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Re: Indonesia - 108<sup>th</sup> session of the Committee (8-26 July 2013)

13 June 2013

Dear Distinguished Committee members:

We respectfully submit this letter in advance of the Human Rights Committee's (the Committee) review of Indonesia at its 108<sup>th</sup> session from 8-26 July 2013. Equality Now, and the Indonesian-based Kalyanamitra, non-governmental human rights organizations, are writing to express our concern about the discrimination and inequality faced by Indonesian women and girls.

This letter will focus on continued violations against girls and women in Indonesia, in particular the government legitimization of female genital mutilation (FGM). This is in violation of Articles 2(1) (non-discrimination), 3 (equality between men and women), 7 (prohibition of torture and cruel treatment or punishment), 24 (protection of minors) and 26 (equal protection under the law) of the International Covenant on Civil and Political Rights (the ICCPR). We also note the Committee's "General Comment No. 28: Equality of rights between men and women (article 3)," which states, "In States parties where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be provided," and "should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated."

Kalyanamitra is an independent non-governmental organization working to promote gender equality in Indonesia through women's community development, dissemination of information and publications on women's issues, training, research, and advocacy on women's rights. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 160 countries.

***Medicalization of female genital mutilation (FGM) by Indonesia***

According to the World Health Organization (WHO), FGM refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. Approximately 140 million girls and women worldwide are living with the consequences of FGM. In Indonesia, surveys show that among girls aged 15-18, 86-100% had undergone some form of

FGM that commonly involves cutting or injury to the clitoris. Approximately 92% of the surveyed families expressed support for the continuation of FGM not only for their daughters but also for their future granddaughters.<sup>1</sup> In Indonesia it is generally practiced on baby girls within the first six weeks of birth, but may vary depending on local customs. Reasons given for the practice include religion, custom, “cleanliness” and suppressing sexual desire.<sup>2</sup>

In 2006, the Director General of Public Health Management, Ministry of Health, issued a circular that prohibited medical personnel from performing FGM. However, this was rendered ineffectual when, in November 2010, the Indonesian Ministry of Health passed a regulation [No. 1636/MENKES/PER/XI/2010 regarding “Female Circumcision”] legitimizing the practice of FGM and authorizing medical professionals to perform it.<sup>3</sup> Though this “medicalization” of FGM permits a procedure that is harmful to girls and women and represents a violation of the ethical code governing the professional conduct of nurses, midwives and other health care workers, efforts to overturn the legislation have been unsuccessful; human rights groups on the ground fear an increase in FGM due to this regulation.

We are concerned that medicalization of any form of FGM legitimizes the practice thus rendering it impossible to stop the practice. In collaboration with Kalyanamitra, Equality Now issued an Action in 2012 calling on the Indonesian government to live up to its domestic and international obligations by: repealing the 2010 Ministry of Health regulation legitimizing the practice of FGM; enacting and implementing comprehensive legislation banning FGM with strong penalties for violators; and conducting public awareness-raising and education campaigns to change cultural perception and beliefs on FGM. (Please see attached Action.<sup>4</sup>)

The Indonesian regulation on “Female Circumcision” runs counter to a number of Indonesian laws which include decrees enshrining international legal obligations in the national legal framework. These are Law No. 7/1984 on the ratification of the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Law No. 5/1998 on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Law No. 39/1999 on Human Rights; Law No. 23/2002 on Child Protection; Law No. 23/2004 on the Elimination of Domestic Violence; and Law No. 23/2009 on Health.

Indonesia is also a member of the World Health Assembly of the WHO which passed a resolution in 2008 urging all member states to accelerate work towards the elimination of FGM, to enact and enforce legislation against the practice and to prohibit performance of FGM by any person including medical professionals.<sup>5</sup> The WHO has consistently stated that, “under no circumstances should FGM be performed by health professionals or in health establishments.”<sup>6</sup> In a 2010 interagency publication, “Global strategy to stop health-care providers from performing female genital mutilation,” a number of organizations including UN bodies and the WHO found that “[t]he involvement of health-care providers in the performance of FGM is likely to create a sense of legitimacy for the practice. It gives the impression that the procedure is good for health, or at least that it is harmless. This can further contribute to institutionalization of the practice, rendering it a routine procedure and even leading to its spread into cultural groups that currently do not practice it.”<sup>7</sup>

In addition, the regulation runs counter to a recently passed U.N. General Assembly resolution on eradicating FGM which expresses concern about “evidence of an increase in the incidence of female genital mutilations being carried out by medical personnel in all regions in which they are practiced”, and urges member states to “condemn all harmful practices that affect women and girls, in particular female genital mutilations, whether committed within or outside a medical institution, and to take all necessary measures, including enacting and enforcing legislation to prohibit female genital mutilations.”(A/C.3/67/L.21/Rev.1\*, ¶ 4)<sup>8</sup>

In its 2012 consideration of Indonesia's report the CEDAW Committee expressed its deep concern about "the serious regression with regard to the practice" of FGM and particularly the Ministry of Health's regulation authorizing certain medical practitioners to conduct FGM. It called on the Indonesian Government to withdraw the 2010 regulation and to "adopt robust legislation which will criminalize all forms of female genital mutilation...and provide sanctions against offenders."(CEDAW/C/IDN/CO/6-7, ¶ 21, 22) In its examination of Indonesia in 2008, the Committee Against Torture also called for the Government to "adopt all adequate measures to eradicate the persistent practice of female genital mutilation, including through awareness-raising campaigns in cooperation with civil society organizations."(CAT/C/IDN/CO/2, ¶ 16).

In a November 2012 letter, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment wrote a joint letter to the government of Indonesia expressing concern about the Health Ministry regulation. The letter drew the attention of the government to its obligations under various international covenants highlighting FGM as a human rights violation as well as to the recommendations emanating from the Universal Periodic Review on Indonesia in May 2012<sup>9</sup> calling for repeal of the regulation, enactment of strong legislation against FGM and adoption of awareness-raising campaigns in cooperation with civil society organizations.

The Indonesian Health Ministry maintains that this regulatory step has been taken to make the procedure safer and to discourage demand for traditional healers performing the procedure which would increase chances of complications. In a March 2013 report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment responded to this position stating that the procedure "amounts to torture or cruel, inhuman and degrading treatment and that regulating it even for purposes of ensuring safe and professional procedures serves only to provide cover for a practice that violates the State's obligations under international law." The report went on to say that the Special Rapporteur "insists that the Government of Indonesia repeal the abovementioned legislation."(A/HRC/22/53/Add.4, ¶ 47).

The Committee in its list of issues to the government of Indonesia asked the State party to "respond to reports that the law does not prohibit female genital mutilation (FGM)" and to "explain how the medicalization of the practice of FGM is compatible with the rights provided for under the Covenant." (CCPR/C/IDN/Q/1, ¶ 18). We are encouraged to see that the Committee has raised this issue and hope the Committee will emphasize the urgent need to repeal the 2010 regulation and enact and implement comprehensive legislation against FGM.

#### ***Suggested Questions to the State Party***

We would respectfully urge the Committee to raise with the Indonesian government during its review the following questions with regard to issues raised in this letter:

- 1) What are the government's plans to repeal the 2010 regulation legitimizing the practice of FGM?
- 2) What measures has the government explored to raise awareness and educate the public about FGM as primarily a violation of the human rights of girls and women and not just a health issue?
- 3) What are the government's plans to enact and effectively implement legislation banning FGM?

### ***Proposed Recommendations***

We also urge the Committee to consider the following recommendations to the Indonesian government:

- 1) Repeal the 2010 Ministry of Health regulation legitimizing the practice of FGM.
- 2) Put in place comprehensive legislation criminalizing all forms of FGM with strong penalties for violators.
- 3) In cooperation with civil society organizations, conduct public awareness-raising, education and sensitization campaigns to change cultural perception and beliefs on FGM and acknowledging FGM as a human rights violation with harmful consequences.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,



Yasmeen Hassan  
Global Director  
Equality Now



Listyowati  
Chairperson  
Kalyanamitra

### Enclosures

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<sup>1</sup> Population Council, "Female Circumcision in Indonesia: Extent, Implications and Possible Interventions to Uphold Women's Health Rights," (2003), available at [http://www.popcouncil.org/pdfs/frontiers/reports/Indonesia\\_FGM.pdf](http://www.popcouncil.org/pdfs/frontiers/reports/Indonesia_FGM.pdf)

<sup>2</sup> Amnesty International, "Left without a choice, Barriers to reproductive health in Indonesia," (2010) available at <http://www.amnesty.org/en/library/info/ASA21/013/2010>

<sup>3</sup> Minister of Health of the Republic of Indonesia Regulation Number 1636/MENKES/PER/XI/2010 on Female Circumcision, 15 November 2010, enacted in Jakarta on 28 December 2010.

<sup>4</sup> Available at [http://www.equalitynow.org/take\\_action/fgm\\_action431](http://www.equalitynow.org/take_action/fgm_action431)

<sup>5</sup> Sixty-First World Health Assembly, Female Genital Mutilation (WHA61.16), 24 May 2008, available at [http://apps.who.int/gb/ebwha/pdf\\_files/A61/A61\\_R16-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/A61/A61_R16-en.pdf)

<sup>6</sup> See WHO Statement on female circumcision to the United Nations, Sub-Commission on Human Rights, 1982.

<sup>7</sup> UNFPA, UNHCR, UNICEF, UNIFEM, WHO, FIGO, ICN, MWIA, WCPA, WMA, "Global strategy to stop health-care providers from performing female genital mutilation," p.9, (2010) available at [http://whqlibdoc.who.int/hq/2010/WHO\\_RHR\\_10.9\\_eng.pdf](http://whqlibdoc.who.int/hq/2010/WHO_RHR_10.9_eng.pdf)

<sup>8</sup> See General Assembly Resolution (A/C.3/67/L.21/Rev.1\*), Intensifying global efforts for the elimination of female genital mutilations, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/67/L.21/Rev.1&referer=http://www.npwj.org/node/5820&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/67/L.21/Rev.1&referer=http://www.npwj.org/node/5820&Lang=E)

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<sup>9</sup> During the May 2012 Universal Periodic Review of Indonesia it was recommended that Indonesia “repeal the regulation of the Minister of Health N° 1636 and officially prohibit the increasing practice [of FGM]...and other traditional practices inflicting sufferings on women and girls” (recommendation No. 109.26 by Norway); and “adopt all necessary measures to eradicate the persistent practice of female genital mutilation, including through awareness-raising campaigns, in cooperation with civil society organizations” (recommendation No. 109.27 by Uruguay). See Report of the Working Group on the Universal Periodic Review\* Indonesia (A/HRC/21/7) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/17/PDF/G1215017.pdf?OpenElement>