Corporal punishment of children in Indonesia

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Child population 85,276,000 (UNICEF, 2015)

GLOBAL INITIATIVE TO
End All Corporal Punishment of Children

Indonesia's commitment to prohibiting corporal punishment

Indonesia expressed its commitment to prohibiting all corporal punishment of children, including in the home, by clearly accepting the recommendation to do so made during the Universal Periodic Review of Indonesia in 2017. Indonesia is a Pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and as a sentence for crime.

There appears to be no defence of "reasonable chastisement" or similar enshrined in legislation (information unconfirmed) but provisions against violence and abuse in the Penal Code, the Law on Child Protection, the Law on Human Rights, the Law on Domestic Violence and the Constitution are not interpreted as prohibiting all corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment can be considered "reasonable" and prohibition of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – The provision in the National Standards of Care for Child Welfare Institutions stating that corporal punishment should not be used should be confirmed through clear prohibition of corporal punishment in legislation. The law should prohibit corporal punishment in all alternative care settings (foster care, institutions, orphanages, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited by law in all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition of all corporal punishment should be included in legislation applicable to all education settings, including primary and secondary, public and private.

Sentence for crime – The law should be clear that corporal punishment may not be imposed as a sentence for crime for persons under 18 at the time of the offence, including under Shari'a law.

Current legality of corporal punishment

Home

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.

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] 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]

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] 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

[1] 31 October 2012, CRC/C/IDN/3-4, para. 76
[2] 5 September 2012, A/HRC/21/7/Add.1, Report of the working group: Addendum, para. 6.9
[3] Reported in *Jakarta Globe*, 7 March 2013

implementation of the National Strategy has not yet been adopted but a roundtable event on the issue was held in May 2017.

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]

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under "Home"). 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. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence (see under "Home").

Day care

There is no explicit prohibition of corporal punishment in day care: it is lawful as for parents. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence (see under "Home").

Schools

Corporal punishment is lawful in schools. The Law on Child Protection 2014 protects children in schools from "violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions" (art. 54); Ministerial Regulation No. 82/2015 on the Prevention and Sanction of Violence in Schools also provides protection from violence but neither text explicitly prohibits corporal punishment. A group of teachers has been reported to pursue a judicial review procedure of the Law on Child Protection 2014 in order to clarify the interpretation of the term "violence and abuse"[5] – as of July 2017 the Constitutional Court does not appear to have a decision yet.

The Act on the National Education System 2003 is silent on the issue of corporal punishment. We have been unable to examine the text of the Teachers and Lecturers Law 2015 but there are no indications that it addresses corporal punishment. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence (see under "Home").

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but it is not explicitly prohibited. The Law on Correctional Facilities 1995 provides for respect for human dignity (art. 5) and corporal punishment is not among permitted disciplinary measures (art. 47). The Law on Human Rights states that children deprived of their liberty have the right to "humane treatment, as befits the personal development needs of his age" (art. 66); the protections from violence and cruel treatment in the Law on the Juvenile Justice System 2012, the Constitution 1945 and the Law on Child Protection 2014 also apply (see under "Home"). Protection from cruel and

[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)
[5] See http://indonesiaexpat.biz/news/corporal-punishment-students/, accessed 19 July 2017

degrading treatment is provided for in the Regulations of the Minister of Justice No. M.04-UM.01.06 1983 on Procedures for Placement of Prisoners and the Discipline of Prisoners in Correctional Facilities and No. M.04-UM.01.06 1983 on Detention and Care of Detainees, and Order of State Detention Center.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under provisions protecting children from "inhuman punishment" in the Law on Human Rights 1999 (art. 66) and the Child Protection Law 2014 (art. 16). The Law on the Juvenile Justice System 2012 states that children in conflict with the law have a right to "be treated humanely and in accordance with the needs of their age" and to "freedom from torture and other cruel, inhuman or degrading punishment or treatment" (art. 3, unofficial translation) and article 71(4) states that "the penalties imposed on children must not violate the dignity of the child". However, we have yet to ascertain the applicability if these laws in relation to Shari'a law in Aceh and other areas.

Shari'a law has been implemented in the province of Aceh and other areas. Law No. 11/2006 on the Government of Aceh authorises that Government to establish bylaws, including criminal law (Qanun Jinayah), criminal procedure (Qanun Jinayah on Procedural Law) and the Shari'a Court (Mahkamah Syariah): these should be consistent with national law. In 2009, the Aceh Legislative Council endorsed the Aceh Criminal Code (Qanun Hukum Jinayat) – a set of bylaws which would replace part of the Indonesian Criminal Code with Islamic provisions applicable to Muslims, including punishment for adultery and premarital or homosexual sex with caning or stoning to death. In March 2013, the draft Code was revised to remove the punishment of stoning for adultery; it was signed into law in December 2013 and sent to the Jakarta, the capital, for approval. The proposed Criminal Code is under discussion alongside a proposed Criminal Procedure Code (Qanun Acara Jinayat). In reporting to the Human Rights Committee in 2013, the Government stated that the punishment of caning is "not necessarily" about punishment but is a deterrent – but it went on to describe the involvement of doctors in implementing the punishment of caning in order to ensure "the health conditions of the convicted before, during and after the punishment is carried out".[6] In September 2014, the Aceh provincial parliament approved the Principles of the Islamic Bylaw and the Islamic criminal code (Qanun Jinayah) which extend Sharia law to non-Muslims and provide for judicial corporal punishment.[7]

In reporting to the Committee on the Rights of the Child in 2014, the Government acknowledged that there have been by-laws which are inconsistent with human rights principles, stating that these are "undesired by-products of the implementation of sub-national autonomy in Indonesia".[8] A number of by-laws have been revoked following review by the Ministry of Home Affairs, and guidelines on legal drafting[9] have been produced in an attempt to prevent such laws being drafted and to support implementation of Law No. 12 of 2011 on the Formulation of Law and Regulation. Drafting is also regulated by the Joint Regulation of the Minister for Law and Human Rights and Minister for Home Affairs No. 20 of 2012 and No. 77 of 2012 on Human Rights Parameters for the formulation of by-

[6] 28 June 2013, CCPR/C/IDN/Q/1/Add.1, Reply to list of issues, para. 115

[7] 2 October 2014, Human Rights Watch press release, http://www.hrw.org/news/2014/10/02/indonesia-aceh-s-new-islamic-laws-violate-rights, accessed 27 October 2014

[8] 6 May 2014, CRC/C/IDN/Q/3-4/Add.1, Reply to list of issues, paras. 1 to 9

[9] "Understanding the Making of Local Regulations", November 2011

laws. To our knowledge, these do not prohibit corporal punishment as a sentence under sharia law (unconfirmed).

Universal Periodic Review of Indonesia's human rights record

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. However, the following recommendation was made and accepted by the Government:[10]

> "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."

Examination in the second cycle took place in 2012 (session 13). Two recommendations were made to prohibit corporal punishment but in the Report of the working group one of these was recorded as a recommendation to prohibit "violence":[11]

> "Expressly prohibit in national legislation violence against children in all settings, including at home, schools, penal institutions and centres of alternative care (Uruguay) [footnote: "The recommendation as read during the interactive dialogue: 'Expressly prohibit in national legislation the corporal punishment of children in all settings, including at home, schools, penal institutions and centres of alternative care'"]
>
> "Abolish all corporal punishment of children in all settings (Liechtenstein)"

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".[12]

Indonesia's third cycle examination took place in 2017 (session 27). The Government supported the following recommendations:[13]

> "Put an end to corporal punishment and other forms of violence in schools (Panama)"
>
> "Prohibit explicitly in legislation corporal punishment of children in all places, including at home, in schools, criminal institutions and alternative care centres (Uruguay)"
>
> "Take the necessary measures to guarantee the proper functioning of a juvenile justice system, including, inter alia, by treating minors in a manner appropriate to their age, and that Indonesia abolish all corporal punishment of children in all settings (Liechtenstein)"

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(10 July 2014, CRC/C/IDN/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8 and 60)

"While welcoming the State party's efforts to follow up the Committee's concluding observations of 2004 on its second periodic report (CRC/C/15/Add.223), the Committee notes with regret that some

[10] 14 May 2008, A/HRC/8/23, Report of the working group, para. 76(2)
[11] 14 May 2008, A/HRC/8/23, Report of the working group, paras. 108(75) and 109(28)
[12] 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)
[13] 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)

of the recommendations contained therein have not been fully addressed.

"The Committee urges the State party to take all necessary measures to address the recommendations contained in the concluding observations on its second periodic report under the Convention that have not been implemented or only partially addressed. In particular, the Committee reiterates its recommendations (CRC/C/15/Add.223, paras. 23, 25, 44, 52 and 72 (a)) that the State party: ...

c) In the light of the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and articles 19, 28, paragraph 2, 37, among others, of the Convention, amend its current legislation to prohibit corporal punishment everywhere, including in the family, schools and childcare settings; carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment....

"Building on its previous recommendation (CRC/C/15/Add.223, para. 63), the Committee urges the State party to take prompt measures to ensure that quality education is accessible by all children in the State party. It further urges the State party to: ...

e) take all necessary measures, including developing school-specific action plans and regular school inspections, aimed at putting an end to corporal punishment and other forms of violence in school, including bullying."

Committee on the Rights of the Child

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

"The Committee is deeply concerned that corporal punishment in the family and in schools is widespread, culturally accepted and still lawful.

"The Committee recommends that the State party:

a) amend its current legislation to prohibit corporal punishment everywhere, including in the family, schools and childcare settings;

b) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment.

"… the Committee is very concerned:

e) at the high incidence of violence against children in the schools, including bullying and fighting among students, and that no specific law exists to regulate school discipline and protect children against violence and abuse in the school."

Committee Against Torture

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

"The Committee is deeply concerned that local regulations, such as the Aceh Criminal Code, adopted in 2005, introduced corporal punishment for certain new offences. The Committee is concerned that the enforcement of such provisions is under the authority of a 'morality police', the *Wilayatul Hisbah*, which exercises an undefined jurisdiction and whose supervision by public State institutions is unclear. Furthermore, the Committee is concerned that the necessary legal fundamental safeguards do not exist for persons detained by such officials, including the absence of a right to legal counsel,

the apparent presumption of guilt, the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) that contravene the Convention and national law. In addition, it is reported that the punishments meted out by this policing body have a disproportionate impact on women (arts. 2 and 16).

The State party should review all its national and local criminal legislations, especially the 2005 Aceh Criminal Code, that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention.... State institutions should supervise the actions of the *Wilayatul Hisbah* and ensure that fundamental legal safeguards apply to all persons who are accused of violating matters of its concern.

The State party should further ensure that a legal aid mechanism exists to guarantee that any person has an enforceable right to a lawyer and other due process guarantees, so that all suspects have the possibility of defending themselves and of lodging complaints of abusive treatment in violation of national law and the Convention.

The State party should review, through its relevant institutions, including governmental and judicial mechanisms at all levels, all local regulations in order to ensure they are in conformity with the Constitution and with ratified legal international instruments, in particular the Convention.

"While noting the State party's intention to raise the minimum age of criminal responsibility to 12 years, the Committee is deeply concerned that it remains established at 8 years of age, that detained children are not fully segregated from adults, that a large number of children are sentenced to jail terms for minor offences and that corporal punishment is lawful and frequently used in juvenile prisons, such as in the Kutoarjo prison....

The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with the generally accepted international norms on the subject and to abolish all corporal punishment of children...."

Human Rights Committee

(21 August 2013, CCPR/C/IND/CO/1, Concluding observations on initial report, para. 15)

"The Committee regrets the use of corporal punishment in the penal system, particularly in Aceh province, where the Acehnese Criminal Law (Qanun Jinayah), inter alia, provides for penalties that violate article 7 of the Covenant, such as flogging, for offences against the *qanun* (by-law) governing attire, the *qanun khalwat* (prohibiting a man and a woman from being alone in a quiet place) and the *qanun khamar* (prohibiting the consumption of alcohol). The Committee also regrets that the execution of these sentences by sharia police (Wilayatul Hisbah) disproportionately affects women (arts. 2, 3, 7 and 26).

The State party should take practical steps to put an end to corporal punishment in the penal system and in all settings. In this regard, the State party should repeal the Acehnese Criminal Law (Qanun Jinayah), which permits the use of corporal punishment in the penal system. The State party should act vigorously to prevent any use of corporal punishment under this law as a form of punishment for criminal offences until it is repealed."

Prevalence/attitudinal research in the last ten years

A survey of 1,682 Indonesian students aged 12–14 years, conducted between October 2013 and March 2014, found that 27.2% of boys and 9.4% of girls had experienced physical violence (been hit,

beaten, slapped or kicked) by school staff in the last 6 months. Of these, 17% of boys and 25% of girls said they reported the incident to a teacher or principal (with 70% saying some action was taken), while 19% of boys and 42% of girls reported it to their parents or guardians – indicating that girls place more trust on their parents compared to teachers. Two-thirds of all students said their parents took some action on their complaint.

(International Center for Research on Women (ICRW) and Plan International (2014), *Are Schools Safe and Gender Equal Spaces? Findings from a baseline study of school related gender-based violence in five countries in Asia*, Plan International)

According to statistics collected in 2010-2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), in Papua Province 90% of children aged 2-14 experienced violent "discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Nearly three quarters (74%) experienced physical punishment, while a much smaller percentage (33%) of mothers and caregivers thought physical punishment was necessary in childrearing. More than a quarter (26%) of children experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement); 83% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Badan Pusat Statistik (2013), *The Selected Districts of Papua Province Multiple Indicator Cluster Survey 2011, Final Report*, Jakarta: BPS)

According to statistics collected in 2010-2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), in West Papua Province 86% of children 2-14 year olds experienced violent "discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Nearly two thirds (65%) experienced physical punishment, while a much smaller percentage (20%) of mothers and caregivers thought physical punishment was necessary in childrearing. Nearly a quarter (23%) of children were severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement); 80% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Badan Pusat Statistik (2013), *The Selected Districts of West Papua Province Multiple Indicator Cluster Survey 2011, Final Report*, Jakarta: BPS)

A 2013 study on the rights of migrant children in Indonesia, which involved interviews with 102 migrants, found that child and adult migrants in detention frequently experienced beatings and other physical violence, including being kicked, slapped, punched, burned with cigarettes and the use of electroshock weapons.

(Human Rights Watch (2013), *Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia*, NY: Human Rights Watch)

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. *Someone that Matters: The Quality of Care in Childcare Institutions in Indonesia* is based on a survey of 36 childcare institutions in six provinces plus a government owned orphanage. Most of the institutions are run privately by religious organisations. The research found that physical and psychological punishment was widespread in these institutions, and was often routine and accepted as a part of daily life by children and staff. Pinching children's stomachs and caning them were the most common forms of punishment. Shaving of heads and throwing dirty water on children were also common for repeat "offenders".

(Martin, F. & Sudjarat, T. (2007), *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF and DEPSOS RI, www.savethechildren.org.uk/en/docs/someone-that-matters.pdf)