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The National Coalition for the Elimination of Commercial Sexual Exploitation of Children is a coalition of 21 child rights NGOs: Pusat Kajian dan Perlindungan Anak (PKPA); Center for Community Development and Education (CCDE); Yayasan Perkumpulan Bandungwangi (YPB); Yayasan Kesejahteraan Anak Indonesia (YKAI); Yayasan Kusuma Buana (YKB); Bangun Mitra Sejahtera Sejati (BMS) ; Sekretariat Anak Merdeka Indonesia (SAMIN); Yayasan Indriya-Nati (YIN);Yayasan KAKAK; Arek Lintang (ALIT); Yayasan SETARA; Yayasan Dinamika Indonesia (YDI);Bina Sejahtera Indonesia (BAHTERA);Yayasan Kesejahteraan Anak Indonesia; Yayasan Tunas Alam Indonesia (SANTAI);Yayasan Sosial Solidaritas Nusantara (YSSN); Lembaga Advokasi Anak (LADA);Yayasan Pendidikan Kesehatan Perempuan (KASEH PUAN); Yayasan Mitra Kesehatan dan Kemanusiaan (YMKK); Yayasan ASA PUAN ; Yayasan SETARA KITA.

The National Coalition for the Elimination of Commercial Sexual Exploitation of Children is the affiliate group in Indonesia of ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) which is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography and child trafficking). It represents 82 member organizations from 75 countries.

Executive Summary

This contribution aims to provide a review of the four year period between 2008 and 2011 of the situation of the implementation of international obligations/commitments on commercial sexual exploitation of children (CSEC) in Indonesia. The Government has participated in the Third World Congress against Sexual Exploitation of Children and Adolescents in November 2008 and since then has made significant progress toward a more comprehensive national policy and legislation to better protect children from various forms of commercial sexual exploitation. For instance the government has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol) in 2009. However, the Indonesian government has not yet ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and some laws, especially laws addressing child prostitution and child pornography/child abuse images, fail to adequately define and criminalise the different forms of commercial sexual exploitation of children. These laws need to be reviewed and amended to comply with relevant international legal standards. With regard to the policy framework, even though a National Plan of Action on the Eradication of the Criminal Act of Trafficking in Persons and Sexual Exploitation of Children (2009-2014) has been established, its implementation still suffers from a lack of coordination among the relevant state agencies and well as weak monitoring mechanisms.

With regard to the implementation of the relevant legal and policy frameworks, further efforts to coordinate actions by all relevant stakeholders, including governmental agencies as well as civil society organizations, are needed to improve child victims' access to adequate assistance and support services and to enhance capacity building for law enforcement representatives.

The following findings are drawn from relevant literature, including the ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children Indonesia– Second Edition* (2011)¹ and work of the member organisations.

¹ ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children Indonesia – Second Edition* (2011): http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_INDONESIA_FINAL.pdf

I. Current normative and institutional framework for the promotion and protection of human rights

1.1 Legal framework

1.1.1 International legal standards

- a) Since the previous UPR review, Indonesia has ratified in 2009, the UN Convention against Transnational Organized Crime as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol);
- b) However, the Indonesian government has not yet ratified the Optional Protocol on the sale of children, child prostitution and child pornography.

1.2.1 Regional legal standards

The Indonesian government has signed the ASEAN² Declaration Against Trafficking in Persons, particularly Women and Children (2004) and has also signed bilateral treaties on mutual legal assistance with the Government of Australia and China, while bilateral extradition treaties have been signed with Malaysia, the Philippines, Hong Kong and the Republic of Korea. However, it has not yet ratified, the Treaty on Mutual Legal Assistance in Criminal Matters³ developed within the framework of the ASEAN, to facilitate the exchange of information, material evidence, testimonies and other items that are needed to prosecute nationals or residents that have allegedly committed certain crimes, including sexual crimes against children abroad among ASEAN member States (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam).

1.3.1 Domestic legal framework

Although progress has been made in Indonesia with regard to the development of domestic laws addressing child trafficking for sexual purposes, the existing legislation fails to provide adequate provisions regarding the protection of children against child prostitution and child

² ASEAN: Association of Southeast Asian Nations

³ Treaty on Mutual Legal Assistance in Criminal Matters. ASEAN. <http://www.aseansec.org/17363.pdf>

pornography/child abuse images. In addition, the extraterritorial legal framework is not robust enough to protect effectively children from foreign countries against travelling child sex abusers based in Indonesia.

a) Laws addressing child prostitution:

The two main Indonesian laws addressing forms of commercial sexual exploitation of children, the *Child Protection Act* (2002) (CPA) and the *Criminal Code* (1982) have not been amended since the previous review. Those laws, which contain several provisions that can be used to protect children from sexual exploitation (e.g. Article 88 prohibits a person from sexually exploiting a child for his own gain or the gain of a third party, which include pimps) still fail to contain specific provisions which define child prostitution in line with the requirements of relevant international standards. Moreover, they do not criminalise activities prohibited under international law, namely obtaining, offering, procuring and providing a child for prostitution. In addition, it is unclear whether children victims of prostitution cannot be prosecuted for being involved in prostitution.

The fact that Indonesia is not a State Party to the Optional Protocol on the sale of children, child prostitution and child pornography constitutes an obstacle for the international community to urge Indonesian public authorities to adopt adequate legislation addressing child prostitution.

b) Laws addressing child pornography

The *Law on Pornography* was adopted in 2008. This law, which has a very broad scope, provides a definition of pornography in general, unclear and open to varied interpretations, which makes it difficult to implement. In addition, although under the Law on Pornography a child is considered as a person under eighteen years old, this law does not contain a provision that specifically defines child pornography and criminalises all the activities relating to child pornography in accordance with relevant international and regional legal standards. The *Electronic Information and Transaction Law* (No. 11/2008) adopted in 2008, prohibits the distribution of documents containing “indecent content”, which could include child abuse images. However, the broad interpretation of

this concept does not provide an adequate measure to effectively criminalise the distribution of child pornography.

Furthermore, the domestic legal framework does not impose any reporting obligations upon individuals and professionals who may be exposed to child pornography because of the nature of their work (e.g. IT technicians, photo developers). Neither are reporting obligations imposed on Internet providers and financial companies⁴.

c) Laws addressing child trafficking

- While the *Law on the Eradication of the Criminal Act of Trafficking in Persons (No. 21/2007)* is largely in compliance with the Trafficking Protocol, “recruiting, transporting, harboring, sending, transferring, or receiving of a person” for the purpose of exploitation is only deemed trafficking if it is committed with deceptive or forceful means. This is not in line with Article 3 of the Trafficking Protocol which stipulates that above mentioned activities should be considered trafficking in persons even if it does not involve any kind of deceptive or forceful means.
- The provisions of the *Law on the Eradication of the Criminal Act of Trafficking in Persons* are in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), which was ratified in 2009. However, the *Government Regulation of the Republic of Indonesia No. 9/2008 Regarding Procedures and Mechanisms of an Integrated Service Center for a Witness and/or Victim of Trafficking in Persons* under which victims of and witnesses to trafficking in persons cases (including children) in Indonesia are entitled to receive free health and social rehabilitation, return, social reintegration and legal assistance (provided by an integrated service center operating at both the national and local levels), do not distinguish between child and adult victims and fail to address the specific needs of child victims of trafficking⁵.

⁴ ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children Indonesia– Second Edition* (2011): http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_INDONESIA_FINAL.pdf

⁵ Ibid.

d) Laws addressing child sex tourism related offenses, including extraterritorial legislation

- In Indonesia, foreign travelling child sex offenders can be prosecuted in Indonesia and under the extraterritorial scope of several legal provisions, Indonesian citizen can be prosecuted for crimes against children committed in foreign countries. However, according to Art. 5 of the *Criminal Code* the prosecution of Indonesian citizens is only possible when the facts alleged also constitute a crime in the country where they were committed (principle of double criminality). Such a principle constitutes an obstacle to the prosecution of travelling child sex offenders from Indonesia and provides an incentive for travelling offenders to countries with weak legal frameworks where they can exploit children without facing consequences when they return home⁶. In addition, the scope of this extraterritorial legislation only applies to Indonesian citizens and not to foreigners who reside permanently in Indonesia.
- In addition, the Indonesian legal framework fails to criminalise individuals or companies which advertise/promote child sex tours, as well as those who make/organize travel arrangements for persons for the purpose of sexually exploiting children at destination. This specific legislation should be reviewed and brought in line with the relevant provisions of the *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*⁷, an outcome document of the Third World Congress against Sexual Exploitation of Children and Adolescents, which was held in Brazil in November 2008.

1.4.1 Recommendations regarding the legal framework⁸:

- Urge the government of Indonesia to ratify the Optional Protocol on the sale of children, child prostitution and child pornography.

⁶ ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children Indonesia– Second Edition* (2011): http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_INDONESIA_FINAL.pdf

⁷ *The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*: http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf

⁸ Some of the recommendations were drawn from the ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children Indonesia– Second Edition* (2011): http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_INDONESIA_FINAL.pdf

- Harmonise the laws addressing commercial sexual exploitation of children with the standards set forth in the Optional Protocol on the sale of children, child prostitution and child pornography and other relevant international and regional legal standards. In particular, the laws should provide a clear definition of the different forms of child sexual exploitation (sale of children, child prostitution and child pornography) in line with the requirements of the provisions of the Optional Protocol.
- The *Law on the Eradication of the Criminal Act of Trafficking in Persons (No. 21/2007)* should be reviewed and amended in order to stipulate that deceptive or forceful means need not be used in order for prohibited conduct⁹ to be considered trafficking.
- The Indonesian legal framework should impose reporting obligations to individuals and professionals who may be exposed to child pornography because of the nature of their work as well as Internet providers and financial companies.
- The *Government Regulation of the Republic of Indonesia No. 9/2008 Regarding Procedures and Mechanisms of an Integrated Service Center for a Witness and/or Victim of Trafficking in Persons* should be reviewed and amended in order to respond adequately to the specific needs of children victims of trafficking.
- The Criminal Code should be reviewed in order to eliminate the requirement of the double criminality principle with regard to the prosecution of Indonesian travelling child sex abusers. In addition, the scope of the extraterritorial legislation applicable to Indonesian citizens should be extended to foreigners who reside in Indonesia.
- Ratify the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

⁹ Recruiting, transporting, harboring, sending, transferring, or receiving of a person for the purpose of exploitation.

II. Promotion and protection of human rights on the ground: implementation of international human rights

2. Key areas of concerns with regard to the implementation of children's rights right to protection against commercial sexual exploitation on the ground

2.1 Gaps in implementing existing policies addressing child trafficking and commercial sexual exploitation of children

- The *Evaluation of the Implementation of Indonesia's first National Plans of Action on The Elimination of Trafficking of Women and Children and The Elimination of Commercial Sexual Exploitation of Children*¹⁰ (conducted in June 2008), revealed that the first national Plan of Action was not adequately implemented by relevant stakeholders due to several causes including a lack of prioritization, a lack of common understanding among the stakeholders (state agencies and civil society organizations) and a lack of clear indicators. According to the evaluation, the implementation process of the national Plan was not adequately monitored and assessed, even though monitoring bodies, such as task forces, were in place.

The above mentioned Evaluation also showed that the coordination and cooperation among the stakeholders involved in the implementation process of the first National Plans of Action *on The Elimination of Trafficking of Women and Children and The Elimination of Commercial Sexual Exploitation of Children* was very weak, primarily due to duplication and overlapping of activities and a lack of financial resources¹¹.

Therefore, it appears that the impact of this core policy to combat commercial sexual exploitation of children is limited.

- A new National Plan of Action on the Eradication of the Criminal Act of Trafficking in Persons and Sexual Exploitation of Children (2009-2014) has been established under the decision of the Coordinating Ministry for People's Welfare and its implementation and monitoring is coordinated by the Ministry of Women's Empowerment.

¹⁰ Sofian, Ahmad, Palupi, Sri, Susilo, Wahyu & Marshall, Phil. *Evaluation of the Implementation of Indonesia's first National Plans of Action on The Elimination of Trafficking of Women and Children (TWC) and The Elimination of Commercial Sexual Exploitation of Children (CSEC)*. June 2008.

¹¹ Ibid.

After two years of implementation of the NPA it appears that efforts were not effective due to several reasons, including:

- The NPA was initiated through Ministerial action, which bestows much less legal authority than Presidential Decree, which was used to initiate the earlier NPA. This lower legal status leads to low levels of implementation by the provincial and district governments.
- The Ministry of Public Welfare has exercised less coordination in encouraging other ministries and state agencies to implement measures to eliminate trafficking and sexual exploitation.
- A national task force for the elimination of trafficking and sexual exploitation of children has been established, but the task force does not function effectively, even at the highest level within the Secretariat. This task force, located within the Ministry of Women Empowerment and Child Protection, has failed to perform its function to coordinate the elimination trafficking in person and sexual exploitation of children

2.2 Lack of access child victims to adequate support and assistance services

Even though specific shelters providing as medical, psychological, social and legal services for victims of trafficking have been established in Jakarta, Surabaya, East Java, Makassar, South Sulawesi and Pontianak, West Kalimantan¹² with the support of the International Organization for Migration (IOM), many areas do not have such centers and child victims who reside in those areas are not able to access adequate services providing them with the specific support and assistance that they need as child victims of trafficking and/or commercial sexual exploitation.

In addition, due to the lack of toll free 24h national hotlines available for child victims, many cases of child trafficking and commercial sexual exploitation of children are not reported to the relevant authorities.

The situation of child victims unable to access reporting mechanisms and support services is of great concern as it hampers their recovery and social reintegration process.

¹² IOM, *Recovery Centres for Victims of Trafficking*. Accessed on 17 March 2010: [http://www.iom.or.id/infokit/eng/CTU%20Shelter%20Brochure%203July06\(lo\).pdf](http://www.iom.or.id/infokit/eng/CTU%20Shelter%20Brochure%203July06(lo).pdf).

2.3 Lack of training of law enforcement officials

Despite many efforts conducted by the Indonesian government in collaboration with UN agencies and civil society organizations to train law enforcement officials on issues related to the commercial sexual exploitation of children, it appears that such issues are not well understood by all law enforcement agents. For instance, it has been reported that judges and attorneys still refer to the *Criminal Code* rather than to the *Child Protection Law*, which provides more comprehensive protection for children¹³.

Recommendations regarding the implementation of child rights against trafficking and commercial sexual exploitation¹⁴:

- The implementation of the National Plan of Action should be coordinated and monitored by task forces at the national and local levels that are adequately equipped and organised to avoid duplication and overlapping. They should provide progress reports on a regular basis.
- The Government of Indonesia should ensure that shelters for victims such as the Integrated Service Centers are established in every district at the provincial level and should provide them with adequate resources.
- Anonymous 24-hour hotlines for child victims of trafficking and commercial sexual exploitation should be established and available nationwide. They should be adequately equipped to respond to the specific needs of the child victims.
- Law enforcement representatives should be provided with additional training on child protection laws and procedures in order to increase capacity with regard to the prosecution of child sex offenders. They should also receive specific training with regard to the identification of child victims of trafficking.

¹³ Government of Indonesia. *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1*. Report presented at the first session of the UN Human Rights Council, Working Group on the Universal Periodic Review, Geneva, 7-18 April 2008: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/IDSession1.aspx>.

¹⁴ Some of the recommendations were drawn from the ECPAT International *Global Monitoring Report on the status of action against commercial sexual exploitation of children Indonesia– Second Edition* (2011): http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_INDONESIA_FINAL.pdf