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**AMNESTY
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INTRODUCTION

Amnesty International submits the following information to the United Nations (UN) Committee on the Rights of the Child (the Committee) in advance of its 66th pre-sessional meeting, at which it will prepare for the review of Indonesia's third and fourth periodic reports on implementation of the Convention on the Rights of the Child (the Convention).¹

The information contained in this briefing is drawn from Amnesty International's ongoing research on Indonesia.

1. FEMALE GENITAL MUTILATION (ARTICLE 24)

In November 2010 the Ministry of Health issued regulation No. 1636/MENKES/PER/XI/2010 concerning "female circumcision" (*sunat perempuan*).² The regulation legitimizes the practice of female genital mutilation and authorizes certain medical professionals, such as doctors, midwives and nurses, to perform it (Article 2). Article 1.1 defines this practice as "the act of scratching the skin covering the front of the clitoris, without hurting the clitoris". The procedure includes "a scratch on the skin covering the front of clitoris (*frenulum clitoris*) using the head of a single use sterile needle" (Article 4.2 (g)). According to this regulation, the act of "female circumcision" can only be conducted with the request and consent of the person circumcised, parents, and/or guardians (Article 3.1).³

This regulation violates a number of Indonesian laws⁴ and runs counter to a 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation. Amnesty International has recommended that regulation No. 1636/MENKES/PER/XI/2010 be immediately repealed.

A 2003 study conducted by the Population Council in Jakarta with the support from the Ministry for Women's Empowerment concluded that "extensive medicalization of [female circumcision] has

¹ Third and Fourth Periodic Reports of Indonesia, United Nations Convention on the Rights of the Child, UN Doc. CRC/C/IDN/3-4, 18 October 2012.

² Minister of Health of the Republic of Indonesia Regulation Number 1636/MENKES/PER/XI/2010 on Female Circumcision, 15 November 2010, enacted in Jakarta on 28 December 2010.

³ Commentary based on an unofficial translation, on file with Amnesty International.

⁴ For example Presidential Decree No. 36/1990 concerning the ratification of the Convention on the Rights of the Child (CRC); Law No. 23/2002 on Child Protection; Law No. 7/1984 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Law No. 39/1999 on Human Rights; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health.

already occurred in some parts of the country and is underway in others".⁵ This conclusion was supported by a 2009 Indonesia-wide survey on female genital mutilation, published by the Institute of Population and Gender Studies, Yarsi University, Jakarta, which found that "medicalization" of female genital mutilation "continues to this day without showing any tendency of a downward trend".⁶ The 2009 study, which examined the practice of female genital mutilation by health institutions (general hospitals, women and children's hospitals, and maternity clinics) and health professional organizations, found that 18 per cent performed female genital mutilation.⁷ The study found that 92.1 per cent of girls who underwent "female circumcision" in health institutions were under one year old, and that "circumcision" in these institutions was performed on girls up to 10 years of age.⁸ According to the study, of the health institutions that perform "female circumcision", 56 per cent said that the procedure was "symbolic" and did not remove any part of the genitalia and the remaining 44 per cent admitted to removing parts of the female genitalia.⁹

During research carried out in March 2010,¹⁰ Amnesty International was told by many women and girls that they chose female genital mutilation for their own baby girl in recent years. The practice is generally undertaken by a traditional birth attendant within the first six weeks after the baby girl is born. The women said they had asked that their baby girl have female genital mutilation performed for religious reasons. Other reasons women cited ranged from wanting to ensure the girl's "cleanliness" (the external female genitalia are considered dirty) and avoiding diseases; to perpetuating cultural or local practices; or seeking to regulate or suppress the girls' urge towards "sexual activity" during adulthood. Some women described the procedure as being merely a "symbolic scratch", while in other cases they explained that it consisted of cutting a small piece of the clitoris. Many women interviewed agreed that there would be some bleeding as a result.

Female genital mutilation has long been recognized as a human rights violation in consensus documents,¹¹ in general comments and recommendations from the treaty monitoring bodies,¹²

⁵ Population Council, *Female Circumcision in Indonesia: Extent, Implications and Possible Interventions to Uphold Women's Health Rights*, Jakarta, September 2003, p39.

⁶ Uddin, Prof Dr. Jurnal et al, *Female Circumcision: A Social, Cultural, Health and Religious Perspective*, Institute of Population and Gender Studies, Yarsi University, Jakarta (Jakarta: Yarsi University Press, 2010), (Uddin et al, 2010), p162.

⁷ Uddin et al, 2010, Supra No6, pp3-4.

⁸ Uddin et al, 2010, Supra No6, p4.

⁹ Uddin et al, 2010, Supra No6, pp8-10.

¹⁰ Amnesty International, *Left without a choice: Barriers to reproductive health in Indonesia* (Index: ASA 21/013/2010), (Amnesty International, *Left without a choice*).

¹¹ United Nations Fourth World Conference on Women, Platform for Action, September 1995; National Council of Childhood and Motherhood, "Cairo Declaration for the Elimination of FGM," June 23, 2002; UN General Assembly, "Traditional or Customary Practices Affecting the Health of Women and Girls," Resolution 56/128, 19 December 2001, A/RES/56/128; UN Commission on the Status of Women, Ending Female Genital Mutilation, UN Doc. E/CN.6/2008/L.2/Rev. 1.

¹² UN Committee on the Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention of the Rights of the Child, 2003; and the UN Committee on the Elimination of

other UN bodies,¹³ and by human rights and health experts.¹⁴ In its General Comment 4, the Committee stated that States have an obligation to “protect adolescents from all harmful traditional practices, such as early marriages (see section 2: Gender stereotyping and early marriages below), honour killings and female genital mutilation”.¹⁵ The Committee on the Elimination of Discrimination against Women and the Human Rights Committee have both expressed concerns about the 2010 regulation on “female circumcision” and have recommended that it be immediately revoked.¹⁶ Medicalizing the practice raises further questions about medical ethics, and does little to mitigate the long-term health consequences for those who are affected.

Amnesty International believes that the Indonesian authorities should put in place a comprehensive long-term plan with relevant ministries, other governmental entities, and civil society organizations aimed at the eradication of female genital mutilation. The plan should include the enactment of specific legislation prohibiting female genital mutilation, and providing appropriate penalties for those who perform female genital mutilation, such as the suspension of professional licenses. The plan should also include publicising and disseminating the 2006 government circular, No. HK.00.07.1.3. 1047a, signed by the Director General of Community Health, which specifically warned about the negative health effects of female genital mutilation. Finally, a long-term plan should make provision for public awareness-raising campaigns at community level and within health institutions to change the cultural perceptions associated with female genital mutilation.

2. GENDER STEREOTYPES AND EARLY MARRIAGE (ARTICLES 1, 2, 24 AND 28)

When it reviewed Indonesia’s second periodic report in January 2004, the Committee called on the State Party to ensure that the age of marriage is the same for girls as it is for boys and to “take all other necessary measures to prevent early marriage”, including awareness-raising campaigns.¹⁷

Discrimination against Women, General Recommendation No. 14 on Female circumcision, 1990; and General Recommendation 24 on Women’s Health, 1999; UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health, 2000; UN Human Rights Committee General Comment No. 28, The Equality of Rights between men and women, 2000.

¹³ UN General Assembly Resolution 67/146 Intensifying global efforts for the elimination of female genital mutilations, UN Doc. A/RES/67/146, 5 March 2013.

¹⁴ UN Commission on Human Rights, “Report of the Special Rapporteur on violence against women, its causes and consequences,” E/CN.4/2002/83, January 31, 2002; International Federation of Gynecology and Obstetrics, “World Health Assembly for FGM Resolution,” January 20, 2009.

¹⁵ Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, 2003, UN Doc. CRC/GC/2003/4, para 39 (g).

¹⁶ See Concluding observations of the Committee on the Elimination of Discrimination against Women: Indonesia, UN Doc. CEDAW/C/IDN/CO/6-7, 7 August 2012, paras 21-22 and the Human Rights Committee Concluding observations on the initial report of Indonesia (Advance Unedited Version), July 2013, para 12. In addition, the Committee against Torture had previously expressed concern about the practice of female genital mutilation in its concluding observations. See UN Doc. CAT/C/IDN/CO/2, 2 July 2008.

¹⁷ Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44, Concluding Observations – Indonesia, UN Doc. CRC/C/15/Add.223, 26 February 2004

Moreover, the Committee has repeatedly made it clear that an appropriate minimum age for marriage is 18, and that marriage under 18 should only be allowed in exceptional circumstances with appropriate safeguards to ensure meaningful consent from the child.

Gender stereotyping is one factor in the prevalence of early marriages in Indonesia.¹⁸ This is linked to the wide perception of women's role and status in Indonesia in relation to marriage and motherhood. The stereotyping of women's – as well as men's – roles is codified in law.

The Marriage Law (No. 1/1974) states that "the husband is the head of the family while the wife is the head of the household" (Article 31.3). "[T]he husband has the responsibility of protecting his wife and of providing her with all the necessities of life in a household in accordance with his capabilities" (Article 34.1), while the wife "has the responsibility of taking care of the household to the best of her ability" (Article 34.2). The Marriage Law provides that the legal age of marriage in Indonesia is 16 for women, and 19 for men (Article 7) and authorizes polygamy for men only (Article 3.2 and Article 4). Amnesty International believes that the Indonesian government should review and amend the Marriage Law (No. 1/1974) to eliminate provisions that discriminate against girls or women, including age of marriage and polygamy, or perpetuate gender stereotypes.

Although decreasing, marriage at a young age is still relatively widespread, in particular in rural areas.¹⁹ A 2010 study by the Indonesian Ministry of Health found that 41.9 per cent of all first marriages involving women and girls occurred between the ages of 15-19 while 4.8 per cent between the ages of 10-14.²⁰ During interviews in March 2010, Amnesty International met many women and girls who married when they were still children, sometimes as young as 13. Despite their young age, many had their first child shortly after being married. Early marriage leading to early pregnancy can greatly increase girls' risk of dying or experiencing serious and long term health problems as a result of pregnancy and childbirth.²¹

Amnesty International is further concerned that religious courts in Indonesia continue to provide dispensation, as allowed for in the Marriage Law, for girls under 16 to marry at the request of their parents/legal guardian (Article 7.2), usually because of pregnancy.²² This is inconsistent with Law

¹⁸ In a 2011 study by Plan International on child marriages in eight districts, they found that other factors that led to early marriages include poverty, local tradition and customs, unwanted pregnancies, lack of education, lack of knowledge about sexual and reproductive rights and lack of law enforcement. See Plan Indonesia and CPPS GMU, *Child Marriage in Indonesia*, Jakarta: Plan Indonesia, 2011, pp31-39.

¹⁹ See Combined sixth and seventh periodic reports of States parties: Indonesia, UN Doc. CEDAW/C/IDN/6-7, 7 January 2011, (Combined sixth and seventh periodic reports of States parties: Indonesia), para 199.

²⁰ See Indonesia Ministry of Health's Basic Health Research 2010 (*Riskada*), p159, available at <http://www.riskedas.litbang.depkes.go.id/download/TabelRiskedas2010.pdf>, accessed 29 July 2013.

²¹ We the Children: End-Decade Review of the Follow-up to the World Summit for Children: Report of the Secretary-General, UN Doc. A/S-27/3, 4 May 2001, para 181.

²² According to data collected by Aisiyah (the women's wing of Muhammadiyah) from the Bantul Religious Court in Yogyakarta province, there were only ten requests for such age dispensations in 2000, but 115 such cases in 2010. See *The Jakarta Globe*, "The Thinker: Let's talk about sex", 17 May 2010, available at

No. 23/2002 on Child Protection, which considers a child to be below the age of 18 (Article 1) and makes it the obligation and responsibility of a parent/legal guardian to prevent child marriages (Article 26.c).²³ Amnesty International believes that the religious courts must comply with Law No. 23/2002 on Child Protection and the obligations under the Convention to prevent early marriages and coerced marriage.

The organization believes that the government should conduct a public education campaign designed at eliminating gender stereotypes and intensify efforts to raise awareness of the risks associated with early marriage and early pregnancy.

3. SEXUAL AND REPRODUCTIVE RIGHTS (ARTICLE 24)

Adolescent girls across Indonesia continue to face serious obstacles in law, policy and practice, to fulfilling their sexual and reproductive rights, obstacles which are rooted in gender discrimination.

Both the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) provide that access to sexual and reproductive health services may only be granted to legally married couples, thus excluding all unmarried people from these services, including the vast majority of adolescents.²⁴ In the case of married adolescents, both law and practice require that they seek their husband's permission in order to obtain certain types of contraceptive services from government-run health facilities.²⁵ District health officers and other government officials told Amnesty International in March 2010 that contraception and family planning services are intended solely for married people in accordance with laws and policies. Amnesty International believes that the government should review and amend the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) to bring them into line with the Convention and other international human rights standards. In particular legal provisions which discriminate on the grounds of marital status (for example access to family planning services and reproductive health services) should be amended and requirements for the husband's consent should be removed.

For the time that these measures are not taken, adolescent girls remain at risk of unwanted pregnancies, potentially exposing them to sexually transmitted diseases, and certainly preventing children from accessing the information and services they need to enable them to exercise their human rights to health and development. In addition, early pregnancies may present particular health risks, and can prevent girls from exercising other human rights. For example, unmarried

<http://www.thejakartaglobe.com/columns/the-thinker-lets-talk-about-sex/375460>, accessed on 24 July 2013 and Rifka Annisa "Pernikahan Usia Muda dan Dampaknya", 1 December 2011.

²³ Amnesty International telephone interview with NGO in Yogyakarta, May 2012.

²⁴ See Amnesty International, *Left without a choice*, Supra No10, pp24-26.

²⁵ In the Population and Family Development Law (No. 52/2009), the choice over contraception is not up to the individual alone. Article 24.1 states that contraceptive services are the responsibility of the married couple (*pasangan suami isteri*) in accordance with their choice and health consideration. Furthermore, Article 26.1 provides that in the event that contraceptive use carries a health risk, there needs to be a formal agreement between the husband and wife (*persetujuan suami dan istri*).

adolescent girls who become pregnant have been forced by the school administrators to stop schooling.²⁶ Instead of risking rejection by the wider community, some girls may decide, feel compelled or be compelled to marry when they become pregnant, or else to seek an unsafe abortion which puts them at risk of serious health problems and maternal mortality.²⁷ Further, the insistence in law and policy on marriage as the one acceptable forum for sexual activity with a predominantly reproductive focus can contribute to marginalize children who do not gender conform or who are disinclined to marry or have children.

For unmarried girls who want to continue pregnancy, it remains unclear how they can access reproductive health services during pregnancy and at the time of the birth, without getting married first. Amnesty International's research suggests that the fear of stigmatization can discourage pregnant unmarried girls, especially if they are from poor and marginalized communities, from seeking antenatal and postnatal services. Unmarried girls who are raped, whether they become pregnant as a result or not, may also be unable to access reproductive health services, either because they do not know they are entitled to these services or due to the fear of stigmatization.²⁸

In its General Comment 4 on Adolescent health and development in the context of the Convention on the Rights of the Child, the Committee has stated that "States should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)", and further, that states "should ensure that [adolescents] have access to appropriate information, regardless of their marital status and whether their parents or guardians consent". The Committee had also stressed the importance of ensuring adolescents'

²⁶ During interviews for a 2010 report, local NGOs confirmed to Amnesty International that unmarried girls who become pregnant are usually forced to leave school. One explanation offered by a High School teacher was that allowing a pregnant girl to continue in school could encourage other students to do the same. Although it does not appear to be a central government policy, it is left for the school to decide what to do in case a student is pregnant. There have been several recent cases where school administrators have prevented or else tried to prevent unmarried, pregnant adolescents from taking national school examinations. See for example *The Jakarta Post*, "NTT high schools keep pregnant students away from national exam", 17 April 2012, available at: <http://www.thejakartapost.com/news/2012/04/17/ntt-high-schools-keep-pregnant-pupils-away-national-exam.html>, accessed on 29 July 2013; *The Jakarta Globe*, "Pregnant Student Exam 'Ban' Provokes Outrage", 14 April 2012, available at <http://www.thejakartaglobe.com/archive/pregnant-student-exam-ban-provokes-outrage/>, accessed 29 July 2013; and *The Jakarta Globe*, "Pregnant 11-Year-Old May Be Barred From Test", 27 April 2011, available at: <http://www.thejakartaglobe.com/archive/pregnant-11-year-old-may-be-barred-from-test/>, access 29 July 2013.

²⁷ See Amnesty International, *Left without a choice*, Supra No10, p25.

²⁸ Under Indonesian law there are only two exceptions in which a woman may legally seek and health workers perform an abortion – in the case of rape or when the life of the women and/or foetus is in danger. However, Amnesty International's 2010 research found that many health workers were generally unaware that abortion could be performed legally in the case of rape, and were thus unable provide comprehensive information to adolescent girls who become pregnant as a result of rape and who may seek an abortion. See Amnesty International, *Left without a choice*, Supra No10, pp35-36.

active involvement in information and awareness raising programmes.²⁹

Amnesty International believes that the government should take measures to ensure that state officials, health workers and other service providers provide girls and boys, regardless of their marital status, age-appropriate and comprehensive sexual and reproductive health information and services. Monitoring mechanisms should be in place to ensure that reproductive health programmes are implemented free from discrimination, including discrimination based on age, family status, sexual orientation, or income. In addition, the state should conduct targeted campaigns to counter discriminatory stereotyping of girls in laws and policies, especially where these stereotypes contribute to limit girls' ability to exercise their human rights fully. These campaigns should be developed in consultation with children and should target, in particular, service providers, educators, and the juvenile justice system. They should highlight the link between discriminatory practices, reproductive health, and sexuality.

4. CHILDREN FROM MINORITY RELIGIOUS GROUPS (ARTICLES 2, 7, 14 AND 27)

Amnesty International continues to document attacks against members of religious minorities including children, by mobs, at times accompanied or incited by radical Islamist groups. These attacks target in particular Ahmadiyya and Shi'a communities. Homes, schools and places of worship have been burnt or destroyed as a result, in some cases forcing communities – including children – out of their homes and into temporary shelters and accommodation without access to basic facilities or adequate privacy, space and security. In these cases, the authorities have failed to adequately protect these communities from being forced out of their homes and acts of violence, and in most cases have also failed to investigate and prosecute the violence. In some cases, they have also forcibly evicted them.

Amnesty International has noted an increase in local regulations that discriminate against the Ahmadiyya after a 2008 Joint Ministerial Decree was issued cautioning members of the Ahmadiyya community to, among other things, cease the propagation of their beliefs.³⁰ Local authorities and radical Islamist groups have justified discrimination, intimidation and attacks against religious minorities, especially the Ahmadiyya, by referring to these regional and national laws or regulations. In many cases, police have failed to take adequate measures to prevent these attacks despite prior knowledge of threats against the community. Amnesty International is also aware that in some instances there has been a failure by the police to protect these communities when the attacks occur. Many children have been traumatised by these attacks.³¹ The organization has called

²⁹ Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, 2003, para 28.

³⁰ 2008 Joint Decree by the Minister of Religious Affairs, Attorney General and Minister of Internal Affairs. There are local regulations forbidding Ahmadiyya activities in a number of cities (Bekasi, Depok, Bogor, Samarinda, Pekanbaru, Padang, Cimahi), districts (Pandeglang, Kampar, Sukabumi, Cianjur, Kuningan, Garut, West Lombok) and provinces (Banten, East Java, West Java, South Sulawesi) in Indonesia.

³¹ In April 2011, Amnesty International interviewed children of Ahmadiyya followers who had been traumatised after attacks on a community in the sub-district of Cikeusik, Banten province in February 2011 which left three

on the government to revoke immediately the 2008 Joint Ministerial Decree and all other regulations that restrict the activities of religious minority groups in Indonesia or otherwise violate their right to freedom of thought, conscience and religion.

Government failures to address these attacks have meant that members of these minority groups, including children, have been unable to return to their homes and have had to stay in temporary shelter for several years without adequate access to minimum essential levels of water and sanitation and food, or medical care (see the Lombok and Sampang cases below). Amnesty International is also concerned that in some cases, it has been difficult for children to continue with their schooling. As highlighted below, in many cases the authorities have failed to establish conditions, and to provide the means, which allow those affected by the attacks to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

Amnesty International has received information that Ahmadiyya followers and other religious minorities face obstacles in obtaining identity cards from local government authorities because of their religious beliefs.³² The lack of legal identity documents makes it very difficult to obtain birth certificates for their children, access education and employment, register their marriages, or access other forms of state assistance.

■ About 116 people, including at least 40 babies and children,³³ belonging to the Ahmadiyya community have been living in temporary accommodation in Mataram, Lombok for over seven years. In February 2006 they were forced to flee their homes in Ketapang, West Lombok sub-district after their houses were destroyed by mobs. The attacks appeared to be motivated by the religious beliefs of those living in the communities. After the attacks, the police carried out investigations to identify the perpetrators. Although several suspects were questioned, Amnesty International is not aware of anyone being brought to justice for the attack. The displaced families have been unable to return to their homes and rebuild their lives. An Amnesty International visit in March 2010 found that the community were living in three 20-by-8-metre dormitories. The rooms for each family were 3 square metres each and divided by banners and sarongs tied up with plastic string. The facilities lacked essential services. Tap water was frequently cut off by the authorities and there was no electricity supply. Dozens of adults in the shelter do not have identity

Ahmadi's dead as well as from the 2006 attacks in Lombok.

³² The officially recognized religions in Indonesia are Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Article 64 of Law No. 23/2006 on Civil Registration states if a person's religion is not one of the recognized religions, he or she "must still be served and must be recorded in the population database" but the column on religion in the identity card will be left blank. Nevertheless persons belonging to a non-recognized religious group have found it difficult to obtain identity cards. See Setara Institute, *Di Atas Kaki Sendiri: Pengabaian Negara atas Suara Korban Pelanggaran Kebebasan Beragama/Keyakinan* [On their Own Feet: State neglect of the voices of victims of violations of freedom of religion/belief], February 2012, pp71-78.

³³ According to news sources, at least 20 babies have been born in the temporary shelter. See *Portal KBR*, "Pemerintah NTB Tolak Beri Akta Lahir 20 Anak Ahmadiyah" [NTB authorities deny birth certificates to 20 Ahmadiyya children], available at: http://www.portalkbr.com/nusantara/nusatenggara/2681517_4265.html, accessed 29 July 2013.

cards and have faced various obstacles in obtaining such cards from the local authorities.³⁴ As of June 2013 the situation in the shelter remains the same. At least 21 individuals have been denied identity cards, and have therefore been unable to access essential services, including free health care which, by law, is available to those identified as poor. Further, at least 12 children have not been able to obtain birth certificates.³⁵ During meetings, the local authorities have repeatedly told the community that it is better for them to live in the shelter as neither the authorities nor the police can guarantee their security and protection if they return to their homes. It should be highlighted that the government has the obligation to protect all individuals against violence, discrimination, and abuse, irrespective of their beliefs or ethnicity.

■ At least 168 Shi'a followers in Sampang, East Java, including 51 children, have been living in temporary shelters since August 2012, after their village was attacked by an anti-Shi'a mob. One person was killed and 35 houses were destroyed in the incident. Between August 2012 and June 2013 the community were housed by local authorities in a sports complex in Sampang, East Java, where they did not receive adequate food and medical supplies from the Sampang district authorities. In early May 2013, the local authorities halted clean drinking water and food supplies to the displaced community. The authorities had previously cut off food supplies on 22 November 2012 but resumed supply on 4 December 2012.³⁶ Some children reportedly suffered from diarrhoea, infections to their respiratory system, gastritis and anaemia while living in the shelter. The community was prevented from returning to their village by the local authorities because they said they could not guarantee the safety of the community. This has had a negative impact on community livelihoods – and the ability of individuals to work and support themselves – as most of the adults are tobacco farmers. In January 2013, the East Java and Sampang district authorities told the evicted Shi'a community that they would have to convert to Sunni Islam if they wanted to return to their homes, otherwise, they would be forcibly relocated either to another part of the province or to somewhere outside Java island. The displaced community rejected being relocated, preferring to return to their homes and livelihoods in safety. On 21 June they were forcibly evicted by the Sampang district authorities to a housing facility in Sidoarjo, East Java, around four hours by road from their homes, after hundreds of people organized a demonstration outside the complex calling on the local authorities to evict the Shi'a community and remove them from the Sampang district. Amnesty International believes that the government should guarantee the safe, voluntary and dignified return of displaced minority religious communities, including children, to their homes or to permanent resettlement and adequate alternative housing elsewhere in the country, according to their wishes

³⁴ See Amnesty International, *Indonesia: Displaced and forgotten: Ahmadiyya in Indonesia* (Index: ASA 21/006/2010); and *Indonesia: Open letter on the displaced Ahmadiyya community in Mataram, Lombok* (Index: ASA 21/008/2010).

³⁵ Amnesty International E-mail correspondence with confidential contact, 1 August 2013. See also VOA *Indonesia*, "Warga Ahmadiyah di NTB Sulit Dapatkan KTP dan Akta Kelahiran" 22 June 2013, available at: <http://www.voaindonesia.com/content/warga-ahmadiyah-di-ntb-sulit-dapatkan-ktp-dan-akta-kelahiran/1687411.html>, accessed on 24 July 2013.

³⁶ For further information, See Amnesty International, *Urgent Action: Shia's at risk of forced relocation* (Index: ASA 21/002/2013), 5 January 2013; Amnesty International, *Urgent Action, Authorities cut off food and water to Shi'as* (Index: ASA 21/043/2012), 26 November 2012; and Amnesty International, *Religious freedom under attack as Shi'a villagers face eviction*, 15 January 2013

Amnesty International believes the authorities should conduct prompt, effective, independent and impartial investigations into all reports of intimidation, harassment and attacks against the Ahmadiyya, Shi'a, Christian and other religious minorities and bring the perpetrators to justice in accordance with international fair trial standards. The government must ensure that the police actively protect the rights of all citizens, including children, regardless of their religious or other beliefs and put in place a strategy for preventing and addressing incidents of religiously based violence. The police should also ensure they register and investigate all cases of religious-based violence, threats and intimidation, regardless of the religious background of the victim.

5. DOMESTIC WORKERS (ARTICLES 19, 32 AND 37)

Amnesty International has long standing concerns about the situation of domestic workers in Indonesia, the vast majority of whom are women and girls. The organization continues to document reports of abuses against child domestic workers in the country.³⁷

A major problem is the lack of information about domestic workers and their situation in Indonesia. An International Labour Organization (ILO) study published in 2004 concluded that there are about 2.6 million domestic workers in Indonesia, and that around 26 per cent are below the age of 18.³⁸ The Indonesia Population and Housing nationwide census conducted in 2010 did not include any specific questions attempting to obtain data on domestic workers within each household.³⁹

The lack of comprehensive figures on the number of domestic workers currently working in Indonesia, and of disaggregated data on their gender, age, origin, socio-economic background and conditions in which they work, makes it difficult to determine the extent of the problem of any abuse and exploitation, and to craft effective policies to address these issues.

Domestic workers in Indonesia typically leave school early which has a significant impact on their future education and employment opportunities. In March 2010, Amnesty International met many

³⁷ See for example *Tempo*, "PRT Anak Disiksa Majikan Selama 3 Bulan" [Child domestic worker tortured by employer for three months], 30 May 2013, available at: <http://www.tempo.co/read/news/2013/05/30/058484613/PRT-Anak-Disiksa-Majikan-Selama-3-Bulan>, accessed 31 July 2013; *Beritajatim.com*, "Masih Banyak Anak Jadi PRT" [Still a lot of child domestic workers], 7 November 2012, available at: http://www.beritajatim.com/detailnews.php/6/Jember/2012-11-07/151793/Masih_Banyak_Anak_Jadi_PRT, accessed 31 July 2013; *Surya Online*, "Gadis 16 Tahun Korban Kekejaman Majikan" [16 year old victim of employer's cruelty], 19 June 2012, available at: <http://surabaya.tribunnews.com/2012/06/19/gadis-16-tahun-korban-kekejaman-majikan>, accessed 31 July 2013; and *Merdeka.com*, "2 PRT bawah umur asal Indramayu dianiaya majikan" [2 underage domestic workers ill-treated by employer], 5 April 2012, available at: <http://www.merdeka.com/peristiwa/2-prt-bawah-umur-asal-indramayu-dianiaya-majikan.html>, accessed 31 July 2013

³⁸ International Labour Organization (ILO), *Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak Di Indonesia*, [Flowers on the Rock: Phenomenon of Child Domestic Workers in Indonesia], 2004. This figure was most recently quoted by the ILO in June 2013. See ILO press release, World Day Against Child Labour 2013: Child domestic workers to present "The Broken Pearl behind the Mop", 17 June 2013, available at: http://www.ilo.org/jakarta/info/public/pr/WCMS_216753/lang--en/index.htm, accessed 29 July 2013.

³⁹ E-mail correspondence, 8 July 2010; and Amnesty International interviews, Jakarta, 9 and 12 March 2010.

adolescent domestic workers who stopped schooling when they were under 15, and interviewed domestic workers who were as young as 14.⁴⁰ Due to the isolated nature of their work, domestic workers – including child domestic workers – are at risk of physical, psychological and sexual abuse, as well as economic exploitation. Many are denied their rights to fair and equitable work, a safe and healthy work environment, and freedom of movement and association.

Amnesty International has long standing concerns that existing domestic legislation – in particular the 2003 Manpower Act (Law No. 13/2003) – discriminates against domestic workers, because it does not afford them the same protection which other workers receive under its provisions, for example reasonable limitation on working hours, remuneration adequate to secure a life with dignity, and standards providing for rest and holidays.

There have been positive moves towards better legal protection for domestic workers, including a draft Domestic Workers Protection Law, which was placed on the parliamentary legislative agenda in 2010.⁴¹ However, to date there has been limited progress on debating and passing the draft law. In April 2013 the Parliamentary Commission on Health, Manpower and Population Affairs (Komisi IX), which is overseeing the drafting process, submitted the draft law to the Legislative Body (Badan Legislasi) of the House of Representatives. However, the body has yet to discuss the draft law.

The draft legislation contains several positive elements. It includes provisions prohibiting the employment of child domestic workers below 18 years old (Article 6(1)). Article 7 provides for administrative sanctions for employers and recruitment agencies who recruit a domestic worker under the age of 18. Article 57 provides for criminal sanctions for those who employ domestic workers under 18, and Article 58 provides criminal sanctions for both employers and agencies who recruit child domestic workers. The draft law further provides for written employment agreements (Article 19); conditions for termination of employment (Article 27), and the right to join a trade union (Article 29). In addition to sanctions against the recruitment and employment of child domestic workers, the draft also provides criminal sanctions for those who use threats, violence, abduction, confinement, forgery, fraud and/or abuse of power to recruit domestic workers (Article 59).⁴²

Amnesty International notes that Article 6(2) provides that during a five year transitional period, children between the ages of 15-17 may be employed as domestic workers, providing the employer obtains written permission from the parent or guardian and prepares a work agreement with the parent or guardian; and that the child domestic worker is not employed at night; is not made do work that could hinder and harm their development; is given the opportunity to study, and is employed only for “light” types of work”.

⁴⁰ See Amnesty International, *Left without a choice*, Supra No10, Chapter 5: The case study of domestic workers as a vulnerable group, pp39-44.

⁴¹ See Combined sixth and seventh periodic reports of States parties: Indonesia, UN Doc. CEDAW/C/IDM/6-7, 7 January 2011, (Combined sixth and seventh periodic reports of States parties: Indonesia), para 108.

⁴² Commentary based on a March 2013 draft of the law, translated by Amnesty International. On file with Amnesty International.

Although Amnesty International welcomes discussions on the draft legislation in the House of People's Representatives, the organization is concerned that the draft as it stands does not meet obligations under the Convention, and other international human rights and labour treaties and standards. Several provisions are also less favourable than those provided for in the 2003 Manpower Act, perpetuating existing discrimination against domestic workers. For example although the Manpower Act contains provisions relating to sick pay, clearly defined daily and weekly rest periods, and a clearly defined holiday allowance, similar provisions are not included in the draft legislation.⁴³ Amnesty International is also concerned that the draft as it stands does not contain adequate provisions on wages, limitations on working hours and redress mechanisms. Further, the current draft does not contain explicit and specific provisions relating to women and girls, for example maternity provisions.⁴⁴

Unless the draft is amended to comply with Indonesia's obligations under the Convention – and other international law and standards – and enacted at the earliest opportunity, domestic workers in Indonesia, including children, will remain vulnerable to exploitation and abuse. Amnesty International therefore believes that the authorities should pass specific legislation regulating the labour rights of domestic workers in accordance with international law and standards, and in particular that provisions contained in the legislation should not be less favourable than what is provided for in the Manpower Act; that the new Domestic Workers Protection Law should explicitly prohibit the employment of children below the age of 15 as domestic workers, and children under the age of 18 shall not be engaged in the worst forms of child labour, as provided in the Convention and ILO Conventions No. 138 and 182, which Indonesia has ratified; and that the new Domestic Workers Protection Law should be amended to explicitly include legal provisions pertaining to the specific needs of women and girls, in particular during and after pregnancy.

Further, the Indonesian government should immediately undertake a thorough survey assessing the number of domestic workers in every Indonesian province. This survey should gather data on their gender, age, origin, socio-economic background and conditions of living and employment. All data collected should be treated confidentially with appropriate standards of data protection. The government should also ratify the ILO Domestic Workers Convention (No. 189) at the earliest opportunity, incorporating its provisions into domestic law and implement it in policy and practice.

⁴³ While Article 21 (2) of the draft provides that terms and conditions of work must include accumulated hours of work; weekly rest; leave entitlements; time off during working hours and holiday allowances, these are not sufficiently defined. In contrast, Article 79 of the Manpower Act provides periods of rest and leave to include: "The period of rest between working hours at least half an hour after working for 4 (four) hours consecutively and this period shall not be inclusive of working hours; The weekly rest is 1 (one) day after 6 (six) workdays in a week or 2 (two) days after 5 (five) workdays in a week; and The yearly period of rest is 12 (twelve) workdays after the workers/labourer works for 12 (twelve) months consecutively".

⁴⁴ In the current draft, Article 32(f) states that an employer shall "provide guarantees of protection for security, health and safety". The elucidation of the law clarifies that "health protection guarantees" include maternity leave, however no mention of such protections is made anywhere else in the draft.

6. CHILDREN AND ARMED CONFLICT: JUSTICE, TRUTH AND REPARATION FOR PAST ABUSES (ARTICLES 38 AND 39)

The Indonesian government has made little progress in delivering justice, truth and reparation for past crimes under international law and other human rights violations which occurred under the rule of Suharto and during the *reformasi* period (from 1998) including during the events of 1965-66, the 1998 May riots, and in certain parts of Indonesia such as Aceh, Papua and Timor-Leste (then East Timor). These crimes included unlawful killings, rape and other crimes of sexual violence, enforced disappearances, torture and other ill-treatment.

Children were deeply affected by these events, either as direct victims, or indirectly when family members and guardians were killed, disappeared, or subjected to abuses. This has had long-lasting consequences for children, who may now be adults, for example in limiting and preventing their access to education and healthcare.⁴⁵

Children whose family members or guardians were disappeared are also victims.⁴⁶ They have a right to know the truth about what happened to their loved ones and a right to full and effective reparation.⁴⁷

At the national level, the Indonesian authorities have attempted to establish a range of mechanisms to try to deal with these past crimes under international law and other human rights violations. However, weaknesses in legislation, failures in implementation, and a lack of political will mean that for many victims justice, truth and reparation remain elusive.

⁴⁵ See for example Amnesty International, *A cycle of violence for Aceh's children* (Index: ASA 21/59/00); Amnesty International, *New military operations, old patterns of human rights abuses in Aceh (Nanggroe Aceh Darussalam, NAD)* (Index ASA 21/033/2004) (Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*); Final report of the Commission for Reception, Truth and Reconciliation, Section 7.8 Violations of the Rights of the Child; International Centre for Transitional Justice (ICTJ) and Elsham, *The Past That Has Not Passed: Human Rights Violations in Papua Before and After Reformasi*, July 2012.

⁴⁶ It is well established that the term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim (see principle 2 of the United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly on 29 November 1985, A/Res/40/34). See also Article 24 of the Convention for the Protection of All Persons from Enforced Disappearance, which Indonesia has signed but yet to ratify. It defines a "victim" as "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance".

⁴⁷ See Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances; Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances, adopted by General Assembly resolution on 18 December 1992, G.A. res. 47/133, states that victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation; and Principles 15-23 of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law.

The Illustrative case of Timor-Leste

Indonesia has done very little to deliver justice, truth and reparation to survivors of past human rights violations – including girls and boys at the time of the events – and their families.

Amnesty International remains concerned that the Indonesian authorities have done little to establish the fate and whereabouts of children who are believed to have been sent to Indonesia during the Indonesian occupation of Timor-Leste (East Timor) from 1975-1999 without the consent of their parents or under coercion. Precise figures for the numbers of children who are believed to have been sent to Indonesia are not available, however the final report of the Commission for Reception, Truth and Reconciliation (CAVR), the Timorese truth commission established in 2001, estimates that “several thousand”⁴⁸ children were sent to Indonesia during this period.

In 2005 the Indonesian and Timorese governments established the bilateral Commission of Truth and Friendship to “establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events”.⁴⁹ In 2008, the Commission published its final report, in which it concluded that Indonesia bears responsibility for human rights violations committed in 1999, including for enforced disappearances. The Commission recommended that:

“[T]he governments of Indonesia and Timor-Leste work together to acquire information/form a commission about disappeared people and cooperate to gather data and provide information. This Commission shall also be tasked to identify the whereabouts of all Timor-Leste children who were separated from their parents and to notify their families”.⁵⁰

Since the publication of the report, Amnesty International is aware that Timor-Leste and Indonesia have held a number of bilateral Senior Officials’ Meetings (SOM) to discuss the Joint Plan of Action to implement the recommendations of the report. We are also aware that the Indonesian government issued a Presidential Regulation No. 72/2011 in October 2011 to implement the recommendations of the CTF.⁵¹ However, to date, Amnesty International is not aware of any efforts to implement the recommendation to establish the fate and whereabouts of the disappeared and all of the Timorese children who were separated from their families.

⁴⁸ The CAVR acknowledged difficulties in ascertaining how many children were removed to Indonesia, however pointed to figures of between 2,400 and 4,534 in its final report. It concluded that “[b]ased on these estimates, the Commission is confident that several thousand children were sent to Indonesia from Timor-Leste”. However the Commission also noted that it was “important to recognise that the removals took place along a spectrum from unregulated transfers of young children without consent being sought, to coercion of children and parents, to informed consent”. See the Final report of the CAVR, Section 7.8 Violations of the Rights of the Child, paras 355-356.

⁴⁹ Article 12, Terms of Reference for the Commission of Truth and Friendship.

⁵⁰ Final report of the Commission of Truth and Friendship, recommendation 5, pxx.

⁵¹ Section V in the appendix of the regulation covers the action plan to setup a Commission on Missing Persons.

Amnesty International is concerned that the failure to promptly and effectively implement recommendations made by the CTF is prolonging the suffering of the families of the disappeared and of children who were separated from their families, as they have been waiting for information and answers for over 14 years. During a visit to Timor-Leste in October 2012, Amnesty International delegates met with some of the family members of disappeared and relatives of children who were taken during the conflict. Relatives spoke of their disappointment that nothing had been done to search for their loved ones. Some believed their family members might still be alive; however, they do not know where they are. They all called on the governments of Timor-Leste and Indonesia to conduct a search to uncover the fate and whereabouts of their family members.

Amnesty International believes the Indonesian government should immediately implement recommendations by the bilateral Timor-Leste – Indonesia Commission of Truth and Friendship to establish a bilateral Commission for Disappeared Persons to uncover the fate and whereabouts of those who were subjected to enforced disappearance during the period of Indonesian occupation (1975-1999), with particular attention to all the Timorese children who were separated from their families.

Further, the government should provide full and effective reparation to victims of past crimes under international law and other human rights violations committed in Timor-Leste for which it bears responsibility. In particular, Indonesia should support and contribute to the establishment of a trust fund towards the creation of a comprehensive reparation programme for victims of past crimes.

The illustrative case of Aceh

The Indonesian government has also failed to provide truth, justice and reparation for victims of the 29 year long Aceh conflict between the Indonesian government and the armed pro-independence movement, the Free Aceh Movement (*Gerakan Aceh Merdeka* or GAM) which began in 1975 and continued until 2005. The conflict had a devastating impact on the civilian population – including children – in particular between 1989 and 2004 when military operations were conducted by the Indonesian authorities to suppress claims for separatism. Between 10,000 and 30,000 people were killed during the conflict, many of them civilians.⁵²

In 2003-2004, children – the majority of them boys – were also reported to have been recruited by GAM.⁵³ According to local NGOs, children were involved in a range of tasks including acting as informants, collecting “taxes”, participating in arson attacks, providing food and other supplies, cooking and collecting firewood. It is unclear to what extent recruitment was voluntary and there were reports that some children were forced to join, or were forced to remain in GAM if they joined of their own accord.⁵⁴

⁵² See Amnesty International, *Time to face the past: Justice for past abuses in Indonesia’s Aceh province* (Index: ASA 21/001/2013), (Amnesty International, *Time to face the past*), p9.

⁵³ See Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No45, p19.

⁵⁴ See Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No45, p6 and pp44-46.

Amnesty International and other organizations have documented human rights violations, including some that could amount to crimes under international law committed by Indonesian security forces and GAM during the conflict – including against children.⁵⁵ Although the Indonesian authorities took some measures during and shortly after the Aceh conflict to compensate people for their loss⁵⁶ or to assist children whose parents were killed during the conflict,⁵⁷ most survivors do not trust the justice system as an avenue to seek reparation, and there has yet to be a comprehensive reparation programme specifically aimed at victims of crimes under international law in Aceh and their families. The Indonesian government appears to favour collective reparation,⁵⁸ and the various measures that have been taken have been mostly financial, targeting the Acehese population at large rather than individual victims of human rights abuses.

During a visit to Aceh in May 2012, Amnesty International interviewed victims of the conflict – including women and men and girls and boys – about their experiences of the conflict, and their post-conflict needs. Many identified ongoing economic hardship, lack of education opportunities, and psychological trauma as key concerns. Some parents in particular identified a need for their children to receive psychological counselling. However, Amnesty International’s research has found that government-sponsored victims’ assistance programmes in Aceh following the conflict were *ad hoc* and did not adequately respond to the post-conflict needs of victims and their families. Some children were not provided with medical, psychological and mental health services or treatment

⁵⁵ See *Indonesia: "Shock therapy": Restoring order in Aceh 1989-1993* (Index: ASA 21/007/1993); *Indonesia: A cycle of violence for Aceh's children*, Supra No45; *Indonesia: The impact of impunity on women in Aceh* (Index: ASA 21/060/2000); *Indonesia: Activists at risk in Aceh* (Index: ASA 21/061/2000); and Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No45.

⁵⁶ A controversial *diyat* payment programme of payments to the next of kin of people who were killed or disappeared in the conflict was initiated in 2002 by then Aceh deputy governor Azwar Abubakar. In Islamic law, *diyat* are payments which may be made by a killer or his/her family to the family of a victim in murder cases, but only when the victim’s family agrees to forgo the *qishas* (eye-for-an-eye) punishment. Azwar’s government reportedly paid heirs of the dead and missing 3 million rupiah (US\$ 300 approx) per year. Local human rights activists feared that the *diyat* payments would lead to impunity and criticized the programme. After the conflict ended it was taken up and administered by the Aceh Reintegration Agency (BRA). See Edward Aspinall, *Peace Without Justice?: The Helsinki Peace Process in Aceh*, Centre for Humanitarian Dialogue, 2007, pp25-26, available at: http://www.hdcentre.org/uploads/tx_news/56JusticeAcehfinalrevJUNE08.pdf, accessed 1 August 2013.

⁵⁷ In 1998, the Aceh governor announced a programme, which would include scholarships for students and medical assistance, to assist those who suffered during the DOM period. E-mail correspondence with human rights defender, 20 March 2013. See also 1998 article in *Serambi Indonesia*, "Gubernur Berjanji Serious Rehabilitasi Korban DOM" [Governor makes serious promise to rehabilitate DOM victims], available at: <http://groups.yahoo.com/group/bhinneka/message/2619?var=1>, accessed 24 July 2013. A 2002 article indicates that up to 280,000 Acehese children received scholarship assistance in that year, in *Liputan.com*, "Anak Korban DOM Aceh Mendapat Beasiswa" [Child victims of DOM receive scholarship], 10 June 2002, available at: <http://news.liputan6.com/read/35724/anak-korban-dom-aceh-mendapat-beasiswa>, accessed 24 July 2013.

⁵⁸ See for example Indonesia’s response to the Committee, Committee on the Elimination of Discrimination against Women, Fifty-second session, Summary record of the 1043rd meeting, 5 December 2012, UN Doc: CEDAW/C/SR.1043, para 19.

either during the conflict or after the conflict ended.⁵⁹

Amnesty International recommends that the government establish a programme to provide full and effective reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past crimes under international law and other human rights abuses in Aceh. The programme should be devised in consultation with survivors, including children, to ensure that the reparation programme is effective, reflects the different needs and experiences of survivors of the conflict, and does not cause further harm, such as perpetuating gender or other forms of discrimination.

In addition, the Indonesian government should ratify the International Convention for the Protection of all Persons from Enforced Disappearance, making declarations under Articles 31 and 32 recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals claiming to be victims of enforced disappearance or abduction, incorporate its provisions in to domestic law and implement it in policy and practice. The authorities should also immediately accept and facilitate the request from the Working Group on Enforced or Involuntary Disappearances (WGEID), pending since 2006, to visit Indonesia. In doing so, the government should ensure that the WGEID is granted unimpeded access to Aceh and all other relevant locations and is able to meet freely with a wide range of stakeholders, including victims and their families, civil society organizations, government officials and members of the security forces.

⁵⁹ See Amnesty International, *Time to face the past*, Supra No52, Chapter 5: Reparation: A patchy and inadequate framework, pp40-48.

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