



**Input provided by UNICEF Indonesia
into the
Office of the High Commission for Human Rights'
Compilation and Stakeholders reports
For the Universal Periodic Review of
INDONESIA**

1. Realisation of Child Rights in Indonesia

Indonesia is the world's fourth largest nation with an estimated population of 219 million out of which about 77 million are children. The country is spread over about 18,000 islands, has 300 ethnic groups and 250 languages. There has been considerable progress in Indonesia in realising the rights of children as a result of a number of sound programmes and policies developed and implemented over the last two decades. Today, the remaining challenge for the Government of Indonesia (GoI) and its partners in fully realizing children's rights is closing the regional disparities characterizing the country.

The incidence of poverty dropped in 2007 to 16.6 per cent, from 17.8 per cent in 2006. This reverses about 75 per cent of the deterioration seen in the previous year. Analysis of this latest data is underway but it appears that strong economic growth, falling inflation and targeted cash transfers have contributed to the decline in 2007.

The Government is using increased 'fiscal space' at both central and sub-national level to scale up spending on poverty alleviation and to reduce disparities. In 2007, the National Community Empowerment Programme (NCEP) has been expanded to over half of the country's sub-districts, with full coverage planned for 2009. In addition, two major conditional cash transfer (CCT) programmes directed at households and communities are currently being piloted.

The legal framework is registering a positive and very encouraging momentum. Since joining the newly established Human Rights Council in 2007, the GoI has accepted to being open to Universal Periodic Review (UPR) focusing on analyzing the human rights situation on the ground and putting forward strategies for its improvement within a given national context. Since then a number of visits and discussions on human rights issues were undertaken by representatives from various human rights bodies, such as the Special Rapporteur on Torture in September.

Significant progress has been made in child health and survival particularly in reducing infant mortality (32/1000) and under five mortality rates (40/1000).¹ MMR remains as high 307 per 100,000 though, and it is still one of the highest in the region.²

From 1990 onwards, there has been progress in reducing moderate and severe underweight children. However, this has slowed since 1999. Disparity across provinces is striking with 15 per cent in Yogyakarta to levels as high as 41.5 per cent in Gorontalo.³

¹ Report on achievement of Millennium Development Goals Indonesia 2007, BAPPENAS, 2007

² Ibid

Recent data show an improvement in the immunization coverage, with 72 percent of children 12-23 months old immunized against measles. However, immunization rates across the country vary widely.⁴

Primary school net enrolment has increased from 88.7 percent 10 years ago, to around 94.7% now. Yet these figures hide the fact that around one-quarter of children do not actually graduate from primary school and children in rural areas are much less likely to enroll and stay in school than their peers in urban areas.⁵

Indonesia has done very well in reducing gender disparities. For instance, in terms of female net enrollment ratio for primary school through tertiary education the Millennium Development Goals targets have already been met.⁶

In 2000 access to basic sanitation facilities was 60%, with 77% in urban areas and 52.3% in rural. In 2006 access to basic sanitation facilities was 69.3%, with 81.8% in urban and 60% in rural areas.⁷

Indonesia is one of the countries with potential large number of people living with HIV/AIDS and efforts are undergoing to reduce the spread of the disease and control the incidence of new cases.

In the area of Child Protection, progress in the realisation of child rights has been slower for a number of reasons, many of which are outlined below.

2. Child Protection Situation in Indonesia

Every year, approximately 180,000 children are victims of abuse and violence⁸ and thereby potentially come in contact with the law as victims. Today, however, only 10 per cent of them receive legal, medical or psycho-social services⁹. Some 5,000 children are brought before the formal justice system¹⁰ as offenders and about 80,000-100,000 women and children as victims of sexual exploitation or trafficking¹¹.

Legal and policy framework

In 2002, the Indonesian Law on Child Protection was adopted. The law provides a comprehensive legal framework for protection of children and defines a child as “a person under 18 years of age, including the unborn.” The main provisions of this law were also reinforced by the adoption of separate legal instruments such as the Law on Elimination of Domestic Violence (2004), Anti-Trafficking Law (2007), Law on Citizenship (2006) and the Population Administration Law (2006). These laws provide a major improvement of the Indonesian legal framework for children and provide a platform for positive action. The Population Administration Law, in particular stipulates that birth registration is made compulsory and free of charge for all children between 0-60 days.

3 Ibid

4 Ibid

5 Ibid

6 Ibid

7 Ibid

⁸ Ministry of Social Welfare statistics, 2005 and 2006

⁹ National Commission of Women (KOMNAS Perempuan)

¹⁰ Ministry of Law and Human Rights

¹¹ Data is derived from Ministry of Social Welfare and Indonesian Police statistics.

Independent institutions

The Indonesian Child Protection Commission (KPAI) was established by the Republic of Indonesia Law 23/2002 on Child Protection for “the purpose of improving the effectiveness of the efforts to provide protection for children”¹². The creation of this Commission is a major step forward towards systematic monitoring and evaluation of child rights in Indonesia. Based on Article 76 of the Law the Commission has the following duties: “(a) Conducting socialization of all laws and regulations involved in the field of child protection, collecting data and information, receiving community complaints, and conducting studies, monitoring, evaluation and supervision in respect of the protection of children’s rights: (b) Submitting reports, advice, input and considerations to the President in respect of the protection of children’s rights.” Given that the Commission is still a relatively new body, there is still a need to strengthen its capacity to gather and monitor data and statistics related to child protection.

Child Protection System

In 2002 the Joint Ministerial Decree was developed on integrated services for women and children who are victims of violence. This Decree specifies roles of the Ministry of Health, Ministry of Social Welfare, the Police and Ministry of Women’s Empowerment in the protection of victims. The implementation of this decree has led to the establishment of integrated service units in almost all the provinces. These Service Units also provide assistance to victims of trafficking.

Ministry of Education has integrated principles of child abuse prevention in schools into the child friendly school training curriculum and is implementing the programme in 12 provinces.¹³

Progress in legal framework and the establishment of the child protection system has led to the increased budgetary allocation for child protection in many sectors. For example, following the adoption of the Population Administration Law, the Ministry of Home Affairs has provided subsidies for 200 districts in 2007 and 2008 for issuance of free birth registration certificates.

Juvenile Justice System

Guided by a number of international legal instruments, guidelines and rules that guarantee protection of the human rights of all persons, including children, involved in the criminal justice system as well as those safeguarding the rights of children specifically, the Indonesian Government has issued a range of national laws and executive orders offering protection to children in conflict with the law.¹⁴

Even though the laws offer greater protection to children suspected or convicted of being in conflict with the law than other laws dealing with criminal law offenders in general, they are confined solely to the realm of the formal criminal justice system and provide little opportunities for external or alternative dealings with children accused of committing offences.

Definition of a Juvenile

¹² Republic of Indonesia Law, Number 23, 2002 on Child Protection, Article 74

¹³ UNICEF/Ministry of Education data on the Creating Learning Communities for Children (CLCC), 2007

¹⁴ Juvenile Court Law, No3 ,1997, Child Protection Law No 23,2002, Articles 16c and 64 and Human Rights Law No. 39, 1999, Article 66

The different national legal instruments concerned with children suspected or convicted of violating the law and their treatment offer different age of majority definitions for the purposes of criminal law. Under the Criminal Code a child is a person under the age of 16, under the Juvenile Court Law the age of majority is 18, in keeping with international standards, while Police statistics use 17 years as a cut off age for children. The above mentioned majority age limits are subject to one condition: a child must not be or have been married.

On the other hand, the Child Protection Law of 2002 defines a child as any person under the age of 18 years. The disadvantage of non-uniform ages of majority is that, subject to different interpretations of the law, many juveniles are deprived of benefiting from the juvenile justice system and are instead treated as adults. In addition, the minimum age of criminal responsibility, which in Indonesia according to Juvenile Court Law is set at 8 years, is extremely low considering that a child of that age is still too young to be accountable for his/her actions.

However, positive steps have been taken with the drafting of the new Juvenile Justice Law, which proposes to raise the age of criminal responsibility to 12 and promotes diversion and community based mechanisms for dealing with children suspected of criminal offences.

The Role of the Police, Prosecutors and the Court

According to the Juvenile Justice Assessment, published by UNICEF in 2003¹⁵, there is a big discrepancy between the juvenile justice system on paper and that exercised in practice. The treatment meted out to juvenile offenders is often not much different to that administered to adults. The Police, as a first point of entry into the justice system, frequently resort to violence during the arrest and interrogation of juveniles suspected of committing crimes. The arrest of the child is often not backed by a warrant nor are the child's parents formally notified of the arrest. According to the report, incidences of bribery in regards to "out-of-court settlement" are common. While in Police detention, children are frequently held in the same cells as adults, positive steps have been made by the Indonesian Police by establishment of Women's and Children's Unit at the district level police stations. In these police stations trained personnel uses child friendly and gender sensitive procedures during the interrogation of child suspects of criminal activities.

Public prosecutors, in a similar manner, lack an adequate comprehension of the problems faced by children and the awareness on the existing laws related to children. In general, the prosecutors tend to support the Police Interrogation Report forwarded to them by the Police and opt for sending juvenile cases to court instead of using diversion mechanisms.¹⁶

Court proceedings involving juveniles are also plagued by irregularities with a clear disregard for the Juvenile Court Law. In reality, Court hearings are rarely held with the child being assisted with legal counsel, a probation officer and the parents or guardians are frequently absent, while judges and prosecutors usually wear their official robes. Social inquiry reports prepared by probation officers are often not presented at court, and when they are presented they often contain incorrect information. There is little cooperation between legal institutions to ensure that the solutions found in the Court are in the best interests of the child. Instead, prosecutors tend to require custodial sentences for juveniles, even those who have committed minor offences.¹⁷

¹⁵ Situation Analysis on the Juvenile Justice System in Indonesia, UNICEF, 2003, pg XII

¹⁶ Ibid, pg XII

¹⁷ Ibid, pg XII

Detention facilities

Children placed in detention facilities are those who have been subject to detention prior to their trial or prior to the final disposition in their cases as well as those who have been placed by the Court's ruling in a custodial institution. In all cases children are frequently found in detention centres and correctional institutions for adults, despite international regulations and national laws that guarantee children's right to be separated from adults. It is also a common occurrence that those children who are technically undergoing rehabilitation following the Court's verdict are placed in detention centres intended for those awaiting trial and vice versa. Detention of children in facilities designated for adults exposes these children to risk of violence, abuse, harmful influence and other forms of violation of their rights.¹⁸

Situation of children in detention facilities while awaiting trial

The majority of children awaiting trial are placed under detention by order of the District Court. One of the reasons for such a high percentage is that children who are awaiting court decisions are kept in detention for relatively long periods, sometimes even exceeding explicit domestic standards. Another reason is that transcripts of court verdicts are frequently used as bargaining tools; often the expediency of the delivery of the verdict is related to the amount of money paid to the court officers.¹⁹

Situation of children in correctional institutions

Boys constitute the majority of children undergoing rehabilitation (civil children, state children and convicted children), while girls account for only about 4% of the total number. More than half of all children undergoing rehabilitation were sentenced to one or more years of imprisonment. This number presents a serious concern because the imposition of heavy sentences in cases involving children could either be the result of a) increases in serious crimes committed by children or b) lack of sensitivity on the part of criminal justice institutions.²⁰

Recent positive developments

- a) **Submission of the third and fourth periodic CRC reports.** The third and fourth periodic reports on the status of the implementation of the Convention on the Rights of the Child (CRC) are being prepared and will be soon submitted to the Committee for the CRC.
- b) **Improved political commitment from the Government and Law Enforcement Agencies** by strengthening the national policy and legislative framework to safeguard children's rights. Initial steps have been taken toward the ratification of CRC Optional Protocols on Children Affected by Armed Conflict and on Sale of Children, Child Prostitution and Child Pornography.
- c) **Adoption of legal and policy reform,** for example the Child Protection Law and the Victim and Witness Protection Law. In February, a long-awaited Anti-Trafficking Law was adopted by the Parliament. National Plans of Actions have been adopted on the elimination of sexual exploitation, worst forms of child labour and the elimination of

¹⁸ Ibid, pg XIII

¹⁹ Situation Analysis of the Juvenile Justice System in Indonesia, UNICEF, 2003, pg XIII

²⁰ Ibid, pg XIII

- trafficking of women and children. The existing Juvenile Court Law is under revision as a Juvenile Justice Law with specific provisions on diversion and restorative justice.
- d) **Increased capacity development for Law Enforcers** through a training Manual for Police, Prosecutors, Probation Officers and Judges on the protection of children. The manual was developed jointly with law enforcement agencies, universities and NGOs and is being widely used in trainings for law enforcers. More than 2,500 law enforcers have been trained on applying child-friendly and gender-sensitive procedures. Around 300 of them are multiplying the trainings all over the provinces. A training manual for health professionals and teachers on recognizing, reporting and referring child abuse cases has been developed and trainings have been conducted.
 - e) **Increased visibility and stakeholder mobilisation on issues related to justice protection for children** through national and provincial forums, such as National Seminars, Provincial Workshops and Joint-session trainings. A National Task-Force and Provincial Working Groups on Children in Contact with the Law have been established.
 - f) **An enhanced knowledge base on justice for children**, with the country's first-ever Situation Analysis on Juvenile Justice completed in 2003, a survey on child abuse in six major cities of Indonesia in 1999, and assessments of child abuse in East Nusa Tenggara and West Nusa Tenggara in 2003. Participatory research was also carried out on child labour in East Java, on sexual exploitation of children in Central and West Java and on restorative justice in West Java.
 - g) **Models of community-based initiatives have been developed** to support the implementation of diversion programmes, community-based restorative justice on conflict resolution and child-friendly schools at the provincial level. A number of cases have already been diverted in the pilot areas. Within the framework of the 2006-2010 GoI/UNICEF Country Programme (CP) of Cooperation child-friendly courtrooms for children have been established and the development of a mediation model in provincial courts is undergoing.
 - h) **Establishment and strengthening of Special Police Units for Women and Children and of Special Counter Trafficking Units:** As part of the current CP efforts are undergoing to develop the capacity of police officers working in Women and Children's Desks (called RPK) and in the Counter Trafficking Unit who are dealing with children's and women's cases.

3. Children Involved in Armed Conflict

In 2002, Indonesia signed the Optional Protocol on the Involvement of Children in Armed Conflict and steps have been made for the ratification.

The Child Protection Law enacted in 2002²¹ includes specific articles to prevent the recruitment of children in armed groups and armed forces²² while also outlining general provisions for

²¹ Republic of Indonesia, Law number 23, 2002; Article 15 of the Republic of Indonesia Law Number 23 Year 2002 on Child Protection provides for the protection of every child from involvement in armed conflict, social unrest, or an "event that involves violence" and "misuse for political activities". Article 63 states that "All persons shall be prohibited from recruiting or equipping children for military or similar purposes, and from putting the lives of children in danger." Article 87 provides for the imprisonment of no more than five years and/or a maximum fine of 100 million rupiah²¹ for anyone who recruits and equips children for military purposes, or "misuses children by involving them in political activities, or in an armed conflict, social disturbance...or in a violent

children affected by armed conflict²³. In 1999, the Human Rights Law of Indonesia stipulated similar regulations.

Gender Based Violence

The 1999 Human Rights Law identifies war crimes, including rape. While there have been some reports on abuse and violence on girls and women, particularly in Aceh, very few cases have been addressed or brought to justice. During the Martial Law in Aceh in 2004-2004, some Government's forces were brought to the military court and charged with acts of sexual violence, they were, however, found to be not guilty and all charges dismissed.²⁴

March, 2008

event". It is not known if anyone has been prosecuted under this provision. Article 1 (1) defines a child as someone under 18 years of age.

Article 17 (1) of the 2002 Child Protection Law provides for "(1) Every child whose liberty has been taken away shall be entitled to: a. Receive humane treatment and be housed separately from adults;" as well as legal assistance

²² Law number 23, Article 15, 63

²³ Law number 23, Articles 15, 60, 61, 62, 63

²⁴ See Amnesty International report; "The Impact of Impunity on Women in Aceh", 2003