

## United Nations Country Team Indonesia

### Report for the Universal Periodic Review of Indonesia, 27<sup>th</sup> Session, April-May 2017

#### I. Introduction

This report contains information and recommendations from members of the United Nations Country Team (UNCT) in Indonesia, and is a review of the country's progress on human rights since the last (2<sup>nd</sup>) Universal Periodic Review (UPR) in 2012. During the 2<sup>nd</sup> UPR, Indonesia received 180 recommendations, 150 of which it accepted and 30 of which it did not support. <sup>1</sup>

#### II. Implementation of Universal Periodic Review Working Group 2008 Outcome Report

Indonesia has made substantial progress in human rights conventions, as demonstrated in the submissions by different UN agencies for the current (3<sup>rd</sup>) cycle of Universal Periodic Review (UPR). Indonesia is a signatory to a number of international conventions, a reflection of its commitment to upholding human rights as a fundamental principle of national development. Translating these normative obligations into reality requires appropriate legislative, regulatory instruments and administrative procedures, as well as cultural changes in attitudes.

As recommended in the 2<sup>nd</sup> UPR of 2012, greater efforts are needed by the Government of Indonesia to prevent child labour, trafficking and other forms of violence against women and children, enforce labour standards and worker rights as well as to better protect religious and social minorities, prisoners and detainees. Further progress must be made in order to adhere fully to the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and ILO Convention No. 169 on Indigenous and Tribal Peoples, as well as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the United Nations General Assembly in 2007.

#### III. Background and Framework

##### 1. Institutional and Human Rights Structure

Indonesia has ratified 6 main core UN Covenants<sup>2</sup>, with a number of State agencies and affiliated bodies addressing human rights problems in Indonesia, including the Ministry of Law and Human Rights (MOLH), the Ministry of Foreign Affairs (MOFA), the Ministry of Women's Empowerment and Child Protection (MWECP), the National Commission on Violence Against Women (NCVAW) (Komnas Perempuan), Indonesian Commission on Human Rights (Komnas HAM) and the Indonesian Commission on Protection of Children's Rights (Komite Perlindungan Anak Indonesia- KPAI).

##### 2. Policy Measures and Legislative Developments

Pursuant to the recommendations that it has accepted from the last UPR review, the Government has made efforts to strengthen national human rights institutions and to harmonize local laws with national and international standards. Upon the expiration of the Presidential Regulation n. 23 (2011) on the National Action Plan on Human Rights (RANHAM) for 2011–2014 period, President Joko Widodo has signed Presidential Regulation n. 75 (2015) concerning the National Action Plan of Human Rights for the 2015-2019 period. The new RANHAM includes the goals, strategies, and priority activities for promoting human rights in Indonesia, to be used as a reference for the ministries, agencies, and local governments. To ensure the implementation of RANHAM 2015-2019, President also established a joint secretariat, consisting of the Ministry of Law and Human Rights (chair), the Ministry of Social Affairs, the Ministry of Internal Affairs, and the Ministry of National Development Planning.

The UNCT commends the government on efforts taken to reflect a number of the Sustainable Development Goal (SDG) targets and indicators in the Medium Term Strategic Plan (“RPJMN”) 2015-2019, even prior to the official launch of the SDGs in 2015. In addition, baselines for several targets have been established already using government data.

#### IV. Promotion of Protection of Human Rights on the Ground

##### A. Cooperation with Treaty Bodies

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<sup>1</sup> Decision adopted by the Human Rights Council 21/105. Outcome of the Universal Periodic Review: Indonesia, 12 October 2012.

<sup>2</sup> CRC, CEDAW, CERD, CAT, ICCPR and ICESCR

Referring to the earlier 2012 UPR's recommendations given by other States and accepted by Indonesia, UNCT notes that Indonesia has ratified two of the Optional Protocols to the Convention on the Rights of the Child (CRC-OP-AC / CRC-OP-SC) in September 2012, but not yet ratified the Optional Protocol on Communication Procedures. Indonesia has ratified the International Convention on the Rights of All Migrant Workers and members of Their Families (ICRMW) in May 2012. Indonesia has signed the convention for the Protection of All Persons from Enforced Disappearance (CPED), but has not ratified it.

Indonesia has still not ratified the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (OP-CEDAW), the Rome Statute of the ICC, the Optional Protocol to the Convention against Torture, and the ILO Convention n. 189 on Descent Work for Domestic Workers. Furthermore, Indonesia has still not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

## **B. Equality and non-discrimination**

In a number of provinces and districts local laws do not conform with the national and international legal standards and discriminate against marginalised groups, such as women, sexual and gender minorities, sex workers, drug users, and persons living with HIV. These marginalized groups are vulnerable to violence and have considerable difficulty in accessing justice and relevant services when their rights are violated.

At the national level, sexual minorities have reportedly been targeted by a number of discriminatory campaigns, and some senior or former officials have publically referred to them as being “mentally ill,” and to homosexuality as a form of “modern warfare”. Although male-to-male sex or alternative sexual orientations are not illegal in the country, some men who have sex with men (MSM) and transgender people report being targeted for harassment or arrest by the law enforcement authorities under laws relating to public order or immoral conduct, particularly if they are suspected of involvement in selling sex. This acts as a deterrent to persons belonging to sexual minorities from accessing HIV or SRH services, particularly if they fear arrest or breach of privacy and disclosure of their sexuality or gender identity to their family and community. In Indonesia, the Law on Pornography defines homosexuality as a deviant form of behaviour and criminalizes depictions of homosexuality. Some sub-national laws prohibit sex between men or conflate homosexual conduct with prostitution. In Aceh the local government implemented a new sharia criminal code that imposes a penalty of 100 strokes of cane for homosexual acts. The 2014 Annual Records of Komnas Perempuan revealed 37 reported cases of violence against women (VAW) identified as women with minority sexual orientation (lesbians, bisexuals, transgender persons) both in the domestic and public realms. People with different sexual orientations and gender identities are living with fear and are facing a range of rights violations including around freedom of association and expression, freedom from violence, right to privacy, right to health and right to fair trial.<sup>3</sup>

Media has reported on attacks on freedom of assembly for students with different sexual orientations and gender identities became an ongoing campaign in the media, amplified by some senior government officials with negative and discriminatory comments<sup>4</sup>. Some religious leaders have made demands that Parliament table new legislation to block legal registration of sexual minorities' organizations. In Yogyakarta, police and local authorities closed Al Fatah Pesantren Waria, a school for transgender students, in response to pressure from an Islamic religious group.<sup>5</sup> One community organisation reported to have received 142 reports of harmful incidents directed towards people belonging to gender and sexual minorities in the period January to March 2016<sup>6</sup>. Currently, a group of preachers and academics is requesting the Constitutional Court to change the definitions of adultery, rape and sodomy in the Criminal Code. The purpose of this judicial review is to outlaw any consensual sexual activities outside of marriage, including same-sex relationships criminalizing not only sexual minority groups but also un-registered marriages.<sup>7</sup>

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<sup>3</sup> <https://www.hrw.org/report/2016/08/10/these-political-games-ruin-our-lives/indonesias-lgbt-community-under-threat>

<sup>4</sup> “The sudden intensity of Indonesia's anti-gay onslaught,” BBC, 29 February 2016. <http://www.bbc.com/news/world-asia-35657114>

<sup>5</sup> “Yogyakarta transgender Islamic boarding school shut down,” Bambang Muryanto, The Jakarta Post, 26 February 2016.

<sup>6</sup> Data received from a member based federation that focuses on LGBTIQ rights advocacy in Indonesia.

<sup>7</sup> The Jakarta Post, 31 August 2016.

The NCVAW documented 389<sup>8</sup> bylaws that discriminate against women and girls. Although President Jokowi's administration has annulled 3,143 problematic bylaws in June 2016, they did not include any of the aforementioned bylaws that discriminate against women and girls.

Indonesia is a signatory of the ICPD PoA. Indonesia issued the Health Law, n. 36 (2009), according to which access to information and services on sexual and reproductive health may only be provided to "legal partners". Thus, health care providers, particularly at Government health care centers, do not provide sexual and reproductive health services, including contraception and family planning to unmarried people. The strong social stigma attached to premarital pregnancy discourages unmarried women and girls from seeking antenatal and postnatal services and leaves them at risk of unwanted pregnancies, sexually transmitted diseases, unsafe abortion and human rights abuses. There is widespread opposition to include information on sexual health and contraceptives, such as condoms, as part of health programmes targeting unmarried adolescents. National laws and policies regarding age of consent for medical interventions, in particular the Child Protection Law 2002, pose constraints on sensitive issues such as voluntary testing for HIV, as health care workers need to consult both parents and children when a decision is being made about medical testing or treatment.

Stigma and discrimination against people living with HIV and the groups at higher risk are still issues of concern, feeding the growing HIV epidemic in Indonesia. Indonesia does not have a comprehensive national HIV law, but has specific provisions that prohibit discrimination on the ground of HIV status under general human rights laws, labour laws and the public health law. The Government has encouraged tolerance, but the degree of tolerance is uneven at different levels of society. The legal framework, including punitive laws, undermines access to health services<sup>9</sup>.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To introduce legal, administrative and practical measures, including through legislative reform and allocation of adequate resources, in order to eliminate all forms of discrimination based on sex, age, disability, sexual orientation and gender identity, and health conditions.
- To repeal, within a concrete time frame, all legislation that discriminates against women and girls on the grounds of gender, including those identified by the NCVAW, to ensure compliance with the obligations of the State party under the CEDAW; to repeal laws that discriminate on the grounds of health status.
- To review the penal sanctions against alleged immoral relationships and remove provisions of the abovementioned local laws that discriminate on the grounds of sexual orientation and gender identity.
- Pursuant to the recommendations n. 108.66 and n. 108.123 given respectively by Spain and Belgium during the 2<sup>nd</sup> review cycle, and in consultation with the key stakeholders, including the youth, to ensure independent access to youth-friendly SRH services for young people, including unmarried young people, and to repeal all laws that impeded such access.

### **C. Right to life, liberty and security of the person**

Indonesia has executed 23 people since 2013, most recently in July 2016 when four people were executed for drug-offenses. Under the international law, in particular the International Covenant on Civil and Political Rights which Indonesia has ratified, if the death penalty is to be used at all, it should only be imposed for the "most serious crimes". The Republic of Indonesia voted against resolution 69/186 Moratorium on the use of death penalty adopted by the UN General Assembly on 18 December 2014.

Referring to the 2012 UPR recommendations n. 108.72 and 108.73 given by Liechtenstein and Singapore, the Government of Indonesia recognizes the need for a systematic solution to ending Gender Based Violence (GBV). Toward that end, it has adopted a domestic Violence Law, has put in place the Minimum Service Standard for Violence Against Women and has established a multi-sectoral and integrated services for women victims of violence at the sub-national level. GBV remains a serious public health and human rights concern; the NCVAW reported that between 2004 and 2016, incidents of violence against women (VAW) increased from 14,020 to

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<sup>8</sup> Annual Report National Commission on Violence against Women, 2016 <http://www.komnasperempuan.go.id/wp-content/uploads/2016/03/Lembar-Fakta-Catatan-Tahunan-CATAHU-Komnas-Perempuan-2016.pdf>

<sup>9</sup> Government of Indonesia AIDS Response Report 2014 (<http://www.unaids.org/sites/default/files/country/documents/Indonesia%20NCPI%202013.pdf>); National Consultation on Legal and Policy Barriers to Access to HIV in Indonesia (2013), available at: <http://www.aidsdatahub.org/sites/default/files/publication/rbap-hhd-2015-national-consultation-legal-policy-barriers-hiv-indonesia.pdf>

321,752 cases. The UNCT commends the Government of Indonesia for allocating resources and undertaking a national VAW survey, the first national survey ever conducted in the country to measure the prevalence of VAW. The results will be critical for evidence-based VAW prevention and response policies and programme interventions. The civil society groups, including the National Commission on Human Rights (Komnas HAM) and the national medical association have taken a firm stance in formally opposing the government's plan to punish sex offenders using chemical castration, on the grounds that it is not solving the root causes of the problem and contravenes human rights principles.

Women living with HIV in Indonesia face several issues, including sexual violence, economic discrimination and forced or coerced sterilization<sup>10</sup>. According to the 2012 Indonesian Positive Women Network survey, women are usually not aware that they have rights over their bodies, including the right to decline sterilization when they are asked to undergo the procedure.

A qualitative regional study carried out by UN agencies and sex workers in 2013-2014 found that male, female and transgender sex workers in Indonesia experience extreme physical, sexual, emotional and economic violence at work, in health care and custodial settings, in their neighbourhoods and in their homes<sup>11</sup>.

The Law No. 1 of 1974 on Marriage (Marriage Law) permits females to legally marry at age 16 and males at 19 with parental consent but parents can also petition marriage officers or district-level religious courts for an exemption to marry their daughter earlier, with no minimum age limit. The law contains other provisions of discrimination against women and girls such as authorization of polygamy, discriminatory inheritance laws for sons and daughters, absence of protection for women having undertaken an inter-religious marriage and restriction on Muslim women to marry or divorce under civil law. In 2015, the Constitutional Court rejected a petition filed by civil society groups to revise the marriage age for women to 18, to bring it in compliance with the 1945 Constitution and the Law No. 23 of 2002 on child protection, which defines a child as being a person below the age of 18 years.

Based on the 2016 Badan Pusat Statistik Indonesia (BPS) report: *Progress on Pause: An analysis of child marriage date in Indonesia*, approximately 25% of girls are married before the age of 18 years. The UNCT commends the government for issuing this baseline study providing national data on child marriage prevalence and incidence by region. Tackling child marriage is a priority in the National Mid-Term Development Plan (2015-2019) and several regulations to protect girls from child marriage have been issued in line with the SDG global targets and indicators to eliminate child marriage.

The Minister of Women's Empowerment and Child Protection announced its commitment to eliminate female genital mutilation/ cutting (FGM/C) during the UN Day of Zero Tolerance to FGM in February 2016. Indonesia has not accepted the SDG Target 5.3. to eliminate all forms of harmful traditional practices, including FGM/C. The Ministry of Health Regulation n. 1636/2010 allowing medical professionals to perform FGM has been removed, but this policy development has not yet been widely disseminated. The Ministry of Health basic health survey ("Risksdas") 2013 found that 51% of girls aged between 0-11 years have been circumcised.

The Government has adopted several laws and policies that aim to strengthen the legal framework on the protection of children from violence, including Law n. 35 (2014) on the Amendment of Law n. 23 (2002) on Child Protection; Presidential Instruction n. 5 (2014) on the National Movement to eliminate Sexual Crimes against Children; Decree of the Coordinating Ministry on Human Development and Culture n. 2 (2016) on the National Strategy on the Elimination of Violence against Children 2016-2020; the National Child Protection Strategy 2015-2019; and Regulation of the Ministry of Education n. 82 (2015) on Prevention and Response to Violence against Children in Education Settings. The Government of Indonesia ratified the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography in 2012 but further steps can be taken in submitting the First State Party Reports on the Optional Protocols to the Convention, reviewing the existing national legislation and aligning those legislations with the Optional Protocols as recommended by Egypt in the 2012 UPR recommendation n. 108.18, and ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

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<sup>10</sup> "Indonesia: Positive Women's Network takes action to address Violence against Women Living with HIV", The Global Coalition of Women and Aids, 7 August 2014.

<sup>11</sup> Bhattacharjya, M., Fulu, E. and Murthy, L. with Seshu, M.S., Cabassi, J. and VallejoMestres, M. (2015). *The Right(s) Evidence – Sex Work, Violence and HIV in Asia: A MultiCountry Qualitative Study*. Bangkok: UNFPA, UNDP and APNSW (CASAM). <http://www.aidsdatahub.org/sites/default/files/documents/new/Rights-Evidence-Report-2015-final.pdf>

The Government of Indonesia has made efforts to strengthen the Indonesia Commission on Child Protection (KPAI), one of the national human rights institutions, in accordance with the 2012 UPR recommendation n. 108.32 given by Nepal. The measures, however, have not addressed all recommendations of the UN-supported needs-assessments in 2008<sup>12</sup>.

The annual budget of the Ministry of Women Empowerment and Child Protection has been increased in 2016, allowing the Ministry to widen its programmes on child protection. The Government has also expressed its commitment to be a pathfinder country in the Global Partnership to End Violence against Children, and has committed to implement the newly adopted strategy on elimination of violence against children.

UNCT notes that local Law in Aceh still allows public caning for violations of Sharia Law, such as selling alcohol, gambling or “adultery”. Almost every month Aceh's municipal and regency administrations inflict corporal punishment on violators.<sup>13</sup>

The UN Country Team suggests that Indonesia considers the following recommendations:

- To continue to prioritize policies and programmes for the integration of comprehensive HIV and sexual and reproductive health services with programmes for the prevention and response to GBV.
- To use results of the VAW prevalence survey for evidence-based VAW prevention and response policies and programme interventions, when they become available.
- To repeal discriminatory provisions of Marriage Law n. 1 of 1974 and to adopt a law that provides prohibition of marriage under 18 years of age in line with the Child Protection Law 2002; to develop programmes that address social norms that support child marriage, strengthen economic empowerment for girls and their families and ensure free and universal access to quality education (especially secondary) for girls.
- To strengthen its commitment to eradicate practices of FGM/C; to adopt a legally binding policy that forbids the practice of FGM/C; to develop programmes that address medicalisation of FGM; and to consider again the inclusion of SDG indicator 5.3.2 in the National SDG Monitoring Framework.
- To consider ratification of the Optional Protocol to the CRC on a communications procedure.
- To allocate sufficient funding to implement the National Strategy on the Elimination of Violence against Children 2016-2020, including across sectors and by sub-national government, and to adopt legal frameworks that address all types of physical, emotional and sexual violence<sup>14</sup>; To take all necessary measures to eliminate discrimination against children based on their religion and end all forms of violence against religious minorities<sup>15</sup>. Regarding the 2012 UPR recommendation n. 108.82 by Algeria, the Government may consider to scale-up and expand its efforts to protect children living and working on the streets, especially by allocating sufficient funding for the implementation of the strategy to eliminate homeless among children by 2017 and by ensuring effective coordination amongst stakeholders.

#### **D. Administration of justice, including impunity, and the rule of law**

Improvements have been made in the prosecution of perpetrators of human trafficking pursuant to the 2012 UPR recommendation n. 108.78 by Qatar, especially through the National Action Plan on the Elimination of Trafficking in Persons (2016).

Referring to the 2012 UPR recommendation n. 108.62, UNCT welcomes the fact that the Government of Indonesia has raised the Minimum Age of Criminal Responsibility from 8 to 12 years of age by adopting the Law n. 12 (2012) on Juvenile Justice System. Since the Law entered into force in August 2014, the number of children in prisons has been reduced from more than 3,500 to less than 2,000 according to government data. The law is still not fully implemented as by June 2016, only 2 out of 6 Government Regulations and 1 out of 2 Presidential Regulations had been adopted and the integrated training for 21,000 law enforcers, social workers and lawyers

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<sup>12</sup> Hosking, P., and Setyawati, L. *KOMNAS PERLINDUNGAN ANAK INDONESIA (KPAI): A NEEDS ASSESSMENT*. Report submitted to UNICEF and UNOCHR (2008)

<sup>13</sup> The Jakarta Post ' Dozen Sharia violators caned in Aceh' <http://www.thejakartapost.com/news/2015/09/19/dozens-sharia-violators-caned-aceh.html>

<sup>14</sup> Note that in the Concluding observations on the combined third and fourth periodic reports of Indonesia, para 32, the Committee on the Rights of the Child recommends that the State party strengthen its efforts to protect and prevent children from sexual abuse and exploitation and: (a) Develop a strategy to respond to the special needs of child victims of sexual exploitation and abuse and ensure their access to shelter, health, legal and psychological services; provide adequate training to professionals working in those services; ensure accessible, confidential and child-friendly reporting channels; and facilitate child victims' access to justice; (b) Amend legislation to ensure that all children subject to any form of sexual exploitation are always treated as victims and are not subject to criminal sanctions.

<sup>15</sup> Taken from CRC/C/IDN/CO/3-4. Concluding observations on the combined third and fourth periodic reports of Indonesia, para 20 (c)

had only reached 4 percent of the target officers to be trained. The reintegration of children at family and community levels remains a challenge.

Indonesia launched in May the second National Strategy on Access to Justice (NSA2J) 2016-2019, which builds on the first strategy that had been adopted in 2009. The Strategy focuses on strengthening access to justice in four areas: basic rights, judiciary and dispute settlement, legal aid, and land and natural resources. The Strategy outlines targets and key measures that need to be taken at both national and sub-national levels to improve citizens' access to justice, in particular for the poor and the marginalized<sup>16</sup>.

The enactment of Law n. 16 (2011) on Legal Aid paved the way for Indonesia's first national legal aid program with annual government funds. Since the start of its implementation in 2013, the programme has led to an increase in the number of poor justice seekers served from 1,628 in 2013 to 6,533 in 2015, with 405 legal aid service providers. The programme could further refine the definition of target beneficiaries beyond 'the poor', particularly to accommodate individuals or groups whose civil, political, economic, social and cultural rights have been violated.<sup>17</sup>

Informal and customary justice plays an important role in Indonesia. However the fairness and effectiveness of customary justice can be negatively affected without the clear procedures and accountability, and a low level of representation of women and minority groups<sup>18</sup>. The recent years have seen strengthening of informal justice as some Customary councils have developed guidelines on customary justice that set out the underlying principles, jurisdiction, sanctions and procedures for the execution of the local-level customary justice, based on the international standard for justice provision, human rights and women's rights. Moreover, Customary Councils in Aceh and Central Sulawesi have established MoU with local police to formalize acknowledgement of informal justice system by the formal system.<sup>19</sup>

The UN Country Team suggests that Indonesia considers the following recommendation:

To ensure that the 6 required Government Regulations and 2 Presidential Regulations are developed and aligned with international standards on justice for children and to allocate sufficient funding to support the implementation of the Law.

### **E. Right to privacy, marriage and family life**

On September 8, 2015, Purwakarta Regency, West Java, passed a local regulation that prohibits individuals with HIV/AIDS from getting married, giving the government the power to use medical status to annul or deny a marriage.

### **F. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

In some districts in the province of Aceh, women are not allowed to work in government offices. In some parts of the country, dress codes for women and girls apply in public places, in schools, and in government offices.

Religious minorities, particularly Shia Muslims and Ahmadis, have suffered discrimination including violent attacks and forced displacement while the Government has not provided the required degree of protection to the members of these communities. A policy of only recognizing the six organized religions contributes to the discrimination and violence against men, women and children of the indigenous religions. Data from one organisation shows number of violation against minority religion and beliefs consistently increased from year 2010 to 2015, widespread from Aceh to Papua, committed by the state actors, namely police and civil service police unit (Satpol PP), and non-state actor such as Islamic Defender Front (FPI)<sup>20</sup>.

Defamation is considered a criminal offense by the Indonesian Penal Code Chapter XVI Article 310-321. The Indonesian Press Law (Law n. 40 Year 1999) regulates the press and the Article 8 of Press Law (1999) states that journalists are protected by law in carrying out their professional duties. Of the three journalists whose killings

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<sup>16</sup> Ministry of National Development (2016). Strategi Nasional Akses pada Keadilan 2016-2019 (National Strategy on Access to Justice 2016-2019). The Strategy was launched in May 2016.

<sup>17</sup> Purba, Yasmin, *Akses Terhadap Bantuan Hukum dan Kendala-kendala di dalam Pelaksanaannya: Sebuah Background Paper untuk Digunakan Sebagai Materi Penunjang Diskusi Kelompok*, UNDP Jakarta, 10 Mei 2016.

<sup>18</sup> NSA2J 2016-2019: 33

<sup>19</sup> SAJI (Strengthening Access to Justice in Indonesia) – UNDP project report 2012 to 2015

<sup>20</sup> The Wahid Institute Year End Report on Religious Freedom in Indonesia from 2010-2015.

were recorded by the UN since 2006, the latest Report on the Safety of Journalists and the Danger of Impunity notes that only one case remains unresolved whereas the perpetrators in the other two cases have been convicted.

Given its richness in cultural diversity, Indonesia acknowledges the importance of culture, including cultural expressions, as an integral part of its national sustainable development plan, especially within the development of its creative economy. In 2012 Indonesia ratified the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Indonesia was also elected as one of the 24 members of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions for the 2015 – 2019 period. Indonesian government has submitted its first Quadrennial Periodic Report on measures undertaken to implement the 2005 Convention.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To amend all discriminatory bylaws adopted in the province of Aceh that restrict women's rights in the conduct of their daily life, including social and public life, impose dress code and impede freedom of movement, and to review the penal sanctions against alleged immoral relationships.
- To ensure freedom of religion in practice and to protect persons who are members of minority religions, in compliance with its commitments expressed through the acceptance, *inter alia* of the 2012 UPR recommendations n. 108.112 and 108.102.
- To investigate the cases of killed journalists, and to voluntarily report on the status of judicial follow-up to the appropriate UN agency. The Government may wish to consider taking advantage of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity as a means to strengthen protection of journalists and freedom of expression.

#### **G. Right to work and to just and favourable conditions of work**

On the issue of protection of domestic workers and that of migrant workers including those working as migrant domestic workers, UNCT notes that specific recommendations given by Lebanon and Belgium for Indonesia to adopt the draft law on the protection of domestic workers and to ratify ILO C 189<sup>21</sup> on the Decent Work for Domestic Workers are not yet materialized. UNCT encourages Indonesia to continue these processes.

UNCT appreciates the steps taken by the Indonesian government to ensure better protection for its migrant workers abroad, and appreciates the current process in the Indonesian parliament to amend the current Law 39 (2004) by bringing it to conformity with the relevant international standards on migrant workers adopted by the UN and ILO. UNCT appreciates the bill on the protection of domestic workers that is still in the Parliament, and encourages Indonesia to continue its legislative process to adopt the bill for improving the protection of the rights of domestic workers.

In 2012, According to data from Labor Force Survey 2012, 111,000 children aged 15 – 17 were in domestic work. Although progress has been made to reduce child labour in Indonesia, more can be done in this regard, especially since children continue to be engaged in hazardous work, mainly in agriculture.

Refugees and asylum-seekers continue to be denied the right to work and the ability to contribute to their host communities, resulting in increasing levels of poverty and a growing problem of homelessness.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To implement effective protection measures at all levels to prevent children from falling into domestic labour and to recognize domestic work as work and provide workers with their labour entitlements; to strengthen the monitoring and enforcement of the Indonesian labour law which prohibits children under 18 from partaking in hazardous work.
- To consider amending the 2011 Immigration Act to include provisions that (1) ensure the right to seek asylum, (2) protect the rights of refugees and asylum-seekers, (3) allow refugees and asylum-seekers the right to work while awaiting durable solutions, and (4) remove barriers to regularizing the status of refugees who are married to Indonesians and wish to remain in the country.

#### **H. Right to social security and to an adequate standard of living**

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<sup>21</sup> In the previous 2012 UPR Process, referring to Report of the Working Group on the Universal Periodic Review, Indonesia (Addendum), A/HRC/21/7/Add.1, September 5, 2012, Indonesia declared its acceptance to the recommendation to ratify ILO C 189 on Decent Work for Domestic Workers

Indonesia is committed to provide comprehensive social protection to its citizens as the Government launched the National Social Health Insurance Scheme (Jaminan Kesehatan Nasional - JKN) on 1 January 2014, designed to cover all Indonesian citizen by 2019. However, many studies highlighted that the JKN is currently only benefiting those that are better off and widening the gap of access to care among the lower economic quintile. Services are most likely to be more accessible by those living close to the health facilities or those who have control over means of transportation. The government has recognized this problem and is working towards a strengthened policy to serve its main purpose of addressing disparities in access to quality health care of the population. The national poverty line (NPL) is well below the extreme international poverty line. 14 percent of children live below the NPL but 62 percent below twice the NPL, showing the high level of vulnerability and income insecurity.

The UN Country Team suggests that Indonesia considers the following recommendation:

To complement the existing NPL with a higher monetary poverty line as well as a multidimensional poverty indicator to more effectively monitor poverty and further increase investments in social protection while consolidating the various cash transfer schemes towards inclusive categorical cash transfers for children, elderly and persons with disability.

### **I. Right to health**

The Sustainable Development Goals (SDGs) highlight the need to monitor inequalities and overcome them through addressing equity, gender, and human rights (and social determinants of health). In the efforts to “leave no one behind”, equity-oriented health systems that are gender-responsive are required to support progressive realization of the right to health and reforms towards Universal Health Coverage. Likewise, application of a human rights based approach that acknowledges the central role of accountability, social participation and intersectoral action is of vital importance.

Pursuant to the 2012 UPR recommendation n. 108.122 by Cuba, maternal health continued to be a priority in Indonesia, as reflected in its Medium Term National Development Plan 2015-2019 and the National Action Plan on Maternal and Neonatal Health 2016-2030. Its health systems reforms aimed at achieving universal health coverage by 2019 have contributed to high coverage of skilled birth attendance (87%) and 4<sup>th</sup> visit of ante natal care (84%)<sup>22</sup>. Unfortunately, despite the efforts made by the Government, Indonesia reports one of the highest Maternal Mortality Ratios (305 per 100,000 live births, as determined by the inter-census study of 2015) in the ASEAN region.

While there has been progressive improvement in the coverage of reproductive, maternal, newborn, child and adolescent health (RMNCAH) services, there is evidence that potentially life-saving interventions are often delivered with insufficient quality. There is an urgent need to focus on improving the quality of care at the supply side, including through improving facilities readiness, reinforcing human resources, and establishing blood banks. Several studies documented that the quality of care provided to newborns and children is often poor, particularly at the hospital level and that severe deficiencies exist in the quality of interventions for maternal health, for both routine and emergency care. The universal coverage of health-care services will not result in improved health outcomes and saved lives if the quality of the interventions is insufficient. It may even be detrimental, harming the health of the individual as well as leading to adverse effects on future health-seeking behaviour of communities.

UNCT welcomes the 2013 strategy to ensure universal access to testing and antiretroviral medications to reduce the transmission of HIV from mother to child. This effort is being scaled up and while progress is encouraging, additional efforts remain critical. An integrated approach to improving the management of childhood illnesses (IMCI) has led to improved access to antibiotics for children with pneumonia in low resource settings, which represents a major cause of death.

Since 2005, the Government of Indonesia has had a policy of providing free treatment for people living with HIV including antiretroviral therapy and treatment for TB and other opportunistic infections. In 2013 the Indonesian government launched the Strategic Use of Anti Retro Viral (SUFA) policy, a pioneering strategy that made antiretroviral treatment available immediately for any person diagnosed with HIV. The programme has now been rolled out in 75 districts. The programme is a good indication of how the Indonesian government has sought new and innovative approaches in responding to HIV and to use treatment as prevention in reducing HIV transmission.

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<sup>22</sup> Indonesia 2015 Countdown Report: Maternal, Newborn and Child Survival.



Antiretroviral therapy coverage remains extremely low (with only 8% of estimated number of persons living with HIV receiving treatment) and only an estimated 25% of people living with HIV know their status. The rise of new HIV infections concentrated in key populations, especially among MSM and transgender people, calls for an urgent effort to expand access to HIV services including voluntary and confidential counselling, testing and antiretroviral therapy.

Marriage as a requirement to access sexual and reproductive health services leaves unmarried women and girls at risk of unwanted pregnancies, sexually transmitted diseases, unsafe abortion and human rights abuses.

The 2009 law which retains the criminalization of drug use, and the Narcotics Law which allows for people who use drugs to be ordered to undergo compulsory treatment, are inconsistent with the Special Rapporteur's recommendations<sup>23</sup> of several UN bodies<sup>24</sup> and are counter-productive to HIV prevention, treatment, care and support efforts.

Laws, policies and practices against sex workers limit their enjoyment of basic social and economic rights such as access to education, health care, housing, banking facilities, inheritance, and property. Access to legal services and protection are limited. They may also lack identification cards to establish citizenship, as a result of migration or other unfavourable regulations, which can lead to exclusion of sex workers from health and social services.

Indonesia's public health system includes a medical insurance scheme for nationals and foreigners, but refugees and asylum-seekers are not able to access the scheme due to their lack of formal legal status.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To accelerate the implementation of the National Action Plan on Maternal and Neonatal Health 2016-2030 focusing on the reduction of preventable newborn and maternal deaths.
- To position quality of care at the centre of debates on universal health coverage and in SDGs development priorities and to ensure equitable access to quality of care, including sexual and reproductive health to unmarried individuals, receives the attention it deserves.
- To consider making funding available and identifying management mechanisms in order to realize the implementation of the National Action Plan for School Age Children and Adolescents' Health for 2017-2020; provide a comprehensive framework to address adolescent health, including comprehensive sexuality education.
- To provide equal access to voluntary, community based treatment and services for sex workers and for people who use drugs.
- To extend its medical insurance scheme to cover refugees and asylum-seekers in view of the implications on general public health in the country.

## **J. Right to Education**

The completion rate at all levels of education reached over 96 percent in 2013-14. The government of Indonesia has made strong efforts to implement 12 years of compulsory education through the implementation of the Smart Indonesia Programme (Program Indonesia Pintar) and has significantly increased the budget allocated for education from 406 trillion Rupiah in 2015 to 419 trillion Rupiah in 2016. However, increasing the school enrolment ratio does not equate to an increase in equal (geographic) access for education.

UNCT welcomes the significant progress that has been made over the last ten years in improving access to Early Childhood Center (ECE) services, particularly through the 2013 new presidential regulation n. 60 (2013) that provided guidance on establishing a cross-sectoral task force to implement and coordinate a number of movements led by the Ministry of Education and Culture.

While refugee and asylum-seeker children have access to public education, efforts are necessary to address barriers that prevent formal enrolment, including limited capacity in local schools, lack of documentation required to obtain a school identification number (required to sit for exams), and the requirement that all students be proficient in Bahasa Indonesia.

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<sup>23</sup> Human Rights Council, The protection of human rights in the context of human immunodeficiency virus (HIV) and the Acquired Immunodeficiency Syndrome (AIDS) – 13 April 2011 (A/HRC/RES/16/28) paragraph 20

<sup>24</sup> Human Rights Council, The protection of human rights in the context of human immunodeficiency virus (HIV) and the Acquired Immunodeficiency Syndrome (AIDS) – 13 April 2011 (A/HRC/RES/16/28) paragraph 20; Joint UN Statement on Compulsory Drug Detention and Rehabilitation Centres ([www.unaids.org/sites/default/files/sub\\_landing/files/IC2310\\_Joint%20Statement6March12FINAL\\_en.pdf](http://www.unaids.org/sites/default/files/sub_landing/files/IC2310_Joint%20Statement6March12FINAL_en.pdf))

The UN Committee on the Rights of the Child has urged governments to repeal laws that restrict sexual minorities' information<sup>25</sup>.

A 2015 report by Plan International and the International Centre for Research on Women found that girls and boys in Indonesian schools reported extremely high rates (84%) of GBV<sup>26</sup>.

A special 2015 Asia regional report cited a study on Indonesia that underlines that 17% of respondents in the study had attempted suicide because of repeated bullying. <sup>27</sup> In order to address the call to “promote safe and inclusive school cultures and environments,” the Indonesian government has been developing several regulatory and policy frameworks related to education. Freedom to establish the educational institution is in place, yet the establishment should be upon approval of education authority.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To include comprehensive sexuality education in the national secondary curriculum and develop and adopt policies to enable girls who become married and/or pregnant to continue with their schooling, as advocated in the 2012 UPR recommendation n. 108.133 by Honduras.
- To consider waiving documentary requirements for refugees and asylum-seekers and providing access to intensive Bahasa Indonesia language courses.
- To strengthen efforts to address bullying and corporal punishment in schools noting CRC concluding recommendation 60 (e).

#### **K. Persons with disabilities**

UNCT welcomes progress in strengthening the policy environment for persons with disabilities, noting several legislative measures undertaken recently that has brought Indonesia closer to the compliance with the Convention on the Rights of Persons with Disabilities, which it had ratified in 2011. Most significantly, on 18 April 2016, the Parliament enacted the Law n. 8 (2016) on People with Disabilities, which represents a marked shift towards a rights-based approach to disability. While the Law addresses many of the critical issues, the real test of its power will come during its implementation. Many of the key issues remain to be elaborated, such as the establishment of the National Council of Disability as multidisciplinary, pluralist, independent consultative body that will guide the implementation of the Law.

The principle of Inclusive Education is stated within Indonesia's Constitution, in the National Education Law, Article 4 N 20 (2003), and the National Ministerial Decree n. 70 (2009) on Inclusive Education Services. Indonesia has included People with disability in the discussions for the formulation of policies including a National Plan of Action on Persons with Disabilities. However, numerous implementation gaps still exist. The National Ministerial Decree n. 70 (2009) is currently under review to, amongst others, address the persistent discrimination faced by persons with disabilities throughout the country and provide better mechanisms for schools to accommodate children with disabilities. The benefits of educating children with disabilities are not well understood and are therefore less in demand. As a result, inclusive education is often still mistakenly or narrowly understood as special education.

Referring to the earlier 2012 UPR recommendation n. 108.135 given by Argentina, reproductive health issues among women with disabilities are still largely a neglected issue, especially due to the assumption that women with disabilities do not have the need and the capacity to perform the same reproductive and sexual functions as those without disabilities. Special attention is needed to obtain data on women with disabilities related to the issues of reproductive health, violence and sexual harassment.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To amend or repeal many of the discriminatory laws on the national, regional and local level to bring the overall legislative framework in conformity to the non-discriminatory principles stipulated in the National Law.

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<sup>25</sup> UN Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, January 31, 2014, CRC/C/RUS/CO/4-5.

<sup>26</sup> Plan International / ICRW, “Are Schools Safe and Equal Places for Girls and Boys in Asia? Research Findings on School Related Gender-Based Violence”, February 2015.

<sup>27</sup> UNESCO, “From Insult to Inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity,” 2015.

- As the available data on children with disabilities is scattered and underused, to streamline and coordinate data collection on children with disabilities for better evidence-based planning and programming, noting CRC Concluding Observation 46 (d).
- To streamline and coordinate the definition and understanding of inclusive education among involved stakeholders, and to develop programmes addressing social norms that condone educating children with disabilities.
- To support policy innovations at the local level that promote the rights of persons with disabilities in various aspects of public life, and to upscale and disseminate best practices in this area.

#### **L. Migrants, refugees and asylum-seekers**

Immigration authorities continued to arbitrarily detain refugees and asylum-seekers, including children and women, in overcrowded detention facilities with poor living conditions. While Indonesia has generally respected its international rescue at sea obligations and has been advocating for regional approaches, the Government may consider going further in adopting legislation in coordination with other countries in the region to ensure for rescue at sea of those in distress, especially children, and for their safe disembarkation and access to protection from violence, exploitation and abuse, including forced marriage, sexual violence and discrimination.

Since the enactment of the 2006 Citizenship Act, the Government has made various efforts to address potential statelessness (Law n. 24 of 2013 on the Amendment of Law n. 23 of 2006 on Population Administration) particularly for ethnic minorities. However, with an estimated 40 million children without birth certificates, efforts are needed to reduce barriers to birth registration, including simplifying procedures, reducing documentary requirements, de-linking birth registration with marriage registration, and removing fines for late registration.

The UN Country Team suggests that Indonesia considers the following recommendations:

- To implement universal birth registration for all children born in the country, including refugees, asylum-seekers and migrants, as a measure to prevent statelessness; to consider signing the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- To enact the Draft Presidential Regulation on the Handling of Foreign Refugees and Asylum-Seekers, including provisions to end the detention of refugees and asylum-seekers.
- To ensure, pursuant to its commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, respect for the principle of non-refoulement and ensure access to territory and to international protection for refugees and asylum-seekers; to consider the introduction of policies and procedures for the reception of asylum-seekers at border points and to consider becoming more directly involved in the asylum process by undertaking registration of asylum-seekers jointly with UNHCR.
- To release all children from detention, provide access to education and health care services and provide temporary or other guardianship to unaccompanied minors under the Indonesian law, as a third of the 13,474 refugees and asylum seekers currently in Indonesia are children.
- To consider removing barriers to regularizing the status of refugees who are married to Indonesians and wish to remain in the country, and to consider signing the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.