

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the sale of children, child prostitution and child pornography and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 26/12, 25/6 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Presidential decree (Perppu No.1/2016)**, which modifies the 2002 Law No.23 on Child Protection and provides additional punishments for perpetrators of sexual violence against children such as chemical castration and the death penalty.

According to the information received:

On 25 May 2016, the President signed the decree Perppu No.1/2016, which amends Law No.23 on Child Protection from 2002. Article 81 has reportedly been modified and stipulates in a new paragraph 5 that, if the perpetrator of sexual violence against children has caused to the child victim serious injuries, mental disorders, infectious diseases, impairment or loss of reproductive functions, and/or the child victim dies, he or she shall be sentenced to death, life imprisonment or ten years of imprisonment with a maximum of 20 years.

The amendment to Law No.23 on Child Protection from 2002 also reportedly adds a paragraph 7 to Article 81 which provides as a supplementary punishment the possibility of subjecting the perpetrator to chemical castration and the placement of an electronic tag if he or she has already been convicted for such a crime or has caused the abovementioned effects of paragraph 5 to the child victim.

The provisions in paragraph 7 of Article 81 are further elaborated through the insertion of a new Article 81A. It provides inter alia in paragraphs 3 and 4 rehabilitation measures following the implementation of chemical castration which are to be set through supplementary government regulations.

The decree is reportedly due to be submitted to the House of Representatives for further deliberation before it is passed into law.

We would like to take this opportunity to express our concern to your Excellency's Government regarding the aforementioned new provisions of Law No.23 on Child Protection from 2002. The extension of the use of the death penalty in Indonesia would be contrary to calls on States to progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed. Furthermore, the imposition of the death penalty for crimes other than intentional killing is incompatible with article 6(2) of the International Covenant of Civil and Political Rights, acceded to by Indonesia on 23 February 2006, which states that death may be imposed only for the most serious crimes.

Moreover, we are concerned by the possibility of subjecting perpetrators to chemical castration without their consent. Chemical castration is an extreme penalty and constitutes cruel, inhumane and degrading punishment. Sexual offender treatment should be based on consent in order to bring it in line with international norms such as the "Standards of Care for the Treatment of Adult Sex Offenders".

We have additional concerns with the solely repressive response adopted by your Excellency's Government to the reported increase in child sexual abuse and exploitation. Indeed, in order to effectively put an end to the demand for the sexual abuse and exploitation of children it is essential to place emphasis on prevention strategies, with sanctions only constituting a part of such a response.

Moreover, as is indicated in Principle 8 of the "Standards of Care for the Treatment of Adult Sex Offenders", pharmacotherapy may be part of the sexual offender treatment. It should thus not be provided separately from rehabilitation measures as is indicated through the additional Article 81A. What is more, studies on the effectiveness of the different rehabilitation treatment programmes in reducing recidivism rates of sex offenders are inconsistent (A/HRC/31/58). Focusing on only one aspect of rehabilitation could thus be counterproductive. Lastly, chemical castration should be understood as a means to prevent reoffending and a part of the treatment of the offender and not as a sanction.

In light of the above, we would therefore encourage your Excellency's Government to review the decree Perppu No.1/2016, which amends Law No.23 on Child Protection from 2002, so that sanctions for perpetrators of sexual violence against children conform to the principles and provisions of international treaties ratified by Indonesia, in particular, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

We further urge your Excellency's Government to adopt comprehensive strategies to eradicate the demand for the sexual abuse and exploitation of children by ensuring inter alia the accountability of perpetrators of sexual violence against children as well as their rehabilitation to ensure that they do not reoffend. Moreover, in view of the structure of the new Article 81A, we call on your Excellency's Government to ensure that any medical treatment for sexual offenders, such as chemical castration, is consensual and

only envisaged as a possible part of a wider rehabilitation programme based on evidence-based research.

In connection to the above alleged facts and concerns, please see the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide an update on the status of the above-mentioned decree.
3. Please provide further information on any measures taken by Your Government to eradicate the sexual abuse and exploitation of children and in particular the demand for such criminal actions.
4. Please provide further information on rehabilitation measures for perpetrators of sexual violence against children.

We would appreciate receiving a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Maud de Boer-Buquicchio
Special Rapporteur on the sale of children, child prostitution and child pornography

Juan Ernesto Mendez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

The above-mentioned alleged facts would indicate a prima facie violation of the rights of every individual to life, in accordance with articles 3 of the Universal Declaration of Human Rights (UDHR), and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) acceded to by Indonesia on 23 February 2006. Although international law does not prohibit the death penalty, it nonetheless provides that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. In addition, resolution A/RES/65/206 adopted by the General Assembly, calls on States to progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed, as well as to establish a moratorium on executions with a view to abolishing the death penalty.

We would also like to bring to the attention of your Excellency's Government article 6(2) of the ICCPR, which provides that countries which have not abolished the death penalty may only impose it for the most serious crimes. This provision has consistently been interpreted by the Human Rights Committee to mean that the death sentence may only be imposed in respect of intentional killing. The Human Rights Committee also noted that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant (CCPR/C/79/Add.25).

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified, inter alia, in article 7 of the ICCPR, and in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Indonesia ratified on 28 October 1998. In this context, we also wish to draw your Excellency's attention to the report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment to the General Assembly (A/67/279), stating that most conditions, under which capital punishment is actually applied, renders the punishment tantamount to torture. Under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment.

Following its review of Indonesia, the Human Rights Committee (CCPR/C/IDN/CO/1) also recommended that the "State party should reinstate the de facto moratorium on the death penalty and should consider abolishing the death penalty by ratifying the Second Optional Protocol to the Covenant."

In respect to the treatment of sexual offenders, the application of chemical castration without the consent of the offender constitutes a violation to article 7 of the ICCPR. Moreover, as indicated in the thematic report on the demand for the sexual exploitation of children of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/31/58, para.72), the Standards of Care for the Treatment of Adult Sex Offenders recall that it is fundamental to ensure that any rehabilitation of offenders is undertaken in accordance with human rights principles. In

particular, Principle 2 underlines that sexual offender treatment must be an elective process and Principle 4 that it must be a humane treatment.

Under article 34 of the Convention on the Rights of the Child, which Indonesia ratified on 5 September 1990, it has the duty to take all appropriate measures to prevent the sexual exploitation and abuse of children. This obligation is further elaborated through article 9 of Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified by Indonesia on 24 September 2012, which requires the adoption or strengthening, implementation and dissemination of laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol.

In her report on tackling the demand for the sexual exploitation of children (A/HRC/31/58), the Special Rapporteur on the sale of children, child prostitution and child pornography emphasized the importance of addressing the social, cultural, gender and institutional constructs that foster the conditions in which the sexual abuse and exploitation of children is either ignored, tolerated or even accepted. These range from gender discrimination and patriarchal structures to disregard for children as right holders. Authorities should also seek out potential offenders before they act through on the one hand, specialized treatment programmes to ensure that potential preferential offenders, such as paedophiles and hebephiles, can control their impulses, and on the other hand, through sensitization programmes for potential non-preferential offenders who might sexually exploit children out of disregard or ignorance of their age.