**Ending family violence in Indonesia – challenging physical punishment of girls and boys**

**Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 78th session,***from the Global Initiative to End All Corporal Punishment of Children (*[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*), May 2020*

**Introduction: family violence in Indonesia and CEDAW’s examination of the eighth state party report**

The Law on Domestic Violence 2004 and the Law on Child Protection 2014 provide some protection from family violence to women and girls, but those provisions and others in domestic legislation are not interpreted as prohibiting all corporal punishment of children.

**We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Indonesia. In particular, we hope the Committee will:**

* **in its list of issues for Indonesia, ask what progress is being made on drafting and enacting legislation to prohibit all physical punishment of children, and**
* **in its concluding observations on the eighth state party report, recommend that Indonesia ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Indonesia.
2. Treaty body and UPR recommendations on the issue made to Indonesia to date.

**1 Laws on domestic violence and corporal punishment of children in Indonesia**

***Summary***

1.1 Provisions in the Law on Domestic Violence 2004 and the Law on Child Protection 2014 provide some protection from family violence, but the law is not interpreted as prohibiting all forms of physical punishment of children.

***Detail***

1.2 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. 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.

1.5 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 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Indonesia to enact legislation as a matter of urgency to clearly prohibit all corporal punishment of girls and boys.**

**2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review**

2.1 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.[[5]](#footnote-5) This was reiterated in 2014.[[6]](#footnote-6)

2.2 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.[[7]](#footnote-7)

2.3 In 2008, the *Committee Against Torture* recommended the abolition of all corporal punishment of children in Indonesia.[[8]](#footnote-8)

2.4 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.[[9]](#footnote-9) 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”.[[10]](#footnote-10) 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”.[[11]](#footnote-11) 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.[[12]](#footnote-12)

*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. 21 September 2005, CRC/C/15/Add.258, Concluding observations on initial report, paras. 9, 34 and 35 [↑](#footnote-ref-5)
6. 10 July 2014, CRC/C/IDN/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8 and 60 [↑](#footnote-ref-6)
7. 21 August 2013, CCPR/C/IND/CO/1, Concluding observations on initial report, para. 15 [↑](#footnote-ref-7)
8. 2 July 2008, CAT/C/IDN/CO/2, Concluding observations on second report, paras. 15 and 17 [↑](#footnote-ref-8)
9. 14 May 2008, A/HRC/8/23, Report of the working group, para. 76(2)) [↑](#footnote-ref-9)
10. 14 May 2008, A/HRC/21/7, Report of the working group, paras. 108(75) and 109(28) [↑](#footnote-ref-10)
11. 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-11)
12. 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-12)