

**Comments on
the First Periodic Report of the Government of Indonesia
to the Committee on the Rights of the Child
(Covering the period from 1993 to June 2000)**

Prepared for the "Indonesian NGO Coalition for CRC Monitoring"

by

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Prepared on behalf of the "Indonesian NGO Coalition for CRC Monitoring"

I. Introduction

1. The Government of Indonesia (GoI) has submitted its first periodic report on the implementation of the Convention on the Rights of the Child (hereinafter the Convention or CRC) covering the period from 1993 to June 2000.
2. The timeline is likely that the report would officially be considered by the Committee on the Rights of the Child (hereinafter the Committee) in January 2004, whereas a pre-sessional meeting that is open for competent bodies including NGOs would be held in October 2003. It is in anticipation to the pre-sessional meeting that this comment is formulated and submitted to the Committee.
3. This comment is prepared by the "Indonesian NGO Coalition for CRC Monitoring" (hereinafter the NGO Coalition) through a workshop hosted by SAMIN Foundation in Jogjakarta, 19-21 February 2003. (List of workshop participants is attached)
4. Prior to the workshop, written comments to the report covering different areas based on CRC clustering or sub-clustering are prepared by workshop steering committee. In addition, invitees to the workshop are encouraged to prepare their own comments according to their interest and expertise. The workshop was then organized to review the report, taking into account the available written comments. Therefore, this comment is based on both the paper and result of the workshop.

II. Brief updates on major measures taken by the GoI after the reporting period

5. Before coming up with the comment, it is worth noting that the major measures have been taken by the GoI relevant to the State's obligation under the CRC. They include:
 - (a) Adherence to international instrument:
 - Signing of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Supplementing to the UN Transnational Organized Crime (2000)
 - Signing of the two CRC optional protocols (2001)
 - Signing of the Yokohama Commitment (2001)
 - (b) Adoption of new laws:
 - Amendment of 1945 Constitution (August 2000)
 - Adoption of Child Protection Act (2002)
 - Adoption of National Action Plan related to ILO Convention 182 on the Elimination of the Worst Form of Child Labour (2002)
 - Adoption of National Action Plan for the Elimination of CSEC as mandated by the Stockholm Agenda for Action (2002)
 - Adoption of National Action Plan for the Elimination of Trafficking in Persons (2002)
 - Adoption of Act on National Education System (2003)
 - (c) Drafting of new laws still in progress:
 - Anti Trafficking Bill
 - Civil Registration Bill

III. General comment on the report taking into account the latest updates

6. The NGO Coalition generally appreciates the following:
 - The preparation of the report that was made open through direct and indirect involvement of the civil society especially the NGOs.
 - The structure of the report that facilitate a programmatic style of description, make it easy for us to critically follow the content.
 - The honesty of the report which to some extent also self-critical.
7. With respect to the general measures of implementation, the NGO Coalition particularly appreciates:
 - The willingness of the GoI, as was noted by the Committee in its concluding observation to the country's initial report, and again expressed in this report, to consider revoking the reservation it has made during the ratification.
 - The willingness of the GoI to up-grade the instrument of ratification (to the CRC) from a Presidential Decree into an Act as it is expressed in this report.
8. However, it is regretted that serious steps has yet to be taken as to realize the foregoing commitments.
9. With respect to the definition of the child, the NGO Coalition regrets the reservation particularly referred to article 1 of the Convention that was made by the GoI.
10. It is observed that no steps have been taken by the GoI for minimizing the discrepancy in age of majority in different areas (to increase the formerly lower age limit and to decrease the formely higher age limit in order to bring them all to get closer the "universal limit" of 18 years). Worse is that the age of criminal responsibility was set at 8 (eight) years during the reporting period through Act No. 3/1997 concerning Juvenile Justice, creating a wide discrepancy for majority from 8 years in criminal liability to 21 years in civil matters.
11. Although the newly adopted Act No. 23/2002 concerning Child Protection provides the age of majority at 18 years but the law also provides that it doesn't revoke the already prevailing legislation related to child protection (article 91), which mean that the provisions on age limit and the penal clauses may not overrule those in the other laws.
12. In the meantime, the discrepancy in legal age to marry between female and male that, during the review of Indonesia's initial report, was criticised by the Committee for being discriminatory, still remain, that is 16 and 19 years respectively.
13. With respect to civil rights and freedoms, the content of the report is generally fairly honest. However, the NGO Coalition would herewith like to emphasize the demand for the GoI to revoke its particular reservation on articles 14 and 16.
14. With specical reference to article 7 regarding child's right to identity, the NGO Coalition comes up with a general observation that the Government has failed to make birth registration relevant for the child's survival. As a matter of fact, birth registration in Indonesia has nothing to do with services and protection the State may provide, and this, in our observation, constitute the main reason for low demand in birth registration.
15. Whilst we would like to see that birth registration should eventually be made relevant for increasing the demand for it, the NGO Coalition is worried of the possibility that birth registration may put enormous burden to parents both financially and as to comply with administrative requirement to accede such registration.
16. On the supply side, the failure of the Government to make a new, comprehensive and integrated, civil registration law to replace the prevailing discriminatory pre-independence ordinances is very much regretted. It is of a common concern that a new bill on civil registration be drafted immediately where,

ideally, birth registration is made non-discriminatory, free of charge and linked to public services and protection.

17. The adoption of Child Protection Law (Act No. 23/2002) has brought no change in the practice of birth registration although the subject is provided in the law (under Chapter V articles 27 and 28) because it substantially reaffirms the existing laws governing civil registration. It doesn't even have any effect in the existing practice although it is mandated that birth registration must be free of charge (art 28 para 3) because it is defeated by the recently adopted laws on sub-national autonomy; i.e. Act No. 22/1999 concerning Sub-national Governance and the Act No. 25/1999 concerning Fiscal Proportion between Central and Sub-national (Governance).

18. In the meantime, the drafting of Civil Registration Bill as per of May 2003 (draft V) shows no prospects for positive changes in birth registration in Indonesia. Birth registration is provided under Chapter V with only 6 articles are devoted thereto (arts 11-16).

19. With respect to the cluster on family environment and alternative care, the content of which is likely least correspond to the Committee's reporting guideline, the NGO Coalition regrets very much the reservation made specifically to articles 19 and 21 of the CRC.

20. The NGO Coalition is in the opinion that the issue of street children fall under this cluster. In this respect, the coalition is concerned about the lack of programmatic approach especially in the area of social re-integration for runaway children. It was noted in a recent study conducted for PLAN International by Farid and Dananto that re-integration of the children into social life through provision of ID card is absolutely instrumental to prevent children from becoming permanent social drop-outs.

21. In addition, the NGO Coalition believes that the State is primarily responsible to fulfill the rights of children deprived of his/her family where such deprivation is resulted from direct action of the State (such as deportation, detention or imprisonment). Unfortunately, the GoI makes no report in this concern.

22. With respect to the cluster on education, leisure and cultural activities, the NGO Coalition appreciates the honesty of the report. However, the NGO Coalition is regretful for the reservation made specifically to article 29 pertaining to purpose of education.

23. In the meantime, although some of the purpose of education defined in article 29 have been enshrined in the newly adopted law on National Education System, but the new law is not yet fully comply in this regard.

24. In addition, the failure of the GoI to take concrete steps to the maximum extent of available resources to achieve progressively the compulsory and free primary education is very much regretted. In fact, the Laws on Sub-national Autonomy (1999) has further undermine the way towards full realization of this basic right, although the ammended Constitution and the newly adopted Act on National Education System provide guarantee for a minimum budget allocation.

25. With regard to the issue of refugee children, the NGO Coalition very much regrets the reservation made by the GoI to article 22.

26. The NGO Coalition is concerned about the plight of internally displaced children as well as the refugee children from East Timor. Whilst appreciating the spirit of openness in this issue as expressed in the report, the NGO Coalition regrets that the report does not disclose the fact that some of the East Timorese refugee children were smuggled into Indonesia, and that the GoI has insofar failed to contribute to the efforts of repatriating the children.

27. With respect to the issue of children in armed conflicts, the NGO Coalition appreciates the ratification of ILO Convention 182 by the GoI and welcomes the willingness of the GoI to possibly ratify the Additional Protocols to the Geneva Conventions as a matter of priority for the years to come.

28. The NGO Coalition is deeply concerned about the plight of children affected by conflicts in East Timor following the referendum, in Aceh, in Maluku and elsewhere in the country that took place during the reporting period. It is noted that many of them were involved directly in hostilities, especially in Maluku. There were also indications that children were involved indirectly in hostilities. But many more have become victims to the conflicts. We would like to see more serious effort by the GoI to provide better protection for children in such situations and especially in the anticipation of the continuous and intensified armed conflict in Aceh as a result of the martial law applied to the province that was declared since last May 18, 2003.

29. With regard to children involved with the system of administration of juvenile justice, the NGO Coalition appreciate the report as being adequately fair and self critical. The relatively progressive measures through the adoption of Act No. 12/1995 concerning Corrections and, in addition, the adoption of Act No. 3/1997 concerning Juvenile Justice is particularly appreciated. Act No. 3/1997 is considered a significant step since it was through this law that a juvenile penal procedure is introduced for the first time in the country.

30. However, the NGO Coalition is in the opinion that Act No. 3/1997 has yet to be fully compatible to the CRC and other relevant international standard. The CRC standard provided in articles 40 para 2 sub-para b (ii)-(iv) and (vii) and article 37(b), for example, is not yet incorporated in the new law.

31. The age limit for criminal responsibility set-out in the law, which is 8 years, is considered very low. It is even lower than the previously prevailing age of criminal liability set-out in the Penal Code, which is 16 years, even though the age limit in the Penal Code applies only for petit crimes. Moreover, the already low age limit defined in Act No. 3/1997 does not make children below 8 absolutely free from penal investigation since article 5 paragraph 1 of the Act No. 3/1997 provides that, 'when a child below the age of 8 (eight) years commits or being accused of committing crime, thus the child can be subject to (penal) investigation'. As such, even if the child will not be brought to trial, but this approach is in contrast to the perspectives of the Beijing Rules whereby it is suggested that necessity of intervention by juvenile justice system shall be minimized.

32. Act No. 3/1997 also introduces in its penal clause, a fine for children proven guilty of infringing penal law. The NGO Coalition is in the opinion that this clause is nonsense. A child, by definition, must be considered not capable of earning income thus can not be fined in anyway. If it was assumed that it would be the parents who pay the fine, the clause then goes contravene to the very principle of individual responsibility in criminal matters. In practice, the fines (combined with imprisonment) were applied mostly to children in narcotics cases and naturally, it was always the parents who paid it. But when the parents were not capable or not willing to pay the fine, the child would then have to take an additional period of imprisonment in lieu of the unpaid fine.

33. In the meantime, the recently adopted Child Protection Law (No. 23/2002) has brought no legislative changes in the area of children involved with the system of administration of juvenile justice, neither in material nor in procedural matter.

34. With regard to the issue of economic exploitation of children including child labour, the NGO Coalition appreciates very much the ratification of ILO Convention Nos. 138 and 182. In the meantime, the adoption of National Plan of Action concerning elimination of worst forms of child labour (as mandated by the ILO Convention 182 and Recommendation 190) is also very much appreciated.

35. However, the NGO Coalition is concerned about the children involved in underground economy such as prostitution or in the putting out system or serving as domestic helpers, because they do not appear in statistics thus place them in a situation that cannot be monitored. The NGO Coalition wishes to see for specially designed services and protection to reach children in such sectors.

36. The NGO Coalition believes that the Government must put special attention on violence committed by State apparatus against street children. Cases of violent or brutal treatment by the either satuan polisi pamong praja (city police) or the national police including arbitrary arrest or detention during sweeping operations took place so widely and frequently that the children see it as 'normal'.

37. With respect to the issue of sexual exploitation and sexual abuse of children, the report is considered adequately honest, especially the report on situation and measures adopted.

38. Regarding the issue of sexual abuse, the NGO Coalition would first emphasize that the estimate that children constitute 60 per cent of the total victim of rape obviously reflect the seriousness of risk to be faced by children (rather than adult) as a victim to such abuse. Contradictorily, the protection extended by the State is far from sufficient, because:

- Firstly, the age limit for "statutory rape" provided in the prevailing Penal Code is very low; i.e. 12 years of age (article 287 para 2). Assuming that the age of sexual consent for girls (derived from the prevailing Marital Law – Act No. 1/1974) is 16 years, the clause in the Penal Code effectively leave the children aging 12-18 from the protection against "statutory rape".
- Secondly, the penal sanction for those committing "statutory rape" is set very low (at the maximum of 9 year imprisonment), lower even the penal sanction for "rape" (which is a maximum of 12 year imprisonment).
- Thirdly, the concept of "statutory rape" in the Penal Code is not clearly defined. This, together with the lack of understanding among law enforcers on the basic assumptions constituting "statutory rape", makes the children victims of sex abuse even when their age is below 12 often suffer a second abuse during interrogation and in the hearings because of the kind of questions raised by the police (interrogation) and by the judge (hearings) which normally are based on the assumption that the children have already gained a full sexual consent.
- Fourth, the Penal Code in this regard is discriminatory because it doesn't recognise the vulnerability of boy children from sex abuse in general or from "statutory rape" in particular.
- Fifth, lack of an Act for the protection of victims and witnesses in this regard, and the direct exposures, face to face, that must be experienced by the child victim during the hearings makes the child victim of sexual abuse in some kind of mental abuse disadvantaging his/her position.
- Sixth, The Government, insofar, provides no recovery and social re-integration program for the children victim of sex abuse.

39. In the meantime, the recently adopted Child Protection Law (Act No. 23/2002) has yet to bring radical changes in the area of statutory rape.

40. The NGO Coalition also deeply regret the reservation made by the GoI against article 19 of the Convention, bearing in mind that the cases of sexual abuse are proven to be the parents especially the fathers or guardians or among the family members.

41. Regarding the issue of commercial sexual exploitation of children, the NGO Coalition appreciates the active involvement of GoI in the Stockholm Congress. Further measures beyond the reporting period worth to appreciate include:

- The ratification of ILO Convention 182 and the relevant National Plan of Action.
- The active involvement of the GoI the Yokohama Congress and other regional meetings in this respect, and the adoption of National Action Plan against CSEC and National Action Plan against the Trafficking in Persons especially Women and Children.

42. The NGO Coalition would like to emphasize that the estimate that prostituted children comprised 30 per cent of the total sex workers in Indonesia does not include those the children who were prostituted outside the country's territory, and that the number quoted (between 40-70 thousands) is a conservative estimate.

43. The GoI, during the reporting period, did not take any action to provide the children with adequate protection. There was no affirmation in the legislation that the prostituted children are victims and not offenders, not even in the newly adopted Child Protection Act. The prevailing Penal Code criminalise the pimps carrying maximum punishment of 1 year and 4 months imprisonment (article 296) or a fine of IDR 15,000 (less than 2 US dollar). Another relevant clause, article 506, carries only a maximum of one year detention for pimping. But the clients, those who buy the sex from a child is not

criminalised. And, in fact, there was no evidence that the foregoing articles insofar were ever used against any pimp.

44. On the other hand, the "regulation approach" employed by the Penal Code has put the prostitution issue under local regulations that mostly 'legalise' prostitution in certain complexes at the same time also criminalise street prostitution and consequently the children who are involved in street prostitution are also criminalised.

45. In the meantime, the recently adopted Child Protection Act makes not an explicit reference to the issue of child prostitution.

46. Concerning the issue of trafficking of children (for sexual purpose), not a single step was taken during the reporting period. The prevailing Penal Code contains only one article in this respect (article 297) that reads, "trafficking of female and of immature boy is liable for a maximum of 6 years imprisonment", and there was no evidence that the penal clause was ever used against any trafficker.

47. The GoI began to take steps only recently, started with the signing of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Supplementing to the UN Transnational Organized Crime (done in 2000) followed by the development of a National Action Plan for the against trafficking in persons (adopted in December 2002). In the meantime, a bill against trafficking in persons is still being drafted.

48. The NGO Coalition wishes to see a much better and more effective protection for children from trafficking, at the same time also wishes to see realistic, effective and accountable programs to provide children victim of trafficking with recovery and re-integration scheme.

49. Concerning the issue of child pornography, there is insofar no protection provided under national legislation, not even under the recently adopted child protection act. The only reference to measures concerning this issue is the signing of the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the ratification of ILO Convention 182 and the development of the related National Plan of Action.

IV. Particular concerns of the Indonesian NGO Coalition for CRC Monitoring

50. On the status of CRC instrument of ratification

- The "Indonesian NGO Coalition for CRC Monitoring" is very much concerned about the fact that the GoI was using a presidential decree as an instrument of ratification when ratifying the CRC. According to the prevailing statutory hierarchy, a presidential decree comes fourth under an act (the sequence is: **act** or in Indonesian called undang-undang, then **government regulation in lieu of an act** or peraturan pemerintah pengganti undang-undang, then **government regulation** or peraturan pemerintah, then **presidential decree** or keputusan presiden). The use of presidential decree in CRC ratification gives a very low status of the CRC within the national legislation system. As a consequent, the CRC can formally be used not as a reference to change or amend the existing laws nor can it be used in drafting any bill.
- Considering that other major human rights treaties to which Indonesia is a party were ratified by an act, like CEDAW (ratified in 1984), CAT (ratified in 1998), CERD (ratified in 1999), ILO Conventions 138 and 182 (ratified in 1999 and 2000 respectively) hence, the use of presidential decree in CRC ratification was considered by the NGO Coalition as a kind of discrimination, and even an abuse to the CRC.
- Government officials were used to argue that the presidential decree was employed in the ratification of CRC because the Government had a good intention to speedily commit itself towards the treaty, saying that an act would have required longer time as it needs approval

from the parliament. But this argument was obviously invalid for at least two reasons. Firstly, the president by the time of CRC ratification (1990) was so powerful that if he proposed an act for the ratification, the parliament would unlikely be dare to stand against his proposal. Secondly, if it were true that the GoI was sincere to adhere itself to the CRC provisions, why it made such an extensive reservation then? In addition, there was no sign of genuine commitment since practically no important steps were taken towards the realization of the treaty until the regime was thrown in 1998.

- Such an instrument of ratification would also make it difficult for the GoI to ratify the CRC Optional Protocols since, under the present situation, it would be politically difficult for the government to use a presidential decree to ratify them whilst if an act is used to ratify the protocols, it may pose a serious issue since it would certainly mean that within the national jurisdiction the CRC get a lower hierarchical status than its Optional Protocols.
- The "Indonesian NGO Coalition for CRC Monitoring" welcomes the commitment of the government to up-grade its instrument of ratification on the CRC from a Presidential Decree into an Act as is expressed in the current report, and we kindly request the on the Committee on Rights of the Child to encourage the GoI to act on its commitment as soon as possible.

51. On the status of reservation to the CRC provisions

- The NGO Coalition welcomes the intention of the GoI to withdraw the reservations it made towards CRC provisions that has been expressed before the Committee during the review of the State's initial report. However, we deeply concern about the fact that the Government has taken no steps to realize the intention it has promised itself.
- The NGO Coalition is in the opinion that the second paragraph of the statement submitted by the GoI during the time of ratification is eventually a sweeping reservation that must also be revoked without further delay.
- Therefore, we demand the Committee to urge the GoI to immediately revoke its reservations, not only to the limited number of articles stipulated in the third paragraph of the statement (i.e. articles 1, 14, 16, 19, 21, 22 and 29) but essentially also the second paragraph.

52. On the review of child-related laws to ensure their conformity with the CRC

- Since the GoI was using a presidential decree in CRC ratification, the Convention can't essentially be used as a reference in changing existing laws or drafting a new bill. Thus, formally speaking, there is no way of conducting a review of child-related national laws to ensure their conformity with the CRC principles and provisions.

53. On initiative to become parties to other relevant instruments

- The NGO Coalition would again express its appreciation to the GoI for the action that has been taken in this area; i.e. the ratification of ILO Convention Nos. 138 and 182. We do believe that the GoI would also consider to ratifying other conventions relevant to child protection especially the two CRC optional protocols that it has signed in 2001.
- We therefore emphasize our opinion that the GoI would first need to upgrade the instrument of ratification to the CRC since it would be difficult for the GoI to ratify the Protocols without first upgrading the CRC instrument of ratification.

54. With respect to the definition of the child

- Recalling that the Indonesian delegate during the review of the country's initial report welcome the Committee's suggestion to eliminate the discriminatory distinction in legal age

to marry between female and male, the NGO Coalition would herewith express its concern the relevant step has yet to be made by the GoI to eradicate the discrimination.

- Relatedly, the NGO Coalition is very much concerned about the discrepancy in between the legal age to marry and the age limit for statutory rape, whereas the latter is set as low as 12 years (for girls) whilst the former is set at 16 (for female). This means that a girl in Indonesia may have sex consensually but she may not be able to legally marry. This is shameful, and in terms of child protection, this leaves girls who have reached the age of 12 but under 16 without proper protection. In this respect, we would like to see that the age for statutory rape be increased, at the minimum, to the level of legal age to marry.
- In general, it is recommended that the discrepancy in age of majority in different areas (from criminal liability to civil majority) be minimized.

55. With respect to the issue of birth registration

- The NGO Coalition is in the opinion that birth registration signifies a State's recognition to the existence of a child as a legal individual that deserves services and protection. It is therefore ultimately essential. We are gravely concerned about the very low rate of birth registration in Indonesia as well as the continuous discriminatory legislation and practices in this respect.
- The NGO Coalition is also in the opinion that such a low rate is vested in the failure of the Government to make birth registration relevant. We therefore strongly urge the Committee to encourage GoI to make birth registration becomes relevant by linking it to services and protection, compulsory and free of charges for all children.
- We also urge the Committee to encourage the GoI to radically change the existing laws, regulation and practices that are discriminatory.

56. With respect to child's right to education

- The NGO Coalition would herewith express its opinion that a truly compulsory and free primary education is itself an important right besides that it serves as a key towards the fulfillment of other children's rights such as the right to free expression and the right to be protected from economic exploitation.
- The Coalition would therefore call for the attention to the need for the GoI to take more serious steps to progressively increase the budget allotted for educational sector especially for primary education.

57. With respect to the issue of refugee children

- The NGO Coalition believes that the issue of refugee children from East Timor must be solved properly and immediately and that GoI must take more active role to repatriating the children. Thus, we request the Committee to urge the Indonesian Government to take action to this end.

58. With respect to children involved with the system of administration of juvenile justice

- The law on juvenile justice (Act No. 3/1997) is likely to be improved (through amendment) to ensure its full compatibility with the principle and provisions of CRC, the Beijing Rules and the Riyadh Guidelines. In particular: (a) the age of criminal responsibility must be increased, (b) fine as a penal sanction to children must be revoked, and (c) procedure of arrest and detention must be improved.
- In the meantime, the NGO Coalition also believes that law enforcer especially the police must be trained. Where necessary, through establishment of special units within the police handling cases of children in conflict with the penal law.

59. With respect to the issue of child labour

- The NGO Coalition wishes to see a specially designed services and protection to reach children in the underground economy. We also hope that the already developed plans especially the National Plan of Actions for the elimination of the worst forms of child labour can be implemented accordingly.

60. With respect to the issue of street children

- The Government must take significant steps to end violence, arbitrary arrest and detention committed by State apparatus against street children, especially during sweeping operations.
- Considering formal acceptance by the State through, among other, issuance of ID card, is instrumental in the process of integration of run-away children into social life, and that the authority of such issuance rests with the Government, the GoI must take all measures that street children especially those who belong to the category of run-away children can get the official ID card.

61. With respect to sexual exploitation and sexual abuse of children

- On the issue of child sexual abuse the age of sexual consent must be increased at least to the level similar to the legal age to marry. Likewise, the concept of statutory rape must be adopted into the judicial system and an adequately high penal sanction for violation must be established.
- On the issue of commercial sexual exploitation of children, the NGO Coalition is in the opinion that the first and foremost necessary step for the GoI is to adopt a paradigm that children can only be victims and not offenders.