

INDONESIA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 13th session, 2012

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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Indonesia, despite recommendations made by treaty monitoring bodies and the Government’s acceptance during the initial UPR of a recommendation to incorporate the Convention on the Rights of the Child into national legislation.

We hope the Human Rights Council will highlight with concern the lack of progress towards prohibiting all corporal punishment of children in Indonesia and strongly recommend that legislation be introduced which would achieve this as a matter of urgency, including legislation to prohibit corporal punishment in the home and as a sentence for crimes under Islamic law.

1 The initial review of Indonesia by the Human Rights Council (2008)

1.1 Indonesia was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 1). The issue of corporal punishment was not explicitly raised during the review. However, the following recommendation was made and accepted by the Government:

“The removal of all reservations to the Convention on the Rights of the Child was welcomed, as was the incorporation of the Convention into national legislation.”¹

1.2 Prohibiting corporal punishment of children in all settings is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. But since the review in 2008 no progress has been made towards prohibiting all corporal punishment of children in Indonesia. Today, as in 2008, corporal punishment is lawful in the home, schools, penal institutions and care settings, and in some areas may be imposed as a sentence for crime under Islamic law.

2 Legality of corporal punishment in Indonesia

2.1 Corporal punishment is lawful in the **home**. Provisions against violence and abuse in the Law on Child Protection (2002), the Penal Code (1982), the Law on Human Rights (1999), the Law on Domestic Violence (2004) and the Constitution (1945) are not interpreted as prohibiting all corporal punishment in childrearing. The Government has stated that it has a programme to develop “national and regional regulations that prohibit all forms of physical and psychological punishments of children at home and in schools”² but it appears that no legislation has yet been drafted which would achieve this.³

2.2 The Law on Child Protection protects children in **school** 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.

2.3 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 couples being alone (*khalwat*) and, for Muslims, eating, drinking or selling food during sunlight hours in Ramadan.⁴ 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.⁵

2.4 There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.

¹ 14 May 2008, A/HRC/8/23, Report of the Working Group on the Universal Periodic Review: Indonesia, para. 76(2)

² [2007], CRC/C/IDN/3-4, Third-fourth report to the Committee on the Rights of the Child, para. 76. The report has not yet been reviewed by the Committee.

³ See <http://www.dpr.go.id/id/uu-dan-ruu/ruu-sedang-dibahas> (draft bills being discussed) and <http://www.dpr.go.id/id/uu-dan-ruu/ruu-sudah-disetujui> (bills which have been approved), accessed 5 October 2011

⁴ 23 May 2011, PRE01/260/2011, Amnesty International press release

⁵ 23 May 2011, PRE01/260/2011, Amnesty International press release. See also 8 October 2011, AHRC-ETC-046-2011, Asian Human Rights Commission Press Release

2.5 There is no explicit prohibition of corporal punishment in **alternative care settings**. National Standards of Care for Child Welfare Institutions, adopted under Ministry of Social Affairs regulation 30/HUK/2011, state that corporal punishment should not be used but there is no prohibition in law.

2.6 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.⁶ 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.⁷

3 Recommendations by human rights treaty monitoring bodies

3.1 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.⁸

3.2 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.⁹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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November 2011

⁶ Beazley, H. 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

⁷ Martin, F. & Sudjarat, T. (2007), *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF & DEPSOS RI

⁸ 26 February 2004, CRC/C/15/Add.223, Concluding observations on second report, paras. 43, 44 and 61

⁹ 2 July 2008, CAT/C/IDN/CO/2, Concluding observations on second report, paras. 15 and 17