



January 7, 2004

The Committee on the Rights of the Child

Re: Supplementary information on Indonesia, scheduled for review by the Committee on the Rights of the Child during its 35th Session

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Indonesia, which is scheduled to be reviewed by the Committee on the Rights of the Child during its 35th Session. The Center for Reproductive Rights, an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the Convention on the Rights of the Child (Children's Rights Convention). This letter highlights several areas of concern related to the status of the reproductive health and rights of girls and adolescents in Indonesia, with a focus on discriminatory or inadequate laws and policies.

Because reproductive rights are fundamental to adolescents' health and equality, states parties' commitment to ensuring them should receive serious attention. Furthermore, adolescent reproductive health and rights receive broad protection under the Children's Rights Convention. Article 24 of the Children's Rights Convention recognizes girls' and adolescents' right "to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health." It also requires states parties to take appropriate measures to develop "family planning and education services." Yet, despite these protections, the reproductive rights of girls and adolescents in Indonesia continue to be neglected and, at times, blatantly violated.

We hope to bring to the Committee's attention the following issues of concern, which directly affect the reproductive health and rights of girls and adolescents in Indonesia:

I. The Right to be Free from Traditional Practices that are Harmful to Children's Health (Article 24(3) of the Children's Rights Convention)

Article 24(3) requires states parties to take measures to abolish traditional practices that are harmful to children's health. The Committee has determined that child or forced marriage is both a harmful traditional practice and a form of gender discrimination.¹ It has expressed concern that "early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS."² The Committee has also recognized the

role that customary law plays in the perpetuation of these harmful practices and has called for the elimination of laws that conflict with the Children's Rights Convention.³ The Committee has further recommended that states parties address the gender roles and stereotypes that contribute to the practice of child marriage⁴ and has recognized that lower marriageable age for girls constitutes gender discrimination.⁵

The Indonesian Marriage Law and the Indonesian Penal Code offer weak legal protection against child marriage. Under the Marriage Law, the legal age of marriage is 19 for boys and 16 for girls.⁶ Moreover, girls under the age of 16 are allowed to marry with the consent of their parents and the court.⁷ In its Concluding Observations to Indonesia in 1994, the Committee expressed concerns over the discriminatory aspects of this law.⁸ The Marriage Law fails to recognize the particular vulnerability of girls to coerced and forced marriages and sexual relations. This is especially dangerous in a context where the Indonesian Penal Code does not recognize marital rape, even against minor girls.⁹

Not only does Indonesian law offer weak protection against child marriage, traditional norms and community practices often endorse the practice. Statistics reveal that an estimated 46.5% of girls are married before the age of 18 and 21.5 % of girls are married before the age of 16.¹⁰ Rural women are most likely to marry early. Research conducted in 2001 found that nearly 60% of rural women marry by the age of 20, and 8% of rural women marry by the age of 15.¹¹ Women with less formal education are most like to marry early.¹²

II. The Right to Reproductive Health Services (Article 24 of the Children's Rights Convention)

The Committee has regularly expressed concern in its Concluding Observations over adolescents' limited access to reproductive health services, and has asked states parties to increase girls' and adolescents' access to such services.¹³ It has frequently drawn attention to high rates of maternal mortality affecting adolescents,¹⁴ highlighting the need to address unsafe or illegal abortion.¹⁵ It has further recommended measures to improve women's access to pregnancy-related health care services,¹⁶ emphasizing the importance of appropriately trained personnel attending births.¹⁷ In its General Comment on Adolescent Health and Development, the Committee urges governments "to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, [and] adequate and comprehensive obstetric care and counselling."¹⁸

Indonesia has several laws and policies in place designed to promote access to reproductive health services.¹⁹ However, health indicators and statistics point to a lack of implementation of these policies and programs, and failure to address the reproductive health needs of adolescents. Indonesia has a maternal mortality rate of 470 per 100,000 live births, the highest in the Southeast Asia region.²⁰ Approximately one third of women in Indonesia give birth before the age of 20.²¹ Child marriage practices, generally accompanied by early pregnancy and childbirth, also create widespread need for reproductive health services among adolescents in Indonesia.

Further, illegal and unsafe abortion puts the health and lives of young women at grave risk. Indonesia has one of the most restrictive abortion laws in the world.²² The procedure is currently legal only in cases where the woman's life is at risk.²³ Women and adolescents with unwanted pregnancies must often resort to clandestine abortion procedures. Although an accurate estimate of the prevalence of induced abortion is difficult to determine because of limited research, national-level surveys show that an estimated 11% of the maternal mortality rate is attributable to illegal and unsafe abortion.²⁴ From hospital and clinic records, it is also evident that the incidence of abortion has not decreased despite the prohibition on abortion under national law.²⁵

Given the variety of circumstances affecting adolescents' reproductive health and rights, the government should adopt a more comprehensive approach to meeting the reproductive health needs of young people.

III. The Right to Education on Sexuality and Family Planning (Article 24 of the Children's Rights Convention)

The Committee has consistently recognized states parties' duty to ensure access to sexual and reproductive health education. In numerous Concluding Observations, the Committee has recommended that states parties strengthen their reproductive health education programs for adolescents in order to combat adolescent pregnancy and the spread of HIV/AIDS and other STIs.²⁶ In its General Comment on Adolescent Health and Development, the Committee has stated:

...States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent.²⁷

The Indonesian government has recently implemented programs designed to increase adolescents' access to reproductive health information.²⁸ However, reproductive health indicators and statistics relating to Indonesian adolescents demonstrate a lack of access to information and education to help them prevent unwanted pregnancy and sexually transmitted infections including HIV/AIDS. In a national level survey, roughly 71.1% of Indonesian youths reported never receiving family planning education in school.²⁹ Roughly 72% of adolescents surveyed had never been taught in school about the transmission of STIs including HIV/AIDS,³⁰ and only 16.1% of youths between the ages of 15-19 were able to correctly reject common misconceptions regarding the transmission of HIV/AIDS.³¹

The challenges of bringing reproductive and sexual health and rights education to young women are significant. Many of those who are in school, particularly girls, are severely in need of vital information. The situation is undoubtedly worse for those who are not in school at the time they reach puberty. 2003 statistics indicate that 46% of secondary school age girls and 44% of secondary school age boys are currently not enrolled.³² The needs of these adolescents are little known.

IV. The Right to be Protected from All Forms of Trafficking (Article 35 of the Children's Rights Convention)

Article 35 of the Children's Rights Convention requires states parties to "take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form." The Committee has addressed the harmful effects of trafficking in a number of Concluding Observations. The Committee has emphasized the need for bilateral and regional agreements to combat child trafficking³³ and the need for rehabilitation and programs for reintegration of children without stigmatization so that they may lead normal lives.³⁴ The Committee has also emphasized the need to strengthen national strategies and programs on the prevention of trafficking, and the need to train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints effectively, in a child-sensitive manner.³⁵

Despite a growing awareness of the problem of trafficking of women and minors in Indonesia, there are still inadequate legal protections for victims of trafficking. The Indonesian Penal Code punishes trafficking in females and underage males.³⁶ However, neither the Penal Code nor the 1999 Law on Human Rights, which affirms children's right to be protected from trafficking,³⁷ contain a definition of trafficking, nor articulate the measures necessary to protect minors from trafficking.³⁸ These weaknesses contribute to difficulties in the implementation and enforcement of the law.

With these indicators as background, we hope to bring the Committee's attention to these issues of concern, which directly affect the reproductive health and rights of girls and adolescents in Indonesia. In addition, we would like to suggest that the following questions be posed to the government of Indonesia during the dialogue accompanying the state party reporting process:

1. What policies and programs have been adopted to improve the accessibility of family planning services, and to ensure that adolescents, including unmarried adolescents, have access to reproductive health services and information?
2. What programs have been set up to improve education and information on sexual and reproductive health and rights for adolescents? Has the government taken steps to universally implement comprehensive sexual and reproductive health education programs in public schools?
3. What is being done to address the effects of illegal and unsafe abortion on the lives and health of adolescents?
4. What is the government's legal and policy strategy for stopping the practice of child marriage? Does the government envision law reform to legally prohibit the practice?
5. What efforts are being made to ensure the right of pregnant adolescents and adolescent mothers to attend school?

6. What measures are in place to enforce the existing anti-trafficking provisions? Does the government envision law reform in this area to develop an appropriate definition of trafficking and to increase legal protections?

There remains a significant gap between the provisions of the Children's Rights Convention and the reality of adolescents' reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive health and rights of adolescents and the strong concluding observations and recommendations the Committee has issued to governments in the past, stressing the need to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the Indonesian government's compliance with the provisions of the Children's Rights Convention. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

Melissa Upreti
Legal Adviser for Asia

Julia Zajkowski
Legal Adviser for Global Projects

-
- ¹ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Bangladesh*, U.N. Doc. CRC/C/15/Add.74 (1997) ¶ 15; *Concluding Observations of the Committee on the Rights of the Child: Burkina Faso*, U.N. Doc. CRC/C/15/Add.19 (1994) ¶14; *Concluding Observations of the Committee on the Rights of the Child: India*, U.N. Doc. CRC/C/15/Add.115 (2000) ¶32-33.
- ² Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, para. 20, UN doc. CRC/GC/2003/4 (2003) [hereinafter *General Comment on Adolescent Health*].
- ³ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Sierra Leone*, U.N. Doc. CRC/C/15/Add.116 (2000) ¶24; *Concluding Observations of the Committee on the Rights of the Child: Ethiopia*, U.N. Doc. CRC/C/15/Add/144 (2001) ¶14-15.
- ⁴ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Egypt*, U.N. Doc. CRC/C/15/Add.145 (2001) ¶26; *Concluding Observations of the Committee on the Rights of the Child: India*, U.N. Doc. CRC/C/15/Add.115 (2000) ¶33 and 77.
- ⁵ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Iran (Democratic Republic of)*, U.N. Doc. CRC/C/15/Add.123 (2000) ¶19; *Concluding Observations of the Committee on the Rights of the Child: Jordan*, U.N. Doc. CRC/C/15/Add.125 (2000) ¶27; *Concluding Observations of the Committee on the Rights of the Child: Marshall Islands*, U.N. Doc. CRC/C/15/Add.139 (2000) ¶24; *Concluding Observations of the Committee on the Rights of the Child: Suriname*, U.N. Doc. CRC/C/15/Add.130 (2000) ¶21-22.
- ⁶ Law of the Republic of Indonesia Number 1 of the Year 1974 on Marriage [hereinafter the Marriage Law].
- ⁷ *Id.* In addition, Article 45 of the Marriage Law classifies girls who have married as adults even if they are still under 18 years old.
- ⁸ *Concluding Observations of the Committee on the Rights of the Child: Indonesia*, U.N. Doc. CRC/C/15/Add.12 (1994).
- ⁹ Article 287 of the Indonesian Penal Code, as cited in Radhika Coomaraswamy, United Nations Special Rapporteur on Violence Against Women Report on Indonesia, E/CN.4/1999/68/Add.3 (1999), available at http://land.heim.at/podersdorf/220272/document/radhika_report2.html, at 37.
- ¹⁰ TRAFFICKING OF WOMEN AND CHILDREN IN INDONESIA (Ruth Rosenberg, International Catholic Migration Commissionat, ed.) , at 132-3.
- ¹¹ See BUREAU OF HEALTH PROMOTION, DEPARTMENT OF HEALTH, TAIWAN, RESEARCH BRIEF: EARLY MARRIAGE AND CHILDBEARING IN INDONESIA AND NEPAL (prepared for the International Conference on Asian Youth at Risk: Social, Health and Policy Challenges, November 26-29, 2001, Taipei, Taiwan).
- ¹² *Id.* at Figure 1.
- ¹³ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Benin*, U.N. Doc. CRC/C/15/Add.106 (1999) ¶25; *Concluding Observations of the Committee on the Rights of the Child: Cambodia*, U.N. Doc. CRC/C/15/Add.128 (2000) ¶53; *Concluding Observations of the Committee on the Rights of the Child: Mexico*, U.N. Doc. CRC/C/15/Add.112 (1999) ¶27.
- ¹⁴ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Chad*, U.N. Doc. CRC/C/15/Add.107 (1999) ¶30; *Concluding Observations of the Committee on the Rights of the Child: Dominican Republic*, U.N. Doc. CRC/C/15/Add.150 (2001) ¶37; *Concluding Observations of the Committee on the Rights of the Child: Peru*, U.N. Doc. CRC/C/15/Add.120 (2000) ¶24.
- ¹⁵ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Chad*, U.N. Doc. CRC/C/15/Add.107 (1999) ¶30; *Concluding Observations of the Committee on the Rights of the Child: Colombia*, U.N. Doc. CRC/C/15/Add.137 (2000) ¶48; *Concluding Observations of the Committee on the Rights of the Child: Guatemala*, U.N. Doc. CRC/C/15/Add.154 (2001) ¶40.
- ¹⁶ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Central African Republic*, U.N. Doc. CRC/C/15/Add.138 (2000) ¶55; *Concluding Observations of the Committee on the Rights of the Child: Guatemala*, U.N. Doc. CRC/C/15/Add.154 (2001) ¶41; *Concluding Observations of the Committee on the Rights of the Child: Yemen*, U.N. Doc. CRC/C/15/Add.102 (1999) ¶24.
- ¹⁷ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Guatemala*, U.N. Doc. CRC/C/15/Add.154 (2001) ¶35; *Concluding Observations of the Committee on the Rights of the Child: United Republic of Tanzania*, U.N. Doc. CRC/C/15/Add.156 (2001) ¶47; *Concluding Observations of the Committee on the Rights of the Child: Yemen*, U.N. Doc. CRC/C/15/Add.102 (1999) ¶24.
- ¹⁸ Committee on the Rights of the Child, *General Comment on Adolescent Health*, *supra* note 2, para. 31.

-
- ¹⁹ See e.g., Law of the Republic of Indonesia Number 10 of 1992 Concerning Population Development and the Development of Happy and Prosperous Families, Chapter VI.
- ²⁰ See UNITED NATIONS POPULATIONS FUND (UNFPA), THE STATE OF WORLD POPULATION 2002 (2002), at 70 and 77.
- ²¹ USAID HEALTH STATISTICAL REPORT: INDONESIA (October 2003), available at http://www.usaid.gov/pop_health/home/Countries/ane/indonesia.pdf, at 5 (citing Indonesia Demographic and Health Survey 1997).
- ²² Under section 348 of the Indonesian Penal Code, any person performing an abortion is subject to imprisonment for five and one-half years. Under section 346 of the Indonesian Penal Code, a woman wilfully inducing her own miscarriage is subject to imprisonment for up to four years. In addition, physicians, midwives, and pharmacists are subject to harsher penalties, including the revocation of their licence to practise their profession. See UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS POPULATION DIVISION, ABORTION POLICIES: A GLOBAL REVIEW VOLUME II GABON TO NORWAY (2001), available at <http://www.un.org/esa/population/publications/abortion/doc/indonesia.doc>, at 60.
- ²³ Under the 1992 Law on Pregnancy Termination for Health Considerations, “in the case of emergency and with the purpose of saving the life of a pregnant woman or her foetus, it is permissible to carry out certain medical procedures”, including abortion. See *id.* at 60.
- ²⁴ NATIONAL INSTITUTE FOR HEALTH RESEARCH & DEVELOPMENT, MINISTRY OF HEALTH, INDONESIAN HOUSEHOLD HEALTH SURVEY (1995).
- ²⁵ ABORTION POLICIES: A GLOBAL REVIEW VOLUME II GABON TO NORWAY (2001), *supra* note 22, at 61.
- ²⁶ See *Concluding Observations of the Committee on the Rights of the Child: Argentina*, U.N. Doc. CRC/C/15/Add.35 (1995) ¶19; *Concluding Observations of the Committee on the Rights of the Child: Egypt*, U.N. Doc. CRC/C/15/Add.145 (2001) ¶44; *Concluding Observations of the Committee on the Rights of the Child: Georgia*, U.N. Doc. CRC/C/15/Add.124 (2000) ¶47; *Concluding Observations of the Committee on the Rights of the Child: Latvia*, U.N. Doc. CRC/C/15/Add.142 (2001) ¶39-40; *Concluding Observations of the Committee on the Rights of the Child: Russian Federation*, U.N. Doc. CRC/C/15/Add.110 (1999) ¶48.
- ²⁷ Committee on the Rights of the Child, *General Comment on Adolescent Health*, *supra* note 2, para. 28.
- ²⁸ See COUNTRY REPORT OF THE REPUBLIC OF INDONESIA FOR THE 5TH ASIAN AND PACIFIC POPULATION CONFERENCE (2002) at 82, available at http://www.unescap.org/pop/5appp/papers/Indonesia_annexes.doc.
- ²⁹ See BASELINE SURVEY OF YOUNG ADULT REPRODUCTIVE WELFARE IN INDONESIA (1998/1999), available at <http://www.bkkbn.go.id/hqweb/ceria/ss2knowledge.html>, at sec.9.2.
- ³⁰ *Id.*
- ³¹ *Id.* at sec. 11.
- ³² UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC POPULATION DATE SHEET: INDONESIA (2003), available at http://www.unescap.org/pop/data_sheet/2003/country.asp?sCountry=13.
- ³³ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Myanmar*, U.N. Doc. CRC/C/15/Add.69 (1997) ¶44.
- ³⁴ See e.g., *Concluding Observations of the Committee on the Rights of the Child: Bhutan*, U.N. Doc. CRC/C/15/Add.157 (2001) ¶61; *Concluding Observations of the Committee on the Rights of the Child: India*, U.N. Doc. CRC/C/15/Add.115 (2000) ¶76; *Concluding Observations of the Committee on the Rights of the Child: Myanmar*, U.N. Doc. CRC/C/15/Add.69 (1997) ¶45; *Concluding Observations of the Committee on the Rights of the Child: Palau*, U.N. Doc. CRC/C/15/Add.149 (2001) ¶59.
- ³⁵ See e.g. *Concluding Observations of the Committee on the Rights of the Child: Viet Nam* (18/03/2003) ¶50; *Committee on the Rights of the Child, Concluding Observations: Romania* (18/03/2003) ¶59.
- ³⁶ Article 297 of the Indonesian Penal Code.
- ³⁷ Article 65 of Law No. 39/1999 on Human Rights.
- ³⁸ See Review of EXISTING COUNTER TRAFFICKING LEGISLATION IN INDONESIA (Anis Hamim, International Catholic Migration Commission ed.) (September 2002), available at www.icmc.net/files/ctreviewe.en.pdf, at 2.