

**BRIEFING FROM THE GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN**

**BRIEFING ON INDONESIA FOR THE COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
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The human rights obligation to prohibit corporal punishment of girls and boys

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence: as the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”. This briefing describes the legality of corporal punishment of children in Indonesia and urges the Committee on the Elimination of Discrimination Against Women to include the issue in its examination of the state party’s implementation of the Convention.

Corporal punishment of children in Indonesia

In Indonesia, corporal punishment of children is lawful in the home, schools, penal institutions and alternative care settings. It may also be imposed as a sentence for crime under Islamic law. The sixth/seventh state party report to the Committee on the Elimination of Discrimination Against Women (CEDAW/C/IDN/6-7) provides extensive information on efforts to address violence against women but makes no mention of corporal punishment – violence that may lawfully be inflicted on girls and boys in the name of discipline and religion.

With regard to the home, 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), but neither these provisions nor provisions against violence and ill-treatment in the Penal Code (1982), the Law on Human Rights (1999), the Law on Domestic Violence (2004) and the Constitution (1945) are interpreted as prohibiting all corporal punishment in childrearing.

In schools, the Law on Child Protection protects children from “violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions” (article 54) but does not explicitly prohibit corporal punishment. The Act on the National Education System (2003) is silent on the issue of corporal punishment.

In the penal system, corporal punishment is unlawful as a sentence for crime under provisions protecting children from “inhuman punishment” in the Law on Human Rights (article 66) and the Child Protection Law (article 16), but *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

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

couples being alone (khalwat) and, for Muslims, eating, drinking or selling food during sunlight hours in Ramadan. In 2009, the Aceh parliament passed the Aceh Criminal Code (Qanun Hukum Jinayat) which punishes adultery and premarital or homosexual sex with caning or stoning to death, though as at May 2011 the Code had not been implemented.

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, although the Constitution, the Law on Human Rights and the Law on Child Protection apply (see above), and the Directorate General of Corrections has stated in policy the right of juvenile offenders to humane treatment.

There is no explicit prohibition of corporal punishment in alternative care settings.

Research has shown that children are subjected to corporal punishment in all settings. In large scale comparative research across 8 Asian countries in 2005, the 813 children from Indonesia reported a number of forms of physical punishment, including being hit with implements, kicking, slapping, ear twisting, hair pulling and pinching. Of those who were hit, 32.4% were hit with an implement, 23.6% slapped with the hand, 23.6% punched with the fist, and 20.4% kicked.² 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 that many children face corporal punishment in childcare institutions, most commonly having their stomachs pinched and being caned; shaving of heads and throwing dirty water on children were also common.³

Recommendations by human rights treaty monitoring bodies

Following examination of the state party's second report in 2004, the Committee on the Rights of the Child recommended prohibition of corporal punishment in all settings, including the family, schools and childcare settings (CRC/C/15/Add.223, para. 44). In 2008, in its concluding observations on Indonesia's second report, the Committee Against Torture recommended a review of all national and local criminal legislation to abolish the provisions for corporal punishment and particularly recommended abolition of all corporal punishment of children (CAT/C/IDN/CO/2, paras. 15 and 17).

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of corporal punishment of girls in its List of Issues for Indonesia, in particular asking what legislative and other measures have been taken by the state party to prohibit and eliminate corporal punishment, to ensure girls enjoy their rights as human beings to respect for their human dignity and physical integrity and to equal protection under the law, including in in homes and as a sentence under Islamic law.

In light of General Recommendation No. 19 on Violence against women adopted by the Committee on the Elimination of Discrimination Against Women in 1992, of the links between corporal punishment of children and all other forms of violence including gender-based violence, and of the Committee on the Rights of the Child's General Comment No. 8 (2006), we hope the Committee will subsequently recommend to the state party that explicit prohibition of all corporal punishment of children be enacted in relation to all settings, including the home and as a sentence of the courts, as a matter of urgency.

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org, September 2011*

² Beazley, H., S. Bessell, et al. (2006), *What Children Say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and Pacific, 2005*, Stockholm, Save the Children Sweden

³ Martin, F. & Sudjarat, T. (2007), *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF & DEPSOS RI