



Global Initiative to  
**End All Corporal Punishment  
of Children**

**BRIEFING ON INDONESIA FOR THE  
COMMITTEE ON THE RIGHTS OF THE CHILD,  
PRESESSIONAL WORKING GROUP – October 2013**

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**This briefing describes the legality of corporal punishment of children in Indonesia. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendations on the issue, the recommendations to prohibit made during the UPR in 2012 (rejected by the Government) and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will:**

- **in its List of Issues for Indonesia, raise the issue of corporal punishment of children, in particular asking what steps have been taken to ensure that all corporal punishment, without exception, is explicitly prohibited in the home and other settings?**
- **in its concluding observations on Indonesia’s third/fourth report, recommend that legislation is enacted to explicitly prohibit all corporal punishment, however light, in all settings including the home and as a sentence for crime under Shari’a law, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

## **1 Indonesia’s report to the Committee on the Rights of the Child**

1.1 The third/fourth state party report to the Committee on the Rights of the Child acknowledges that the practice of “imposing discipline through corporal punishment” is one of the challenges faced in fulfilling the right of children to be protected from violence.<sup>1</sup> The Government lists a number of steps it has taken to reduce violence against

<sup>1</sup> 18 October 2012, CRC/C/IDN/3-4, Third/fourth state party report, para. 75

children, including through “development of national and regional regulations that prohibit all forms of physical and psychological punishment of children at home and in schools”.<sup>2</sup>

1.2 Despite the above assertion, we have been unable to identify any Indonesian legislation or proposed legislation which prohibits all corporal punishment in the home and schools, though we note that in rejecting the recommendations to prohibit corporal punishment made during the UPR in 2012 the Government again indicated that it is prohibited by law.<sup>3</sup> Our research suggests, however, that while the law prohibits corporal punishment of some severity, it does not explicitly prohibit all corporal punishment, however light (see next section).

## **2 The legality and practice of corporal punishment of children in Indonesia**

2.1 *Summary*: In Indonesia, corporal punishment is unlawful as a sentence for crime in some but possibly not all circumstances; it is considered unlawful in penal institutions but is not explicitly prohibited; it is not prohibited in all its forms in the home, schools and alternative care settings.

2.2 *Home (lawful)*: The Law on Child Protection 2002 states that parents and other carers must protect the child from “harsh treatment violence and abuse” (article 13), that every child shall be entitled to protection from “abuse, torture or inhuman punishment” (article 16) and that every person who commits or threatens violence against a child shall be punished (article 80). The Law on Human Rights 1999 states that children – defined as unmarried persons under 18 (article 1(5)) – have the right “to protection by parents, family, society, and state” (article 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” (article 58), and “not to be the object of oppression, torture, or inhuman legal punishment” (article 66(1)). But there is no explicit prohibition of all corporal punishment in childrearing in these laws or in the Penal Code 1918, the Law on Domestic Violence 2004, the Law on Youth 2009 or the Constitution 1945.

2.3 *Schools (lawful)*: The Law on Child Protection 2002 protects children in schools from “violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions” (article 54) but it does not explicitly prohibit corporal punishment. The Act on the National Education System 2003 is silent on the issue of corporal punishment. In research by Save the Children UK in schools in North Maluku, nearly a quarter of the children surveyed reported having been hit by the teacher on their legs, hands, ears, cheeks and buttocks, once or more than once, the teachers using their hands, or a stick, ruler or bamboo swathe.<sup>4</sup>

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<sup>2</sup> *ibid.*, para. 76(c)

<sup>3</sup> 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)

<sup>4</sup> Save the Children UK, Indonesia (2004), “Violence in schools: report on a survey conducted by the Save the Children Education Programme in North Maluku”, unpublished, cited in Save the Children (2005), *Discipline and punishment of children: a rights-based review of laws, attitudes and practices in East Asia and the Pacific – Save the Children Sweden Southeast Asia and the Pacific, regional submission to the UN Secretary General’s Global Study on Violence against Children*, Save the Children Sweden

- 2.4 *Penal system – sentence for crime (?partial prohibition)*: Corporal punishment is unlawful under provisions protecting children from “inhuman punishment” in the Law on Human Rights 1999 (article 66) and the Child Protection Law 2002 (article 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” (article 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 of these laws in relation to Shari’a law.
- 2.5 Shari’a law has been implemented in the province of Aceh and other areas, including flogging and stoning as punishments for crime. Following the enactment of the Special Autonomy Law in Aceh in 2001, the province passed a series of bylaws to implement Shari’a law, including caning as punishment for offences such as adultery, consuming alcohol, unmarried couples being alone (khalwat) and, for Muslims, eating, drinking or selling food during sunlight hours in Ramadan. 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 corporal punishment for adultery and premarital or homosexual sex.
- 2.6 *Penal system – disciplinary measure in penal institutions (unlawful)*: Corporal punishment is considered unlawful but it is not explicitly prohibited. The Law on Correctional Facilities 1995 provides for respect for human dignity (article 5) and corporal punishment is not among permitted disciplinary measures (article 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” (article 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 2002 also apply (see above). 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.
- 2.7 *Alternative care settings (lawful)*: There is no explicit prohibition of corporal punishment in alternative care settings. 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. The first comprehensive research into the quality of care in childcare institutions in Indonesia, jointly conducted by the Social Services Ministry, Save the Children and UNICEF, found physical and psychological punishment to be widespread and often routine in childcare institutions. Pinching children’s stomachs and caning them were the most common forms of punishment. Shaving of heads and throwing dirty water on children were also common for repeat “offenders”.<sup>5</sup>

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<sup>5</sup> Martin, F. & Sudjarat, T. (2007), *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF & DEPSOS RI

### 3 Opportunities for achieving prohibition

3.1 A draft new Criminal Code has long been under discussion. In March 2013, the draft Code was revised to remove the punishment of stoning (but not caning) for adultery, and the Ministry of Justice and Human Rights reported that the revised Code had been submitted to the lawmakers.<sup>6</sup> A proposed Criminal Procedure Code (Qanun Acara Jinayat) is also under discussion. **We hope the Committee will urge the Government of Indonesia to ensure that the new Criminal Code protects children from all corporal punishment, including as a sentence under Shari'a law.**

### 4 Recommendations by human rights treaty bodies and during the UPR

- 4.1 *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.<sup>7</sup>
- 4.2 *CAT*: In 2008, the Committee Against Torture recommended the abolition of all corporal punishment of children in Indonesia.<sup>8</sup>
- 4.3 *UPR*: Indonesia was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation was made specifically concerning corporal punishment of children, but the Government accepted a recommendation to incorporate the Convention on the Rights of the Child into national legislation.<sup>9</sup> The second cycle review took place in 2012 (session 13). Two recommendations were made to prohibit corporal punishment in all settings but one of these was recorded as a recommendation to prohibit “violence”.<sup>10</sup> 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”.<sup>11</sup>

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<sup>6</sup> Reported in *Jakarta Globe*, 7 March 2013

<sup>7</sup> 21 September 2005, CRC/C/15/Add.258, Concluding observations on initial report, paras. 9, 34 and 35

<sup>8</sup> 2 July 2008, CAT/C/IDN/CO/2, Concluding observations on second report, paras. 15 and 17

<sup>9</sup> 14 May 2008, A/HRC/8/23, Report of the working group, para. 76(2)

<sup>10</sup> 14 May 2008, A/HRC/21/7, Report of the working group, paras. 108(75) and 109(28)

<sup>11</sup> 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)