**BRIEFING ON INDONESIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 129th session (July 2020)**

*From the Global Initiative to End All Corporal Punishment of Children, May 2020*

**This briefing describes the legality of corporal punishment of children in Indonesia. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, those made to Indonesia by the Human Rights Committee, the Committee on the Rights of the Child, the Committee Against Torture and during the Universal Periodic Review in 2012 and 2017 (which the Government supported), and Indonesia’s stated commitment to law reform, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Indonesia, in particular asking what progress is being made on enacting legislation** **prohibiting all corporal punishment of children in all settings, including the home and as a sentence for a crime, throughout Indonesia, and**
* **in its concluding observations on Indonesia’s second state party report, recommend that legislation is enacted as a matter of priority to prohibit all corporal punishment of children in all settings, including as a sentence for a crime and under religious law, in all provinces.**

**1 The legality of corporal punishment of children in Indonesia**

1.1 ***Summary:*** Corporal punishment of children is unlawful in penal institutions and as a sentence for a crime in most provinces.

1.2 ***Home (lawful):*** Corporal punishment is lawful in the home. The Law on Child Protection 2014 (amending the 2002 Child Protection Law) states that parents and other carers must protect the child (defined as persons under 18, art. 1(1)) from “harsh treatment violence and abuse” (art. 13), that every child shall be entitled to protection from “abuse, torture or inhuman punishment” (art. 16) and that every person who commits or threatens violence against a child shall be punished (art. 80); the Law on Human Rights 1999 states that children – have the right “to protection by parents, family, society, and state” (art. 52), to “protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his parents, guardian, or any other party responsible for his care” (art. 58), and “not to be the object of oppression, torture, or inhuman legal punishment” (art. 66(1)). But these provisions and provisions against violence and ill-treatment in the Penal Code 1918, the Law on Child Welfare 1979, the Law on Domestic Violence 2004, the Law on Youth 2009 and the Constitution 1945 are not interpreted as prohibiting all corporal punishment in childrearing. We have been unable to examine the text of the Marriage Law 1974.

1.3 In its third/fourth state party report to the Committee on the Rights of the Child, dated October 2010, the Government stated it had a programme to develop “national and regional regulations that prohibit all forms of physical and psychological punishments of children at home and in schools”.[[1]](#footnote-1) Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence provides for implementation of the Law on Child Protection 2002, the Law on Domestic Violence 2004 and other relevant laws to protection children from violence in the home and in other spheres. They define violence as “any act that results or could result in misery or suffering, whether physical, sexual, economic, social or mental” (art. 11), child abuse as “any form of restriction, discrimination, exclusion and all forms of treatment to children which includes but is not limited to physical, sexual, psychological and economic violence” (art. 13) and physical violence as “any act that results in pain, injury, or physical disability” (art. 14) (unofficial translation). But there is no indication that this is interpreted as prohibiting all corporal punishment in childrearing. In 2012, the Government rejected recommendations to prohibit corporal punishment made during the Universal Periodic Review.[[2]](#footnote-2)

1.4 A draft new Criminal Code has long been under discussion: in March 2013 the Ministry of Justice and Human Rights reported that the revised Code had been submitted to the lawmakers.[[3]](#footnote-3) It appears no new Code has yet been adopted.

1.5 A National Strategy on the Elimination of Violence Against Children 2016-2020 was adopted by the Ministry for Women’s Empowerment and Child Protection in 2015. The strategy identifies corporal punishment as a “dangerous practice” and highlights prohibition of physical punishment as an international obligation not yet translated into national law, and a challenge in relation to rules of law that needs to be overcome. Following the adoption of the National Strategy, Indonesia became a pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. The roadmap on the implementation of the National Strategy has not yet been adopted but a roundtable event on the issue was held in May 2017. The Government accepted recommendations to prohibit corporal punishment during the Universal Periodic Review in 2017, committing itself to banning its use in all settings.[[4]](#footnote-4)

1.6 ***Alternative care settings (lawful):*** There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents. National Standards of Care for Child Welfare Institutions, adopted under Ministry of Social Affairs regulation 30/HUK/2011, state that corporal punishment should not be used but there is no prohibition in law. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence.

1.7 ***Day care settings (lawful):*** There is no explicit prohibition of corporal punishment in day care: it is lawful as for parents. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence.

1.8 ***Schools (lawful):*** Corporal punishment is lawful in schools. The Law on Child Protection 2014 protects children in schools from “violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions” (art. 54); Ministerial Regulation No. 82/2015 on the Prevention and Sanction of Violence in Schools also provides protection from violence but neither text explicitly prohibits corporal punishment. A group of teachers has been reported to pursue a judicial review procedure of the Law on Child Protection 2014 in order to clarify the interpretation of the term “violence and abuse”[[5]](#footnote-5) – as of July 2017 the Constitutional Court does not appear to have a decision yet.

1.9 The Act on the National Education System 2003 is silent on the issue of corporal punishment. We have been unable to examine the text of the Teachers and Lecturers Law 2015 but there are no indications that it addresses corporal punishment. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence.

1.10 ***Penal institutions (unlawful):*** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but it is not explicitly prohibited. The Law on Correctional Facilities 1995 provides for respect for human dignity (art. 5) and corporal punishment is not among permitted disciplinary measures (art. 47). The Law on Human Rights states that children deprived of their liberty have the right to “humane treatment, as befits the personal development needs of his age” (art. 66); the protections from violence and cruel treatment in the Law on the Juvenile Justice System 2012, the Constitution 1945 and the Law on Child Protection 2014 also apply. Protection from cruel and degrading treatment is provided for in the Regulations of the Minister of Justice No. M.04-UM.01.06 1983 on Procedures for Placement of Prisoners and the Discipline of Prisoners in Correctional Facilities and No. M.04-UM.01.06 1983 on Detention and Care of Detainees, and Order of State Detention Center.

1.11 ***Sentence for crime (partially lawful):*** Corporal punishment is unlawful as a sentence for crime under provisions protecting children from “inhuman punishment” in the Law on Human Rights 1999 (art. 66) and the Child Protection Law 2014 (art. 16). The Law on the Juvenile Justice System 2012 states that children in conflict with the law have a right to “be treated humanely and in accordance with the needs of their age” and to “freedom from torture and other cruel, inhuman or degrading punishment or treatment” (art. 3, unofficial translation) and article 71(4) states that “the penalties imposed on children must not violate the dignity of the child”. However, we have yet to ascertain the applicability if these laws in relation to Shari’a law in Aceh and other areas.

1.12 Shari’a law has been implemented in the province of Aceh and other areas. Law No. 11/2006 on the Government of Aceh authorises that Government to establish bylaws, including criminal law (Qanun Jinayah), criminal procedure (Qanun Jinayah on Procedural Law) and the Shari’a Court (Mahkamah Syariah): these should be consistent with national law. In 2009, the Aceh Legislative Council endorsed the Aceh Criminal Code (Qanun Hukum Jinayat) – a set of bylaws which would replace part of the Indonesian Criminal Code with Islamic provisions applicable to Muslims, including punishment for adultery and premarital or homosexual sex with caning or stoning to death. In March 2013, the draft Code was revised to remove the punishment of stoning for adultery; it was signed into law in December 2013 and sent to the Jakarta, the capital, for approval. The proposed Criminal Code is under discussion alongside a proposed Criminal Procedure Code (Qanun Acara Jinayat). In reporting to the Human Rights Committee in 2013, the Government stated that the punishment of caning is “not necessarily” about punishment but is a deterrent – but it went on to describe the involvement of doctors in implementing the punishment of caning in order to ensure “the health conditions of the convicted before, during and after the punishment is carried out”.[[6]](#footnote-6) In September 2014, the Aceh provincial parliament approved the Principles of the Islamic Bylaw and the Islamic criminal code (Qanun Jinayah) which extend Sharia law to non-Muslims and provide for judicial corporal punishment.[[7]](#footnote-7)

1.13 In reporting to the Committee on the Rights of the Child in 2014, the Government acknowledged that there have been by-laws which are inconsistent with human rights principles, stating that these are “undesired by-products of the implementation of sub-national autonomy in Indonesia”.[[8]](#footnote-8) A number of by-laws have been revoked following review by the Ministry of Home Affairs, and guidelines on legal drafting[[9]](#footnote-9) have been produced in an attempt to prevent such laws being drafted and to support implementation of Law No. 12 of 2011 on the Formulation of Law and Regulation. Drafting is also regulated by the Joint Regulation of the Minister for Law and Human Rights and Minister for Home Affairs No. 20 of 2012 and No. 77 of 2012 on Human Rights Parameters for the formulation of by-laws. To our knowledge, these do not prohibit corporal punishment as a sentence under sharia law (unconfirmed).

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***HRC***: In 2013, the Human Rights Committee recommended that Indonesia take practical steps to put an end to corporal punishment in the penal system and in all settings and that it repeal the Aceh Criminal Code, which permits the use of corporal punishment in the penal system.[[10]](#footnote-10)

2.2 ***CRC***: In 2004, the Committee on the Rights of the Child recommended that legislation in Indonesia be amended to explicitly prohibit corporal punishment in the family, schools and childcare settings.[[11]](#footnote-11) This was reiterated in 2014.[[12]](#footnote-12)

2.3 ***CAT***: In 2008, the Committee Against Torture recommended the abolition of all corporal punishment of children in Indonesia.[[13]](#footnote-13)

2.4 ***UPR***: In 2012, during the Universal Periodic Review of Indonesia, two recommendations were made to prohibit corporal punishment in all settings but one of these was recorded as a recommendation to prohibit “violence”.[[14]](#footnote-14) The Government accepted the recommendation to prohibit violence but rejected the recommendation abolish all corporal punishment, stating that “corporal punishment of children is not an issue as such practices are not tolerated in Indonesia both legally and culturally”.[[15]](#footnote-15) In the third cycle examination in 2017, Indonesia supported recommendations on corporal punishment, including a recommendation to explicitly prohibit it in all settings including the home.[[16]](#footnote-16)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 31 October 2012, CRC/C/IDN/3-4, para. 76 [↑](#footnote-ref-1)
2. 5 September 2012, A/HRC/21/7/Add.1, Report of the working group: Addendum, para. 6.9 [↑](#footnote-ref-2)
3. Reported in *Jakarta Globe*, 7 March 2013 [↑](#footnote-ref-3)
4. 5 May 2017, A/HRC/WG.6/27/L.5, Draft report of the working group, unedited version, paras. 5(126), 5(129) and 5(137) [↑](#footnote-ref-4)
5. See <http://indonesiaexpat.biz/news/corporal-punishment-students/>, accessed 19 July 2017 [↑](#footnote-ref-5)
6. 28 June 2013, CCPR/C/IDN/Q/1/Add.1, Reply to list of issues, para. 115 [↑](#footnote-ref-6)
7. 2 October 2014, Human Rights Watch press release, <http://www.hrw.org/news/2014/10/02/indonesia-aceh-s-new-islamic-laws-violate-rights>, accessed 27 October 2014 [↑](#footnote-ref-7)
8. 6 May 2014, CRC/C/IDN/Q/3-4/Add.1, Reply to list of issues, paras. 1 to 9 [↑](#footnote-ref-8)
9. “Understanding the Making of Local Regulations”, November 2011 [↑](#footnote-ref-9)
10. 21 August 2013, CCPR/C/IND/CO/1, Concluding observations on initial report, para. 15 [↑](#footnote-ref-10)
11. 21 September 2005, CRC/C/15/Add.258, Concluding observations on initial report, paras. 9, 34 and 35 [↑](#footnote-ref-11)
12. 10 July 2014, CRC/C/IDN/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8 and 60 [↑](#footnote-ref-12)
13. 2 July 2008, CAT/C/IDN/CO/2, Concluding observations on second report, paras. 15 and 17 [↑](#footnote-ref-13)
14. 14 May 2008, A/HRC/21/7, Report of the working group, paras. 108(75) and 109(28) [↑](#footnote-ref-14)
15. 5 July 2012, A/HRC/21/7, Report of the working group, paras. 108(75); 5 September 2012, A/HRC/21/7/Add.1, Report of the working group: Addendum, para. 6(9) [↑](#footnote-ref-15)
16. 5 May 2017, A/HRC/WG.6/27/L.5, Draft report of the working group, unedited version, paras. 5(126), 5(129) and 5(137) [↑](#footnote-ref-16)