of the South Jakarta District Court, which founded not guilty and ordered the release of the actor behind Munir's murder, Muchdi Purwopranjono (former commanding general of the Kopassus). **On redress for victims:** The President should fully consider the report and recommendations from KKPK, which includes a Presidential initiative to provide access to justice, reparations and social assistance to victims, as well as acknowledgement for past crimes. Instead of

	drafting and passing a new law through parliament for a national truth commission, the President should issue a decree to establish an inquiry on the past abuse and provide urgent reparations to victims.

Overall NGO Grades for the follow-up Action of the State party[3]: **A:** Action largely satisfactory; **B1**: Substantive action taken, but further action desirable; **B2**: Initial steps taken, but substantial action required; **C1**: Some actions taken, but recommendations are not really implemented; **C2**: No action taken; **E**: measures taken are contrary to the recommendations	**C2**

[3] The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Paragraph 10: "*The Committee regrets that the State party suspended its de facto moratorium on the death penalty and has resumed executions. The Committee regrets that death sentences are imposed by courts for drug crimes, which do not meet the threshold of the "most serious crimes" set under article 6 of the Covenant (art. 6)*"…

NGO Assessment of the Action of the State party on the Recommendations made by the Committee[4]

Recommendation by the Committee	*The State party should reinstate the de facto moratorium on the death penalty and should consider abolishing the death penalty by ratifying the Second Optional Protocol to the Covenant.*
Actions taken by the State party (if any) and current situation	The new government led by the President Joko Widodo has been supporting the capital punishment, which is also reflected in his statement made on the Human Rights Day, 9th December 2014, at the Gajah Mada University, saying that "*There is no pardon for the drugs crime. I think we are aware that Indonesia in a state of emergency due to drugs*". In his statement, the President has also mentioned that he would not approve any clemency for 64 (death penalty inmates) who are convicted of the drug crimes. The statement was made without conducting any in-depth study on the actual cases of the clemency. Furthermore, in December 2014, Indonesian government has announced that 6 (six) death row inmates, namely; Agus Hadi (Indonesian – drug crimes), Pujo Lestari (Indonesian – drug crimes), Gunawan Santoso (Indonesian – murder), Tan Joni (Indonesian – murder), Namaona Denis (Nigerian – drug crimes), Marco Archer Cardoso (Brazil – drug crimes) would be executed by the end of the 2014, whereby the announced execution was eventually postponed until further notice. In parallel, Indonesia has **abstained** at the adoption of UN GA Resolution, A/RES/69/186 on the moratorium of the death penalty in December 2014, while voted against at the adoption of UN General Assembly Resolution, A/RES/67/176 in December 2012. At the same time, the Supreme Court issued the Circular Letter (SEMA) No. 7 of 2014 on 31 December 2014, with the pretext of providing legal certainty, limiting the final number of judicial review (PK) application to only once. This letter applies to all cases of judicial review application submitted by inmates convicted any form of criminal acts, not only the drug crimes. However, the Supreme Court SEMA is contradicting the decision of the Constitutional Court No. 34/PUU-XI/2013 that has declared that the Article 268 paragraph 3 of the Criminal Procedure Code, which also limited the number of judicial review only once, is invalid. **On 18 January 2015**, **at 00:00 AM**, six death row inmates were carried out, all convicted of drug crimes: Namaona Denis (Nigerian), Marco Archer Cardoso (Brazilian), Ang Kim Soei alias Kim Ho alias Ance Tahir alias Tommy Wijaya (Dutch), Daniel Enemuo alias Diarrassouba Mamadou (Nigerian), Tran Thi Bich Hahn (Vietnamese), and Rani Andriani alias Melisa Aprilia (Indonesian).. **On 30 January 2015**, the President Joko Widodo has officially rejected 16 clemency applications of the death inmates convicted of drug crimes. Furthermore, Indonesia has announced execution of 10 more death row inmates: Andrew Chan and Myuran Sukumaran (Australians), Raheem Abbaje Salami (Nigerian), Zainal Abidin (Indonesian), Serge Areski Atlaoui (French), Rodrigo Gularte (Brazilian), Silvester Obiekwe Nwaolise alias Mustofa and Okwullu Oyatanze (Nigerians), Martin Anderson alias Belo (Ghana), and Mary Jane Veloso (Philippine).[5] **On 23 of February**, Attorney General said the execution would take place in the end of February or at least in the beginning on March 2015.[6] However, Indonesia has delayed the executions until all legal options have been exhausted. Mary Jane Veloso had applied for a Judicial Review because she was not

[4] Carried out by: Elsam; imparsial; and the Commision for the Disappeared and Victims of Violence (KontraS)

[5] Republika Online, "Death convict Serge Arezki to attend judicial review session", http://www.republika.co.id/berita/en/national-politics/15/03/10/nkzvpx-death-convict-serge-arezki-to-attend-judicial-review-session, downloaded on 27 March 2015.

[6] Metro Tv News, "Inilah Terpidana Mati Yang Akan Dieksekusi", downloaded on 23 February 2015: http://video.metrotvnews.com/play/2015/02/23/361738/8203-inilah-terpidana-mati-yang-akan-dieksekusi

	provided with a proper translator during her trial and did not understand proceedings, but **on March 27, 2015**, the Supreme Court declared that her application was rejected.[7] At the moment, the Government is preparing to move her to the Nusakambangan prison in Central Java for the execution.[8] As of now, the priority of the government of Indonesia regarding the issue of death penalty seems to be the protection of Indonesian citizens (migrant workers) living abroad, particularly those who are sentenced to death penalty (it is estimated that approximately 264 migrant workers are sentenced to death in countries such as Malaysia, Saudi Arabia and China). At the same time, execution of death penalty inmates is on-going and the re-instatement of de fact moratorium appears quite unlikely in Indonesia. Against this backdrop, the possibility of the ratification of ICCPR OP2 by Indonesia appears very scarce.
Other Comments and actions immediately required from the State	The Attorney General has stated in December 2014 that there will be 20 executions of death row inmates annually, starting from 2015, if the President indeed rejects the clemency applications as he announced.[9] The execution on 19 January 2015 was the first round of such execution. The Supreme Court Circular Letter No 7/2014, limiting the number of application for judicial review to only once, appears to be an attempt to speed up the process of execution of the death row inmates, as the Supreme Court and the Attorney General office have been arguing that death row inmates repeatedly submit applications for the judicial review in order to delay their executions. At the same time, almost all the cases of death penalty are also affected by the cross-cutting issues such as: the lack of fair trial; torture and intimidation by law enforcement officers to coerce confession and/or obtain information for the crime; violation of the right of the suspects/convicts for qualified legal representation; the lack of adequate translation and proper notification to embassy/consulate (applicable for foreigners); and the lack of notification to the families. In the past, executions were always carried out in secrecy (no information was given regarding the time and place of the execution), whereby no adequate information was provided to the inmates, their family members or their legal representatives either.
Recommendation by the Committee	*(The State party) should ensure that, if the death penalty is maintained, it is only for the most serious crimes.*
Actions taken by the State party (if any) and current situation	**No action was taken** by the State party. The Government is still imposing death penalty under 14 laws including ordinary crimes (see the list of regulations below). Most death penalty cases are related to drug crimes, terrorism, child abuses and murder. The execution in 2013, which ended the four-year de facto moratorium since 2009, was of the inmate convicted of drug crimes.
Other Comments and actions immediately required from the State	The Government of Indonesia has, several times, set up task force consisting of experts on the amendment of Penal Code of Indonesia (KUHP), of which the last one was created in 2010 that produced the option of having death penalty as an alternative punishment in the Penal Code. However, the Parliament of 2009-2014 disagreed to it and the discourse on the amendment of Penal Code went on, while the official process of the consideration of the amendment has stopped and waits until further notice. Indonesian authority is still regarding and insisting that the drug crimes are extraordinary crimes, which require extraordinary punishment (i.e. death penalty). Currently there is no plan of amending the Narcotics Law stipulating death penalty to drug crimes.

[7] ABC.net, "Bali Nine: Indonesia denies judicial review for fellow death row inmate Mary Jane Veloso", http://www.abc.net.au/news/2015-03-27/set-back-for-bali-nine-as-deathrow-inmate-denied-judicial-review/6352524, downloaded in 27 March 2015.

[8] Reuters, "Indonesia prepares to transfer Philippines drug convict for execution", http://www.reuters.com/article/2015/03/27/us-indonesia-executions-idUSKBN0MN10Z20150327, downloaded in 27 March 2015.

[9] Jakarta Post, "Jokowi Order Excecution", downloaded in 7 December 2014: http://www.thejakartapost.com/news/2014/12/05/jokowi-orders-executions.html

Recommendation by the Committee	*(T)he Committee recommends that the State party review its legislation to ensure that crimes involving narcotics are not amenable to the death penalty.*
Actions taken by the State party (if any) and current situation	**No action was taken by the State party**. The judges are still using the Narcotics Law No. 35/2009 to impose death sentence to drugs traffickers. National Narcotics Agency (BNN) is in the view that the application of death penalty would have a dettering effect. According to one of the civil society activitist, Ricky Gunawan of Legal Aid Society, the annual report of BNN shows that the number of drug traffickers and users are increasing till today, although death penalty is imposed, drug crimes are not decreasing or prevented at all. There is no discussion in the Parliament to review the legislation regarding death penalty regulated in the Narcotics Law No. 35/2009.
Other Comments and actions immediately required from the State	Regardless of the application of death penalty, the Indonesian Government and especially the law enforcement officers must ensure that all the legal processes meet the highest international standards especially with regard to the fair trial and provision of legal safeguards. President Joko Widodo has been using the argument that 40 to 50 persons, especially the youth, are dying everyday due to narcotics to justify the application of death penalty.[10]
Recommendation by the Committee	*(T)he State party should consider commuting all sentences of death imposed on persons convicted for drug crimes.*
Actions taken by the State party (if any) and current situation	**No action, if not contradicting ones, has been taken since 2013** by the State party, while the new President Joko Widodo has announced, as described above, that he would reject all clemency applications submitted by the death row inmates convicted of drug crimes. According to the National Narcotics Agency, of the total 133 inmates on death row, there are 58 convicted of drug crimes as **of 21 January 2015**, after the execution of six drug crime death row inmates on 18 January 2015.
Other Comments and actions immediately required from the State	The State party should carry out thorough review of all death penalty cases, in which there are also those allegedly became victims of unfair trial, corruption and/or errors and failures in the legal system.

Overall NGO Grades for the follow-up Action of the State party[11]: **A:** Action largely satisfactory; **B1**: Substantive action taken, but further action desirable; **B2**: Initial steps taken, but substantial action required; **C1**: Some actions taken, but recommendations are not really implemented; **C2**: No action taken; **E**: measures taken are contrary to the recommendations	**E**

Additional information: list of laws imposing death penalty in Indonesia (as of March 2015)

NO	LEGISLATIONS	ARTICLES
1	Criminal Code (KUHP)	Article 104, Article 111 paragraph (2), Article 124 paragraph (3), Article 140, Article 340, Article 365 paragraph (4), Article 444, Article 368 paragraph (2).

[10] The Conversation, "Indonesia Uses Faulty stats on Drug Crisis to Justify Death Penalty", downloaded on 23 February 2015: http://theconversation.com/indonesia-uses-faulty-stats-on-drug-crisis-to-justify-death-penalty-36512

[11] The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

2	Military Penal Code (KUHPM).	Article 64, Article 65, Article 67, Article 68, Article 73 1st, 2nd, 3rd and 4th, Article 74 1st and 2nd, Article 76 (1), Article 82, Article 89 1st and 2nd, Article 109 1st and 2nd, Article 114 paragraph (1), Article 133 paragraph (1) and (2), Article 135 paragraph (1) 1st and 2nd, paragraph (2), Article 137 paragraph (1) and (2), Article 138 paragraph (1) and (2), and Article 142 paragraph (2).
3	Act No. 12 of 1951 on Firearms	Article 1 paragraph (1).
4	Presidential Stipulation (Penpres) No. 5 of 1959 on the Authority of the Attorney General/Judge Advocate General in Terms of Aggravating the Threat of Punishment against Criminal Acts that Endanger the Implementation of Food and Clothing Supplies	Article 2.
5	Government Regulation Substituting a Law (Perpu) No. 21 of 1959 on Aggravating the Threat of Punishment against Economic Crimes.	Article 1 paragraph (1) and paragraph (2)
6	Act No. 11/PNPS/1963 on Eradicating Subversion Activity.	Article 13 paragraph (1) and paragraph (2), Article 1 paragraph (1).
7	Act No. 31/PNPS/1964 Principal Provisions of the Atomic Energy	Article 23.
8	Act No. 4 /1976 on Amendment of Several Articles in the Indonesian Criminal Code related to the Extension of the Effectiveness of the Stipulation of Criminal Legislation against Aviation Crime and Facilities/Infrastructure Aviation Crime.	Article 479k paragraph (2) and 479o paragraph (2).
9	Act No. 5/1997 on Psychotropic Substances	Article 59 paragraph (2).
10	Act No. 22 / 1997 on Narcotics	Article 80 paragraph (1), paragraph (2), paragraph (3) Article 81 paragraph (3), Article 82 paragraph (1), paragraph (2), and paragraph (3), Article 83.
11	Act No. 31 /1999 on Anti Corruption	Article 2 paragraph (2).
12	Act No. 26 / 2000 on Human Rights Court	Article 36, Article 37, Article 41, Article 42 paragraph (3).
13	Act No. 15 / 2003 on Eradication of Criminal Acts of Terrorism	Article 6, Article 8, Article 9, Article 10, Article 14, Article 15, Article 16.
14	Act No. 23 / 2002 on Child Protection	Article 89 paragraph (1).

Paragraph 12: "*The Committee regrets the State party's issuance of Regulation No. 1636 of 2010, following a fatwa (ruling) by the Ulema Council, which permits medical practitioners to perform female genital mutilation (FGM), including on 6-month-old babies. The Committee regrets the State party's explanation that a previous ban against FGM led to an increase in its practice by non-medical practitioners, exposing women to grave risks of harmful forms of FGM and that the current regulation would better protect women (art. 7)*" …

NGO Assessment of the Action of the State party on the Recommendations made by the Committee[12]

Recommendation by the Committee	*The State party should repeal Ministry of Health Regulation No. 1636 of 2010, which authorizes the performance of FGM by medical practitioners (medicalization of FGM).*
Actions taken by the State party (if any) and current situation	The State Party has repealed the Ministry of Health Regulation No. 1636 of 2010 of Female Circumcision on February 2014 through the Ministry of Health Regulation No. 6 of 2014. The practice of FGM in Indonesia, or commonly known as female circumcision, is still performed in various forms. Most practices of female circumcision in Indonesia are classified as type IV of the WHO/UNICEF/UNFPA categorisation[13] such as pricking, scraping or scratching the genital area, and others performed symbolically, such as: greasing turmeric in the clitoris area; and using chicken peck as a tool of circumcision. In the perspective of involved NGOs, practice of symbolic circumcision should also be prohibited, because it still makes women the object of tradition that aim to restrict the rights of women, sexuality and can cause violence against women. There is also a prevalent stereotyping and bias against women, which backs the practice of all forms of female circumcision, that woman are not clean and need to be circumcised or or circumsicino is needed to women in order their to manage libido (National Commission for Woman, 2013).[14] In March 2015, Arimbie Heroepoetri, Chairman of the Sub-Commission on Violence Monitoring Committees in Indonesia said "*circumcision is performed on underage girls who have not had a voice against his own body. So circumcision in the form of any symbol we consider as a violence against woman*".[15] At the same time, the regulation of the Minister of Health No. 6 of 2014 is a regulation which only annulled the regulation No.1636 of 2010, but is not a by law that bans all forms of FGM. Thus, there is still no legal instrument that explicitly prohibits the practice of all forms of FGM and women and girls are left without any legal protection from any impact arising from the practice of FGM. Although the consideration section of the Ministry of Health Regulation No. 6 of 2014 actually contains a suggestion to not perform female circumcision, which mutilates female genitalia, the wording and position of the regulation is rather confusing. In any case, it does not prohibit the practice of FGM clearly. The Article 2 of the Ministry of Health Regulation No. 6 of 2014 also states: "*Giving a mandate to the Consultative Assembly of Health and Syara'k to publish guidelines for the performance of female circumcision to ensure the safety and health of the women, who are being circumcised as well as to not perform mutilation of female genitalia (female genital mutilation)*." However again, the forms of female circumcision, which are allowed and which are not allowed, are not clearly defined or categorised. Thus, there is still the possibility that widely practiced female circumcisition that are even categorised as type IV FGM as above would still be continued due to the ambiguity, and even because of the guidelines allowing circumcision. At the same time, the guidelines itself are not yet published or prepared and there is no definite information regarding the progress of this mandate. On the other hand, the Regulation of the Minister of Health No. 6 of 2014 on the annulment of the Regulation of the Minister of Health No. 1636 of 2010 are not effectively, if at all, disseminated among the public.

[12] Carried out by: the Indonesian Planned Parenthood Association (IPPA); Kalyanamitra; and Institut Perempuan

[13] WHO International, "Sexual and Reproductive Health: Classification of female genital mutilation", http://www.who.int/reproductivehealth/topics/fgm/overview/en/

[14] The Indonesian Institute, "Sunat Perempuan: Dilema Kebijakan dan Praktek Keagamaan", http://theindonesianinstitute.com/sunat-perempuan-dilema-kebijakan-dan-praktek-keagamaan/, downloaded on March 16, 2015

[15] BBC Indonesia, "Komnas Kecam Sunat Perempuan", http://www.bbc.co.uk/indonesia/laporan_khusus/2013/02/130204_komnassunat, downloaded on March 16, 2015.

	The situation appears that the State party does not have serious commitment or intention to eliminate all forms of FGM and to improve the protection of women and girls, particularly their sexual and reproductive health and rights.
Other Comments and actions immediately required from the State	A research conducted in 2010 found three major complications experienced by circumcised females in Indonesia: haemorrhaging, psychological trauma, and infection (Jurnalis Uddin, 2010)[16], while the same complications were found in the research carried out by the International Planned Parenthood Federation (IPPF) in 2001. As such, the female circumcision practiced in Indonesia includes certain forms of FGM and is clearly harming women's health. At the same time, female circumcision/FGM is performed with the purpose to control the lives of women, but without any consent of the women or girls concerned as it is carried out when they are still baby, thus in clear violation of their rights. Any forms of FGM must be comprehensively and explicitly prohibited through legislation and all necessary measures need to be taken to educate the public, especially those practicing it, that FGM is a violation of human rights.
Recommendation by the Committee	*(T)he State party should enact a law that prohibits any form of FGM and ensure that it provides adequate penalties that reflect the gravity of this offence.*
Actions taken by the State party (if any) and current situation	The Ministry of Health Regulation No. 6 of 2014 states that FGM must not be performed, while the regulation itself is not exactly a law and does not provide any penalties. The said Regulation does not define the exact forms of FGM, or specify the forms of female circumcision that are categorized as FGM and thus must not be performed, either. While there is no recent/official data or research/studies on FGM in Indonesia, NGOs dealing with FGM observed that in several areas in Jakarta and Tangerang, FGM is still practiced either by medical or non-medical personnel, often under the name of female circumcision. In Muara Baru, North Jakarta, FGM is performed on girls aged 7-8 years by non medical personnel, particularly among the domestic migrant residents from Makassar, South Sulawesi, whereby gold daggers are used to take small part (by scratching) around the clitoris. In Prumpung, East Jakarta, FGM is carried out by medical personnel in private clinics upon the strong request of parents or other family of the baby. In 2014, a female 7-day-old baby was circumcised in a clinic by pricking the clitoris using tiny needle, while several female babies under 1 month were also found circumcised in the same year. In Cipadu, Tangerang, it is reported that female circumcision is performed on female babies aged under 1 year. Although there is no information about the exact method since the parents were not present during the circumcision, they acknowledged that there were blood stains on the genitalia of the baby. Different forms of FGM are still performed in Indonesia due to the lack of clear legal instruments prohibiting with penalties to the perpetrators. On the other hand, medical personnel do not have any legal grounds to refuse the performance of FGM against parents' and/or society's demand on the basis of tradition, religion or belief.
Other Comments and actions immediately required from the State	
Recommendation by the Committee	*(T)he State party should make efforts to prevent and eradicate harmful traditional practices, including FGM, by strengthening its awareness-raising and education programmes.*
Actions taken by the	**No substantive action was taken** in this regard. The society as a whole still perceives the practice of female circumcision, which includes certain

[16] Prof. Dr. Jurnalis Uddin, DR. Dr. Artha Budi Susila Duarsa, DR. H. Zuhroni M.Ag, Rifqatussa'adah M.Ag (The Institution for Population & Gender Studies, YARSI University, Jakarta) in collaboration with FATAYAT NU, Jakarta and the International Islamic Center for Population Research and Studies, Al Azhar University, Cairo, "Female Circumcision: a social, cultural, health and religious perspectives" ISBN: 978-978-9186-17-1, published on July 2010 by YARSI UNIVERSITY PRESS, 2000.

State party (if any) and current situation	forms of FGM, as a part of cultural and religious rituals and the demand for such practice remains high, whether performed by medical or non-medical personnel. On the other hand, the Government also admitted that female circumcision is a part of cultural custom, provided that the safety and health of women are ensured and FGM is not performed, as stated in the regulation of the Minister of Health No. 6 of 2014 in Consideration section, letter C " *based on cultural aspects and beliefs of Indonesian society to this day there are still demand for the practice of female circumcision, where its performance must ensure to the safety and health of the woman whom being circumcised, and must not perform female genital mutilation (FGM)*". However, there are practices of female circumcision/FGM, which harm health of women and violate their rights, thus, even if it is regarded as "*cultural*" practice, any form of FGM must be prohibited, prevented and eliminated by the State party through a firm and clear legal regulation. While there is still prevalent mind-set among the society that female circumcision is a cultural, customary or religious necessity/obligation, no specific action is taken by the State party to address it, nor raise awareness or educate those involved. Due to the lack of efforts or action by the State in awareness raising and education, the perception that female circumcision/FGM is a necessity/obligation will continue to exist or even grow in the community and perpetuated into the next generation.
Other Comments and actions immediately required from the State	As recommended by the Committee, the Government should comprehensively prevent and eliminate harmful traditional practices including female circumcision/FGM through awareness-raising or mindset-changing targeted at the public at large and especially by involving religious figures, traditional authorities, community leaders, as well as concerned parties.
Recommendation by the Committee	*(T)he national-level team established to develop a common perception on the issue of FGM should ensure that communities where the practice is widespread are targeted in order to bring a change in mindset.*
Actions taken by the State party (if any) and current situation	The Government gave a mandate to the Consultative Assembly of Health and Syara'k to create guidelines for female circumcision through Minister of Health's Regulation number 6 of 2014 Article 2. However, up to now, nothing concrete is carried out.
Other Comments and actions immediately required from the State	The national-level team should also focus on the practice of female circumcision and carry out comprehensive study on the exact forms, quantity/prevalence, and effect on the health and rights of women and girls of the female circumcision. The Government, through correlating Ministries i.e. Ministry of Women Empowerment and Child Protection, Ministry of Health and Ministry of Religious Affairs should release a Joint Decree on the prohibition of female circumcision.

Overall NGO Grades for the follow-up Action of the State party[17]: **A:** Action largely satisfactory; **B1**: Substantive action taken, but further action desirable; **B2**: Initial steps taken, but substantial action required; **C1**: Some actions taken, but recommendations are not really implemented; **C2**: No action taken; **E**: measures taken are contrary to the recommendations	**C1**

[17] The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Paragraph 25: "*The Committee regrets that Law No. 1 of 1965 on defamation of religion, which prohibits the interpretations of religious doctrines considered divergent from the teachings of protected and recognized religions, the 2005 edicts by the Indonesian Ulema Council and the 2008 Joint Decree by the Minister for Religious Affairs and others, unduly restrict the freedom of religion and expression of religious minorities, such as the Ahmadiyya. The Committee is also concerned at reports of the persecution of other religious minorities, such as Shia and Christians, who are subjected to violence by other religious groups and law enforcement personnel (arts. 18, 19, 21 and 22)*" …

NGO Assessment of the Action of the State party on the Recommendations made by the Committee[18]

Recommendation by the Committee	*Notwithstanding the decision of the Constitutional Court upholding Law No. 1 of 1965 on defamation of religion, the Committee is of the view that the said law is inconsistent with the provisions of the Covenant and that it should be repealed forthwith. The Committee reiterates its position as stated in paragraph 48 of general comment No. 34, that: "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. …Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith."*
Actions taken by the State party (if any) and current situation	**No substantive action was taken by the State party to implement the recommendation.** At the same time, Indonesian Government and the local governments have been adopting the substance of the blasphemy law in other legislations and regulations and/or using these legislations and regulations together with or in the context of the Law on blasphemy, such as: - Article 156a of the Criminal Code - Article 59 paragraph (2) of the Law No. 17 of 2013 on Mass Organisation (UU Ormas), in which "*Organizations are prohibited from misuse, abuse, or desecration of religious affiliations in Indonesia*"; - Article 28 paragraph (2) of the Law No. 11 of 2008 concerning the Information and Electronic Transactions Law (UU ITE), stipulating "*Any Person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension on individuals and/or certain groups of community based on ethnic groups, religions, races, and intergroups (SARA)*";[19] - Article 13 of the Qanun No. 11 of 2002 on Aqidah, Worship and Symbols of Islam, local Regulation in Aceh, stipulating "*Every Muslim compulsory Islamic dress. What is considered to be an Islamic dress is clothing that covers the genitalia, not transparent, and does not show the shape of the body.*" - Article 5 of the Qanun No. 14 of 2003 on Seclusion, local Regulation in Aceh, stating "*Every person is prohibited from seclusion*", in which seclusion is defined as "*a silent act between two people mukallaf or more of the opposite sex who is not mahram or without marriage*." In addition, several cases of blasphemy were reported in the media according to the Indonesian Legal Aid Foundation and the Legal Aid Society of Bandung, including: - **In July 2014**, the Chief Editor of Jakarta Post, Meidyatama Suryodiningrat was suspected for alleged blasphemy through ISIS caricatures published in the Jakarta Post on July 3, 2014, as the caricatures shows a man raising a flag emblazoned with the Arabic phrase "There is

[18] Carried out by: Lembaga Bantuan Hukum (LBH, "Legal Aid Foundation) Bandung; LBH Jogjakarta; Center for Marginalized Communities Studies (CMARs) Surabaya; Solidaritas Korban Pelanggaran Kebebasan Beragama & Berkeyakinan (Sobat KBB); and the Wahid Institute

[19] ABNR: Counsellors at Law, "Law of the Republic of Indonesia Number 11 of 2008 Concerning Electronic Information and Transactions", http://www.bu.edu/bucflp/files/2012/01/Law-No.-11-Concerning-Electronic-Information-and-Transactions.pdf, downloaded on March 16, 2015.

	no God but Allah" over a picture of a skull and crossbones, with armed fighters in the background. He was charged under Article 156a of the Criminal Code for Blasphemy, with over 5 year imprisonment;[20] - **In September 2013**, Young Shayk Ahmad Arifin al-Haj was charged under Article 156a of the Criminal Code on defamation or blasphemy, because he was regarded as being deviated from the teachings of Islam.[21]
Other Comments and actions immediately required from the State	The Draft Law on Protecting Freedom of Religion is planned to be submitted to the House of Representative in July 2015. Prior to the submission, the Minister of Religious Affairs visited religious leaders and communities in Indonesia in October 2014 to request consideration of the content of the law. The Minister explained the definition of desecration and blasphemy will be included in the new Law, in which substance of the blasphemy law appear to be intergrated. However, there is no clarity whether the blasphemy law will be repealed, while there is also the possibility that the new Law will be created in addition to the blasphemy law, which may remain unchanged.
Recommendation by the Committee	*(T)he Committee recommends that the State party provide adequate protection against violence perpetrated against members of religious minorities.*
Actions taken by the State party (if any) and current situation	**No substantive action has been taken by the State.** The State restricts and prohibits citizens to believe in and perform any religion. National Commission on Human Rights (Komnas HAM) has recommended the Government to review the legislation and policies at a national and regional level that are classified discriminatory and violates the right to freedom of religion/belief. Until now these recommendations have not been implemented. Human Rights Watch conducted research in 2013 in 10 provinces on the Indonesian islands of Java, Madura, Sumatra, and Timor, and interviewed more than 115 people of various religious beliefs. The research identified in total of 71 victims of violence and abuses, while islamist militant groups, such as the Islamic People's Forum (Forum Umat Islam) and the Islamic Defenders Front (Front Pembela Islam) have been implicated as perpetrators of the attacks and arson on houses of worship and homes of members of minority religions. Indonesian government officials and security forces have often facilitated harassment and intimidation of religious minorities by militant Islamist groups. They have also been making blatantly discriminatory statements, refusing to issue building permits for religious minorities' house of worship, and pressuring congregations to relocate. Governmental institutions, including the Ministry of Religious Affairs, the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakor Pakem) under the Attorney General's Office, and the semi-official Indonesian Ulema Council, have also been playing a role in the violation of the rights and freedoms of the country's religious minorities. These institutions have eroded religious freedom by issuing decrees and *fatwa* (religious rulings) against members of religious minorities and using their position of authority to press for the prosecution of "blasphemers".[22] **Bakor Pakem ("**The Coordinating Board for Monitoring Mystical Beliefs in Society") is a coordinating body under Indonesia's Attorney General's Office with branches in every province and regency under local prosecutors' offices. Bakor Pakem traditionally sits under the intelligence division of the public prosecution office. It is extremely influential when it comes to prohibition of religious communities. Bakor Pakem recommended

[20] The Jakarta Post, "Police to review 'Post' case", http://www.thejakartapost.com/news/2014/12/16/police-review-post-case.html, downloaded on March 12, 2015.
[21] Medan Bisnis, "Kejiatsu Didesak Tahan Penista Agama", http://www.medanbisnisdaily.com/m/news/read/2014/09/02/115065/kejatisu-didesak-tahan-penista-agama/, downloaded on March 18, 2015.
[22] Human Rigts Watch, "Indonesia: Religious Minorities Targets of Rising Violence", http://www.hrw.org/news/2013/02/28/indonesia-religious-minorities-targets-rising-violence, downloaded on March 19, 2015.

	the banning of Al Qiyadah Al Islamiyah sect on November 7, 2007, and in two days, the Attorney General's Office banned the sect. Bakor Pakem recommended the banning of the Ahmadiyya in April 2008, two months later, Ahmadiyya religious propagation activities were banned.[23] In accordance with the Article 30, paragraph 3 of Law No. 16 of 2004 on the Prosecutor, Bakor Pakem has the duty to:[24] a. Oversight and prevent the flow of trust, abuse, and/or blasphemy; b. Receive and analyze reports and/or information about the flow of public trust; c. Examine and access carefully the development of a cult to determine the impacts of public order and peace; d. Submit reports and advice in accordance with the level of authority and responsibility; e. Be able to take preventive measures and repressive action accordance with the legislation
Other Comments and actions immediately required from the State	Violence against religious minority continues occurring, while a set of discriminatory laws against religious minorities as well as prohibition of certain minority religions, such as Ahmadiyya, are certainly one of the root causes of such violence.

Overall NGO Grades for the follow-up Action of the State party[25]: **A:** Action largely satisfactory; **B1**: Substantive action taken, but further action desirable; **B2**: Initial steps taken, but substantial action required; **C1**: Some actions taken, but recommendations are not really implemented; **C2**: No action taken; **E**: measures taken are contrary to the recommendations	**C2**

[23] Human Rights Watch, "In Religion's Name: Abuses against Religious Minorities in Indonesia", 2013, page. 42. See more: Uli Parulian Sihombing, "Menggugat Bakor Pakem: kajian hukum terhadap pengawasan agama dan kepercayaan di Indonesia (Jakarta: Indonesian Legal Resource Center) 2008.

[24] ILRC – Hivos, "Kompilasi Hasil Penelitian Putusan pengadilan dan Kebijakan Daerah terkait Hak-Hak Atas Kebebasan Beragama/Berkeyakinan" 2012-2014.

[25] The NGO Grades are made in accordance with the assessment grades of the HR Committee (see the page 1) so that both grades can be directly compared

Centre for Civil and Political Rights

Centre for Civil and Political Rights (CCPR)
t: +41 (0)22 332 25 53 - e: info@ccprcentre.org
a: 1, rue de Varembé - CP 183 - CH-1202 Geneva
www.ccprcentre.org

Contact person for the review and follow-up of Indonesia
Mr. Daisuke SHIRANE
Centre for Civil and Political Rights (CCPR)
Asia Pacific Coordinator
dshirane@ccprcentre.org