



INDONESIA

CAPITAL: Jakarta

POPULATION: 243.3 million

GNI PER CAPITA (PPP): \$3,830

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	4.66	4.75
CIVIL LIBERTIES:	3.66	3.58
RULE OF LAW:	2.92	3.00
ANTICORRUPTION AND TRANSPARENCY:	2.56	2.90

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Michael Buehler

INTRODUCTION¹

Indonesia is both the world's largest Muslim-majority country and one of its most ethnically diverse. Home to approximately 230 million people, of whom more than 85 percent follow Islam, there are almost as many Muslims living in Indonesia as in the entire Arabic-speaking world. The Sunni branch of Islam predominates, while approximately one million Indonesians adhere to the Shia variant. A significant number of Sufi communities also exist in the archipelago state.

Indonesia is also the world's third largest democracy, after India and the United States. President Suharto's New Order regime, one of the most repressive dictatorships in Southeast Asia, collapsed in May 1998 after controlling Indonesian politics for more than 30 years. Since Suharto's downfall, the most dramatic reform initiative has been the introduction of an extensive regulatory framework governing the conduct of executive and legislative elections. Based on the new system, three national legislative and presidential elections, as well as balloting in several hundred localities, have occurred throughout the last decade. Overall, elections in Indonesia are considered free and fair.

The quality of democracy remains low, however. Despite efforts by the current administration to strengthen good governance, graft remains endemic in all aspects of society, especially within the bureaucracy, and constitutes the most significant obstacle to reform. The rule of law is seriously undermined by rampant corruption in the judiciary and politically well-connected elites rarely face consequences for abuses of power. Protection from torture is ineffective and impunity for human rights abuses perpetrated by security forces and military personnel remains the norm. In short, corruption, collusion, and nepotism continue to

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constitute the modus operandi of Indonesian politics. These are both a legacy of the Suharto era and the result of hasty decentralization provisions drafted under Suharto's vice president and successor, B. J. Habibie, and implemented by Megawati Sukarnoputri, who led the country from 2001 to 2004.

Despite these enormous challenges, the country has managed nine years of positive economic growth. At the time of writing, it looked as though Indonesia would end up being "one of the few relatively bright spots around the world during this global recession."² Nonetheless, legal uncertainty, corruption, and rent seeking by Indonesian state officials continue to pose serious obstacles to good governance and economic prosperity in the long run.

ACCOUNTABILITY AND PUBLIC VOICE 4.75

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.75
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.67
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.57

The most immediately visible change in Indonesian politics over the last 10 years has been the implementation of executive and legislative elections at the national and subnational levels. Since 2004 elected government has been comprised of a directly elected president and vice president, a 550-member House of Representatives, and a senate-like Regional Representatives Assembly. Presidents, vice presidents, and legislators serve five-year terms, with the former limited to two terms. Parliaments at the provincial, regency, and municipality levels are also elected. Regents, mayors, and governors throughout the archipelago are limited to two terms.

Elections at every level of government were held in 2009. In April, Indonesia conducted its third legislative election of the post-Suharto era, while its second direct presidential election took place in July. Direct elections for regents and mayors were held in 486 out of 510 regencies and municipalities, while gubernatorial elections were held in 15 out of 33 provinces between 2005 and 2008.

In preparation for the 2009 polls, the parliament passed a series of laws instituting changes to the electoral framework. Though shortcomings remain, the amendments made the electoral system more transparent and accountable to the citizenry, thereby deepening Indonesian democracy. The most important reform involved changes to the party list system, which resulted from a December 2008 decision by the Constitutional Court and subsequent passage of an amended version of the 2008 Legislative Election Law. The 2004 general legislative elections were based on an open-list proportional system in which voters selected a party and could then also select 1 of 10 ranked candidates listed for each party; in practice, however, postvote seat allocations almost always followed the party ballot rankings due to the high threshold necessary to achieve a directly elected seat. Under the reformed system, priority is given to candidates who

achieve the highest number of votes, regardless of their position on the party list. This has shifted additional power to voters, as representatives are dependent on the electorate for their position rather than on party leaders, reducing intraparty horse-trading and corruption.

The new law also amended a threshold rule according to which parties that failed to win 3 percent of the vote obtained a seat but were not allowed to contest future elections. Under the new law, only parties that win 2.5 percent of the national vote may occupy a parliamentary seat, but those failing to meet the threshold are free to contest future polls. Many observers saw this reform as a positive development that would reduce fragmentation in parliament without penalizing losing parties too harshly.³

The 2008 Legislative Election Law also created an election oversight agency, Bawaslu, tasked with monitoring campaign and election rules violations; it possesses increased powers compared to its predecessor, the Election Supervisory Committee. In October 2008, the parliament passed an amended Presidential Election Law stipulating that only parties or party coalitions that gain 20 percent of parliamentary seats or 25 percent of the national vote may nominate a presidential candidate.

In April 2008, the parliament also passed revisions to the Regional Governance Law, which regulates the election of regents, mayors, and governors. Many observers considered the revised bill a breakthrough in the institutionalization of democracy in Indonesia. The new law's primary amendment was to grant independent candidates the possibility of participating in subnational executive government elections, thereby greatly increasing local government accountability. Previously, only political parties could nominate candidates; this contributed to heightened corruption and an uneven playing field as slots were granted to the highest-bidding candidates, to the disadvantage of popular aspirants who could not afford a party nomination.⁴

The new law also required incumbents in subnational executive elections to immediately resign from office on registering for reelection. In the past, officials could remain in office during their campaign, increasing the risk of diversion of state funds to campaign expenses. Unfortunately, in August 2008, the Constitutional Court scrapped the regulation that required incumbents to step down after registering their candidacies.⁵

Finally, authority for arbitrating disputes in subnational executive elections shifted from the Supreme Court to the Constitutional Court, which was previously authorized only to adjudicate legislative and presidential elections.⁶ Transferring authority for dispute resolution to the more widely respected Constitutional Court was widely seen as a positive step, as the Supreme Court had generated controversy in its handling of past subnational executive elections.

Despite its overall positive effect on Indonesian democracy, several shortcomings remain in the new regulatory framework. Some critics have raised concerns that the national parliamentary thresholds excessively favor large parties over small ones. At the regional level, the new law requires independent

candidates running in executive elections to post an election bond and collect signatures from a minimum percentage of voters in the relevant district in order to run. The bill further discriminates against independent candidates by requiring that they pay a fine of up to US\$2.1 million should they withdraw their nomination after approval by the local general election commission, a sanction that party-nominated candidates do not face. Some observers fear that such logistical and financial barriers may prove too costly and discourage otherwise viable candidates from running.

The 2008 General Election Law also requires parties to account for financial contributions from private individuals and companies. It subjects party finance records to independent audits, with sanctions for infractions. Achieving full compliance with and enforcement of these regulations remains a problem, however, and “money politics” remains widespread in Indonesian elections.⁷

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.⁸ Millions of voters were unregistered, distribution of voting materials to polling stations was chaotic, and election officials were inadequately trained. In total, over 1,000 electoral violations were recorded, twice the number reported in 2004.⁹ The General Election Commission certified 68 organizations to monitor the elections, while granting permission to eight international survey institutes to conduct “quick counts” at a sample of ballot stations. However, the actual number of observers deployed to the approximately 500,000 polling station was lower than in 2004, casting doubts on the degree of oversight of the elections.¹⁰ Vote rigging occurred but was not widespread or systematic, while some incidents of voter intimidation and booth capture were reported, mainly in Aceh.¹¹ Incidents of election-related violence occurred only rarely and adversaries chose to solve disputes through institutional means, including via hundreds of lawsuits submitted to the Constitutional Court.¹²

Despite such shortcomings, the 2009 general elections were considered free and fair, and it is unlikely that the will of voters was severely distorted. The 38 parties that proved a nationwide presence and successfully registered had equal campaigning opportunities. With the exception of Islamic parties, however, this pluralism of parties does not reflect a diversity of competing ideologies or policy options. Indonesian politics remains highly personalized, with most parties linked to well-known politicians and little campaigning based on programmatic platforms.¹³

Only 9 of the 38 parties collected sufficient votes to pass the parliamentary threshold. The Democratic Party (PD) of incumbent president Susilo Bambang Yudhoyono was the clear winner, garnering 21 percent of the vote (143 seats) and tripling its showing from 2004. The Golkar party, the backbone of former dictator Suharto’s regime, came in second with 14.45 percent (105 seats), continuing a pattern of declining support for the party with each successive election. The Indonesian Democratic Party-Struggle (PDI-P), which won the 1999

elections, came in third in 2009, collecting 14.3 percent of the vote (97 seats). Most significantly, Islamic political parties suffered substantial losses with their share of the vote waning from 32 percent in 2004 to 24 percent in 2009. The Prosperous Justice Party (PKS) was the only Islamic party to achieve a modest increase; nonetheless, its 7.88 percent of the vote (54 seats) was far below the 15–20 percent it had anticipated. The fragmentation of Islamic authority, low party cohesion, and recent institutional reforms have together greatly diminished the chances for political Islam to become a significant force in national Indonesian politics in the near future.¹⁴ President Yudhoyono won the July 2009 presidential elections with more than 60 percent of the vote.

In keeping with the pattern following the 2004 contest, most parties entered the cabinet following the 2009 elections. During Yudhoyono's first term, nearly all parties eventually were given cabinet posts, leaving the PDI-P as the only true opposition party. Formation of the government following the 2009 balloting followed a similar pattern, with six of the nine parties represented in the parliament—whose members account for three-fourths of all parliamentary seats—also joining the cabinet. This arrangement reflects a general tendency toward party collusion, which undermines accountability. For instance, Golkar officially opposed President Yudhoyono's reelection yet joined the cabinet following his victory.

Elections of regents, mayors, and governors held since 2005 have suffered from sporadic incidents of vote rigging and other irregularities. Election authorities have ordered recounts or re-votes in several subnational entities in recent years. Postelection violence has been limited, even in conflict-prone regions like Maluku, Central Sulawesi, and Central Kalimantan. The few outbreaks of violence have primarily targeted local electoral commissions and typically died down quickly.¹⁵ Assassinations of candidates, not uncommon in other Southeast Asian democracies, are unknown in Indonesia.

Although the principle of separation of powers is entrenched in the constitution, Indonesia's record of applying checks and balances has been mixed. While parliamentarians voice fierce criticism of the executive branch—including via censure motions against the president—the fragmented national parliament has limited capacity to effectively monitor the administration.¹⁶ Moreover, as legislators have abused legislative review to extort bribes from government officials, new regulations have been implemented that limit legislative oversight functions. The 2004 Regional Governance Law, for example, stripped local parliaments of their ability to impeach the regent, appoint regional secretaries, and screen electoral candidates.¹⁷

The Constitutional Court has repeatedly ruled against the government since its establishment in 2003. Nevertheless, its 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.¹⁸

Civil service incentive structures remain largely unchanged from the Suharto era. A lack of coordination among overlapping national ministries, as well as between central and local authorities, in the hiring and firing of public personnel further lowers efficiency and increases opportunities for corruption.¹⁹ Some ministries have succeeded in introducing modest reforms. The Ministry of Finance, the State Audit Agency, and the Supreme Court have implemented merit- and performance-based salaries as well as a more open and fair promotion track. Such reforms affect only 2 percent of the civil service, however, which continues to be characterized by a lack of transparency, scant use of merit in determining promotions, and strong job security.

Indonesia's democratic transition has significantly widened the space for civil society. Civic groups frequently comment on pending legislation, occasionally with some effect. The Anti-Pornography bill, passed in October 2008, was delayed for almost a year and significantly weakened following civil society opposition. Overall, however, civil society in Indonesia is weakly developed and civic groups' ability to influence the legislative process remains limited.

Legal impediments for civic organizations have increased in recent years. In December 2008, the Ministry of Home Affairs issued a regulation enforcing a provision of the 1985 Civil Society Organization Law that requires nongovernmental organizations (NGOs) to obtain government approval for assistance received from abroad. The law empowers the government to freeze the leadership boards of NGOs that violate the statute. As 90 percent of the country's approximately 13,500 registered NGOs receive foreign funding, the new regulation adds a significant administrative burden on both the government and civil society, while raising fears that it could be abused to punish government critics.²⁰ Pending legislation that would amend the 1985 law to protect against money laundering and terrorist financing through NGOs could produce further barriers to civil society activity, significantly threatening its vibrancy and capacity.

Indonesia is home to a large number of independent media outlets that offer a diversity of perspectives. The private print media has grown from under 300 publications in 1998 to over 800 in 2008. Although fear of legal harassment remains a key obstacle to free expression, a series of landmark Constitutional Court decisions since 2006 have enhanced protection of media freedom. In two rulings in December 2006 and July 2007, the Constitutional Court struck down passages in the Criminal Code that had allowed punishment for slander against the government.²¹ In December 2008, Harifin Tumpa, the acting chief justice of the Supreme Court, issued a circular that urged judges to treat all media cases under the more liberal press law rather than the criminal code.²² In April 2009, the court cleared *Time* magazine of defaming former President Suharto.

In February 2009, the Constitutional Court also struck down articles in the Legislative Election Law, arguing that they contradicted constitutional free speech guarantees. The articles required media outlets to provide equal advertising space to all candidates and enabled a government body to withdraw the

publishing license of any media organization failing to publish “fair and balanced reports” on political parties.²³

Despite these positive developments, legal impediments to free expression remain. The criminal code is still frequently applied to jail journalists for defamation, while passages of the Presidential Election Law and the Public Information Law are also restrictive. The Electronic Transaction and Information Law (ITE), passed in 2008, sanctions up to six years imprisonment and fines of up to US\$95,000 for individuals found to have electronically disseminated information deemed insulting or defamatory. Although the number of detained journalists has decreased, several have faced trials or been jailed in recent years based on these laws.²⁴ Meanwhile, the government retains the authority to issue and revoke licenses for broadcast media, as well as to block local outlets from directly relaying news programs by foreign providers.²⁵

Journalists in Indonesia also face physical and other forms of intimidation. In 2008, the Legal Aid Institute for the Press reported 25 cases of physical abuse and 27 cases of intimidation directed against journalists.²⁶ Such violence is rarely investigated, although many perpetrators are reportedly supporters of candidates in regional elections, government agents, police officers, or members of the Indonesian military. Other threats to press freedom derive from powerful private and corporate interests, who use defamation laws to restrict investigative reporting and, in some localities, form a corrupt nexus with state officials that can contribute to violence.

Freedom of expression continues to be restricted in conflict zones and areas with a history of separatist movements. According to Amnesty International, at least 152 people were arrested in the regions of Maluku and Papua during 2007 and 2008 for activities related to raising flags that symbolized regional independence; several were subsequently sentenced to prison.²⁷

The internet was accessed in 2008 by 25 million people, or 10.5 percent of the population. While there are no notable restrictions on accessing content, the ITE law has been used to prosecute civilians who express criticism of the government or other powerful actors via electronic media. In 2009, a Jakarta housewife named Prita Mulyasari was fined and arrested on defamation charges under the law for having criticized a private hospital for malpractice in an e-mail message that was later made public.

CIVIL LIBERTIES

3.58

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.13
GENDER EQUITY	3.00
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	2.75
FREEDOM OF CONSCIENCE AND BELIEF	4.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.00

While protection of civil liberties has advanced markedly since the Suharto era, torture and other rights abuses remain widespread. Legal provisions in the existing and draft revised criminal procedure codes do not sufficiently guard against torture and other ill-treatment. Members of the security forces regularly go unpunished for human rights violations, and torture of suspects in custody remains routine. The death penalty and caning continue to be applied, with 10 people executed in 2008.

Conditions in prisons and detention facilities are dismal. Overcrowding, poor sanitation, and inadequate access to medical care are pervasive. The penal code does not require the authorities to bring detainees before a judge or other judicial officer without delay. As a result, individuals may be detained for months without being afforded judicial review.²⁸

Harassment of peaceful political activists continues to occur. In October 2009, the Indonesian Human Rights Commission (Komnas HAM) reported that human rights defenders in Indonesia are increasingly being reported to the police, accused of lies, defamation, and criminal acts.²⁹ According to Amnesty International, 32 people were jailed or detained for peacefully expressing their views during 2008.³⁰

Despite such challenges, Indonesian authorities responded to terrorist attacks in recent years in an evenhanded and effective manner. The government has avoided the temptation of detaining Islamists without trial and instead prosecuted them by law, while implementing programs aimed at deradicalizing suspects. At the same time, the government has taken effective measures to protect citizens from further attacks. Leading members of terrorist groups have been killed and scores incarcerated for their involvement in attacks. Radical Islamic groups staged no large-scale attacks for several years, until a series of bombings occurred in Jakarta in July 2009. Within months, alleged mastermind Noordin Muhammad Top and other leading figures in his organization were killed, while other perpetrators were arrested quickly. As such, the political and economic impact of the bombings has been minor.³¹ Nonetheless, the government has introduced some counterterrorism measures that risk undermining civil liberties. Following the July 2009 bombings, the Yudhoyono administration proposed extending the limit for holding suspects without charge from seven days to two years, with the possibility of renewal for an unlimited period.

Impunity for police and military officers involved in torture and other human rights violations remains the norm. According to Amnesty International, "Indonesia lacks an effective, independent and impartial mechanism to receive complaints and conduct investigations into allegations of torture."³² Citizens may submit complaints of torture to the police or the military, though this occurs only rarely due to the low reputation of both institutions' redress mechanisms. In 2005, a National Police Commission (Kompolnas) was established and tasked with investigating allegations of abuse. Its impact has been minimal, however, and in June 2008 the commission publicly admitted that it had failed

to improve police performance because of a weak mandate, including a lack of authority to investigate and detain suspected abusers.³³

With respect to external oversight, the independence and capacity of Komnas HAM is severely hindered by limited resources and a weak mandate. The inability to identify and prosecute the culprits behind the 2004 poisoning of human rights lawyer Munir Said Thalib is a prominent example of the impunity that prevails in cases of rights violations. Muchdi Purwopranjono, a senior intelligence official, was acquitted of the murder in December 2008 following a trial in which multiple witnesses retracted previous incriminating statements, apparently due to fear of reprisal.³⁴

Though Indonesia is safer than many developing countries, crime remains a serious problem, especially in urban areas such as Jakarta, Medan, and Surabaya. Pickpocketing and other forms of robbery are common, while armed carjacking, vehicle theft, and nonviolent residential break-ins also occur. Crimes committed by private actors closely affiliated with ruling elites regularly go unpunished or are treated with lenience. Nonetheless, the most significant criminal actions affecting ordinary Indonesians remain those involving state actors, including predatory taxes, bribe solicitation, and police harassment.

The threat of human trafficking differs from region to region and is worst in provinces with conveniently located ports. The East Java Children's Protection Agency estimates that at least 100,000 women and child victims of trafficking annually pass through East Java province alone.³⁵ In response, the government passed a strong antitrafficking law in 2007 that aims to improve law enforcement and public awareness of the issue. Measures taken to safeguard citizens' rights beyond Indonesia's borders have not offered adequate protection. A memorandum of understanding with Malaysia explicitly endorsed the right of Malaysian employers to hold the passports of Indonesian workers, a tactic widely seen as facilitating exploitation.³⁶

Women are guaranteed equality under the Indonesian constitution, and the government has committed to formulating policies that counter violence against women and discrimination in the workplace. Since 2005, the minister for women's empowerment, Meutia Farida Hatta Swasono, has helped institute regulations to improve women's rights, including ensuring gender sensitivity in the National Strategy for Poverty Alleviation, facilitating women's access to credit, and improving female education.³⁷ In April 2008, the parliament passed a bill establishing a quota of 30 percent for women's participation as candidates and board members in all political parties. Despite initial concerns voiced by women's rights organizations that the new party-list system would be detrimental to female representation, the 2009 legislative elections resulted in election of the largest number of female parliamentarians to date.

Nevertheless, serious challenges remain; in 2006, Indonesia ranked 68th out of 115 countries in the global gender gap index.³⁸ Multiple laws and regulations discriminate against women in such spheres as family, marriage, divorce, land

ownership, and inheritance. Indonesian women are required to obtain their husband's consent for certain actions, including applying for a passport and undergoing sterilization or abortion. In recent years, Sharia-inspired bylaws have been adopted in some districts that infringe on women's constitutional rights. Mostly implemented by secular parties in order to bolster their political machines,³⁹ the restrictions imposed include limits on women's mobility at night and regulation of female dress. In November 2008, the national parliament also adopted a controversial antipornography law, imposing restrictions on certain forms of dance, traditional dress, and depiction of nudity in art. While it is premature to gauge its full impact, several women have subsequently been arrested in Jakarta under the new law.⁴⁰

Discrimination in employment remains institutionalized, with women's participation in the labor force dampened by such factors as lack of education, discrimination in wages and promotions, harassment in the workplace, and societal expectations related to balancing work and family life. Women receive roughly 20 percent lower wages than men for similar work. Although regulations forbid discrimination based on gender, women continue to encounter bias in civil service hiring and promotions.⁴¹

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 are divided among some 300 other ethnic groups.⁴² The country's national motto is *Bhinneka tunggal ika*, or "Unity in Diversity." Indonesia ratified the International Convention on the Elimination of All Forms of Discrimination in 1999. In October 2008, the parliament adopted an antidiscrimination law.⁴³ Nevertheless, ethnic discrimination persists and members of some minority groups encounter difficulties obtaining identity cards and other personal documents from the government bureaucracy.⁴⁴

Religious freedom has expanded since the end of the New Order and Indonesia officially recognizes Islam, Protestantism, Roman Catholicism, Hinduism, Buddhism, and Confucianism. Nevertheless, concerns have arisen in recent years over rising religious intolerance and the government's failure to respond effectively. This is especially true in the case of groups deemed heretical by mainstream Islamic authorities,⁴⁵ particularly the Ahmadiyah, a heterodox Islamic group with 400,000 Indonesian followers, which has been the focus of attacks since 2002. Under pressure from influential Muslim organizations, in June 2008 the national government issued a decree that warned Ahmadiyah against propagating its tenets in public. Some local authorities, however, have used the decree to justify outright bans on certain sects, in violation of the Indonesian constitution.⁴⁶ In April 2008, Ahmad Mossadeq, head of a new sect called Al Qiyadah Al Islamiyah, was sentenced to four years in prison for sullying religion. In total, the Wahid Institute in Jakarta identified 232 instances during 2008 where individuals or groups, mostly radical Islamic ones, tried to force their beliefs on others through legislation or violence, an 18 percent increase compared to 2007.⁴⁷

Similarly, as of 2007, approximately 52 out of 510 regencies and municipalities in Indonesia had adopted Sharia-inspired bylaws.⁴⁸ Most of the bylaws regulate Islamic knowledge and practices such as Quran reading ability for public servants, Muslim dress codes, and the collection of alms (*zakat*).⁴⁹ In September 2009, the parliament in Aceh province issued a bylaw endorsing stoning to death as punishment for adultery and caning for homosexuality.⁵⁰ In September 2008, the newly elected Constitutional Court chief justice, Mohammad Mahfud, declared the bylaws unconstitutional and a threat to national integrity. Nevertheless, Indonesia's political and legal environment renders revocation of the bylaws difficult, leaving most in place once adopted.

Disabled people, constituting approximately 10 percent of the population, face discrimination in various aspects of life, including education,⁵¹ political participation, and employment. Draft 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.⁵²

Indonesian workers have the right to join independent unions, bargain collectively, and, except for civil servants, stage strikes. Government enforcement of minimum wage and other labor laws remains weak, however. Only 10 percent of workers in the formal sector are union members, while domestic workers—estimated to number 2.6 million—are currently excluded from coverage by Indonesian labor laws. Security forces regularly intervene in labor disputes. In December 2008, at least nine people were injured and several hospitalized when police forcibly dispersed approximately 15,000 members of the Federation of Indonesian Metal Workers' Union (FSPMI) who demanded a wage increase in demonstrations in Batam.⁵³

Freedom of assembly is guaranteed under Indonesia's constitution. Demonstrations and rallies have become a popular means for expressing discontent with the government since Suharto's fall. Nevertheless, the right to protest is applied unequally across the country, and in conflict regions such as Aceh or Papua official permission for demonstrations is often refused. According to Amnesty International, the situation in Papua and Maluku continued to deteriorate in 2008.⁵⁴ In March 2009, the government detained four Dutch journalists for covering a demonstration in Papua that was held without a permit.⁵⁵ In other regions, public protests have on occasion been met with excessive force. Members of the police and the military involved in such clashes often go unpunished.

RULE OF LAW

3.00

INDEPENDENT JUDICIARY	2.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.60
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.25
PROTECTION OF PROPERTY RIGHTS	3.33

The Indonesian legal system is a civil law system based on Dutch, French, and German models. Judicial candidates are proposed by the Judicial Commission (JC) 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. In recent years, the Constitutional Court has continually asserted its independence, 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.

Despite efforts by the Yudhoyono administration to introduce reform measures, low judicial standards and lax enforcement continue to characterize the Indonesian justice system. Direct intervention by the central government in judicial affairs is increasingly rare, but executive interference at lower levels of authority remains common, facilitated by endemic corruption within the legal system. In a comprehensive national survey conducted by the government's Corruption Eradication Commission (KPK), the judiciary ranked among the lowest-rated state entities regarding degree of corruption.⁵⁶

Vested interests within the judiciary have also managed to resist reform efforts. A telling example surrounded the establishment of the independent JC in 2001 with a mandate to investigate misconduct in the judiciary and propose appointments to the Supreme Court. After the JC recommended investigations of 13 Supreme Court judges for potential wrongdoing in February 2006, the court asked the Constitutional Court to curtail the commission's investigatory powers. The Constitutional Court complied, stripping the JC of its authority to levy sanctions against judges and court officials. Instead, the JC now issues recommendations to the Supreme Court for possible sanctions, a procedure of limited effectiveness. In March 2008, the JC examined 212 cases and recommended 27 to the Supreme Court for follow-up, but the latter failed to scrutinize a single case.⁵⁷

Responsibility for appointing judges to the Supreme Court has shifted from the JC to the national parliament, opening the door to increased politicization of the judiciary.⁵⁸ Harifin Tumpa, one of the above-referenced judges initially identified for investigation, was appointed chief justice of the Supreme Court in early 2009. The tensions related to the JC have significantly lowered the possibility of creating a fair, clean, and transparent judiciary even as Indonesia's judiciary recently ranked last in a survey of 12 Asian countries by the Hong Kong-based Political and Economic Risk Consultancy. Its report noted that the judiciary is "one of Indonesia's weakest and most controversial institutions and many consider the poor enforcement of laws to be the country's number one problem."⁵⁹

The low quality of legal training also contributes to poor judicial performance, and no significant efforts exist to reform the system. Due to low salaries, instructors at many Indonesian law schools prioritize advising governmental and nongovernmental agencies over teaching. A weak career development

system, including low pay and inadequate pensions, also contributes to the low integrity and quality of many Indonesian judges. To date, only minor reforms have been implemented to improve the situation. In April 2008, President Yudhoyono issued a presidential regulation creating a new stipend that ensures adequate take-home pay for judicial employees if their performance meets certain criteria. A lack of adequate instruments for assessing judicial performance and quality limits the potential effectiveness of this initiative. In addition, compliance with judicial decisions by other branches is inconsistent due to cultural, economic, political, and legal factors as well as weak enforcement mechanisms.

Prosecutorial functions are conducted under the authority of the Jakarta-based attorney general. A weak regulatory framework, noncompliance by political parties and law enforcement officers, and limited resources pose challenges to prosecutorial independence. In recent years, the attorney general's office itself has suffered from chronic mismanagement and questionable decision making, particularly with regard to combating corruption within the judicial system. In early 2009, Attorney General Hendarman Supandji provided strategic posts to two senior prosecutors who were implicated in a bribery scandal in 2008.

The Indonesian legal system grants accused criminals the presumption of innocence. In practice, this has not always been upheld in the context of counterterrorism and anticorruption measures. Critics have accused the Indonesian police, for example, of charging certain individuals with links to terrorist organizations without sufficient supporting evidence.⁶⁰ Although hearings are generally public, fairness, impartiality, and timeliness are often lacking. It can take months for prisoners to be brought before a judge. The criminal procedure code guarantees the right to be assisted by counsel, but access to legal support and the judicial system in general remain beyond the reach of many Indonesians. According to recent estimates, only 10–17 percent of poor Indonesians have the ability to bring their cases to the courts.⁶¹ The “morality police” established in Aceh in 2005 have undermined due process rights in the province. As the unit's jurisdiction remains undefined and its supervision by state institutions lacking, individuals detained by its agents may be deprived of fundamental safeguards.

The Indonesian military of 2009 looks very different from the one presided over by former president Suharto during the New Order. The executive arm of the civilian government has been strengthened, and the visibility of the military in Indonesian politics has diminished significantly. With each successive election, the military's ability to influence the outcome has contracted, even as some former members run for office, mostly in subnational elections. The military lacks influence and resources to control substantial numbers of voters,⁶² and military support for intervention in the political process continues to subside. The percentage of governors with a military background has dropped from around 50 percent in 1998 to 12 percent in 2009.⁶³

In recent years, civilian authorities have made impressive progress in increasing democratic control over the military, stripping it of its vast powers, and removing its representation in parliament. One important factor was the

successful 2005 peace agreement forged between the government and the separatist rebel movement in Aceh, which nullified the pretext of “preventing national disintegration” that had been used to justify the military’s political autonomy. Another Yudhoyono administration initiative involves overseeing the military’s withdrawal from hundreds of military-run businesses, a process governed by a 2004 decree requiring the military to withdraw from all business activity by 2009.⁶⁴ Although the directive has been implemented to a degree that was previously unimaginable, the military has retained significant alternative sources of income. In 2008, the defense minister estimated that approximately 30 percent of the military’s budget was raised from off-budget sources. These include a growing number of informal—and sometimes illegal—economic activities,⁶⁵ such as illegal mining, illegal logging, racketeering, gambling operations, and prostitution rings, as well as contracting security services out for the protection of drug traffickers or private enterprises.⁶⁶ The military’s access to such large amounts of funding outside its formal budget has enabled it to maintain a measure of autonomy from democratic civilian control, despite the erosion of its institutional powers and formal business activity.

The military has thus successfully resisted certain reform measures, including efforts to hold its members accountable for crimes or to force it to relinquish a territorial command structure that still reaches down to the village level. Under Indonesian law, members of the military are to be tried in civilian courts for nonmilitary crimes. However, in 2006, Defense Minister Juwono Sudarsono rejected civilian jurisdiction, claiming it could compromise military interests and national security.⁶⁷ Although there were a number of cases under the Yudhoyono administration in which members of the police and the military were held accountable for corruption,⁶⁸ such instances are exceptions and there is no indication that the issue is being addressed systematically. Military tribunals have frequently offered lenient treatment to military personnel accused of human rights abuses, thereby fostering a culture of impunity.⁶⁹

Indonesian law protects the right of every citizen to own property, though 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. In March 2007, legislation was passed to reduce red tape and strengthen property laws.⁷⁰ The 2006 establishment of a ministerial-level task force and empowerment of commercial courts to issue seizure orders related to violations of intellectual property rights (IPR) have strengthened IPR protection.⁷¹ The extent to which such laws will be effectively enforced remains to be seen, however. Corruption and weak capacity in the judiciary, including within commercial courts, hinder the provision of adequate legal recourse related to property disputes, and internationally binding contracts are frequently disregarded.⁷² In a setback to economic reform, the Constitutional Court in March 2008 struck down extended land lease tenures, a chief attribute of the 2007 investment law, arguing that the leases violated the 1960 Agrarian Law.⁷³

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 forest rights among the sectors in which conflict is common.⁷⁴ Agricultural land is often claimed by multiple owners; with a corrupt judiciary and poor land ownership database, there are few avenues for arbitrating such disputes. Thus, as of mid-2009, thousands of unresolved land conflicts—including between local communities and government entities like the military—continue to result in violent clashes.⁷⁵

ANTICORRUPTION AND TRANSPARENCY 2.90

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.50
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	2.25
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	4.00
GOVERNMENTAL TRANSPARENCY	2.83

Despite progressive government efforts to combat graft, including hundreds of arrests in recent years, corruption remains endemic in Indonesia. Among the key causes of corruption are the government's considerable involvement in the economy and weak enforcement of anticorruption rules, including conflict of interest standards intended to counter the firmly entrenched culture of bureaucratic corruption molded during the Suharto era.

In 2007, Indonesia ranked below all major economies in the region except the Philippines on the ease of doing business.⁷⁶ The Yudhoyono administration has implemented reforms aimed at curbing red tape, some of which have shown positive results. Obtaining construction licenses has become easier and investor protection has improved. Credit information management has become more transparent, and the number of days needed to open a business has been reduced.⁷⁷ Nevertheless, corruption remains widespread at all levels of the bureaucracy. In state-run hospitals, for example, staff frequently bolster their salaries by accepting commissions for prescriptions or blackmailing patients.⁷⁸ A public service bill, which will expand the power of the ombudsman and authorize local regions to establish citizens committees to monitor the provision of public services, was adopted in late 2009, after three years of deliberation. It remains to be seen whether the law will be successfully implemented. Moreover, excessive regulations increased at the local level following decentralization in 2001; a survey conducted in 2008 estimated that around 30 percent of all local regulations were predatory in nature and an impediment to investment.⁷⁹

The Indonesian government is involved in running over 150 state-owned enterprises (SOEs). It also administers prices on basic goods such as fuel, rice, and electricity. Regulatory procedures in such enterprises do not sufficiently discourage graft, while the practice of officials fulfilling dual roles in government

and business facilitate corruption. A number of ministerial personnel, including high-level bureaucrats and presidential aides, serve simultaneously as commissioners of SOEs or private companies. Although the KPK has begun to look into the issue, the practice remains widely accepted. The operations of many SOEs remain opaque, and the Financial Institution Supervisory Agency often fails to enforce requirements for submission of financial reports.⁸⁰ The 2008 Openness of Public Information Law placed some obligations on SOEs but failed to require them to grant information requests at a level of detail sufficient to ensure transparency.⁸¹ In a promising development, in May 2009, the director of Pertamina, the state oil company, pledged to join the Extractive Industries Transparency Initiative (EITI) and introduce codes of conduct, blacklists of problematic vendors, and whistleblower protection programs.⁸² Senior public servants and agency heads are required by law to declare their assets and cooperate with the KPK. Such declarations remain poorly verified, however, due to inadequate human resources and financial management support.

Widespread arbitrary and predatory tax collection, especially at the subnational level, poses a significant problem. The State Audit Agency estimated that embezzled tax proceeds reached US\$1 billion between 2005 and 2007.⁸³ In response, the government has made substantial efforts to reform tax collection. It has introduced modern compliance systems, revamped the Directorate General of Taxation, and passed a tax procedure law in 2008. The new regional taxation law adopted in late 2009 defines a list of taxes that subnational governments are allowed to collect, while setting minimum and maximum rates for each type of tax. The degree to which the law will be enforced remains to be seen.⁸⁴

There are several independent investigative and auditing bodies in Indonesia. The Ombudsman Commission, created in 2000 by a presidential regulation, processes complaints about the quality of public services. In practice, it has been less effective than many had hoped due to a lack of government funding and support.⁸⁵ The Supreme Audit Agency (BPK), with offices in every province, supervises the state budget. It is independent, with its head elected by its members in order to avoid the appointment of government cronies. Although the BPK has addressed numerous cases of misconduct in recent years,⁸⁶ some of its members have themselves been investigated for corruption.

The KPK is considered the most effective investigative body in Indonesia and has delivered a number of high-profile convictions, including governors and general election commissioners. Its overall influence over corrupt practices in the country remains relatively modest, however, as it handles only between 12 and 30 percent of all corruption cases.⁸⁷ The bulk of cases are handled by prosecutorial offices across the country. In May 2009, the KPK's head was arrested on murder and racketeering charges, though this had less of a negative impact on public perception of the body than expected.⁸⁸ Instead, following criticism that it was becoming "too assertive," particularly in its pursuit of high-level politicians and bureaucrats, the national parliament passed an Anti-Corruption Court Law in September 2009 that significantly weakened the KPK. The new law authorizes

the heads of regular courts to alter the composition of judicial panels on the Anti-Corruption Court. Career judges, rather than ad hoc ones, may comprise the majority of such panels in the future, a change many observers view as a step backwards. Previously, such panels consisted predominantly of ad hoc judges, perceived as more independent because of their recruitment from outside the graft-ridden Indonesian judiciary.⁸⁹

In recent years, this set of agencies has frequently prosecuted public officials for abuse of power, including a former ambassador and other high-ranking officials.⁹⁰ Courts have also upheld jail sentences for prominent individuals convicted of bribing state officials. Nonetheless, the majority of abuses of power continue to go unpunished, and other government bodies have been less vigilant in punishing corrupt practices. Both the legislative and executive branches have refrained from holding members of the political establishment accountable, the attorney general's office has repeatedly ceased investigations of blatant violations of the law, and the Anti-Corruption Court has been criticized for handing down insufficiently severe punishments. Some observers have raised concerns that the Yudhoyono administration's aggressive anticorruption push, launched at a time when the judicial and civil service systems remain unreformed, has had the unintended side effect of exacerbating an atmosphere of uncertainty and perceived risk for state decision makers.⁹¹

Corruption scandals are widely reported in the media, with a growing number of outlets at the local level also covering such cases. The 2006 Witness Protection Act protects whistleblowers and establishes a witness and victim protection agency. Incomplete definitions, however, render the law's protection inadequate, and it is rarely put into practice.

Corruption is 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. Although the government has taken steps to address the endemic graft—including increasing teachers' salaries in February 2009—the problem remains deeply entrenched.

In 2008, the national parliament adopted an Open Public Information Law after more than nine years of deliberation. The law is scheduled to take effect in April 2010 and will require 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. Both SOEs and the judiciary must also comply, but political parties are still not required to disclose their private contributors apart from requirements under the General Election Law. The Open Public Information 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 as it will be funded from a ministerial budget, most likely the Information and Communications Ministry.

Closed-door meetings of the national parliament limit the ability of the press and public to monitor its proceedings. The parliament has debated the possibility of curtailing this practice,⁹² but the relevant draft bill has yet to be adopted by the national parliament. Parliamentary oversight of the budget remains problematic. Although opposition parties have become more involved in scrutinizing the executive budget-making process, parliamentarians have also chosen to hold closed budget meetings. Following a request by the KPK to observe such meetings, parliamentary leaders in August 2008 chose to uphold the right of committee heads to keep such meetings closed, though KPK officials may attend if granted an official invitation. Budget timeliness by subnational governments improved markedly in 2008 compared to previous years.⁹³

A variety of regulations have increased the transparency of public procurement processes at the national level, though opacity remains prevalent at the local level. A licensing requirement imposed on bidders has been eliminated, thereby reducing possibilities for bribery. At the national level, tenders are usually published in newspapers or over the internet. Still, as no effective mechanisms exist to monitor the assets of procurement officials and investigations into alleged bribery are rare, an environment conducive to corruption persists. As a result, public procurement remains one of the most corruption-ridden sectors in Indonesia.

Foreign assistance continues to be prone to abuse and embezzlement, partly due to a lack of capacity by those in the development sector to carry out rigorous monitoring and evaluation. The World Bank estimates that it loses approximately 30 percent of its budget in Indonesia due to corruption.⁹⁴

RECOMMENDATIONS

- In order to curb the influence of “money politics” in both executive and legislative elections, the government should substantially increase public party financing.
- Expand already-initiated pilot projects on civil service reforms, including the introduction of merit-based pay systems for the entire Indonesian bureaucracy.
- Legal impediments to freedom of expression should be repealed, including restrictive passages of the Presidential Election Law, the Public Information Law, and the 2008 Electronic Transaction and Information Law. The press law should be revised to include clear regulations on libel and defamation, and the criminal code should no longer be used for such suits.
- Local bylaws that are in conflict with national laws and decrees should be abolished, including those restricting religious freedom for minority groups or imposing strict Sharia-inspired codes of conduct on the general population.
- In order to enhance efforts to combat judicial corruption and reduce subnational executive interference, the oversight powers of the Judicial Commission should be reinstated as soon as possible.

- The government should vigorously investigate and prosecute human rights abuses committed by military and police personnel. Members of the military should face trial in civilian courts for nonmilitary-related crimes.
- The list of exceptions in the Open Public Information Law should be shortened and protection for whistleblowers and victims of corruption should be improved.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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